

Model Intrastate Mutual Aid Legislation

Developed by the National Emergency Management Association

In partnership with National Public Safety Organizations

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Introduction

Over the past two years, emergency disciplines of all types agree there has been a sea change in the country after the terrorist acts committed on United States' soil September 11, 2001. Excepting that, the everyday concerns of emergency responders do not abate as is demonstrated by recent wildfires, earthquakes, mudslides, hurricanes and floods.

In each of these events, the merit of mutual aid between governments, both intra and interstate, has proven its benefit time and time again. As has been repeatedly demonstrated by the Emergency Management Assistance Compact (EMAC), states can depend on each other to provide manpower and material resources in times of need. EMAC shines as the **states** mutual aid system; and currently has 48 states, 2 Territories and Washington D.C. as signatories to the compact. For over a decade, EMAC has served its members well.

Given recent terrorist fears, the Department of Homeland Security has chosen to focus on mutual aid. It is unquestionable that mutual aid systems are needed for state to state assistance and, particularly, between local jurisdictions. Indeed, in a recent edition of *State Government News*, the author wrote: "Through the *National Strategy on Homeland Security*, the Department of Homeland Security (DHS) placed a new focus on state and **local** (emphasis added) mutual aid as a key to the nation's emergency response capabilities for all hazards, man-made or natural. The National Incident Management System (NIMS), currently under development by DHS, provides an operational framework for the response by federal, state and local agencies. In the NIMS, mutual aid is emphasized as an indispensable tool for the swift and coordinated response to disasters of all kinds."¹

In mid-July 2003, a request was sent to all state Emergency Management Agencies by the National Emergency Management Association (NEMA) asking for copies of existing mutual aid legislation/agreements, enabling legislation and other supporting documents. Preliminary responses were received from 16 states and the District of Columbia confirming that legislation/agreements were or were not in place. Over the summer, additional responses were received, documents were sorted and reviewed, then condensed into a monograph summarizing legislation and agreements; which served as a starting point for development of a model intrastate mutual aid agreement.

¹ State Government News magazine, March 2004, by Amy Hughes Senior Policy Analyst, National Emergency Management Association.

“Many local jurisdictions have agreements in place, but they vary widely across the country. Moreover, many are not formal agreements, and do not address key issues such as liability and compensation; and encompass multi-disciplines. To be able to move assets effectually between local jurisdictions and across state lines, mutual aid agreements should be robust, inclusive, demonstrate an effective relationship to EMAC and address liability and compensation issues in a manner consistent with state law.”²

As part of a grant awarded NEMA by FEMA in 2003, NEMA agreed to develop and market model intrastate mutual aid legislation along with several other related tasks.

A multi-discipline review group³ was selected to ensure many voices from across the emergency services and the public safety fields were included. The interest shown by various associations and entities further demonstrates the ardent interest in mutual aid by this diverse body.

On January 9, 2004, the working group met in New Orleans, LA to review all work. Local perspectives were brought to the forefront by those involved with local government emergency response, and incorporated into the model. At the NEMA Mid-Year Conference, held in Washington, D.C., February 9-13, 2004, the membership unanimously approved the proposed model.

One of the most important aspects of the model is that adoption by jurisdictions is entirely voluntary. The model is meant to be a tool and resource for states and jurisdictions to utilize in developing or refining statewide mutual aid agreements. It is anticipated that states and jurisdictions may wish to modify the model to conform to their own state laws and authorities, or to address unique needs and circumstances. Further, the proposed articles and provisions in the model are complementary to the recommended minimum elements to be included in mutual aid agreements that are a part of the draft National Incident Management System Plan.

² “A Proposal to Amend the NEMA/FEMA Cooperative Agreement, Submitted by [NEMA] to [FEMA]”, Revised January 29, 2003, page 6

³ Comprehensive contact list included on Page 10.

