

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 309

An Act to amend and reenact §§ 44-146.13 through 44-146.17, 44-146.18 through 44-146.22, 44-146.24, 44-146.26, 44-146.27, 44-146.28, 44-146.30, 44-146.31, 44-146.34, 44-146.35 and 44-146.39 of the Code of Virginia, relating to the Virginia Emergency Services and Disaster Law.

[H 1352]

Approved April 3, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 44-146.13 through 44-146.17, 44-146.18 through 44-146.22, 44-146.24, 44-146.26, 44-146.27, 44-146.28, 44-146.30, 44-146.31, 44-146.34, 44-146.35 and 44-146.39 of the Code of Virginia are amended and reenacted as follows:

§ 44-146.13. Short title.

This chapter may be cited as the "Commonwealth of Virginia Emergency Services and Disaster Law of 1973 2000."

§ 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 *Services Management*, and to authorize the creation of local organizations for emergency *services 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.

§ 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) 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*

(4) 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.

§ 44-146.16. Definitions.

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

(1) "Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life;

(2) "Man-made disaster" means 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, which threaten or cause damage to property, human suffering, hardship or loss of life;

(2a) "Emergency" means a ~~sudden and unforeseeable occurrence or condition, either as to its onset or as to its extent, of such disastrous severity or magnitude that 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 is required~~ 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;

(3) "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 natural or man-made 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;

(4) "Major disaster" means any natural ~~or man-made disaster~~ *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. 43-288 as amended) above and beyond emergency services by the federal government* to supplement the efforts and available resources of the several states, local governments, and *disaster* relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him;

(5) "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 ~~when it is evident that the resources of the Commonwealth are adequate to cope with such disasters~~;

(6) "Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of ~~a 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 *a 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; ~~in the absence of a declared state of emergency,~~ to prevent *or manage* a water shortage;

(7) "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;

(8) "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 which chooses to have an emergency ~~services management~~ program separate from that of the county in which such town is located;

(9) "Interjurisdictional agency for emergency ~~services 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;

(10) "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 which bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

(11) "Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying,

injecting, escaping, leaching, fire, explosion, or other releases;

(12) "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;

(13) "Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards.

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency ~~Services~~ *Management*. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local ~~civilian~~ *emergency services* activities relating to the safety and welfare of the Commonwealth in time of natural or man-made 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, ~~or other~~ *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. 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 ~~Services~~ *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 ~~programs~~ and public information programs *relative to emergency management* and to take ~~all~~ other preparatory steps including the partial or full mobilization of emergency ~~service 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;

(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; ~~and~~

(8) ~~When necessary,~~ To request ~~predisaster federal assistance or the declaration of a major disaster declaration from the President, thereby certifying and certify~~ the need for federal disaster assistance and ~~to give assurance of 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; *and*

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

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

(a) The State Office of Emergency Services is continued and shall hereafter be known as the Department of Emergency ~~Services~~ *Management*. Wherever the words "State Office Department of Emergency Services" are used in any law of this Commonwealth, they shall mean the Department of Emergency ~~Services~~ *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 ~~Services~~ *Management* shall in the administration of *emergency services and* disaster preparedness programs:

(1) Promulgate plans and programs which are conducive to adequate disaster *mitigation* preparedness, *response and recovery* programs;

(2) Prepare and maintain a State Emergency Operations Plan ~~relating to man-made and natural disaster concerns~~ *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;*

(3) Coordinate and administer ~~preparedness~~ *disaster mitigation, preparedness, response and recovery* plans and programs with the proponent federal, state and local government agencies and related groups;

(4) Provide guidance and assistance to state agencies and units of local government in ~~designing emergency programs and plans~~ *developing and maintaining emergency management programs, plans and systems;*

(5) 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;

(6) 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;

(7) 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;*

(8) *Develop standards, provide guidance and encourage the maintenance of local and state agency emergency operations plans;*

~~(8)~~ (9) ~~Promulgate~~, Prepare, maintain, ~~or~~ *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;

~~(9)~~ (10) 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; and

~~(10)~~ (11) Establish guidelines pursuant to § 44-146.28, and administer payments to eligible applicants as authorized by the Governor.

