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SENATE BILL NO. 245

Offered January 17, 2000

A *BILL to amend and reenact §§ 44-146.16 and 44-146.28 of the Code of Virginia, relating to emergency services and disaster aid.*

Patrons—Bolling; Delegate: Davis

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 44-146.16 and 44-146.28 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:

(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; 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 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 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 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 disaster assistance above and beyond emergency services by the federal government to supplement the efforts and available resources of the several states, local governments, and 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 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 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 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~~

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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 a water shortage;

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

(9) "Interjurisdictional agency for emergency services" 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.

§ 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 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~~ *political subdivision'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, 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 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 shall report annually to the General Assembly on the local jurisdictions that received financial assistance and the amount each jurisdiction received.

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