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HOUSE BILL NO. 420

Offered January 8, 2020

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A BILL to amend and reenact §§ 44-146.16, 44-146.18, and 44-146.19 of the Code of Virginia, relating to the Department of Emergency Management; responsibilities of political subdivisions; provision of emergency preparedness information to individuals with limited English proficiency, disabilities, or other special needs.

Patrons—Price, Delaney, Keam, Kory, Rasoul, Simon and Willett

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 44-146.16, 44-146.18, and 44-146.19 of the Code of Virginia are amended and reenacted as follows:

§ 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;

"Department" means the Department of Emergency Management established pursuant to § 44-146.18.

"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

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59 United States government;

60 *"Individuals with limited English proficiency" means individuals who do not speak English as their*
61 *primary language and who have a limited ability to read, write, speak, or understand English.*

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

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

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

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

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

88 "Resource shortage" means the absence, unavailability or reduced supply of any raw or processed
89 natural resource, or any commodities, goods or services of any kind that bear a substantial relationship
90 to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

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

96 **§ 44-146.18. Department of Emergency Management; administration and operational control;**
97 **coordinator and other personnel; powers and duties.**

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

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

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

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

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

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

120 5. Coordinate and administer disaster mitigation, preparedness, response, and recovery plans and

programs with the proponent federal, state, and local government agencies and related groups;

6. 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;

7. 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;

8. 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;

9. 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;

10. 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 *and ensure that such model school plan is designed to include and reach individuals with limited English proficiency, disabilities, or other special needs;*

11. 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 § 23.1-804;

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

13. 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;

14. 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;

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

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

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

18. 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; *and*

19. *Develop an emergency response plan to address the needs of individuals with limited English proficiency, disabilities, or other special needs in the event of a disaster, including the provision of competent interpretation services and translated documents, and assist and coordinate with local agencies in developing similar emergency response plans for such individuals.*

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

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

1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual disaster;

2. Providing facilities from which state agencies and supporting organizations may conduct emergency operations;

3. Providing an adequate communications and warning system capable of notifying all political subdivisions in the Commonwealth of an impending disaster within a reasonable time;

4. Establishing and maintaining liaison with affected political subdivisions;

5. Determining requirements for disaster relief and recovery assistance;

6. Coordinating disaster response actions of federal, state and volunteer relief agencies; and

182 7. Coordinating and providing guidance and assistance to affected political subdivisions to ensure
183 orderly and timely response to and recovery from disaster effects.

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

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

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

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

- 200 1. Coordinating the search and rescue function of the Department of ~~Emergency Management~~;
- 201 2. Coordinating with local, state, and federal agencies involved in search and rescue;
- 202 3. Coordinating the activities of search and rescue organizations involved in search and rescue;
- 203 4. Maintaining a register of search and rescue certifications, training, and responses;
- 204 5. Establishing a memorandum of understanding with the Virginia Search and Rescue Council and its
205 respective member agencies regarding search and rescue efforts;
- 206 6. Providing on-scene search and rescue coordination when requested by an authorized person;
- 207 7. Providing specialized search and rescue training to police, fire-rescue, EMS, emergency managers,
208 volunteer search and rescue responders, and others who might have a duty to respond to a search and
209 rescue emergency;
- 210 8. Gathering and maintaining statistics on search and rescue in the Commonwealth;
- 211 9. Compiling, maintaining, and making available an inventory of search and rescue resources
212 available in the Commonwealth; and
- 213 10. Periodically reviewing search and rescue cases and developing best professional practices.

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

217 **§ 44-146.19. Powers and duties of political subdivisions.**

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

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

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

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

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

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

236 5. In Smyth County and in York County, the chief administrative officer for the county shall appoint
237 a director of emergency management, with the consent of the governing body, who shall appoint a
238 coordinator of emergency management with the consent of the governing body.

239 C. Whenever the Governor has declared a state of emergency, each political subdivision within the
240 disaster area may, under the supervision and control of the Governor or his designated representative,
241 control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and
242 other commodities, materials, goods, services and resource systems which fall only within the boundaries
243 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, the responsibilities of all local agencies ~~and shall establish~~, *the establishment of* a chain of command, and a provision that the Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be contacted immediately to deploy assistance in the event of an emergency as defined in the emergency response plan when there are victims as defined in § 19.2-11.01. The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall also contain current contact information for both agencies. *The plan shall also include provisions to ensure that adequate and timely emergency relief assistance, including competent interpretation services and translated documents, is provided to individuals with limited English proficiency, disabilities, or other special needs.* 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 (i) an annually updated emergency management assessment and (ii) data related to emergency sheltering capabilities, including emergency shelter locations, evacuation zones, capacity by person, medical needs capacity, current wind rating, standards compliance, backup power, and lead agency for staffing, to the State Coordinator of Emergency Management on or before May 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. *The governing body of the locality shall ensure that such alert and warning plan provides adequate and timely warning to individuals with limited English proficiency, disabilities, or other special needs.*

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.