

EMERGENCY MANAGEMENT SYSTEM AND PUBLIC HEALTH INFRASTRUCTURE - BACKGROUND MEMORANDUM

INTRODUCTION

House Concurrent Resolution No. 3053 (attached as Appendix A) directs a study of the state's emergency management system, the impact of federal emergency reorganization of the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments. House Concurrent Resolution No. 3054 (attached as Appendix B) directs a study of the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues. Testimony from the standing committees indicates that both resolutions were introduced as a means to comprehensively evaluate the state's emergency management and public health systems.

BACKGROUND

The terrorist attacks on New York City and Washington, D.C., in September 2001 and the anthrax releases in October 2001 raised numerous questions regarding our country's ability to respond to disasters and public health emergencies. Closer to home, the derailment of a train and the release of anhydrous ammonia in Minot in January 2002 brought to light the need to evaluate the ability of local governments and the state to respond to an emergency situation.

The Council on Foreign Relations, a nonpartisan national think tank, established an independent task force to evaluate the preparedness and adequacy of funding for emergency responders in the United States. The report of the task force concluded that the United States is better able to respond to an emergency such as a terrorist attack than it was two years ago but still remains ill-prepared to handle a catastrophic attack. Among other things, the report suggested that fire departments generally have enough radios to equip one-half of the firefighters on a shift and enough breathing apparatuses to equip one-third of the firefighters on a shift. The report also indicated that police departments do not have protective gear to safely secure a site following a weapons of mass destruction attack, and public health laboratories lack basic equipment and expertise to adequately respond to a chemical or biological attack.

The report of the Council on Foreign Relations included several recommendations to improve emergency preparedness and response. Among the recommendations are:

- Congress should require the Department of Homeland Security to work with state and local agencies to establish clearly defined standards and guidelines for emergency preparedness.

- Congress should develop a system for distributing funds based on threat.
- Congress should provide emergency responder grants to facilitate long-term planning and training.
- States should develop a prioritized list of requirements to ensure that federal funding is allocated properly.

The report concludes that the country will inadequately fund critical emergency responder needs if current funding levels are maintained. According to the report, maintaining current levels of funding will result in underfunding of the needs by almost \$100 billion over the next five years. The report suggests that additional funds are needed for the following purposes:

- To extend the E-911 system nationally.
- To enhance urban search and rescue capabilities of major cities and the Federal Emergency Management Agency to address building collapses.
- To foster interoperable communications systems for emergency responders.
- To enhance public health preparedness by strengthening laboratories, disease tracking, and communications and by training public health professionals for biological, chemical, and radiological events.
- To strengthen emergency operations centers for local public safety coordination.
- To provide protective gear to firefighters.
- To enhance capacity of emergency medical technicians and paramedics to respond to mass casualty events.
- To develop surge capacity in hospitals and help prepare hospitals for a weapons of mass destruction attack.
- To enhance emergency agricultural and veterinary capabilities to respond to a national food supply attack.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

After the September 2001 terrorist attacks, Congress passed the Homeland Security Act, which consolidated 22 federal, domestic agencies under the Department of Homeland Security. The first priority of the department is to protect the nation against further terrorist attacks. In addition to providing a better-coordinated defense of the homeland, the department is responsible for protecting the rights of American citizens and enhancing public services, such as natural disaster assistance and citizenship services, by dedicating offices to those missions.

The Department of Homeland Security will consist of four major directorates: border and transportation security, emergency preparedness and response, science and technology, and information analysis and infrastructure protection. In addition, the Secret Service and the Coast Guard will be located in the Department of Homeland Security and will report directly to the Secretary of Homeland Security. The border and transportation security directorate is responsible for major border security and transportation operations. The emergency preparedness and response directorate, which includes the Federal Emergency Management Agency, will oversee domestic disaster preparedness training and coordinate government disaster response. The purpose of the science and technology directorate is to utilize scientific and technological advantages when securing the homeland. The information analysis and infrastructure protection directorate is responsible for analyzing intelligence and information from other agencies involving threats to homeland security and evaluating vulnerabilities in the nation's infrastructure.

