

**VIRGINIA
DEPARTMENT OF EMERGENCY
MANAGEMENT LAWS**

2015 EDITION

Governor's Secretaries

Emergency Services and Disaster Law of 2000,
as Amended

Transportation of Hazardous Radioactive Materials

Funding for State and Local Government
Radiological Emergency Preparedness

Virginia Hazardous Materials Emergency Response Program

Issued by
Virginia Department of Emergency Management

Jeffrey D. Stern, Ph.D.
State Coordinator



Reprinted from the Code of Virginia of 1950
and the 2015 Supplement

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Title 2.2.

Administration of Government.

SUBTITLE I.

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ARTICLE 8.

Secretary of Public Safety and Homeland Security.

§ 2.2-221. Position established; agencies for which responsible; additional powers and duties.

A. **(Effective until July 1, 2018)** The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Alcoholic Beverage Control, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

A. **(Effective July 1, 2018)** The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: the Virginia Alcoholic Beverage Control Authority, Department of Corrections, Department of Juve-

nile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

B. The Secretary shall by reason of professional background have knowledge of military affairs, law enforcement, public safety, or emergency management and preparedness issues, in addition to familiarity with the structure and operations of the federal government and of the Commonwealth.

Unless the Governor expressly reserves such power to himself, the Secretary shall:

1. Work with and through others, including federal, state, and local officials as well as the private sector, to develop a seamless, coordinated security and preparedness strategy and implementation plan.

2. Serve as the point of contact with the federal Department of Homeland Security.

3. Provide oversight, coordination, and review of all disaster, emergency management, and terrorism management plans for the state and its agencies in coordination with the Virginia Department of Emergency Management and other applicable state agencies.

4. Work with federal officials to obtain additional federal resources and coordinate policy development and information exchange.

5. Work with and through appropriate members of the Governor's Cabinet to coordinate working relationships between state agencies and take all actions necessary to ensure that available federal and state resources are directed toward safeguarding Virginia and its citizens.

6. Designate a Commonwealth Interoperability Coordinator to ensure that all communications-related preparedness federal grant requests from state agencies and localities are used to enhance interoperability. The Secretary shall ensure that the annual review and update of the statewide interoperability strategic plan is conducted as required in § 2.2-222.2. The Commonwealth Interoperability Coordinator shall establish an advisory group consisting of representatives of state and local government and constitutional offices, broadly distributed across the Commonwealth, who are actively engaged in activities and functions related to communications interoperability.

7. Serve as one of the Governor's representatives on regional efforts to develop a coordinated security and preparedness strategy, including the National Capital Region Senior Policy Group organized as part of the federal Urban Areas Security Initiative.

8. Serve as a direct liaison between the Governor and local governments and first responders on issues of emergency prevention, preparedness, response, and recovery.

9. Educate the public on homeland security and overall preparedness issues in coordination with applicable state agencies.

10. Serve as chairman of the Secure Commonwealth Panel.

11. Encourage homeland security volunteer efforts throughout the state.

12. Coordinate the development of an allocation formula for State Homeland Security Grant Program funds to localities and state agencies in compliance with federal grant guidance and constraints. The formula shall be, to the extent permissible under federal constraints, based on actual risk, threat, and need.

13. Work with the appropriate state agencies to ensure that regional working groups are meeting regularly and focusing on regional initiatives in training, equipment, and strategy to ensure ready access to response teams in times of emergency and facilitate testing and training exercises for emergencies and mass casualty preparedness.

14. Provide oversight and review of the Virginia Department of Emergency Management's annual statewide assessment of local and regional capabilities, including equipment, training, personnel, response times, and other factors.

15. Employ, as needed, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and fix their compensation to be payable from funds made available for that purpose.

16. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, real property, or personal property for the benefit of the Commonwealth, and receive and accept from the Commonwealth or any state, any municipality, county, or other political subdivision thereof, or any other source, aid or contributions of money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made.

17. Receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be held, used, and applied to carry out these requirements subject to the conditions upon which the aid, grants, or contributions are made.

18. Make grants to local governments, state and federal agencies, and private entities with any funds of the Secretary available for such purpose.

19. **(Effective July 1, 2018)** Provide oversight and review of the law-enforcement operations of the Alcoholic Beverage Control Authority.

20. Take any actions necessary or convenient to the exercise of the powers granted or reasonably implied to this Secretary and not otherwise inconsistent with the law of the Commonwealth.

History.

1976, c. 732, §§ 2.1-51.16, 2.1-51.18; 1978, cc. 455, 606, 607, 820; 1984, cc. 720, 779; 1985, cc. 447, 448; 1986, c. 60; 1988, cc. 67, 173, 888; 1989, c. 733; 1990, cc. 1, 317; 1992, c. 81; 1996, c. 503; 2001, c. 844; 2006, cc. 150, 326; 2011, cc. 780, 858; 2012, cc. 803, 835; 2014, cc. 115, 490; 2015, cc. 38, 730.

Subsection A set out twice. — The first version of Subsection A above is effective until July 1, 2018. The second version of subsection A is effective July 1, 2018.

Editor's note.

Acts 2014, cc. 115 and 490, cl. 3 provides: "That as of the effective date of this act [March 3, 2014], the Secretary of Public Safety and Homeland Security shall be deemed the successor in interest to the former Secretary of Veterans Affairs and Homeland Security to the extent this act transfers powers and duties. All right, title, and interest in and to any real or tangible personal property vested in the former Secretary of Veterans Affairs and Homeland Security to the extent that this act transfers powers and duties related to homeland security as of the effective date of this act shall be transferred to and taken as standing in the name of the Secretary of Public Safety and Homeland Security."

Acts 2014, cc. 115 and 490, cl. 4 provides: "That the Governor may transfer an appropriation or any portion thereof within a state

agency established, abolished, or otherwise affected by the provisions of this act, and from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act."

Acts 2014, cc. 115 and 490, cl. 5 provides: "That the Governor may transfer any employee within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act."

Acts 2014, cc. 115 and 490, cl. 6 provides: "That in reviewing local disaster response plans or local shelter, evacuation, and traffic plans to support emergency evacuation in the event of man-made or natural disaster priority shall be given by the Virginia Department of Emergency Management to Hampton Roads localities."

Acts 2014, cc. 38 and 730, cl. 4 provides: "That the provisions of this act shall become effective on July 1, 2018, except that the provisions of the thirteenth, fourteenth, and fifteenth enactments of this act shall become effective on July 1, 2015."

The 2014 amendments.

The 2014 amendments by c. 115, effective March 3, 2014, and c. 490, effective April 2, 2014, are identical and in subsection A, inserted the subsection A designator, inserted

“and Homeland Security” in the first sentence, added a comma in the second sentence; and added subsection B.

The 2015 amendments.

The 2015 amendments by cc. 38 and 730,

effective July 1, 2018, are identical and substituted “the Virginia Alcoholic Beverage Control Authority” for “Department of Alcoholic Beverage Control” in subsection A; added subdivision B 19; redesignated former subdivision B 19 as subdivision B 20.

§ 2.2-222.1. Secretary to oversee and monitor the development, maintenance, and implementation of a comprehensive and measurable homeland security strategy for the Commonwealth.

A. The Secretary shall ensure that, consistent with the National Incident Management System (NIMS), the Commonwealth implements a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action pursuant to securing the Commonwealth at both the state and local level against man-made and natural disasters. To that end, the Secretary shall take action to assign responsibility among agencies, jurisdictions, and subdivisions of the Commonwealth to effect the highest state of readiness posed by both man-made and natural disasters. In doing so, the Secretary shall ensure that preparedness initiatives will be effectively and efficiently coordinated, implemented, and monitored.

B. The Secretary shall also oversee and monitor the development, maintenance, and implementation of a comprehensive and measurable homeland security strategy for the Commonwealth. To ensure a comprehensive strategy, the Secretary shall coordinate the homeland security strategy with all state and local, public and private, councils that have a homeland security focus within the Commonwealth. The strategy shall ensure that the Commonwealth’s homeland security programs are resourced, executed, and assessed according to well-defined and relevant Commonwealth homeland security requirements. In support of the strategy, the Secretary shall provide oversight of the designated State Administrative Agency (SAA) for homeland security to ensure that applications for grant funds by state agencies or local governments describe well-defined requirements for planning, organizing, training, equipping, exercising, evaluating, and taking corrective action measures essential to Commonwealth security.

C. The Secretary shall ensure that the homeland security strategy is fully incorporated into the Secure Commonwealth Plan. In the development of the Secure Commonwealth Plan, the Secretary shall (i) designate a state proponent for each goal in the Secure Commonwealth Plan required within the Commonwealth homeland security strategy; (ii) identify which state agencies shall have responsibility for prevention, protection, mitigation, response, and recovery requirements associated with each goal in the Secure Commonwealth Plan; (iii) prescribe metrics to those state agencies to quantify readiness for man-made and natural disasters; (iv) ensure that state agencies follow rigorous planning practices; and (v) conduct annual reviews and updates to ensure planning, organizing, training, equipping, exercising, evaluating, and taking corrective action is fully implemented at state and local levels of government.

D. The Secretary shall develop annually the Commonwealth Threat Hazard Identification and Risk Assessment (C-THIRA) Report to identify threats and hazards and determine capability targets and resource requirements necessary to address anticipated and unanticipated risks to state and local preparedness. The C-THIRA Report shall (i) identify a list of the threats and hazards of primary concern to the Commonwealth; (ii) describe the threats and hazards of concern, showing how they may affect the Commonwealth; (iii) assess each threat and hazard in context to develop a specific capability target for each core capability consistent with federal National Preparedness Goals; and (iv) estimate the resources required to achieve the capability targets

through the use of community assets and mutual aid, while also considering preparedness activities, including mitigation opportunities. Additionally, the C-THIRA Report shall assess the Commonwealth's state of planning, organizing, training, equipping, exercising, evaluating, and ability to take corrective action as well as any shortfalls in these areas. The C-THIRA Report shall also serve as the Commonwealth's strategic approach to improving future preparedness and shall be delivered to the Chairmen of the Senate Committees on Finance and for Courts of Justice and the Chairmen of the House Committees on Appropriations and Militia, Police and Public Safety no later than November 1 of each year.

