



Sub. H.B. 319*

124th General Assembly
(As Reported by H. State Government)

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BILL SUMMARY

- ? Enacts the Emergency Management Assistance Compact.
- ? Prescribes the Compact's format and wording.
- ? Requires the provision of mutual assistance between the states entering into the Compact in managing any emergency or disaster that is duly declared by the governor of an affected member state.
- ? Requires the formulation of appropriate interstate mutual aid plans and procedures necessary to implement the Compact.
- ? Generally requires any state rendering aid under the Compact to be reimbursed by the state receiving the aid for any loss or damage to, or expense incurred in the operation of, any equipment in answering the request for the aid; for any expense incurred in the provision of any service in answering the request; and for other costs incurred in connection with answering the request.
- ? Declares an emergency.

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** This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

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CONTENT AND OPERATION

Overview of the bill

The bill enacts the Emergency Management Assistance Compact ("the Compact"). The purpose of the Compact is to provide mutual assistance between the states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions entering into it ("member states") in managing any emergency or disaster that is duly declared by the governor of an affected member state. "Mutual assistance" includes the use of a state's National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states. (R.C. 5502.40, Article I.)

Several types of emergencies and disasters are covered by the Compact. These include duly declared natural disasters, technological hazards, man-made disasters, civil emergency aspects of resources shortages, community disorders, insurgency, and enemy attack. However, cooperation between the member states is not limited only to duly declared emergencies or disasters. Under the Compact, mutual cooperation is also to be provided in emergency-related exercises, testing, or other training activities using equipment and personnel to simulate performance during actual emergencies. (R.C. 5502.40, Article I.)

Findings of the member states

In the Compact, each member state recognizes the following (R.C. 5502.40, Article II):

(1) Many emergencies transcend political jurisdictional boundaries, and intergovernmental coordination is essential in managing these and other emergencies under the Compact.

(2) There will be emergencies that require immediate access to and present procedures to apply outside resources to make a prompt and effective response. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

Implementation

Underlying principle

The underlying principle on which all articles of the Compact are to be understood is as follows: the prompt, full, and effective utilization of resources of the member states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a member state (R.C. 5502.40, Article II).

Member state responsibilities

The Compact requires the legally designated state official who is assigned responsibility for emergency management to be responsible, on behalf of the governor of each member state, for the formulation of the appropriate *interstate mutual aid plans and procedures* necessary to implement the Compact (R.C. 5502.40, Article II). In formulating and carrying out these plans, the member states, insofar as is practical, must accomplish all of the following (R.C. 5502.40, Article III(A)):

- ? Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the member states might jointly suffer.
- ? Review member states' individual emergency plans and develop a plan determining the mechanism for the interstate management and provision of assistance for any potential emergency.
- ? Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
- ? Assist in warning communities adjacent to or crossing state boundaries.

- ? Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.
- ? Inventory and set procedures for the interstate loan and delivery of human and material resources, as well as procedures for reimbursement or forgiveness.
- ? Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above-listed responsibilities.

Requests for assistance

Requests for assistance must be communicated through the authorized representatives of each member state. And, the Compact's provisions only will apply to requests made by and to these representatives. Requests may be verbal or in writing. However, verbal requests must be confirmed in writing within 30 days. All requests must provide the following information (R.C. 5502.40, Article III(B)):

- ? A description of the emergency service function needed. Examples of descriptions include fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.
- ? The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time of their need.
- ? The specific place and time for staging of the assisting member state's response and a point of contact at that location.

After assistance is requested, the Compact apparently requires frequent consultation between, on the one hand, state officials who have assigned emergency management responsibilities and other appropriate representatives of member states and, on the other hand, affected jurisdictions and the United States government. To this end, there is to be a free exchange of information, plans, and resource records relating to emergency capabilities. (R.C. 5502.40, Article III(C).)

Limitations

Member states providing assistance under the Compact are allowed to place some limitations upon that provision. These "conditions" include the following:

- ? Any member state requested to render mutual aid, or conduct exercises and training for mutual aid, generally must provide and make available resources in accordance with the Compact. But, a state rendering aid may withhold these resources to the extent necessary to provide for its own reasonable protection.
- ? Each member state generally must afford to the emergency forces of any other member state, while operating within its state limits under the Compact, the same powers, duties, rights, and privileges as are afforded its own forces. But, emergency forces are not granted the power of arrest unless specifically authorized by the receiving state.
- ? Emergency forces generally continue under the command and control of their regular leaders. But, organizational units will come under the operational control of the emergency service authorities of the state receiving assistance.

These conditions may be activated, as needed, only (1) after a declaration of a state of emergency or disaster by the governor of a member state that is to receive assistance or (2) after commencement of exercises or training for mutual aid. They apparently will continue for whichever of the following applies and is longer: (1) the exercises or training for mutual aid is in progress, (2) the state of emergency or disaster remains in effect, or (3) loaned resources remain in a receiving state. (R.C. 5502.40, Article IV.)