(c) The State Department of Emergency ~~Services~~ *Management* shall during a period of declared emergency be responsible for:

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

(2) Providing ~~adequate~~ facilities ~~for~~ *from which* state agencies ~~for~~ *and supporting organizations may* conduct ~~of disaster~~ 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 ~~Services~~ *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 ~~periods of declared emergency~~ *a state of emergency declaration by the Governor or following a major disaster declaration by the President.*

(e) The State Department of Emergency ~~Services~~ *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.*

§ 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 ~~Services~~ *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 ~~Services~~ *Management* or by any other state agency or political subdivision *or other entity*, acting at the direction of the Coordinator of Emergency ~~Services~~ *Management*, in and for preventing or alleviating damage, loss, hardship, or suffering caused by emergencies, resource shortages, or natural or man-made 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 ~~Services~~ *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 ~~Services~~ *Management* or by any other state agency or political subdivision *or other entity*, acting at the direction of the Coordinator of Emergency ~~Services~~ *Management*, in the recovery from the effects of a disaster or in the restoration of public property or facilities.

The Coordinator of Emergency ~~Services~~ *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 sixty days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The Coordinator of Emergency ~~Services~~ *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.

§ 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 ~~Services~~ *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.

§ 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 ~~Services~~ *Management* and be responsible for local disaster ~~preparedness and coordination of response mitigation, preparedness, response and recovery.~~ Each political subdivision may maintain in accordance with state ~~emergency disaster~~ preparedness plans and programs an agency of emergency ~~services 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 ~~services 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 have the authority to appoint a coordinator of emergency ~~services activities~~ *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 have the authority to appoint a coordinator of emergency ~~services activities~~ *management* with the consent of the governing body;

3. A coordinator of emergency ~~services management~~ may be appointed by the council of any town to ensure integration of its organization into the county emergency ~~services 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 ~~services management~~ organization separate from that of the county, the mayor or town manager shall have the authority to 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 may appoint a director of emergency ~~services management~~, with the consent of the governing body, who shall have the authority to appoint a coordinator of emergency ~~services 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 ~~services~~ *management* may, in collaboration with other public and private agencies within this Commonwealth or within an adjacent state, 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 ~~services~~ *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. Each political subdivision having a nuclear power station or other nuclear facility within ten miles of its boundaries shall, if so directed by the Department of Emergency ~~Services Management~~, prepare and keep current an appropriate emergency plan for its area for response to nuclear accidents at such station or facility.

§ 44-146.20. Joint action by political subdivisions.

If two or more adjoining 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 ~~services~~ operations plan, mutual aid, or such other activities as necessary for planning and services. ~~A determination of such findings shall be based on the factors related to the difficulty of providing emergency services on an interjurisdictional basis.~~

§ 44-146.21. Declaration of local emergency.

(a) A local emergency may be declared by the local director of emergency ~~services~~ *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 ~~in the absence of the director~~ 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 (6) shall activate the ~~response and recovery programs of all applicable local and interjurisdictional~~ Emergency Operations ~~plans~~ *Plan* and authorize the furnishing of aid and assistance thereunder.

(c) [Repealed.]

(c1) Whenever a local emergency has been declared, the director of emergency ~~services~~ *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. ~~In exercising the powers vested under this section, under the supervision and control of the governing body, such director may, 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 ~~within the disaster area 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 *services 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.

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

In addition to disaster prevention measures included in state, local and interjurisdictional emergency operations plans, the Governor shall consider, on a continuing basis, ~~steps~~ *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, 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.

§ 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 *Services Management* upon request.

§ 44-146.26. Duties of emergency management organizations.

It shall be the duty of every organization for emergency *services 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.

§ 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 *service 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 *services 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 *service management* established pursuant to this chapter and for local or regional disaster service activities.

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

(a) In the case of a declaration of a state of emergency as defined in § 44-146.16, the Governor is

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

The Virginia Department of Emergency ~~Services~~ *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. 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 ~~Services~~ *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 ~~Services~~ *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 ~~Services~~ *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.

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

The Coordinator of the Department of Emergency ~~Services~~ *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.

§ 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.

§ 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 *Services Management*.

"Department" means the Department of Emergency *Services 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 *services 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.

§ 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.

§ 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 *Services 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 *Services 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.