E. The Secretary shall ensure that state agencies develop and maintain rigorously developed response plans in support of the Commonwealth of Virginia Emergency Operations Plan (COVEOP). The Secretary shall designate the Virginia Department of Emergency Management (VDEM) as the primary agent to ensure that state agencies are compliant with the COVEOP. The Secretary shall further require that VDEM ensure the development of state agency and local disaster response plans and procedures, and monitor the status and quality of those plans on a cyclical basis to establish that they are feasible and suitable and can be implemented with available resources.

F. The Secretary shall be responsible for the coordination and development of state and local shelter, evacuation, traffic, and refuge of last resort planning. The Secretary shall ensure that jurisdictions and subdivisions of the Commonwealth have adequate shelter, evacuation, traffic, and refuge of last resort plans to support emergency evacuation in the event of a man-made or natural disaster. To that end, the Secretary shall direct VDEM to monitor, review, and evaluate on a cyclical basis all shelter, evacuation, traffic, and refuge of last resort plans to ensure they are feasible and suitable and can be implemented with available resources.

G. The Secretary shall also ensure that plans for protecting public critical infrastructure are both developed and fully implemented by those state agencies, jurisdictions, and subdivisions of the Commonwealth with responsibility for critical infrastructure protection. The Secretary shall report deficiencies in securing critical infrastructure annually as part of the Commonwealth's C-THIRA Report.

H. The Secretary is authorized, consistent with federal and state law and procurement regulations thereof, to contract for private and public sector services in homeland security and emergency management to enable, enhance, augment, or supplement state and local planning, organizing, training, equipping, exercising, evaluating, and corrective action capability as he deems necessary to meet Commonwealth security goals with such funds as may be made available to the Secretary or the Department of Emergency Management annually for such services.

History.

2014, cc. 115, 490.

rity, see Acts 2014, cc. 115 and 490, cls. 3 through 6, noted under § 2.2-221.

Cross references.

As to provisions related to the transfer of powers and duties from the former Secretary of Veterans Affairs and Homeland Security to the Secretary of Public Safety and Homeland Security,

Effective date.

Acts 2014, c. 115, became effective March 3, 2014, by emergency clause.

Acts 2014, c. 490, became effective April 2, 2014, by emergency clause.

§ 2.2-222.2. Additional duties related to review of statewide interoperability strategic plan; state and local compliance.

The Secretary through the Commonwealth Interoperability Coordinator shall ensure that the annual review and update of the statewide interoperability strategic plan is accomplished and implemented to achieve effective and

efficient communication between state, local, and federal communications systems.

All state agencies and localities shall achieve consistency with and support the goals of the statewide interoperability strategic plan by July 1, 2015, in order to remain eligible to receive state or federal funds for communications programs and systems.

History.

2014, cc. 115, 490.

rity, see Acts 2014, cc. 115 and 490, cls. 3 through 6, noted under § 2.2-221.

Cross references.

As to provisions related to the transfer of powers and duties from the former Secretary of Veterans Affairs and Homeland Security to the Secretary of Public Safety and Homeland Security,

Effective date.

Acts 2014, c. 115, became effective March 3, 2014, by emergency clause.

Acts 2014, c. 490, became effective April 2, 2014, by emergency clause.

§ 2.2-222.3. Secure Commonwealth Panel; membership; duties; compensation; staff.

A. The Secure Commonwealth Panel (the Panel) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The Panel shall consist of 33 members as follows: three members of the House of Delegates and two nonlegislative citizens to be appointed by the Speaker of the House of Delegates; three members of the Senate of Virginia and two nonlegislative citizens to be appointed by the Senate Committee on Rules; the Lieutenant Governor; the Attorney General; the Executive Secretary of the Supreme Court of Virginia; the Secretaries of Commerce and Trade, Health and Human Resources, Technology, Transportation, and Public Safety and Homeland Security, or their designees; two local first responders; three local government representatives; two physicians with knowledge of public health; four members from the business or industry sector; and four citizens from the Commonwealth at large. Except for appointments made by the Speaker of the House of Delegates and the Senate Committee on Rules, all appointments shall be made by the Governor. Additional ex officio members may be appointed to the Panel by the Governor. Legislative members shall serve terms coincident with their terms of office or until their successors shall qualify. Nonlegislative citizen members shall serve for terms of four years. The Secretary of Public Safety and Homeland Security shall be the chairman of the Panel.

B. The Panel shall monitor and assess the implementation of statewide prevention, preparedness, response, and recovery initiatives and where necessary review, evaluate, and make recommendations relating to the emergency preparedness of government at all levels in the Commonwealth. The Panel shall make quarterly reports to the Governor concerning the state's emergency preparedness, response, recovery, and prevention efforts.

C. Members of the Panel shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

D. Staff support for the Panel and funding for the costs of expenses of the members shall be provided by the Secretary of Public Safety and Homeland Security.

E. The Secretary shall facilitate cabinet-level coordination among the various agencies of state government related to emergency preparedness and shall facilitate private sector preparedness and communication.

History.

2014, cc. 115, 490.

Cross references.

As to provisions related to the transfer of

powers and duties from the former Secretary of Veterans Affairs and Homeland Security to the Secretary of Public Safety and Homeland Security, see Acts 2014, cc. 115 and 490, cls. 3 through 6, noted under § 2.2-221.

Effective date.

Acts 2014, c. 115, became effective March 3, 2014, by emergency clause.

Acts 2014, c. 490, became effective April 2, 2014, by emergency clause.

Title 44.
Military and Emergency Laws.

CHAPTER 3.2.

EMERGENCY SERVICES AND DISASTER LAW.

Sec.		Sec.	
44-146.13.	Short title.	44-146.20.	Joint action by political subdivisions.
44-146.14.	Findings of General Assembly.	44-146.21.	Declaration of local emergency.
44-146.15.	Construction of chapter.	44-146.22.	Development of measures to prevent or reduce harmful consequences of disasters; disclosure of information.
44-146.16.	Definitions.	44-146.23.	Immunity from liability.
44-146.17.	Powers and duties of Governor.	44-146.24.	Cooperation of public agencies.
44-146.17:1.	Transmittal to General Assembly of rules, regulations, and orders.	44-146.25.	[Repealed.]
44-146.17:2.	Annual statewide drill.	44-146.26.	Duties of emergency management organizations.
44-146.18.	Department of Emergency Services continued as Department of Emergency Management; administration and operational control; coordinator and other personnel; powers and duties.	44-146.27.	Supplementing federal funds; assistance of federal agencies; acceptance of gifts and services; appropriations by local governing bodies.
44-146.18:1.	Virginia Disaster Response Funds disbursements; reimbursements.	44-146.28.	Authority of Governor and agencies under his control in declared state of emergency.
44-146.18:2.	Authority of Coordinator of Emergency Management in undeclared emergency.	44-146.28:1.	Compact enacted into law; terms.
44-146.18:3.	First informer broadcasters; coordination with Department of Emergency Management.	44-146.28:2.	Disaster relief assistance by out-of-state businesses and employees.
44-146.19.	Powers and duties of political subdivisions.	44-146.29 through 44-146.29:2.	[Expired.]

§ 44-146.13. Short title.

This chapter may be cited as the “Commonwealth of Virginia Emergency Services and Disaster Law of 2000.”

History.

1973, c. 260; 2000, c. 309.

Cross references.

As to postponement of certain elections during state of emergency, see § 24.2-603.1. As to emergency situations at polling locations, see § 24.2-604.2. As to emergency authority of the Secretary of the State Board of Elections, see § 24.2-713. As to extension to file reports required under the Campaign Finance Disclosure Act, § 24.2-945 et seq., in emergency situations, see § 24.2-946.4. As to authority of State

Health Commissioner to issue order of quarantine or order of isolation, see §§ 32.1-48.09, 32.1-48.012, respectively. As to waiver of requirements by Board of Pharmacy during disaster or state of emergency, see § 54.1-3307.3.

Law Review.

For survey of Virginia administrative law for the year 1974-1975, see 61 Va. L. Rev. 1632 (1975).

Michie’s Jurisprudence.

For related discussion, see 12B M.J. Military, § 2.

CASE NOTES

Effect of amendments to chapter. — The amendments to this chapter were changes of form, which merely interpreted the 1973 act and made it more detailed and specific. They

were not changes of substance, which add rights to, or withdraw existing rights from, an original act. *Boyd v. Commonwealth*, 216 Va. 16, 215 S.E.2d 915 (1975).

Acute motor vehicle fuel shortage of 1973 was a “disaster” within the meaning of this chapter. *Boyd v. Commonwealth*, 216 Va. 16, 215 S.E.2d 915 (1975).

§ 44-146.14. Findings of General Assembly.

(a) Because of the ever present possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, resource shortage, or from fire, flood, earthquake, or other natural causes, and in order to insure that preparations of the Commonwealth and its political subdivisions will be adequate to deal with such emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property and economic well-being of the people of the Commonwealth, it is hereby found and declared to be necessary and to be the purpose of this chapter:

(1) To create a State Department of Emergency Management, and to authorize the creation of local organizations for emergency management in the political subdivisions of the Commonwealth;

(2) To confer upon the Governor and upon the executive heads or governing bodies of the political subdivisions of the Commonwealth emergency powers provided herein; and

(3) To provide for rendering of mutual aid among the political subdivisions of the Commonwealth and with other states and to cooperate with the federal government with respect to the carrying out of emergency service functions.

(b) It is further declared to be the purpose of this chapter and the policy of the Commonwealth that all emergency service functions of the Commonwealth be coordinated to the maximum extent possible with the comparable functions of the federal government, other states, and private agencies of every type, and that the Governor shall be empowered to provide for enforcement by the Commonwealth of national emergency services programs, to the end that the most effective preparation and use may be made of the nation's resources and facilities for dealing with any disaster that may occur.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 2000, c. 309.

CASE NOTES

Importance of adequate supply of motor vehicle fuel. — The health, safety and welfare of the people of Virginia depend upon an adequate supply of motor vehicle fuel. *Boyd v. Commonwealth*, 216 Va. 16, 215 S.E.2d 915 (1975).

§ 44-146.15. Construction of chapter.

Nothing in this chapter is to be construed to:

(1) Limit, modify, or abridge the authority of the Governor to exercise any powers vested in him under other laws of this Commonwealth independent of, or in conjunction with, any provisions of this chapter;

(2) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with actual or pending disaster;

(3) Empower the Governor, any political subdivision, or any other governmental authority to in any way limit or prohibit the rights of the people to keep and bear arms as guaranteed by Article I, Section 13 of the Constitution of Virginia or the Second Amendment of the Constitution of the United States, including the otherwise lawful possession, carrying, transportation, sale, or transfer of firearms except to the extent necessary to ensure public safety in

any place or facility designated or used by the Governor, any political subdivision of the Commonwealth, or any other governmental entity as an emergency shelter or for the purpose of sheltering persons;

(4) Affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States or any personnel thereof, when on active duty; but state, local and interjurisdictional agencies for emergency services shall place reliance upon such forces in the event of declared disasters; or

(5) Interfere with the course of conduct of a labor dispute except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.