Model Intrastate Mutual Aid Legislation

Article I Preamble

The purpose of this legislation/agreement is to create a system of intrastate mutual aid between participating political subdivisions in the state. Each participant of this system recognizes that emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and property and for best use of available assets both public and private. The system shall provide for mutual assistance among the participating political subdivisions in the prevention of, response to, and recovery from, any disaster that results in a formal state of emergency in a participating political subdivision, subject to that participating political subdivisions criteria for declaration. The system shall provide for mutual cooperation among the participating subdivisions in conducting disaster related exercises, testing or other training activities outside actual declared emergency periods. This legislation provides no immunity, rights or privileges for any individual responding to a state of emergency that is not requested and/or authorized to respond by a participating political subdivision. Participating political subdivisions will be ensured, to the fullest extent possible, eligibility for state and federal disaster funding.

Also created in this legislation/agreement is the committee known as the State or Statewide Intrastate Mutual Aid Committee. This committee shall be multidisciplinary and representative of emergency management and response disciplines as well as local government. It shall be the committee's responsibility to hold, at a minimum, annual meetings to review the progress and status of statewide mutual aid, assist in developing methods to track and evaluate activation of the system and to examine issues facing participating political subdivisions regarding the implementation of this legislation. The committee may be chaired by the State Emergency Management Agency. The committee may prepare an annual report on the condition and effectiveness of mutual aid in the state, make recommendations for correcting any deficiencies and submit that report to the appropriate legislative committee or other governing body. Members of the committee shall serve a maximum two year term, with recommendation for appointment coming from each respective association.

All political subdivisions within the state are, upon enactment of this legislation or the execution of an agreement, are automatically a part of the statewide mutual aid system. A political subdivision within the state may elect not to participate or to later withdraw from the system upon enacting an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system; and providing a copy of the resolution to the State Emergency Management Agency. This legislation does not preclude participating political subdivisions from entering into supplementary agreements with another political subdivision and does not affect any other agreement to which a political subdivision may currently be a party to, or decide to be a party to.

Article II Emergency Responders Defined

An emergency responder is defined as anyone with special skills, qualifications, training, knowledge and experience in the public or private sectors that would be beneficial to a participating political subdivision in response to a locally declared emergency as defined in any applicable law or ordinance or authorized drill or exercises; and who is requested and/or authorized to respond. Under this definition, an emergency responder may or may not be required to possess a license, certificate, permit or other official recognition for their expertise in a particular field or area of knowledge. An emergency responder could include, but is in no way limited to, the following: law enforcement officers, fire fighters, emergency medical services personnel, physicians, nurses, other public health personnel, emergency management personnel, public works personnel, those persons with specialized equipment operations skills or training or any other skills needed to provide aid in a declared emergency.

Article III Participating Political Subdivisions Responsibilities

It shall be the responsibility of each participating political subdivision with jurisdiction over and responsibility for emergency management within that certain subdivision to do the following:

- i. Identify potential hazards that could affect the participant using an identification system common to all participating jurisdictions.
- ii. Conduct joint planning, intelligence sharing and threat assessment development with contiguous participating political subdivisions, and conduct joint training at least biennially.
- iii. Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivision.
- iv. Adopt and put into practice the standardized incident management system approved by the State Emergency Management Agency.

Article IV Implementation

A participating political subdivision may request assistance of other participating political subdivisions in preventing, mitigating, responding to and recovering from disasters that result in locally-declared emergencies or in concert with authorized drills or exercises as allowed under this legislation/agreement. Requests for assistance shall be made through the chief executive officer of a participating political subdivision or his designee. Requests may either be verbal or in writing and are not required to go directly to the State Emergency Management Agency but in all cases will be reported to the agency as soon as is practical. Verbal requests will be followed up with a written request as soon as is practical or such number of days as the state in its discretion may dictate.

Article V Limitations

A participating political subdivision's obligation to provide assistance in the prevention of, response to and recovery from a locally-declared emergency or in authorized drills or exercises is subject to the following conditions:

- i. A participating political subdivision requesting assistance must have either declared a state of emergency in the manner outlined in Article I or authorized drills and exercises.
- ii. A responding participating political subdivision may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction.
- iii. Emergency response personnel of a responding participating political subdivision shall continue under the command and control of their responding jurisdiction to include medical protocols, standard operating procedures and other protocols, but shall be under the operational control of the appropriate officials within the incident management system of the participating political subdivision receiving the assistance.
- iv. Assets and equipment of a responding participating political subdivision shall continue under the control of their responding jurisdiction, but shall be under the operational control of the appropriate officials within the incident management system of the participating political subdivision receiving the assistance.