NORTH DAKOTA EMERGENCY MANAGEMENT Constitutional Authority of the Legislative Assembly

Article XI, Section 7, of the Constitution of North Dakota sets forth the powers of the Legislative Assembly in the event of an emergency. That section provides:

The legislative assembly, in order to ensure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for ensuring the continuity of governmental operations including, but not limited to, waiver of constitutional restrictions upon the place of transaction of governmental business, upon the calling of sessions of the legislative assembly, length of sessions, quorum and voting requirements, subjects of legislation and appropriation bill requirements, upon eligibility of legislators to hold other offices, residence requirements for legislators, and upon expenditures, loans or donations of public moneys. In the exercise of the powers hereby conferred the legislative assembly shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislative assembly so to do would be impracticable or would admit of undue delay.

North Dakota Disaster Act

North Dakota Century Code Chapter 37-17.1, the "North Dakota Disaster Act," addresses emergency management.

Section 37-17.1-05 provides that the Governor is responsible to minimize or avert the adverse effects of a disaster or emergency. The Governor is authorized to issue executive orders and proclamations which have the effect of law. If the Governor determines a disaster has occurred or a state of emergency exists, the Governor may declare a disaster or emergency by executive order or by proclamation. The executive order or proclamation must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions that have brought it about or make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the Division of Emergency Management, the Secretary of State, and the county or city auditor of the jurisdictions affected. The state of disaster or emergency continues until the Governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The Legislative Assembly by concurrent resolution may terminate a state of disaster or emergency at any time.

The declaration of a disaster or emergency activates the state and applicable local operational plans and authorizes the deployment and use of any forces to which the plan or plans apply and for use or distribution of supplies, equipment, and materials and facilities assembled, stockpiled, or arranged for a disaster or emergency. During the continuance of any state of disaster or emergency declared by the Governor, the Governor is commander-in-chief of the emergency management organization and of all other forces available for emergency duty.

Section 37-17.1-05 also authorizes the Governor to:

1. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations, of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
2. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
3. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
4. Subject to any applicable requirements for compensation under Section 37-17.1-12, commandeer or utilize any private property if

the Governor finds this necessary to manage the disaster or emergency.

5. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the Governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
6. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
7. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises in the area.
8. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.
9. Make provision for the availability and use of temporary emergency housing.
10. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life- and property-sustaining commodities.
11. Designate members of the Highway Patrol, North Dakota National Guard, or others trained in law enforcement, as peace officers.

Section 37-17.1-06 establishes the Division of Emergency Management in the Office of the Adjutant General. The director of the division is appointed by the Adjutant General. Under Section 37-17.1-06, the Division of Emergency Management is required to prepare and maintain a state disaster plan, which must include provisions for:

1. Averting or minimizing the injury and damage caused by disasters or emergencies.
2. Prompt and effective response to a disaster or emergency.
3. Emergency relief.
4. Identification of areas particularly vulnerable to a disaster or emergency.
5. Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other mitigation and preparedness measures.
6. Assistance to local officials in developing and maintaining local emergency management systems.
7. Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
8. Preparation and distribution of emergency management assistance program guidance to the appropriate state and local officials.
9. Organization of manpower and chains of command.
10. Coordination of federal, state, and local emergency management activities.

11. Coordination of state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
12. Any other necessary matters.

Section 37-17.1-06 requires the division to assist in the development and revision of local disaster or emergency operations plans. In addition, the division is required to:

1. Coordinate the procurement and prepositioning of supplies, materials, and equipment for disaster or emergency operations.
2. Provide guidance and standards for local disaster or emergency operations plans.
3. Periodically review local disaster or emergency operations plans.
4. Coordinate state or state and federal assistance to local emergency management organizations.
5. Establish and operate or assist local emergency management organizations to establish and operate training programs and programs for emergency public information.
6. Make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of Chapter 37-17.1.
7. Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
8. Establish access to a register of persons with types of training and skills important in mitigation, preparedness, response, and recovery.
9. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
10. Prepare, for issuance by the Governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
11. Coordinate with the federal government and any public or private agency or entity in achieving any purpose of Chapter 37-17.1 and in implementing programs for disaster mitigation, preparation, response, and recovery.
12. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization in carrying out the search for and rescue of persons when no violation of criminal laws exists.
13. Do other things necessary, incidental, or appropriate for the implementation of Chapter 37-17.1.

Section 37-17.1-07 provides that all areas of the state are within the jurisdiction of and must be served by the Division of Emergency Management and by a local emergency management organization. The section requires each county to maintain an emergency

management organization to serve the county and requires each city to either maintain an emergency management organization or participate in the county-wide emergency management organization. Each local emergency management organization is required to prepare and maintain a local disaster or emergency operations plan.