History.

1973, c. 260; 2000, c. 309; 2006, c. 458; 2012, cc. 42, 158.

identical, and inserted “or prohibit,” “otherwise” and “carrying, transportation” in subdivision (3), and substituted “fire fighting” for “fire-fighting” in subdivision (4).

The 2012 amendments.

The 2012 amendments by cc. 42 and 158 are

§ 44-146.16. Definitions.

As used in this chapter unless the context requires a different meaning:

“*Communicable disease of public health threat*” means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. “Individual” shall include any companion animal. Further, whenever “person or persons” is used in Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1, it shall be deemed, when the context requires it, to include any individual;

“*Disaster*” means (i) any man-made disaster including any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical, or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear, or transportation accident, explosion, conflagration, power failure, resources shortage, or other condition such as sabotage, oil spills, and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship, or loss of life; and (ii) any natural disaster including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, communicable disease of public health threat, or other natural catastrophe resulting in damage, hardship, suffering, or possible loss of life;

“*Discharge*” means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases;

“*Emergency*” means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof;

“Emergency services” means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs;

“Hazard mitigation” means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards;

“Hazardous substances” means all materials or substances which now or hereafter are designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or regulation of the United States government;

“Interjurisdictional agency for emergency management” is any organization established between contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the work of disaster prevention, preparedness, response, and recovery;

“Local emergency” means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, nothing in this chapter shall be construed as prohibiting a local governing body from the prudent management of its water supply to prevent or manage a water shortage;

“Local emergency management organization” means an organization created in accordance with the provisions of this chapter by local authority to perform local emergency service functions;

“Major disaster” means any natural catastrophe, including any: hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act (P.L. 93-288 as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him;

“Political subdivision” means any city or county in the Commonwealth and for the purposes of this chapter, the Town of Chincoteague and any town of more than 5,000 population that chooses to have an emergency management program separate from that of the county in which such town is located;

“Resource shortage” means the absence, unavailability or reduced supply of any raw or processed natural resource, or any commodities, goods or services

of any kind that bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

“*State of emergency*” means the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1978, c. 60; 1979, c. 193; 1981, c. 116; 1984, c. 743; 1993, c. 671; 2000, c. 309; 2004, cc. 773, 1021; 2008, cc. 121, 157.

Cross references.

As to liability protection for health care providers during disasters, see § 8.01-225.02. For the Line of Duty Act, see §§ 9.1-400 et seq. As to declaration of a judicial emergency, see § 17.1-330. As to crisis and emergency management plans for educational institutions, see § 23-9.2:9. For provision authorizing the Governor to waive certain statutory mandates and regulations to expedite certain highway construction projects in order to meet certain emergencies, see § 33.2-101. As to Virginia Post-Disaster Anti-Price Gouging Act, see § 59.1-525 et seq. As to workers’ compensation coverage for first responders in off-duty capacity during state of emergency, see § 65.2-104.

Editor’s note.

Acts 2004, cc. 773 and 1021, cl. 2 provides: “That the Board of Health shall promulgate

regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

Acts 2015, cc. 16 and 338, cl. 1 provides: “The Department of Transportation, Department of Mines, Minerals and Energy, Department of Emergency Management, Department of Motor Vehicles, Department of State Police, and other interested stakeholders shall work to establish a protocol for submission of a declaration of a state of emergency for resource shortages, as defined in § 44-146.16 of the Code of Virginia, that adversely affect the delivery of motor fuels, gasoline, diesel, kerosene, number one and two heating oils, or liquid propane gas within or outside of the Commonwealth.”

Acts 2015, cc. 16 and 338, cl. 2 provides: “That the Department of Emergency Management shall submit a report detailing the established protocol to the Governor and the General Assembly by January 13, 2016.”

Law Review.

For note, “Federal and State Remedies to Clean Up Hazardous Waste Sites,” see 20 U. Rich. L. Rev. 379 (1986).

CASE NOTES

Acute motor vehicle fuel shortage of 1973 was a “disaster” within the meaning of this chapter. *Boyd v. Commonwealth*, 216 Va. 16, 215 S.E.2d 915 (1975).

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and

that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;

(5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;

(6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;

(7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist;

(8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster;

(9) To provide incident command system guidelines for state agencies and local emergency response organizations; and

(10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local public safety agency responding to a disaster has suffered an extreme personal or family hardship in the affected area, such as the destruction of a personal residence or the existence of living conditions that imperil the health and safety of an immediate family member of the employee, the Governor may direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three calendar months, to the employee to assist the employee with the hardship.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1981, c. 116; 1990, c. 95; 1997, c. 893; 2000, c. 309; 2004, cc. 773, 1021; 2006, c. 140; 2007, cc. 729, 742; 2008, cc. 121, 157.

Cross references.

For local authority to supply emergency financial assistance to farmers during declared

major disasters, see § 3.2-505. As to punishment for Class 1 misdemeanors, see § 18.2-11.

Editor's note.

Acts 2004, cc. 773 and 1021, cl. 2 provides: "That the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

OPINIONS OF THE ATTORNEY GENERAL

Waiver of requirements for licensure of health professionals. — The Governor has authority under this section to waive the statutory and regulatory requirements related to the licensure of health professionals during a state of emergency or declared disaster. See opinion of Attorney General to The Honorable John M. O'Bannon, III, Member, House of Delegates, 02-069 (11/13/02).

Enforcement of quarantine in health emergency. — The Governor, State Health Commissioner and Board of Health have the authority in a public health emergency to issue orders or regulations to enforce a quarantine. See opinion of Attorney General to The Honorable John M. O'Bannon, III, Member, House of Delegates, 02-069 (11/13/02).

Control and allocation of services and resources. — The Governor has the authority to control and allocate services and resources, including state government and private medical personnel and supplies, under any state or

federal emergency services program; however, the Commonwealth's authority to take private resources is limited by the constitutional requirement to provide just compensation. See opinion of Attorney General to The Honorable John M. O'Bannon, III, Member, House of Delegates, 02-069 (11/13/02).

Authority of Governor to initiate spending plan should legislature fail to enact budget bill. — The Constitution imposes the clear and certain duty solely upon the General Assembly to make appropriations and states that no funds are to be paid out of the state treasury unless appropriated by law by the General Assembly. It is a question of fact whether conditions exist constituting an emergency under the Emergency Services and Disaster Law of 2000, and it is within the authority of the Governor to make that factual decision. See opinion of Attorney General to The Honorable William J. Howell, Speaker of the House of Delegates, 06-044 (6/8/06).

§ 44-146.17:1. Transmittal to General Assembly of rules, regulations, and orders.

The Governor shall cause copies of any order, rule, or regulation proclaimed and published by him pursuant to § 44-146.17 to be transmitted forthwith to each member of the General Assembly.

History.

1981, c. 160.

§ 44-146.17:2. Annual statewide drill.

The Governor shall conduct an annual statewide drill on response to a large-scale disaster including, but not limited to, electrical power outages. Such drill shall include the participation of local governments, affected state

agencies, public utilities, law-enforcement agencies, and other entities as determined by the Governor. The Governor shall submit a report to the General Assembly on the results of the drill by November 30 of each year. The report shall be delivered to the chairs of the House Committee on Militia, Police and Public Safety and the Senate Committee on General Laws.

History.

2004, c. 430.

§ 44-146.18. Department of Emergency Services continued as Department of Emergency Management; administration and operational control; coordinator and other personnel; powers and duties.

A. The State Office of Emergency Services is continued and shall hereafter be known as the Department of Emergency Management. Wherever the words "State Department of Emergency Services" are used in any law of the Commonwealth, they shall mean the Department of Emergency Management. During a declared emergency this Department shall revert to the operational control of the Governor. The Department shall have a coordinator who shall be appointed by and serve at the pleasure of the Governor and also serve as State Emergency Planning Director. The Department shall employ the professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

B. The Department of Emergency Management shall in the administration of emergency services and disaster preparedness programs:

1. In coordination with political subdivisions and state agencies, ensure that the Commonwealth has up-to-date assessments and preparedness plans to prevent, respond to and recover from all disasters including acts of terrorism;

2. Conduct a statewide emergency management assessment in cooperation with political subdivisions, private industry and other public and private entities deemed vital to preparedness, public safety and security. The assessment shall include a review of emergency response plans, which include the variety of hazards, natural and man-made. The assessment shall be updated annually;

3. Submit to the Governor and to the General Assembly, no later than the first day of each regular session of the General Assembly, an annual executive summary and report on the status of emergency management response plans throughout the Commonwealth and other measures taken or recommended to prevent, respond to and recover from disasters, including acts of terrorism. This report shall be made available to the Division of Legislative Automated Systems for the processing of legislative documents and reports. Information submitted in accordance with the procedures set forth in subdivision 4 of § 2.2-3705.2 shall not be disclosed unless:

a. It is requested by law-enforcement authorities in furtherance of an official investigation or the prosecution of a criminal act;

b. The agency holding the record is served with a proper judicial order; or

c. The agency holding the record has obtained written consent to release the information from the Department of Emergency Management;

4. Promulgate plans and programs that are conducive to adequate disaster mitigation preparedness, response and recovery programs;

5. Prepare and maintain a State Emergency Operations Plan for disaster response and recovery operations that assigns primary and support responsibilities for basic emergency services functions to state agencies, organizations and personnel as appropriate;

6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and programs with the proponent federal, state and local government agencies and related groups;

7. Provide guidance and assistance to state agencies and units of local government in developing and maintaining emergency management and continuity of operations (COOP) programs, plans and systems;

8. Make necessary recommendations to agencies of the federal, state, or local governments on preventive and preparedness measures designed to eliminate or reduce disasters and their impact;

9. Determine requirements of the Commonwealth and its political subdivisions for those necessities needed in the event of a declared emergency which are not otherwise readily available;

10. Assist state agencies and political subdivisions in establishing and operating training programs and programs of public information and education regarding emergency services and disaster preparedness activities;

11. Consult with the Board of Education regarding the development and revision of a model school crisis and emergency management plan for the purpose of assisting public schools in establishing, operating, and maintaining emergency services and disaster preparedness activities;

12. Consult with the State Council of Higher Education in the development and revision of a model institutional crisis and emergency management plan for the purpose of assisting public and private two-year and four-year institutions of higher education in establishing, operating, and maintaining emergency services and disaster preparedness activities and, as needed, in developing an institutional crisis and emergency management plan pursuant to § 23-9.2:9;

13. Develop standards, provide guidance and encourage the maintenance of local and state agency emergency operations plans, which shall include the requirement for a provision that the Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund be contacted immediately to deploy assistance in the event of an emergency as defined in the emergency response plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall also contain current contact information for both agencies;

14. Prepare, maintain, coordinate or implement emergency resource management plans and programs with federal, state and local government agencies and related groups, and make such surveys of industries, resources, and facilities within the Commonwealth, both public and private, as are necessary to carry out the purposes of this chapter;

15. Coordinate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, mitigation, preparation, response, and recovery;

16. Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants as authorized by the Governor;

17. Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency services intelligence pertaining to all probable hazards affecting the Commonwealth;

18. Coordinate intelligence activities relating to terrorism with the Department of State Police; and

19. Develop an emergency response plan to address the needs of individuals with household pets and service animals in the event of a disaster and assist and coordinate with local agencies in developing an emergency response plan for household pets and service animals.

