

**VIRGINIA
EMERGENCY SERVICES
AND
DISASTER LAWS**

2008 EDITION

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



Reprinted from the Code of Virginia of 1950
and the 2008 Supplement



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Title 44.

Military and Emergency Laws.

CHAPTER 3.2.

EMERGENCY SERVICES AND DISASTER LAW.

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§ 44-146.13. **Short title.** — This chapter may be cited as the “Commonwealth of Virginia Emergency Services and Disaster Law of 2000.” (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 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 quaran-

tine, see § 32.1-48.09. 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, § 14.

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. (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 ade-

quate 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 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 lawful possession, 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, fire-fighting 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. (1973, c. 260; 2000, c. 309; 2006, c. 458.)

The 2006 amendments. — The 2006 and redesignated former subdivisions (3) and amendment by c. 458 inserted subdivision (3) (4) as subdivisions (4) and (5).

§ 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. (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. — 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 § 33.1-223.2:5. For the Line of Duty Act, see §§ 9.1-400 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."

The 2004 amendments. — The 2004 amendments by cc. 773, effective April 12, 2004, and 1021, effective April 21, 2004, are nearly identical, and rewrote the section. The

definition of "Communicable disease of public health threat" is set out above as directed by the Virginia Code Commission.

The 2008 amendments. — The 2008 amendments by cc. 121 and 157 are identical, and inserted the paragraph defining "Disaster," deleted "natural or man-made" preceding "disasters" in the first sentence of the paragraph defining "Emergency services," substituted "Stafford Act (P.L. 93-288" for "Stafford Act (P.L. 43-288" in the paragraph defining "Major disaster," and deleted the former paragraphs defining "Man-made disaster" and "Natural disaster."

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. (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 § 3.1-22.19. 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."

The 2004 amendments. — The 2004 amendments by cc. 773, effective April 12, 2004, and 1021, effective April 21, 2004, are identical, and inserted the next-to-last para-

graph in subdivision (1).

The 2006 amendments. — The 2006 amendment by c. 140 added subdivision (10) and made related changes.

The 2007 amendments. — The 2007 amendments by cc. 729 and 742 are identical, and added the last sentence in subdivision (5).

The 2008 amendments. — The 2008 amendments by cc. 121 and 157 are identical, and deleted "natural or man-made" preceding "disasters" at the end of the introductory paragraph; and deleted "man-made or natural" preceding "disaster" in subdivision (10).

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 Honor-

able 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).

§ 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. (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. (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 State 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 State 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;

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.

C. The State 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 State 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 State 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 State 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. (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.)

The 2001 amendments. — The 2001 amendment by c. 841, inserted present subdivisions (b) (8) and (b) (9) and redesignated former subdivisions (b) (8) through (b) (11) as present subdivisions (b) (10) through (b) (13).

The 2003 amendments. — The 2003 amendment by c. 622 substituted “the” for “this” preceding “Commonwealth” in the second sentence of subdivision a; inserted present subdivisions b 1 through 3, and redesignated former subdivisions b 1 through 13 as present subdivisions b 4 through 16; substituted “that” for “which” in subdivision b 4; inserted “impending emergency or” in the introductory language of subdivision c; and added subdivision f.

The 2004 amendments. — The 2004 amendment by c. 690 substituted “subdivision 4 of § 2.2-3705.2” for “subdivision A 57 of § 2.2-3705” in subdivision (b) (3).

The 2005 amendments. — The 2005 amendment by c. 165 changed the style of the subsections and subdivisions, added subdivisions B 17 and B 18, and made a minor stylistic change.

The 2005 amendment by c. 490, inserted “and continuity of operations (COOP)” in subdivision B 7.

The 2007 amendments. — The 2007 amendment by c. 902 added subdivision B 19 and made related changes.

The 2008 amendments. — The 2008 amendments by cc. 450 and 526 are identical, and added “and, as needed, in developing an institutional crisis and emergency management plan pursuant to § 23-9.2:9” to the end of subdivision B 12.

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

The 2008 amendments. — The 2008 amendments by cc. 121 and 157 are identical, and deleted “natural or man-made” preceding “disasters” in subdivision 1; and substituted “60 days” for “sixty days” in the second sentence in the last paragraph.

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, 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. (1985, c. 443; 1990, cc. 1, 317; 2000, c. 309.)