Section 37-17.1-07.1 requires the Governor to appoint members of the State Emergency Response Commission to carry out the state's responsibilities under federal law with respect to hazardous chemicals preparedness and response. The director of the Division of Emergency Management is required to serve as the chairperson of the commission.

Section 37-17.1-09 authorizes the Governor and the executive officers or governing bodies of counties and cities to utilize the services, equipment, supplies, and facilities of state and local governmental entities in carrying out the provisions of Chapter 37-17.1.

Section 37-17.1-10 authorizes the principal executive officer of a city or county to declare a local disaster or emergency, which may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the city or county. Under the section, the effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of local disaster or emergency operations plans and to authorize the furnishing of aid and assistance.

Section 37-17.1-11 addresses disaster or emergency mitigation. The section requires the Governor to consider steps that could be taken to mitigate or reduce the harmful consequences of disasters or emergencies. The State Engineer and the State Water Commission, in conjunction with the Division of Emergency Management, are required to keep land uses and construction of structures under study and identify areas that are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. Section 37-17.1-11 also provides that if the Division of Emergency Management determines that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed, the division shall specify the essential changes to the Governor. If the Governor finds, after public hearing, that the changes are essential, the Governor is required to recommend the changes to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the Governor's recommendations is taken within the time specified by the Governor, the Governor is required to inform the Legislative Assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency. The Governor also may suspend the standard or control that the Governor finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The

new standard or control remains in effect until rejected by concurrent resolution of both houses of the Legislative Assembly or amended by the Governor. During the time the standard or control is in effect, the standard or control contained in the Governor's regulation must be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The Governor's action is subject to judicial review but is not subject to temporary stay pending litigation.

Section 37-17.1-12 authorizes compensation for property commandeered or otherwise used in management of a disaster or emergency declared by the Governor and its use or destruction was ordered by the Governor.

Section 37-17.1-13 requires the Division of Emergency Management to determine what means exist for rapid and efficient communications in times of a disaster or emergency.

Section 37-17.1-14 directs the Division of Emergency Management to encourage and assist counties and cities to conclude suitable arrangements for furnishing mutual aid in emergency management.

Section 37-17.1-14.1 also requires the Division of Emergency Management to encourage and assist political subdivisions to enter mutual aid agreements with other public and private agencies for reciprocal aid and assistance in responding to and recovering from actual and potential disasters and emergencies. The section also authorizes local emergency management organizations to assist in negotiation of mutual aid agreements between the Governor and an adjoining state or province or a political subdivision of an adjoining state or province.

Section 37-17.1-14.2 authorizes the state to enter an interstate mutual aid agreement or compact with another state.

Section 37-17.1-14.3 authorizes the Governor to join with other states in the Interstate Mutual Aid Agreement or Compact.

Section 37-17.1-15 requires the Division of Emergency Management to keep apprised of weather conditions that present a danger of precipitation or other climatic activity severe enough to constitute a disaster.

Section 37-17.1-16 provides that all functions and activities relating to emergency management are governmental functions which are immune from civil liability. The section also provides that any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized disaster or emergency worker who, in the course of performing the individual's duties, practices the professional, mechanical, or other skill during a disaster or emergency.

Section 37-17.1-17 also exempts from civil liability any person who owns or controls real estate or other premises and who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the real estate or premises for the purpose of emergency management activities during an actual, impending, mock, or practice disaster or emergency.

Section 37-17.1-18 authorizes a county or city to make appropriations for the ordinary expenses of the county or city for the payment of its local emergency management organization. In addition, the section provides that whenever the federal government or any other entity offers to the state, or through the state to any county or city, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the state, acting through the Governor or the Emergency Management director, or the county or city, acting through its executive officer or governing body, may accept the offer and may authorize any officer to receive the services, equipment, supplies, materials, or funds on behalf of the state or the county or city.

Section 37-17.1-19 authorizes the Governor, in the event of a disaster or emergency, to enter agreements to establish a program of temporary housing for disaster victims. Under the section, a county or city is also authorized to acquire sites for installation of temporary housing units for disaster or emergency victims.

Section 37-17.1-20 authorizes the Governor, in the event of a presidentially declared major disaster, to enter agreements necessary to establish a program of community disaster loans under the United States Disaster Relief Act of 1974.