The Department of Emergency Management shall ensure that all such plans, assessments, and programs required by this subsection include specific preparedness for, and response to, disasters resulting from electromagnetic pulses and geomagnetic disturbances.

C. The Department of Emergency Management shall during a period of impending emergency or declared emergency be responsible for:

1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual disaster;
2. Providing facilities from which state agencies and supporting organizations may conduct emergency operations;
3. Providing an adequate communications and warning system capable of notifying all political subdivisions in the Commonwealth of an impending disaster within a reasonable time;
4. Establishing and maintaining liaison with affected political subdivisions;
5. Determining requirements for disaster relief and recovery assistance;
6. Coordinating disaster response actions of federal, state and volunteer relief agencies;
7. Coordinating and providing guidance and assistance to affected political subdivisions to ensure orderly and timely response to and recovery from disaster effects.

D. The Department of Emergency Management shall be provided the necessary facilities and equipment needed to perform its normal day-to-day activities and coordinate disaster-related activities of the various federal, state, and other agencies during a state of emergency declaration by the Governor or following a major disaster declaration by the President.

E. The Department of Emergency Management is authorized to enter into all contracts and agreements necessary or incidental to performance of any of its duties stated in this section or otherwise assigned to it by law, including contracts with the United States, other states, agencies and government subdivisions of the Commonwealth, and other appropriate public and private entities.

F. The Department of Emergency Management shall encourage private industries whose goods and services are deemed vital to the public good to provide annually updated preparedness assessments to the local coordinator of emergency management on or before April 1 of each year, to facilitate overall Commonwealth preparedness. For the purposes of this section, "private industry" means companies, private hospitals, and other businesses or organizations deemed by the State Coordinator of Emergency Management to be essential to the public safety and well-being of the citizens of the Commonwealth.

G. The Department of Emergency Management shall establish a Coordinator of Search and Rescue. Powers and duties of the Coordinator shall include:

1. Coordinating the search and rescue function of the Department of Emergency Management;
2. Coordinating with local, state, and federal agencies involved in search and rescue;
3. Coordinating the activities of search and rescue organizations involved in search and rescue;
4. Maintaining a register of search and rescue certifications, training, and responses;
5. Establishing a memorandum of understanding with the Virginia Search and Rescue Council and its respective member agencies regarding search and rescue efforts;
6. Providing on-scene search and rescue coordination when requested by an authorized person;
7. Providing specialized search and rescue training to police, fire-rescue, EMS, emergency managers, volunteer search and rescue responders, and others who might have a duty to respond to a search and rescue emergency;
8. Gathering and maintaining statistics on search and rescue in the Commonwealth;

9. Compiling, maintaining, and making available an inventory of search and rescue resources available in the Commonwealth;

10. Periodically reviewing search and rescue cases and developing best professional practices; and

11. Providing an annual report to the Secretary of Public Safety and Homeland Security on the current readiness of Virginia's search and rescue efforts.

Nothing in this chapter shall be construed as authorizing the Department of Emergency Management to take direct operational responsibilities from local, state, or federal law enforcement in the course of search and rescue or missing person cases.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1979, c. 193; 1984, c. 720; 1985, cc. 443, 447; 1997, c. 893; 2000, c. 309; 2001, c. 841; 2003, c. 622; 2004, c. 690; 2005, cc. 165, 490; 2007, c. 902; 2008, cc. 450, 526; 2009, cc. 222, 269; 2012, c. 418; 2015, cc. 97, 205, 223.

Cross references.

As to vaccination of children upon declaration of public health emergency involving vaccine-preventable disease, see § 32.1-47.1.

Editor's note.

Acts 2015, cc. 16 and 338, cl. 1 provides: "The Department of Transportation, Department of Mines, Minerals and Energy, Department of Emergency Management, Department of Motor Vehicles, Department of State Police, and other interested stakeholders shall work to establish a protocol for submission of a declaration of a state of emergency for resource shortages, as defined in § 44-146.16 of the Code of Virginia,

that adversely affect the delivery of motor fuels, gasoline, diesel, kerosene, number one and two heating oils, or liquid propane gas within or outside of the Commonwealth."

Acts 2015, cc. 16 and 338, cl. 2 provides: "That the Department of Emergency Management shall submit a report detailing the established protocol to the Governor and the General Assembly by January 13, 2016."

The 2012 amendments.

The 2012 amendment by c. 418 deleted "as well as current contact information for both agencies" at the end of the first sentence and added the second sentence of subdivision B 13.

The 2015 amendments.

The 2015 amendment by c. 97 deleted "State" preceding "Department of Emergency Management" throughout the section and added the second paragraph in subdivision B 19.

The 2015 amendments by cc. 205 and 223 are identical, and added subsection G.

§ 44-146.18:1. Virginia Disaster Response Funds disbursements; reimbursements.

There is hereby created a nonlapsing revolving fund which shall be maintained as a separate special fund account within the state treasury, and administered by the Coordinator of Emergency Management, consistent with the purposes of this chapter. All expenses, costs, and judgments recovered pursuant to this section, and all moneys received as reimbursement in accordance with applicable provisions of federal law, shall be paid into the fund. Additionally, an annual appropriation to the fund from the general fund or other unrestricted nongeneral fund, in an amount determined by the Governor, may be authorized to carry out the purposes of this chapter. All recoveries from occurrences prior to March 10, 1983, and otherwise qualifying under this section, received subsequent to March 10, 1983, shall be paid into the fund. No moneys shall be credited to the balance in the fund until they have been received by the fund. An accounting of moneys received and disbursed shall be kept and furnished to the Governor or the General Assembly upon request.

Disbursements from the fund may be made for the following purposes and no others:

1. For costs and expenses, including, but not limited to personnel, administrative, and equipment costs and expenses directly incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of

Emergency Management, in and for preventing or alleviating damage, loss, hardship, or suffering caused by emergencies, resource shortages, or disasters; and

2. For procurement, maintenance, and replenishment of materials, equipment, and supplies, in such quantities and at such location as the Coordinator of Emergency Management may deem necessary to protect the public peace, health, and safety and to preserve the lives and property and economic well-being of the people of the Commonwealth; and

3. For costs and expenses incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of Emergency Management, in the recovery from the effects of a disaster or in the restoration of public property or facilities.

The Coordinator of Emergency Management shall promptly seek reimbursement from any person causing or contributing to an emergency or disaster for all sums disbursed from the fund for the protection, relief and recovery from loss or damage caused by such person. In the event a request for reimbursement is not paid within 60 days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The Coordinator of Emergency Management shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection. The Coordinator is authorized to recover any sums incurred by any other state agency or political subdivision acting at the direction of the Coordinator as provided in this paragraph.

History.

1983, c. 48; 2000, c. 309; 2008, cc. 121, 157.

Law Review.

For article, "Environmental Liens and Title Insurance," see 23 U. Rich. L. Rev. 305 (1989).

§ 44-146.18:2. Authority of Coordinator of Emergency Management in undeclared emergency.

In an emergency which does not warrant a gubernatorial declaration of a state of emergency, the Coordinator of Emergency Management, after consultation with and approval of the Secretary of Public Safety and Homeland Security, may enter into contracts and incur obligations necessary to prevent or alleviate damage, loss, hardship, or suffering caused by such emergency and to protect the health and safety of persons and property. In exercising the powers vested by this section, the Coordinator may proceed without regard to normal procedures pertaining to entering into contracts, incurring of obligations, rental of equipment, purchase of supplies and materials, and expenditure of public funds; however, mandatory constitutional requirements shall not be disregarded.

History.

1985, c. 443; 1990, cc. 1, 317; 2000, c. 309; 2014, cc. 115, 490.

Cross references.

As to the disposition of surplus materials by the Department of General Services, see § 2.2-1124.

The 2014 amendments.

The 2014 amendment by c. 115, effective March 3, 2014, and c. 490, effective April 2, 2014, are identical, and inserted "and Homeland Security" in the first sentence.

§ 44-146.18:3. First informer broadcasters; coordination with Department of Emergency Management.

A. For purposes of this section, unless the context requires otherwise, “first informer” means the critical radio or television personnel of a radio or television broadcast station engaged in (i) the process of broadcasting; (ii) the maintenance or repair of broadcast station equipment, transmitters, and generators; or (iii) the transportation of fuel for generators of broadcast stations.

B. Unless it is shown to endanger public safety or inhibit recovery efforts, or is otherwise prohibited by state or federal law, state and local government agencies shall permit first informer radio or television personnel with proper identification cards to access their broadcasting station within any area declared a state emergency area by the Governor for the purpose of provision of news, public service and public safety information and repairing or resupplying their facility or equipment.

First informer identification cards shall be issued by the Virginia Association of Broadcasters. A list of those first informers who have been issued identification cards shall be furnished to the Virginia Department of Emergency Management and the Secretary of Veterans and Defense Affairs by the Virginia Association of Broadcasters prior to December 30 of each year.

C. Nothing in this section shall be construed to limit or impair the right or ability of any news organization or its personnel to gather and report the news.

History.

2014, c. 561.

Editor’s note.