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

Editor’s note. — Acts 2004, Sp. Sess. I, c. 4, Item § 4-5.09 a., as amended by Acts 2005, c. 951, effective for the biennium ending June 30, 2006, provides: “Notwithstanding the provisions of § 2.2-1156, Code of Virginia, the departments, divisions, institutions, or agencies of the Commonwealth, or the Governor, shall sell or lease surplus real property only under the following circumstances:

“1. Any emergency declared in accordance with § 44-146.18:2 or § 44-146.28, Code of Virginia, or

“2. Not less than thirty days after the Governor notifies, in writing, the Chairmen of the House Appropriations and Senate Finance Committees regarding the planned conveyance, including a statement of the proceeds to be derived from such conveyance and the individual or entity taking title to such property.”

§ 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. 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 operations 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. (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.)

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

The 2003 amendments. — The 2003 amendment by c. 622 added subsection F.

The 2004 amendments. — The 2004 amendment by c. 302 substituted "10" for "ten" in the third sentence of subsection E and added subsection G.

The 2005 amendments. — The 2005 amendments by cc. 6 and 205 are identical, and in subsection D, inserted the clause (i) designation and substituted "(ii) other states or locali-

ties within other states, develop" for "within an adjacent state, develop."

The 2006 amendments. — The 2006 amendment by c. 138 substituted "shall" for "may" in the second sentence of subsection A, and in subdivisions B 3 and B 5; in subsection B, deleted "have the authority to" preceding "appoint a coordinator" in subdivisions B 1, B 2, B 4, and B 5.

The 2007 amendments. — The 2007 amendments by cc. 97 and 138 are identical, and inserted the present third and fourth sentences in subsection E.

The 2007 amendment by c. 129 added subsection H.

§ 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. (1973, c. 260; 2000, cc. 309, 437.)

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

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

The 2003 amendments. — The 2003 amendment by c. 848 added the designator A, in subsection A, inserted “critical infrastructure protection”, and added subsection B.

The 2004 amendments. — The 2004

amendment by c. 690 substituted “subdivision 4 of § 2.2-3705.2” for “subdivision A 57 of § 2.2-3705” in the last sentence of the introductory paragraph in subsection B.

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

The 2005 amendments. — The 2005 amendment by c. 474 added the last sentence to subsection A; substituted “the Commonwealth” for “this Commonwealth” in subsection C; and made minor stylistic changes.

The 2008 amendments. — The 2008 amendments by cc. 121 and 157 are identical, and in subsection C, inserted “without compensation other than reimbursement for actual and necessary expenses,” deleted “gratuitously”

preceding “render aid” and deleted “gratuitous” preceding “service” at the end of the subsection.

Law Review. — For comment, “‘911’ Emer-

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

§ 44-146.25. Certain persons not to be employed or associated in emergency services organizations; loyalty oath required. — No person shall be employed or associated in any emergency services organization established under this chapter who advocates or has advocated a change by force or violence in the constitutional form of government of the United States or in this Commonwealth or the overthrow of any government in the United States by force, or violence, or who has been convicted of, or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for emergency services shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this Commonwealth, which shall be substantially as follows:

“I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the Commonwealth of Virginia, against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence and that during such time as I am a member of the (name of emergency services organization), I will not advocate, nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence.” (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. (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. (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. Allotments may also be made by the Governor from the 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.

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 rescue squads 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. (1973, c. 260; 1974, c. 4; 1975, c. 11; 1997, c. 893; 2000, cc. 309, 1023; 2007, cc. 729, 742.)

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

Editor's note. — Acts 2004, Sp. Sess. I, c. 4, Item § 4-5.09 a., as amended by Acts 2005, c. 951, effective for the biennium ending June 30, 2006, provides: "Notwithstanding the provisions of § 2.2-1156, Code of Virginia, the departments, divisions, institutions, or agencies of the Commonwealth, or the Governor, shall sell or lease surplus real property only under the following circumstances:

"1. Any emergency declared in accordance with § 44-146.18:2 or § 44-146.28, Code of Virginia, or

"2. Not less than thirty days after the Governor notifies, in writing, the Chairmen of the

House Appropriations and Senate Finance Committees regarding the planned conveyance, including a statement of the proceeds to be derived from such conveyance and the individual or entity taking title to such property."

Acts 2008, c. 879, effective for the biennium ending June 30, 2010, in Item 404 A, provides: "All funds transferred to the Department of Emergency Management pursuant to the Governor's authority under §44-146.28, Code of Virginia, shall be deposited into a special fund account to be used only for Disaster Recovery."

The 2007 amendments. — The 2007 amendments by cc. 729 and 742 are identical, and added the last sentence in the first paragraph of subsection (a).