Licenses and permits

When assistance is requested by a member state, any individual who holds a license, certificate, or other permit that was issued by a responding member state and that serves as evidence of "the meeting of qualifications for professional, mechanical, or other skills" generally is deemed to be licensed, certified, or permitted by the receiving state to render aid involving that skill to meet the declared emergency or disaster. However, this reciprocity may be subject to limitations and conditions that the receiving state's governor prescribes by executive order or otherwise. (R.C. 5502.40, Article V.)

Liability

Officers or employees of member states rendering aid in another state under to the Compact must be considered agents of the requesting state with regards to tort liability and immunity. A member state, and its officers and employees, so rendering aid will not be liable on account of (1) any *good faith* act or omission while rendering the aid or (2) the maintenance or using of any equipment or

supplies in connection with rendering the aid. "Good faith" does not include willful misconduct, gross negligence, or recklessness. (R.C. 5502.40, Article VI.)

Supplementary agreements

Since the manner of implementing mutual aid among any two or more member states may differ, the Compact contains "broad" base elements common to all states and does not preclude member states from entering into supplementary agreements or affect agreements already in force between them. Supplementary agreements may include, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, and equipment and supplies. (R.C. 5502.40, Article VII.)

Compensation and death benefits

Each member state must provide for the payment of compensation and death benefits to injured members of *its emergency forces* and to representatives of deceased members of those forces in case these members sustain injuries or die while rendering aid under the Compact. This requirement is to be fulfilled in the same manner and on the same terms as if the injury or death were sustained within that member state. (R.C. 5502.40, Article VIII.)

Reimbursement

Each member state rendering aid in another state under the Compact apparently generally must be reimbursed by the receiving state (1) for any loss or damage to, or expense incurred in the operation of, any equipment in answering the request for aid, (2) for any expense incurred in the provision of any service in answering the request, and (3) for other costs incurred in connection with answering the request. But, any member state rendering aid in another state may assume, in whole or in part, this loss, damage, expense, or other cost, or may loan equipment or donate services to the receiving state without charge or cost. Also, member states may enter into supplementary agreements establishing a different allocation of costs among themselves. The expenses for compensation and death benefits discussed above, however, are *not reimbursable* under these Compact provisions. (R.C. 5502.40, Article IX.)

Evacuation

The Compact requires member states, and the emergency management/services directors of jurisdictions where any type of incident requiring evacuations might occur, to work out and maintain plans for the orderly evacuation and interstate reception of portions of the civilian population as a result

of any emergency or disaster warranting an evacuation. These plans must be put into effect upon the request of the state from which evacuees come and must address all of the following in addition to other relevant factors (R.C. 5502.40, Article X):

- ? The manner of transporting evacuees.
- ? The number of evacuees to be received in different areas.
- ? The manner in which food, clothing, housing, and medical care will be provided.
- ? The registration of evacuees.
- ? The provision of facilities for the notification of relatives or friends.
- ? The forwarding of evacuees to other areas, or the bringing in of additional materials and supplies.
- ? A mutual agreement between a member state receiving evacuees and the member state from which they come on the reimbursement (apparently) of out-of-pocket expenditures for receiving and caring for the evacuees, for their transportation, food, clothing, medicines, and medical care, and for similar items. These expenditures must be reimbursed as agreed by the member state from which the evacuees come. After the emergency or disaster terminates, that state must assume the responsibility for the ultimate support of the evacuees' repatriation.

Enactment and withdrawal

The Compact becomes operative immediately upon its enactment into law by any two states. Thereafter, it becomes effective as to any other state upon its enactment by that state. (R.C. 5502.40, Article XI(A).)

Any member state may withdraw from the Compact by enacting a statute repealing it. But, a withdrawal cannot take effect until 30 days after the governor of the withdrawing state gives written notice to the governors of all other member states. This action does not relieve the withdrawing state from obligations previously assumed under the Compact. (R.C. 5502.40, Article XI(B).)

Copies of the Compact and supplementary agreements

Duly authenticated copies of the Compact and any supplementary agreements must be deposited, at the time of their approval, with each of the

member states, the Federal Emergency Management Agency, and other appropriate federal agencies (R.C. 5502.40, Article XI(C)).

Construction and validity

The Compact must be construed to effectuate its purpose described under "**Overview of the bill**," above. If any of its provisions is declared unconstitutional or if any provision's applicability to any person or circumstance is held invalid, the constitutionality of the remainder of the Compact and the applicability of the remainder to other persons and circumstances are not affected. (R.C. 5502.40, Article XII.)

Use of military force

The Compact does not authorize or permit the use of military force by the National Guard of a state at any place outside that state (1) in any emergency for which the President is authorized by law to call into federal service the militia, or (2) for any purpose for which the use of the Army or the Air Force, in the absence of express statutory authorization, would be prohibited by federal law (R.C. 5502.40, Article XIII). (See **COMMENT**.)

COMMENT

Section 1385 of Title 18 of the United States Code states: "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus ["power of the country"] or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years or both."

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
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| Introduced | 06-27-01 | p. 718 |
| Reported, H. State Government | --- | --- |

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