In the second paragraph of subsection B, “the

Secretary of Veterans and Defense Affairs” was substituted for “the Secretary of Veterans Affairs and Homeland Security” to conform to Acts 2014, cc. 115 and 490.

§ 44-146.19. Powers and duties of political subdivisions.

A. Each political subdivision within the Commonwealth shall be within the jurisdiction of and served by the Department of Emergency Management and be responsible for local disaster mitigation, preparedness, response and recovery. Each political subdivision shall maintain in accordance with state disaster preparedness plans and programs an agency of emergency management which, except as otherwise provided under this chapter, has jurisdiction over and services the entire political subdivision.

B. Each political subdivision shall have a director of emergency management who, after the term of the person presently serving in this capacity has expired and in the absence of an executive order by the Governor, shall be the following:

1. In the case of a city, the mayor or city manager, who shall appoint a coordinator of emergency management with consent of council;

2. In the case of a county, a member of the board of supervisors selected by the board or the chief administrative officer for the county, who shall appoint a coordinator of emergency management with the consent of the governing body;

3. A coordinator of emergency management shall be appointed by the council of any town to ensure integration of its organization into the county emergency management organization;

4. In the case of the Town of Chincoteague and of towns with a population in excess of 5,000 having an emergency management organization separate from that of the county, the mayor or town manager shall appoint a coordinator of emergency services with consent of council;

5. In Smyth County and in York County, the chief administrative officer for the county shall appoint a director of emergency management, with the

consent of the governing body, who shall appoint a coordinator of emergency management with the consent of the governing body.

C. Whenever the Governor has declared a state of emergency, each political subdivision within the disaster area may, under the supervision and control of the Governor or his designated representative, control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

D. The director of each local organization for emergency management may, in collaboration with (i) other public and private agencies within the Commonwealth or (ii) other states or localities within other states, develop or cause to be developed mutual aid arrangements for reciprocal assistance in case of a disaster too great to be dealt with unassisted. Such arrangements shall be consistent with state plans and programs and it shall be the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid arrangements.

E. Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional emergency operations plan for its area. The plan shall include, but not be limited to, responsibilities of all local agencies and shall establish a chain of command, and a provision that the Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be contacted immediately to deploy assistance in the event of an emergency as defined in the emergency response plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall also contain current contact information for both agencies. Every four years, each local and interjurisdictional agency shall conduct a comprehensive review and revision of its emergency operations plan to ensure that the plan remains current, and the revised plan shall be formally adopted by the locality's governing body. In the case of an interjurisdictional agency, the plan shall be formally adopted by the governing body of each of the localities encompassed by the agency. Each political subdivision having a nuclear power station or other nuclear facility within 10 miles of its boundaries shall, if so directed by the Department of Emergency Management, prepare and keep current an appropriate emergency plan for its area for response to nuclear accidents at such station or facility.

F. All political subdivisions shall provide an annually updated emergency management assessment to the State Coordinator of Emergency Management on or before July 1 of each year.

G. By July 1, 2005, all localities with a population greater than 50,000 shall establish an alert and warning plan for the dissemination of adequate and timely warning to the public in the event of an emergency or threatened disaster. The governing body of the locality, in consultation with its local emergency management organization, shall amend its local emergency opera-

tions plan that may include rules for the operation of its alert and warning system, to include sirens, Emergency Alert System (EAS), NOAA Weather Radios, or other personal notification systems, amateur radio operators, or any combination thereof.

H. Localities that have established an agency of emergency management shall have authority to require the review of, and suggest amendments to, the emergency plans of nursing homes, assisted living facilities, adult day care centers, and child day care centers that are located within the locality.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1978, c. 495; 1982, c. 5; 1990, cc. 404, 945; 1993, cc. 621, 671, 781; 2000, c. 309; 2003, c. 622; 2004, c. 302; 2005, cc. 6, 205; 2006, c. 138; 2007, cc. 97, 129, 138; 2009, cc. 222, 269; 2012, c. 418.

Cross references.

As to the 1980, 1990, 2000 and 2010 United States Census population figures for counties and cities of the Commonwealth of Virginia, see the Appendix to Title 15.2. As to prohibition of

waste discharges or other quality alterations of state water, see § 62.1-44.5.

The 2012 amendments.

The 2012 amendment by c. 418 in subsection E, deleted “as well as current contact information for both agencies” at the end of the second sentence and added the third sentence.

Law Review.

For 2007 annual survey article, “Health Care Law,” see 42 U. Rich. L. Rev. 441 (2007).

§ 44-146.20. Joint action by political subdivisions.

If two or more political subdivisions find that disaster operation plans and programs would be better served by interjurisdictional arrangements in planning for, preventing, or responding to disaster in that area, then direct steps may be taken as necessary, including creation of an interjurisdictional relationship, a joint emergency operations plan, mutual aid, or such other activities as necessary for planning and services. Any political subdivision may provide or receive assistance in the event of a disaster or emergency, pursuant to this chapter, under the provisions of any local mutual aid agreement or by the Statewide Mutual Aid program if agreed to by resolution of the governing body. The action of the governing body may include terms and conditions deemed necessary by the governing body for participation in the program. The governing body may withdraw from participation in the Statewide Mutual Aid program by adoption of a resolution or ordinance upon a finding that participation is no longer in the public interest. The locality shall immediately notify the State Coordinator of Emergency Services of the adoption of a participation or withdrawal resolution.

History.

1973, c. 260; 2000, cc. 309, 437.

Cross references.

As to joint aid agreements by localities, see § 15.2-1300.1.

§ 44-146.21. Declaration of local emergency.

(a) A local emergency may be declared by the local director of emergency management with the consent of the governing body of the political subdivision. In the event the governing body cannot convene due to the disaster or other exigent circumstances, the director, or in his absence, the deputy director, or in the absence of both the director and deputy director, any member of the governing body may declare the existence of a local emergency, subject to confirmation by the governing body at its next regularly scheduled meeting or at a special meeting within fourteen days of the declaration, whichever occurs first. The governing body, when in its judgment all emergency actions have been taken, shall take appropriate action to end the declared emergency.

(b) A declaration of a local emergency as defined in § 44-146.16 shall activate the local Emergency Operations Plan and authorize the furnishing of aid and assistance thereunder.

(c) [Repealed.]

(c1) Whenever a local emergency has been declared, the director of emergency management of each political subdivision or any member of the governing body in the absence of the director, if so authorized by the governing body, may control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available. Whenever the Governor has declared a state of emergency, each political subdivision affected may, under the supervision and control of the Governor or his designated representative, enter into contracts and incur obligations necessary to combat such threatened or actual disaster beyond the capabilities of local government, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law pertaining to public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

(d) No interjurisdictional agency or official thereof may declare a local emergency. However, an interjurisdictional agency of emergency management shall provide aid and services to the affected political subdivision authorizing such assistance in accordance with the agreement as a result of a local or state declaration.

(e) None of the provisions of this chapter shall apply to the Emergency Disaster Relief provided by the American Red Cross or other relief agency solely concerned with the provision of service at no cost to the citizens of the Commonwealth.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1976, c. 594; 1986, c. 24; 1990, c. 945; 1994, c. 75; 2000, c. 309.

late or prohibit making of fires on private property during an emergency, see § 15.2-922.1.

Cross references.

As to authority of local government to regu-

§ 44-146.22. Development of measures to prevent or reduce harmful consequences of disasters; disclosure of information.

A. In addition to disaster prevention measures included in state, local and interjurisdictional emergency operations plans, the Governor shall consider, on a continuing basis, hazard mitigation or other measures that could be taken to prevent or reduce the harmful consequences of disasters. At his direction,

and pursuant to any other authority, state agencies, including, but not limited to, those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, critical infrastructure protection, land use and land-use planning, and construction standards, shall make studies of disaster prevention. The Governor, from time to time, shall make recommendations to the General Assembly, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

B. The Governor or agencies acting on his behalf may receive information, voluntarily submitted from both public and nonpublic entities, related to the protection of the nation's critical infrastructure sectors and components that are located in Virginia or affect the health, safety, and welfare of the citizens of Virginia. Information submitted by any public or nonpublic entity in accordance with the procedures set forth in subdivision 4 of § 2.2-3705.2 shall not be disclosed unless:

1. It is requested by law-enforcement authorities in furtherance of an official investigation or the prosecution of a criminal act;
2. The agency holding the record is served with a proper judicial order; or
3. The agency holding the record has obtained the written consent to release the information from the entity voluntarily submitting it.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 2000, c. 309; 2003, c. 848; 2004, c. 690.

OPINIONS OF THE ATTORNEY GENERAL

If an emergency has not been declared by the Governor, most data that is not law-enforcement sensitive may be disseminated, at the discretion of the custodian, to necessary parties. See opinion of Attorney General to The Honorable John W. Marshall, Secretary of Public Safety, 03-078 (12/1/03).

Irrespective of a formal declaration of an emergency, certain law-enforcement data, including most criminal history data, may be disseminated only to criminal justice agencies. See opinion of Attorney General to The Honorable John W. Marshall, Secretary of Public

Safety, 03-078 (12/1/03).

When an emergency has been declared, the Governor has broad powers to require state agencies to work in cooperation with the private sector to provide for the safety and security of the Commonwealth; thus, some information and intelligence collected by the Intelligence and Information "Fusion" Center may be shared with the private sector in the event of a formally declared emergency. See opinion of Attorney General to The Honorable John W. Marshall, Secretary of Public Safety, 03-078 (12/1/03).

§ 44-146.23. Immunity from liability.

A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or private agencies, nor, except in cases of willful misconduct, public or private employees, nor representatives of any of them, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. For the purposes of the immunity conferred by this subsection, representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services

who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).

B. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, of emergency access or of other uses relating to emergency services shall, together with his successors in interest, if any, not be liable for negligently causing the death of, or injury to any person on or about such real estate or premises or for loss of or damage to the property of any person on or about such real estate or premises during such actual or impending disaster.

C. If any person holds a license, certificate, or other permit issued by any state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service.

D. No person, firm or corporation which gratuitously services or repairs any electronic devices or equipment under the provisions of this section after having been approved for the purposes by the State Coordinator shall be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from any defect or imperfection in any such device or equipment so gratuitously serviced or repaired.

E. Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other legal entity shall be liable in civil damages as a result of acts taken voluntarily and without compensation in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of a hazardous substance, or in preventing, cleaning up, treating, or disposing of or attempting to prevent, clean up, treat, or dispose of any such discharge, provided that such acts are taken under the direction of state or local authorities responding to the incident. This section shall not preclude liability for civil damages as a result of gross negligence, recklessness or willful misconduct. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by the provisions of this paragraph shall be in addition to, not in lieu of, any immunities provided by § 8.01-225.

F. No individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities:

1. Pursuant to a Governor-declared emergency or during a formal exercise or training of the State Department of Emergency Management or a responsible county or city emergency management entity; and

2. At the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management;

shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or

damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of the formal exercise or training if such formal exercise or training simulates conditions of an actual emergency. This subsection shall not preclude liability for civil damages as a result of gross negligence, recklessness, or willful misconduct. The immunities of this subsection shall not extend to any manufacturer or to any retailer or distributor substantially involved in the manufacture or design of any product or good. The provisions of this subsection shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by this subsection shall be in addition to, and not in lieu of, any immunities provided by § 8.01-225.

History.

1973, c. 260; 1979, c. 193; 1984, c. 743; 2005, c. 474; 2008, cc. 121, 157; 2009, c. 233.

Cross references.

As to immunity for health care providers during disasters, see § 8.01-225.01.

Law Review.

For comment, "911' Emergency Assistance Call Systems: Should Local Governments Be Liable for Negligent Failure to Respond?," see 8 G.M.U. L. Rev. 103 (1985).

OPINIONS OF THE ATTORNEY GENERAL

A court may modify the sentence of a defendant completing the Department of Corrections' Therapeutic Community Program only if such modification occurs within twenty-one days of entry of the sentencing order. See opinion of Attorney General to The Honorable Henry A. Vanover, Judge, Twenty-Ninth Judicial Circuit, 03-081 (10/6/03).

In the absence of a formally declared emergency and without specific legisla-

tion, the general test of whether sovereign immunity applies depends upon the capacity in which the private entity was acting and whether such acts are under the direction and control of the Commonwealth, based on the nature of, and the state's interest in, the function to be performed. See opinion of Attorney General to The Honorable John W. Marshall, Secretary of Public Safety, 03-078 (12/1/03).

§ 44-146.24. Cooperation of public agencies.

In carrying out the provisions of the chapter, the Governor, the heads of state agencies, the local directors and governing bodies of the political subdivisions of the Commonwealth are directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the Commonwealth and the political subdivisions thereof to the maximum extent practicable consistent with state and local emergency operation plans. The officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the State Department of Emergency Management upon request.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 2000, c. 309.

§ 44-146.25. Repealed by Acts 2015, c. 221, cl. 2.

Editor's note.

Former § 44-146.25, Certain persons not to be employed or associated in emergency ser-

vices organizations; loyalty oath required, derived from 1973, c. 260.

§ 44-146.26. Duties of emergency management organizations.

It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the Governor under authority of this chapter. Each organization shall have available for inspection at its office all such orders, rules and regulations.

History.

1973, c. 260; 2000, c. 309.

§ 44-146.27. Supplementing federal funds; assistance of federal agencies; acceptance of gifts and services; appropriations by local governing bodies.

A. If the federal government allots funds for the payment of a portion of any disaster programs, projects, equipment, supplies or materials or other related costs, the remaining portion may be paid with a combination of state and local funds available for this purpose and consistent with state emergency management plans and program priorities.

B. Whenever the federal government or any agency or officer thereof offers to the Commonwealth, or through the Commonwealth to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan for purposes of emergency services, the Commonwealth, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its local director or governing body, may accept such offer and agree to the terms of the offer and the rules and regulations, if any, of the agency making the offer, including, but not limited to, requirements to hold and save the United States free from damages and to indemnify the federal government against any claims arising from the services, equipment, supplies, materials, or funds provided. Upon such acceptance, the Governor or local director or governing body of such political subdivision may authorize any officer of the Commonwealth or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the Commonwealth or such political subdivision, in accordance with the terms of the agreement, and subject to the rules and regulations, if any, of the agency making the offer.

C. Whenever any person, firm or corporation offers to the Commonwealth or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of emergency management, the Commonwealth, acting through the Governor, or such political subdivision, acting through its local director or governing body, may accept such offer and upon such acceptance the Governor or local director or governing body of such political subdivision may authorize any officer of the Commonwealth or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the Commonwealth or such political subdivision, and subject to the terms of the offer.

D. The governing bodies of the counties, cities and towns are hereby authorized to appropriate funds for expenditure by any local or regional organization for emergency management established pursuant to this chapter and for local or regional disaster service activities.

History.

1973, c. 260; 1999, cc. 6, 7; 2000, c. 309.

§ 44-146.28. Authority of Governor and agencies under his control in declared state of emergency.

(a) In the case of a declaration of a state of emergency as defined in § 44-146.16, the Governor is authorized to expend from all funds of the state treasury not constitutionally restricted, a sum sufficient. Allotments from such sum sufficient may be made by the Governor to any state agency or political subdivision of the Commonwealth to carry out disaster service missions and responsibilities. Allotments may also be made by the Governor from the sum sufficient to provide financial assistance to eligible applicants located in an area declared to be in a state of emergency, but not declared to be a major disaster area for which federal assistance might be forthcoming. This shall be considered as a program of last resort for those local jurisdictions that cannot meet the full cost.

The Virginia Department of Emergency Management shall establish guidelines and procedures for determining whether and to what extent financial assistance to local governments may be provided.

The guidelines and procedures shall include, but not be limited to, the following:

(1) Participants may be eligible to receive financial assistance to cover a percentage of eligible costs if they demonstrate that they are incapable of covering the full cost. The percentage may vary, based on the Commission on Local Government's fiscal stress index. The cumulative effect of recent disasters during the preceding twelve months may also be considered for eligibility purposes.

(2) Only eligible participants that have sustained an emergency or disaster as defined in § 44-146.16 with total eligible costs of four dollars or more per capita may receive assistance except that (i) any town with a total population of less than 3,500 shall be eligible for disaster assistance for incurred eligible damages of \$15,000 or greater and (ii) any town with a population of 3,500 or more, but less than 5,000 shall be eligible for disaster assistance for incurred eligible damages of \$20,000 or greater and (iii) any town with a population of 5,000 or greater with total eligible costs of four dollars or more per capita may receive assistance. No site or facility may be included with less than \$1,000 in eligible costs. However, the total cost of debris clearance may be considered as costs associated with a single site.

(3) Eligible participants shall be fully covered by all-risk property and flood insurance policies, including provisions for insuring the contents of the property and business interruptions, or shall be self-insured, in order to be eligible for this assistance. Insurance deductibles shall not be covered by this program.

(4) Eligible costs incurred by towns, public service authorities, volunteer fire departments and volunteer emergency medical services agencies may be included in a county's or city's total costs.

(5) Unless otherwise stated in guidelines and procedures, eligible costs are defined as those listed in the Public Assistance component of Public Law 93-288, as amended, excluding beach replenishment and snow removal.

(6) State agencies, as directed by the Virginia Department of Emergency Management, shall conduct an on-site survey to validate damages and to document restoration costs.

(7) Eligible participants shall maintain complete documentation of all costs in a manner approved by the Auditor of Public Accounts and shall provide copies of the documentation to the Virginia Department of Emergency Management upon request.

If a jurisdiction meets the criteria set forth in the guidelines and procedures, but is in an area that has neither been declared to be in a state of emergency nor been declared to be a major disaster area for which federal assistance

might be forthcoming, the Governor is authorized, in his discretion, to make an allotment from the sum sufficient to that jurisdiction without a declaration of a state of emergency, in the same manner as if a state of emergency declaration had been made.

The Governor shall report to the Chairmen of the Senate Finance Committee, the House Appropriations Committee, and the House Finance Committee within thirty days of authorizing the sum sufficient pursuant to this section. The Virginia Department of Emergency Management shall report annually to the General Assembly on the local jurisdictions that received financial assistance and the amount each jurisdiction received.

(b) Public agencies under the supervision and control of the Governor may implement their emergency assignments without regard to normal procedures (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials and expenditures of public funds.

(c) Allotments may be made by the Governor from a sum sufficient to provide financial assistance to Virginia state agencies and political subdivisions responding to a declared state of emergency in another state as provided by § 44-146.17, whether or not a state of emergency is declared in the Commonwealth pursuant to § 44-146.16.

(d) Allotments may be made by the Governor from a sum sufficient for the deployment of personnel and materials for the Virginia National Guard and the Virginia Defense Force to prepare for a response to any of the circumstances set forth in subdivisions A 1 through A 5 of § 44-75.1, whether or not a state of emergency is declared in the Commonwealth pursuant to § 44-146.16. However, preparation authorized by this subsection shall be limited to the deployment of no more than 300 personnel, and shall be limited to no more than five days, unless a state of emergency is declared.

History.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1997, c. 893; 2000, cc. 309, 1023; 2007, cc. 729, 742; 2011, cc. 53, 69; 2015, cc. 502, 503.

Cross references.

As to the disposition of surplus materials by the Department of General Services, see § 2.2-1124.

Editor's note.

At the direction of the Virginia Code Commission, "Virginia Defense Force" was substituted for "Virginia State Defense Force" in subsection (d) to conform to amendments by Acts 2011, c. 572 and 586.

Acts 2014, Sp. Sess. I, c. 2, as amended by Acts 2015, c. 665, effective for the biennium ending June 30, 2016, Item 54 provides: "A.1. The amount for Disaster Assistance is from all funds of the state treasury, not constitutionally restricted, and is to be effective only in the event of a declared state of emergency or authorization by the Governor of the sum sufficient, pursuant to § 44-146.28, Code of Virginia. Any appropriation authorized by this Item shall be transferred to state agencies for

payment of eligible costs according to written directions of the Governor or by such other person or persons as may be designated by him for this purpose.

"2. Any amount authorized for expenditure pursuant to § 44-146.28, Code of Virginia, shall be paid to eligible jurisdictions in accordance with guidelines and procedures established by the Department of Emergency Management, pursuant to § 44-146.28, Code of Virginia.

"B. In the event of a Presidentially declared disaster, the state and local share of any federal assistance, hazard mitigation, or flood control programs in which the state participates will be determined in accordance with the procedures in the 'Commonwealth of Virginia Emergency Operations Plan, Basic Plan,' promulgated by the Department of Emergency Management. The state share of any such program shall be no less than 10 percent."

The 2015 amendments.

The 2015 amendments by cc. 502 and 503 are identical, and substituted "emergency medical services agencies" for "rescue squads" in subdivision (a) (4).