Article VI License, Certificate and Permit Portability

If a person or entity holds a license, certificate or other permit issued by a participating political subdivision or the state evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person or entity shall be deemed to be licensed, certified or permitted in the political subdivision requesting assistance for the duration of the declared emergency or authorized drills or exercises and subject to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

Article VII Reimbursement, Disputes Regarding Reimbursement

Any requesting political subdivision shall reimburse the participating political subdivision rendering aid under this system. A participating political subdivision providing assistance may determine to donate assets of any kind to a receiving participating political subdivision. Such requests for reimbursement shall be in accordance with procedures developed by the State Intrastate Mutual Aid Committee.

Should a dispute arise between parties to the system regarding reimbursement, involved parties will make every effort to resolve the dispute within 30 days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within 90 days of the notice of the claim, either party may request the dispute be solved through arbitration. Any arbitration under this provision shall be conducted under the commercial arbitration rules of the American Arbitration Association.

Article VIII Development of Guidelines and Procedures

The State Intrastate Mutual Aid Committee shall develop comprehensive guidelines and procedures that address, including but not limited to, the following: projected or anticipated costs, checklists for requesting and providing assistance, record keeping for all participating political subdivisions, reimbursement procedures and other necessary implementation elements along with the necessary forms for requests and other records documenting deployment and return of assets.

Article IX Workers' Compensation

Personnel of a participating political subdivision responding to or rendering assistance for a request who sustain injury or death in the course of, and arising out of, their employment are entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional state and federal benefits that may be available to them for line of duty deaths.

Article X Immunity

All activities performed under this agreement are deemed hereby to be governmental functions. For the purposes of liability, all persons responding under the operational control of the requesting political subdivision are deemed to be employees of the requesting participating political subdivision. Neither the participating political subdivisions nor their employees, except in cases of willful misconduct, gross negligence or bad faith shall be liable for the death of or injury to persons, or for damage to property when complying or attempting to comply with the statewide mutual aid system.

Article XI Severability

Should a court of competent jurisdiction rule any portion, section or subsection of this legislation invalid or nullified, that fact shall not affect or invalidate any other portion, section or subsection; and all remaining portions, sections or subsections shall remain in full force and effect.

Checklist of Best Practices

- ▶ Closely tie legislation/agreement to EMAC member states' legislation and SOP's for seamless escalation of disaster response and execution of mutual aid.
- ▶ Encourage participation by a broad range of emergency responders. Include other definitions as appropriate. Consider global perspective, e.g., public works, private entities, medical personnel, public transportation and others.
- ▶ Make legislation opt-out. Most states have several hundred municipalities and other jurisdictions within their borders. To attempt to get everyone on board on an opt-in agreement could take years and never achieve a plurality of participation. By making legislation opt-out, everyone is a part of the system the day it becomes law.
- ▶ To the extent permitted by applicable law, include automatic renewal language if agreement instead of legislation.
- ▶ Agreements/legislation should mandate joint planning, training and exercise with liability immunity as if it were an actual emergency.
- ▶ Develop forms to facilitate requests for aid, record-keeping regarding movement of equipment and personnel and reimbursement.
- ▶ Require use of a standardized incident command/management system consistent with that used by the state.
- ▶ In addition to not affecting any existing agreements, should also allow for supplemental agreements between participants.
- ▶ Have a liability/immunity article.
- ▶ Consider arbitration of disputes concerning reimbursement.
- ▶ Be as concise as possible. Guidelines and procedures should be developed separately, but become part of the legislations/agreement when adopted.
- ▶ Establishment of a committee representative of all emergency preparedness and response disciplines and other stakeholders to examine continual changes in emergency preparedness and insure legislation/agreements meet the needs of disciplines/stakeholders. Committee may have standing and authority to refer needs to legislature for rectification. Consider existing committees representative of all stakeholders to determine if they may perform this function.
- ▶ A reimbursement provision. This provision may include an off-set for any insurance proceeds applicable to the costs claimed by the responding political subdivision. The insurance claims process should not delay reimbursement. Reimbursement shall not duplicate any state or federal assistance available for the costs.

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