§ 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. (1995, c. 280.)

Compact cross references. — As to provisions of other member states, see:

- Arizona: A.R.S. § 26-402.
- Arkansas: A.C.A. § 12-49-402.
- Colorado: C.R.S. 24-60-2902.
- Connecticut: Conn. Gen. Stat. § 28-23a.
- Delaware: 20 Del. C. § 3401.
- Florida: Fla. Stat. §§ 252.921 — 252.933.
- Indiana: Burns Ind. Code Ann. §§ 10-4-2.5-1 — 10-4-2.5-16.
- Iowa: Iowa Code § 29C.21.
- Kansas: K.S.A. § 48-9a01.
- Kentucky: KRS § 39A.950.
- Louisiana: La. R.S. 29:751.
- Maine: 37-B M.R.S. §§ 921 — 933.
- Maryland: Md. Ann. Code art. 41, § 19-102.
- Massachusetts: Mass. Ann. Laws Spec. Laws ch. S140, § 1.
- 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.
- New Hampshire: RSA 108:3.
- New Mexico: N.M. Stat. Ann. § 11-15-2.
- North Carolina: N.C. Gen. Stat. §§ 166A-40 — 166A-53.
- North Dakota: N.D. Cent. Code, § 37-17.1-14.5.
- Oklahoma: 63 Okl. St. §§ 684.1 — 684.13.
- 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.
- Vermont: 20 V.S.A. §§ 101 — 112.
- West Virginia: W. Va. Code § 15-5-22.

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

Law Review. — For article discussing issues relating to toxic 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).

CHAPTER 3.4.

FUNDING FOR STATE AND LOCAL GOVERNMENT RADIOLOGICAL EMERGENCY PREPAREDNESS.

Sec.	Sec.
44-146.31. Definitions.	44-146.33. Radiological Emergency Preparedness Fund.
44-146.32. One-time and annual fees.	

§ 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. (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. (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. (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. 44-146.38. Political subdivisions to appoint</p>	<p>Sec. hazardous materials coordinator. 44-146.39. State Hazardous Materials Emergency Response Advisory Council created; membership; responsibilities. 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. (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. The Department shall consider the recommendations of the Hazardous Materials Emergency Response Advisory Council in implementing the Program. (1987, c. 492; 2000, c. 309.)

§ 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. (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. (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 upon recommendation of the State Hazardous Materials Emergency Response Advisory Council. The hazardous materials coordinator shall coordinate the hazardous materials emergency response program within the political subdivision. (1987, c. 492.)

§ 44-146.39. State Hazardous Materials Emergency Response Advisory Council created; membership; responsibilities. — A. There is hereby created the State Hazardous Materials Emergency Response Advisory Council, hereinafter referred to in this chapter as the "Council." The Council

shall consist of such state agency heads or their designated representatives as the Governor shall appoint and nine other members appointed by the Governor. Those nine members shall be representative of local government, industry, the general public, and environmental and emergency response interests. The Governor shall designate a chairman from among the Council members and the Council shall meet at the call of the chairman. Upon initial appointment three of the nine nonstate agency representatives shall be appointed for three-year terms, three for two-year terms, and three for one-year terms. Thereafter, each shall be appointed for a term of three years.

B. The Department of Emergency Management shall provide staff support for the Council. State agencies shall cooperate in providing assistance and advice upon request of the Council to the Coordinator. Expenses incurred as a result of Council functions shall be paid by the Department of Emergency Management from an appropriation for that purpose.

C. The Council shall provide programmatic advice to the Coordinator in the development and implementation of the Virginia Hazardous Materials Emergency Response Program. The Council shall study and make recommendations on all aspects of the Virginia Hazardous Materials Emergency Response Program including, but not limited to, planning, organization, equipment, training, funding, accident prevention and enforcement of regulations.

D. The Council shall provide advice to the Virginia Emergency Response Council. (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 Emergency Response Council shall seek advice on policy and programmatic matters from the Hazardous Materials Emergency Response Advisory Council.

E. 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.) of Title 2.2 for the conduct of its business.

F. 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.

G. 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. (1987, c. 492; 1992, cc. 633, 656; 1994, c. 691; 2007, c. 813.)

Editor's note. — Acts 2007, c. 813, cl. 2, provides: "That the 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."

The 2007 amendments. — The 2007

amendment by c. 813 substituted "Fairfax County and the City of Fairfax" for "any county operating under the urban county executive form of government and serving a city with a population between 19,500 and 20,000" in subsection G.