§ 44-146.28:1. Compact enacted into law; terms.

The Emergency Management Assistance Compact is hereby enacted into law and entered into by the Commonwealth of Virginia with all other states legally joining therein, in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I.

PURPOSE AND AUTHORITIES.

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II.

GENERAL IMPLEMENTATION.

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III.

PARTY STATE RESPONSIBILITIES.

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the

responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;

2. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

3. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

4. Assist in warning communities adjacent to or crossing the state boundaries;

5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

1. A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

3. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV.

LIMITATIONS.

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this

compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V.

LICENSES AND PERMITS.

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI.

LIABILITY.

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII.

SUPPLEMENTARY AGREEMENTS.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII.

COMPENSATION.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and

representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX.

REIMBURSEMENT.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

ARTICLE X.

EVACUATION.

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI.

IMPLEMENTATION.

A. This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not

relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII.

VALIDITY.

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

ARTICLE XIII.

ADDITIONAL PROVISIONS.

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under § 1385 of Title 18 of the United States Code.

History.

1995, c. 280.

Compact cross references.

As to provisions of other member states, see:

Alabama: Code of Ala. § 31-9-40.
Alaska: Alaska Stat. § 26.23.136.
Arizona: A.R.S. § 26-402.
Arkansas: A.C.A. § 12-49-402.
California: Cal Gov Code § 179.5.
Colorado: C.R.S. 24-60-2902.
Connecticut: Conn. Gen. Stat. § 28-23a.
Delaware: 20 Del. C. § 3401.
District of Columbia: D.C. Code § 7-2332.
Florida: Fla. Stat. §§ 252.921 — 252.933.
Georgia: O.C.G.A. § 38-3-81.
Hawaii: HRS § 128F-2.
Idaho: Idaho Code § 46-1018A.
Illinois: 45 ILCS 151/5.
Indiana: Burns Ind. Code Ann. § 10-14-5-1 et seq.
Iowa: Iowa Code § 29C.21.
Kansas: K.S.A. § 48-9a01.
Kentucky: KRS § 39A.950.
Maine: 37-B M.R.S. §§ 921 — 933.
Maryland: Md. PUBLIC SAFETY Code Ann. § 14-702.
Massachusetts: ALM Spec. Laws ch. S140, § 1.
Michigan: MCLS § 3.991.

Minnesota: Minn. Stat. § 192.89.
Mississippi: Miss. Code Ann. § 45-18-3.
Missouri: § 44.415 R.S. Mo.
Montana: Mont. Code Anno., § 10-3-1001.
Nevada: Nev. Rev. Stat. Ann. § 415.010.
New Hampshire: RSA 108:3.
New Jersey: N.J. Stat. § 38A:20-5.
New Mexico: N.M. Stat. Ann. § 12-10-15.
New York: NY CLS Exec § 29-g.
North Carolina: N.C. Gen. Stat. §§ 166A-40 — 166A-53.
North Dakota: N.D. Cent. Code § 37-17.1-14.5.
Ohio: ORC Ann. 5502.40.
Oregon: ORS § 402.105.
Pennsylvania: 35 Pa.C.S. § 7601.
Puerto Rico: 1 L.P.R.A. §§ 621 — 633.
Rhode Island: R.I. Gen. Laws §§ 30-15.9-1 — 30-15.9-14.
South Carolina: S.C. Code Ann. § 25-9-420.
South Dakota: S.D. Codified Laws § 33-15-48.
Tennessee: Tenn. Code Ann. § 58-2-403.
Texas: Tex. Health & Safety Code § 778.001.
Utah: Utah Code Ann. § 53-2-202.
Virgin Islands: 23 V.I.C. § 1051 et seq.
Washington: Rev. Code Wash. (ARCW) § 38.10.010.
West Virginia: W. Va. Code § 15-5-22.
Wisconsin: Wis. Stat. § 323.80.

§ 44-146.28:2. Disaster relief assistance by out-of-state businesses and employees.

A. As used in this section, unless the context requires a different meaning:

“Critical infrastructure” means real and personal property and equipment owned or used to provide public utility or communications services, including communications networks, electric generation facilities, transmission and distribution systems, gas distribution systems, lines, poles, pipes, structures, towers, water and sewage pipelines and systems, and related support facilities, buildings, offices, and equipment.

“Declared disaster or emergency” means a disaster or emergency as defined in § 44-146.16 for which a state of emergency as defined in § 44-146.16 has been declared for the Commonwealth by the Governor or by an official authorized by federal law to make such declarations.

“Disaster-related or emergency-related work” means repairing, renovating, installing, building, or rendering services or other activities necessary to mitigate damage to critical infrastructure resulting from a declared disaster or emergency during the disaster response period. “Disaster-related or emergency-related work” does not include (i) any activities that an out-of-state business or an out-of-state employee is paid to perform by the Commonwealth, a locality in the Commonwealth, or a registered business in Virginia or (ii) the sale of goods by an out-of-state business or an out-of-state employee to the Commonwealth, a locality in the Commonwealth, or a registered business in the Commonwealth.

“Disaster response period” means a period that begins 10 days prior to the first day of the declared disaster or emergency and extends for a period of 60 days after the end of the declared disaster or emergency, or any longer period as declared by the Governor.

“Out-of-state business” means a business entity (i) whose services are requested by a registered business, the Commonwealth, or a local government for purposes of performing disaster-related or emergency-related work in the Commonwealth; (ii) that, except for declared disaster-related or emergency-related work, has no presence in and conducts no business in the Commonwealth; and (iii) that had not obtained from the State Corporation Commission a certificate of authority or registration to transact business in the Commonwealth and had no registrations or tax filings or nexus in the Commonwealth other than disaster-related or emergency-related work during the tax year immediately preceding the declared disaster or emergency. A business entity that otherwise meets the definition of an out-of-state business maintains that status even though it is affiliated with a registered business if such affiliation is solely through common ownership.

“Out-of-state employee” means an employee who, except for disaster-related or emergency-related work during the disaster response period, does not work in the Commonwealth.

“Registered business” means a domestic or foreign business entity that is listed in the business entity records maintained in the office of the clerk of the State Corporation Commission, provides public utility or communications services, and was in existence or had obtained from the State Corporation Commission a certificate of authority or registration to transact business in the Commonwealth prior to the declared disaster or emergency.

B. Except as provided in subsection C:

1. Disaster-related or emergency-related work performed by an out-of-state business within the Commonwealth shall not be considered in determining and shall not result in (i) any requirement that the business file, remit, or pay any state or local taxes or fees, including any filing required for a unitary or combined group of which the out-of-state business may be a part, or (ii) any requirement that the business or its out-of-state employees be licensed or

registered in any manner by the Commonwealth or local governments. These taxes, fees, and registration requirements include but are not limited to fees assessed and collected, and authorizations or registrations issued by the State Corporation Commission; unemployment insurance premiums; income taxes; state registration fees; local business, professional, and occupational taxes; and collection of sales and use tax; and

2. Disaster-related or emergency-related work performed by an out-of-state employee shall not be considered to have established such person's residency or a presence in the Commonwealth that would require that person or that person's employer to file and pay income taxes or to be subject to tax withholdings or to file and pay any other state or local tax or fee during the disaster response period. However, nothing in this section shall be construed to affect or alter the responsibility of the out-of-state employee, or that person's employer, to file and pay income taxes or be subject to tax withholdings in the employee's home state on income earned in the Commonwealth during the disaster response period.

C. The provisions of this section shall not apply to any applicable transaction taxes and fees, including motor fuels taxes, sales and use taxes, transient occupancy taxes, and car rental taxes or fees, based on purchases, leases, or consumption in the Commonwealth.

D. The provisions of this section shall not apply to any out-of-state business or out-of-state employee for any period of presence or transaction of business in the Commonwealth after the disaster response period ends.

History.

2015, c. 595.

Editor's note.

Acts 2015, c. 595, cl. 2 made this section effective March 26, 2015, by emergency.

§ 44-146.29. Expired.

Editor's note.

This section expired by its own terms 30 days

after the commencement of the 1975 Session of the General Assembly. See Acts 1974, c. 4.

§§ 44-146.29:1, 44-146.29:2. Expired.

Editor's note.

Acts 1984, c. 332, which enacted §§ 44-146.29:1 and 44-146.29:2, provided in cl. 3 that its provisions would expire upon the effective date of any act of the 1984 General Assembly

creating a Department of Mines, Minerals and Energy. Acts 1984, c. 590, created such a department, effective January 1, 1985. See now § 45.1-161.1 et seq.

CHAPTER 3.3.

TRANSPORTATION OF HAZARDOUS RADIOACTIVE MATERIALS.

Sec.

44-146.30. Department of Emergency Management to monitor transportation of hazardous radioactive materials.

§ 44-146.30. Department of Emergency Management to monitor transportation of hazardous radioactive materials.

The Coordinator of the Department of Emergency Management, pursuant to regulations promulgated by the Virginia Waste Management Board, will maintain a register of shippers of hazardous radioactive materials and monitor the transportation within the Commonwealth of those hazardous radioactive materials, as defined by the Virginia Waste Management Board, which may constitute a significant potential danger to the citizens of the Commonwealth in the event of accidental spillage or release. The regulations promulgated by the Board shall not be in conflict with federal statutes, rules, or regulations. Other agencies and commissions of the Commonwealth shall cooperate with the Virginia Waste Management Board in the formulation of regulations as herein provided.

History.

1979, c. 434; 1984, c. 745; 1988, c. 30; 2000, c. 309.

substances litigation, focusing on the Fourth Circuit, see 16 U. Rich. L. Rev. 247 (1982). For note, "The Role of Localities in the Transportation and Disposal of Nuclear Wastes," see 18 U. Rich. L. Rev. 655 (1984).

Law Review.

For article discussing issues relating to toxic

CHAPTER 3.4.

FUNDING FOR STATE AND LOCAL GOVERNMENT RADIOLOGICAL EMERGENCY PREPAREDNESS.

Sec.

44-146.31. Definitions.

44-146.32. One-time and annual fees.

Sec.

44-146.33. Radiological Emergency Preparedness Fund.

§ 44-146.31. Definitions.

As used in this chapter, unless the context requires a different meaning:

"*Department*" means the Department of Emergency Management.

"*Nuclear power station*" means a facility producing electricity through the utilization of nuclear energy for sale to the public which is required to be licensed by the Nuclear Regulatory Commission and includes all units of the facility at a single site.

