



Virginia's Emergency Services and Disaster Law

An Overview of the Authority and Responsibilities of State
and Local Entities Related to Disaster Preparation and Response

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Introduction

The ability of the Commonwealth to prepare for and respond to disasters and emergencies that occur within the Commonwealth is of critical importance. The Code of Virginia grants the Governor and state and local entities broad authority to take action to protect the health, safety, and welfare of the Commonwealth and its citizens in response to such disasters and emergencies. This issue brief outlines the statutory authority and responsibilities of such entities to prepare for and act during disasters and emergencies that occur within the Commonwealth.

Authority and Responsibilities of the Governor

The Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (the Law), located in Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia, establishes the statutory framework for the Governor, heads of executive branch agencies, and governing bodies of the political subdivisions of the Commonwealth to prepare for, manage, and recover from emergencies resulting from man-made and natural disasters. Most notably, the Law grants the Governor broad authority to declare a state of emergency in instances in which he has determined that a threatened or actual disaster requires the exercise of emergency measures to protect the safety and welfare of the citizens of the Commonwealth.¹ During declared states of emergency, the Governor has the authority to immediately waive existing statutory and regulatory requirements by executive order.² Specifically, the Law grants the Governor authority to issue such rules, regulations, and orders he deems necessary during a disaster, including measures 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."³ The Governor also has the ability to control and allocate private resources during a state of emergency.⁴ The Governor may require private citizens to assist during emergencies by utilizing his power as commander in chief of the state's military to call out both the National Guard and the unorganized militia, to which certain citizens

¹ VA. CODE § 44-146.17. *See Boyd v. Commonwealth*, 216 Va. 16, 19, 215 S.E.2d 915, 917 (1975) ("[The Governor is granted] the authority to declare a State disaster to exist whenever, *in the Governor's opinion*, the safety and welfare of the people of the State requires the exercise of emergency measures."). *See also* definition of "state of emergency" in VA. CODE § 44-146.16.

² 2002 Op. Va. Att'y Gen.74.

³ VA. CODE § 44-146.17.

⁴ 2002 Op. Va. Att'y Gen.74.

may be drafted.⁵ The Governor may also take control of and utilize tangible private resources during emergencies; however, his ability to do so is limited by both the United States and Virginia Constitutions, which prohibit the damaging or taking of private property for public use without just compensation to the owner.⁶ Additionally, the Law grants the Governor authority to direct and compel the evacuation of all or a part of the populace from any stricken or threatened area if he deems such action to be necessary for the protection of life; implement emergency mitigation, preparedness, response or recovery actions; and "control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein."⁷

The Governor's executive orders, including those establishing a state of emergency and requiring an evacuation, have the force and effect of law, and violation of such orders is punishable as a Class 1 misdemeanor in instances in which the executive order declares that its violation shall have such force and effect.⁸ The Law further provides that no such rules, regulations, or orders "shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly" and requires the Governor to forward a copy of all such rules, regulations, and orders to each member of the General Assembly, thus ensuring that all members of the General Assembly are apprised of the Governor's actions during an emergency and guaranteeing that an emergency, and therefore the Governor's exercise of emergency authority, cannot last indefinitely.⁹

The Governor is also assigned numerous responsibilities related to the preparation for disasters and emergencies in the Commonwealth. Among them, the Governor is tasked with adopting and implementing the Commonwealth of Virginia Emergency Operations Plan, which acts as a blueprint for state-level emergency operations in response to any type of disaster and serves as the framework within which more detailed emergency plans and procedures can be

⁵ *Id.*; VA. CONST. Art. V § 7; 1945-1946 Op. Va. Att'y Gen. 144, 147 ("The Governor is vested with absolute discretion in [the use of the armed forces] and in the selection of members of the militia he will embody. He is the sole judge of whether an exigency exists which requires the aid of the militia and has full discretion as to the method of utilizing that aid."); VA. CODE §§ 44-1, 44-4 ("The unorganized militia shall consist of all able-bodied persons . . . , except such as may be [otherwise excluded by statute]."), 44-5, 44-54.6 ("[T]he Virginia Defense Force shall consist of . . . [s]uch persons of the unorganized militia who may be drafted to fill the force structure of the Virginia Defense Force or who may be ordered out for active duty until released from such service."), 44-86 ("The commander in chief may at any time, in order to . . . aid in any form of disaster wherein the lives or property of citizens are imperiled or may be imperiled, order out the National Guard and the inactive National Guard or any parts thereof, or the whole or any part of the unorganized militia."), 44-87, and 44-89.

⁶ U. S. CONST. AMEND. V; VA. CONST. Art. I, Section 11 ("No private property shall be damaged or taken for public use without just compensation to the owner thereof" and "[n]o more private property may be taken than necessary to achieve the stated public use."); 2002 Op. Va. Att'y Gen.74 (citing *United States v. Russell*, 80 U.S. (13 Wall.) 623, 629 (1871) "Such a taking of private property by the government, when the emergency of the public service in time of war or impending public danger is too urgent to admit of delay, is everywhere regarded as justified, if the necessity for the use of the property is imperative and immediate, and the danger, as heretofore described, is impending, and it is equally clear that the taking of such property under such circumstances creates an obligation on the part of the government to reimburse the owner to the full value of the service. Private rights, under such extreme and imperious circumstances, must give way for the time to the public good, but the government must make full restitution for the sacrifice.")

⁷ VA. CODE § 44-146.17. The Attorney General has held that "These powers may reasonably be interpreted to include quarantine under the Governor's authority to control the ingress, egress and movement of persons within an emergency area." 2002 Op. Va. Att'y Gen.74.

⁸ VA. CODE § 44-146.17.

