

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 53

An Act to amend and reenact § 44-146.28 of the Code of Virginia, relating to state of emergency; preparation for response.

[H 1774]

Approved March 14, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 44-146.28 of the Code of Virginia is amended and reenacted as follows:

§ 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.

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

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