"*Person*" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing.

History.

1982, c. 222; 2000, c. 309.

§ 44-146.32. One-time and annual fees.

A. For each nuclear power station in commercial operation on July 1, 1982, the person owning the station shall pay to the Department, within ninety days of such date, a one-time fee of \$55,000.

B. For each nuclear power station commencing commercial operation after July 1, 1982, the person owning the station shall pay to the Department a one-time fee of \$55,000 not less than one year prior to the scheduled commencement of operation.

C. For each nuclear power station that on July 1 of each year is validly licensed to operate by the Nuclear Regulatory Commission, the person owning the station shall pay to the Department not later than August 1 of that year an

annual fee in an amount based upon the projected annual cost of administering the state and local governments' radiological emergency preparedness programs for the station.

D. The Department shall send timely invoices for such fees to the persons responsible for their payment. However, failure of the Department to send the invoices in a timely manner shall not relieve the responsible persons of their obligation to pay such fees.

History.

1982, c. 222; 1984, c. 322; 1988, c. 56.

§ 44-146.33. Radiological Emergency Preparedness Fund.

All moneys received by the Department under this chapter shall be deposited in the state treasury and set apart in a special fund to be known as the "Radiological Emergency Preparedness Fund." Moneys deposited in this fund shall be expended by the Department to the extent appropriated only to support the activities of state agencies and the local governments in establishing, maintaining and operating such emergency plans, programs and capabilities to deal with nuclear accidents as are required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency with respect to nuclear power stations.

History.

1982, c. 222.

CHAPTER 3.5.

VIRGINIA HAZARDOUS MATERIALS EMERGENCY RESPONSE PROGRAM.

<p>Sec. 44-146.34. Purpose; definitions. 44-146.35. Powers and duties of the Department of Emergency Management. 44-146.36. Coordinator to enter into agreements with political subdivisions; immunity from liability. 44-146.37. Disbursements made from Virginia Disaster Response Fund.</p>	<p>Sec. 44-146.38. Political subdivisions to appoint hazardous materials coordinator. 44-146.39. [Repealed.] 44-146.40. Virginia Emergency Response Council created; membership; responsibilities; immunity for local councils.</p>
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§ 44-146.34. Purpose; definitions.

A. The purpose of this chapter is to provide for the development and implementation of a program to protect the environment and the health, safety, and welfare of the people of the Commonwealth from the threats and potential threats of accidents or incidents involving hazardous materials. This program shall be known as the Virginia Hazardous Materials Emergency Response Program.

B. As used in this chapter, unless the context requires otherwise:

"*Coordinator*" means the Coordinator of the Department of Emergency Management.

"*Department*" means the Department of Emergency Management.

"*Hazardous materials*" means substances or materials which may pose unreasonable risks to health, safety, property, or the environment when used, transported, stored or disposed of, which may include materials which are solid, liquid or gas. Hazardous materials may include toxic substances, flammable and ignitable materials, explosives, corrosive materials, and radioactive materials and include (i) those substances or materials in a form or

quantity which may pose an unreasonable risk to health, safety, or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order; (ii) hazardous substances as defined or designated by law or regulation of the Commonwealth or law or regulation of the United States government; and (iii) hazardous waste as defined or designated by law or regulation of the Commonwealth.

“*Political subdivision*” means any city or county in the Commonwealth, and for the purposes of this chapter, any town with a population of more than 5,000 which chooses to have an emergency management program separate from that of the county in which the town is located.

“*Transport*” or “*transportation*” means any movement of property by any mode and any packing, loading, unloading, or storage incidental thereto.

History.

1987, c. 492; 2000, c. 309.

§ 44-146.35. Powers and duties of the Department of Emergency Management.

In carrying out the purposes set forth in this chapter the Department shall have the authority to:

1. Coordinate the development of hazardous materials training programs and hazardous materials emergency response programs and plans with state and local government agencies and related groups. Those state agencies and local government agencies shall retain the statutory responsibilities assigned elsewhere in this Code.

2. Administer the implementation of the Virginia Hazardous Materials Emergency Response Program.

History.

1987, c. 492; 2000, c. 309; 2011, cc. 594, 681.

Cross references.

As to escheat of property with hazardous materials, § 55-182.2.

Editor’s note.

Acts 2015, c. 241, cl. 1 provides: “The Director of the Department of Environmental Quality, the State Health Commissioner, and the State Coordinator of Emergency Management shall evaluate existing statutory and regulatory tools for ensuring that chemical storage in the Commonwealth is conducted in a manner that is protective of human health, public safety, drinking water resources, and the environment of the Commonwealth. This evaluation may include (i) an examination of Virginia’s existing programs to protect drinking water resources from contamination from chemical storage; (ii) identification of any existing gaps or inadequacy in drinking water protections related to chemical storage; (iii) identification of any existing gaps or inadequacy in chemical storage standards; (iv) any recommendations on chemical storage in the Commonwealth to address protection of human health, public safety, drinking water resources, the environment,

and the economy of the Commonwealth; and (v) other policies and procedures that the Director of the Department of Environmental Quality, the State Health Commissioner, and the State Coordinator of Emergency Management determine may enhance the protection of Virginia’s drinking water resources and the safe storage of chemicals in Virginia.

“The Director of the Department of Environmental Quality, the State Health Commissioner, and the State Coordinator of Emergency Management shall report the findings of the evaluation to the State Water Commission, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, and the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources no later than December 1, 2016.

“For purposes of this section, ‘chemical storage’ means those chemicals identified by the Superfund Amendments and Reauthorization Act (SARA) and the Emergency Planning and Community Right-To-Know Act (EPCRA) that provides for hazardous chemical storage reporting requirements in Section 312 of the SARA and are stored in excess of 10,000 gallons.”

Acts 2015, c. 241, cl. 2 provides: “That the provisions of this act shall expire on January 1, 2017.”

§ 44-146.36. Coordinator to enter into agreements with political subdivisions; immunity from liability.

A. The Coordinator may enter into agreements with political subdivisions to provide hazardous materials emergency response within a specific geographical area of the Commonwealth on a state and political subdivision cost-sharing basis. The cost-sharing agreements shall be negotiated with political subdivisions by the Coordinator.

B. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or private agencies, nor public or private employees, nor representatives of any of them, engaged in any emergency services activities while complying with or attempting to comply with this chapter or any regulation or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of or injury to any person or damage to property as a result of such activities, except where such death, injury or damage results from gross negligence, recklessness or willful misconduct. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

History.

1987, c. 492; 1989, c. 378.

§ 44-146.37. Disbursements made from Virginia Disaster Response Fund.

A. Disbursements for costs and expenses, including, but not limited to equipment, material, hazardous materials emergency response operations and immediate accident or incident site cleanup costs and expenses in preventing or alleviating damage, loss, hardship, or suffering caused by accidents or incident, involving hazardous materials, shall be made from the Virginia Disaster Response Fund in accordance with the provisions of § 44-146.18:1.

B. The Coordinator shall promptly seek reimbursement from any party causing or contributing to an accident or incident involving hazardous materials for all sums disbursed from the Virginia Disaster Response Fund for the protection, relief, and recovery from loss or damage caused by such party.

C. The Coordinator is also authorized to recover any sums expended by any other state agency or political subdivision for preventing or alleviating damage, loss, hardship, or suffering caused by accidents or incidents involving hazardous materials. To recover such sums the Coordinator shall provide documentation that the costs were incurred whether or not they were actually disbursed from the Virginia Disaster Response Fund.

History.

1987, c. 492.

Law Review.

For article, "Environmental Liens and Title Insurance," see 23 U. Rich. L. Rev. 305 (1989).

§ 44-146.38. Political subdivisions to appoint hazardous materials coordinator.

Each political subdivision shall appoint a hazardous materials coordinator. In appointing the hazardous materials coordinator, political subdivisions shall consider the requisite qualifications for hazardous materials coordinators as established by the Coordinator. The hazardous materials coordinator shall

coordinate the hazardous materials emergency response program within the political subdivision.

History.

1987, c. 492; 2011, cc. 594, 681.

§ 44-146.39. Repealed by Acts 2011, cc. 594 and 681, cl. 2.

Editor's note.

Former § 44-146.39, pertaining to the State Hazardous Materials Emergency Response Ad-

visory Council, was derived from 1987, c. 492; 2000, c. 309.

§ 44-146.40. Virginia Emergency Response Council created; membership; responsibilities; immunity for local councils.

A. There is hereby created the Virginia Emergency Response Council to carry out the provisions of Title 3, Public Law 99-499.

B. The Virginia Emergency Response Council shall consist of such state agency heads or designated representatives with technical expertise in the emergency response field as the Governor shall appoint. The Governor shall designate a chairman from among its members.

C. The Virginia Emergency Response Council, known as the "Virginia Council," shall designate an appropriate state agency to receive funds provided under Title 3, Public Law 99-499.

D. The Virginia Council shall adopt rules and procedures in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) for the conduct of its business.

E. Any person appointed by the Virginia Emergency Response Council as a member of a local emergency planning committee shall be immune from civil liability for any official act, decision or omission done or made in performance of his duties as a member of such local council, provided that the act, decision or omission was not done or made in bad faith or with malicious intent or does not constitute gross negligence. No member of any emergency planning committee nor any state agency on behalf of such member need make a payment into the state insurance trust fund under § 2.2-1835 for this purpose.

F. Any joint emergency planning committee serving Fairfax County and the City of Fairfax shall have the authority to require any facility within its emergency planning district to submit the information required and participate in the emergency planning provided for in Subtitle A of Title 3 of Public Law 99-499. For the purposes of this subsection, "facility" shall include any development or installation having an aggregate storage capacity of at least one million gallons of oil as defined in § 62.1-44.34:10, or the potential for a sudden release of 10,000 pounds or more of any other flammable liquid or gas not exempt from the provisions of § 327 of Title 3 of Public Law 99-499. This requirement shall not occur until after public notice and the opportunity to comment. The committee shall notify the facility owner or operator of any requirement to comply with this subsection.

History.

1987, c. 492; 1992, cc. 633, 656; 1994, c. 691; 2007, c. 813; 2011, cc. 594, 681.

provisions of this act shall not affect the powers of any locality with respect to any ordinance, resolution or bylaw validly adopted and not repealed or rescinded prior to July 1, 2007."

Editor's note.

Acts 2007, c. 813, cl. 2 provides: "That the