⁹ VA. CODE §§ 44-146.17 and 44-146.17:1; 2002 Op. Va. Att'y Gen.74.



adopted and maintained by state agencies, local governments, and other organizations.¹⁰ The Governor is also responsible for coordinating mutual aid plans between political subdivisions of the Commonwealth, as well as entering into mutual aid arrangements with other states.¹¹ Additionally, the Governor is responsible for appointing a State Coordinator of Emergency Management and is required to conduct an assessment of the industries, resources, and facilities of the Commonwealth and develop a plan for the most efficient use thereof in the event of an emergency.¹² In the event of a disaster, the Governor is granted the authority to request a major disaster declaration from the President of the United States, which certifies the Commonwealth's need for federal disaster assistance.¹³

Authority and Responsibilities of the Virginia Department of Emergency Management

The Law also establishes the Virginia Department of Emergency Management (the Department) and appoints the Governor as its Director.¹⁴ During a declared emergency, the Department is placed under the operational control of the Governor.¹⁵ Outside of emergencies, however, the Department is operated by the State Coordinator of Emergency Management, who is appointed by and serves at the pleasure of the Governor.¹⁶

The Department has several responsibilities during periods of impending emergencies or declared emergencies, which include:

- Receiving, evaluating, and disseminating intelligence relating to an impending or actual disaster;
- Providing facilities from which state agencies and other organizations can conduct emergency operations;
- Providing a disaster warning system capable of warning all political subdivisions in the Commonwealth of an impending disaster within a reasonable time;
- Determining requirements for disaster relief and recovery assistance;
- Contacting political subdivisions that have been affected by a disaster and providing and coordinating guidance and other assistance to such political subdivisions in an effort to ensure an orderly and timely response to such disaster; and
- Coordinating disaster response actions of federal, state, and volunteer relief agencies.¹⁷

The Department also has several responsibilities related to disaster preparedness. For example, the Department coordinates with political subdivisions and state agencies on the development of assessment and preparedness plans and programs to prevent, respond to, and recover from any disaster, as well as on the development and maintenance of emergency management and continuity of operations programs, plans, and systems.¹⁸ The Department is

¹⁰ V.A. CODE § 44-146.17.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ V.A. CODE §§ 44.-146.14 and 44-146.17.

¹⁵ V.A. CODE § 44-146.18.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*



also tasked with determining the requirements of the Commonwealth and its political subdivisions for necessities that are needed in the event of a declared emergency and that are not otherwise readily available.¹⁹ Additionally, the Department is responsible for assisting 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.²⁰

Authority and Responsibilities of Political Subdivisions

The Law provides that each political subdivision of the Commonwealth is responsible for its own local disaster mitigation, preparedness, response, and recovery. Each political subdivision must have and maintain a local agency and director of emergency management.²¹ Generally, the Law permits the local director of emergency management, with the consent of the governing body of the political subdivision, to declare a local emergency.²² A local emergency occurs when a local governing body believes "the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby."²³

Declaration of a local emergency activates the local Emergency Operations Plan and authorizes the furnishing of aid and assistance thereunder.²⁴ Under both gubernatorial-declared and local-declared emergencies, the local director of emergency management 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 that fall only within the boundaries of the locality and that do not impact systems affecting adjoining or other political subdivisions;
- Enter into contracts and incur obligations necessary to combat the threatened or actual disaster;
- Protect the health and safety of persons and property; and
- Provide emergency assistance to the victims of such disaster.²⁵

During gubernatorial-only declared emergencies, however, political subdivisions may only exercise such powers while under the supervision and control of the Governor or his designee, unless the political subdivision has also declared its own emergency. During declared emergencies, the Law excuses political subdivisions from compliance with time-consuming procedures and formalities that are otherwise prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of

¹⁹ *Id.*

²⁰ VA. CODE § 44-146.18.

²¹ VA. CODE § 44-146.19.

²² VA. CODE § 44-146.21.

²³ VA. CODE § 44-146.16.

²⁴ VA. CODE § 44-146.21.

²⁵ *Id.*



obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.²⁶

Disaster preparedness responsibilities of localities include the preparation and maintenance of a local emergency operations plan, which must include information concerning the responsibilities of all local agencies and must also establish a chain of command.²⁷ Localities are also required to annually submit an emergency management assessment and information concerning emergency sheltering capabilities to the State Coordinator of Emergency Management.²⁸ Localities with populations greater than 50,000 are required to 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.²⁹ Additionally, local emergency management directors are permitted to enter into mutual aid agreements for reciprocal assistance with other political subdivisions or public or private agencies, as well as with other states or localities within other states.³⁰

Emergency Management Assistance Compact

Finally, to assist with national emergencies in other states, Virginia has entered into the Emergency Management Assistance Compact (the Compact).³¹ The Compact has been ratified by Congress (P.L.104-321) and is law in all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. The Compact provides rules and guidelines for cooperation and mutual assistance between the member states and territories in managing any emergency or disaster that is declared by the Governor of an affected state or territory. The Compact allows such states and territories to send personnel, equipment, and commodities to assist with response and recovery efforts in the affected state or territory.

Conclusion

The Commonwealth of Virginia Emergency Services and Disaster Law of 2000 assigns the Governor, executive branch agencies, and political subdivisions of the Commonwealth extensive responsibilities related to disaster preparedness. The Law also grants such entities broad authority and flexibility to take action to protect the health, safety, and welfare of the Commonwealth and its citizens when disasters and emergencies occur. Such authority and flexibility is critically important in the midst of the unique circumstances and uncertainty that frequently arise during major disasters and emergencies.

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²⁶ VA. CODE §§ 44-146.19 and 44-146.21.

²⁷ VA. CODE § 44-146.19.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ VA. CODE § 44-146.27.