Under Section 37-17.1-21, the Governor is authorized to enter agreements and accept federal funds necessary to establish a program of debris and wreckage removal caused by a disaster.

Section 37-17.1-22 requires the director of the Division of Emergency Management to determine and record the costs of the state disaster and emergency response and recovery operations. Upon that determination, the Governor is required to apply to the Emergency Commission for a grant of funds equal to the response and recovery costs of the state. The Emergency Commission is required to grant the amount certified in the application.

Section 37-17.1-23 authorizes the Division of Emergency Management, when approved by the Emergency Commission, to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act. The section also provides that after a county or group of counties have been declared a major disaster or emergency area by the President, the division must submit a request to the Emergency Commission for approval to make an application for a loan from the Bank of North Dakota, approval for additional personnel required to perform the anticipated recovery activities, and authority to spend additional state and federal funds for the recovery program. If the request is acceptable, the Emergency Commission is required to approve the request and issue a notice of its action to the Emergency Management Division, Bank of North Dakota, and the Office of Management and Budget. The division is required to keep the Emergency Commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The Emergency Commission is responsible to repay any loan, including accrued

interest, from the Bank of North Dakota. If at the end of the biennium a balance exists on the loan, the Emergency Commission is required to request the Legislative Assembly for a deficiency appropriation to repay the loan.

North Dakota Century Code Section 54-07-01.1 authorizes the Governor to cooperate with agencies of the United States in emergencies in support of national defense. The section allows the Governor to assist in the transportation of persons or property and the conservation and utilization of vital transportation equipment, materials, and supplies. The Governor is required to report to the Legislative Assembly at its next session any actions taken under Section 54-07-01.1.

PUBLIC HEALTH UNITS

During the 1997-98 interim the Legislative Council's Insurance and Health Care Committee studied the development of a strategic planning process for the future of public health in the state. Because laws regarding public health were spread through various chapters in the North Dakota Century Code and were regarded as being antiquated, the committee recommended, and the Legislative Assembly enacted, Senate Bill No. 2045 (1999), which consolidated the public health law into a new chapter, unified powers and duties of local public health units, and required statewide participation in a public health unit.

North Dakota Century Code Chapter 23-35 contains the consolidated and updated public health law. Section 23-35-02 provides that all land in the state must be in a public health unit by January 1, 2001. As a result of that requirement, 28 public health units have been established. The public health units take a variety of forms, including multicounty health districts, single county health units, city and county health departments, city and county health districts, and single county health departments.

Section 23-35-03 provides that the governing body of a city or county may establish a public health unit by creating and appointing a board of health, which must have at least five members.

Section 23-35-04 authorizes a governing body to form a multicounty or a city-county health district by resolution. A county without a countywide public health unit may contract with a city that has a public health department to provide health services to the county and in the cities throughout the county which do not have a public health unit.

Section 23-35-08 sets forth the powers and duties of a board of health. Included among those duties is the authority to adopt quarantine and sanitary measures that are necessary when an infectious or contagious disease exists.

Section 23-35-12 provides that a local health officer must be a licensed physician and must serve a term of five years. Among the powers and duties of a local health officer are to take any action necessary for the protection of public health and safety and determine when quarantine is necessary for the safety of the public.

North Dakota Century Code Chapter 23-07.6 sets forth procedures for confinement of individuals who may be infected with a communicable disease. Section 23-07.6-02 authorizes the State Health Officer or any local health officer to order an individual into confinement if there are reasonable grounds to believe that the individual is infected with a communicable disease and is unwilling to behave in a manner as not to expose other individuals to danger of infection, the State Health Officer or local health officer determines that the individual poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health. Section 23-07.6-05 provides procedures for a court hearing to contest the confinement.

In 2003 the Legislative Assembly adopted two bills relating to addressing contagious diseases. House Bill No. 1221 modified the laws relating to testing for contagious diseases. Most significantly, the bill included provisions allowing a health care provider or other exposed individual who has a significant exposure to subject an individual's blood to a test for the presence of a contagious disease without the individual's consent under certain conditions.

House Bill No. 1414 made several changes to laws relating to reportable diseases and isolation and quarantine of individuals with communicable diseases. The bill authorizes the State Health Officer to issue temporary orders for emergency reporting of diseases, provides a framework and specific procedures for isolation or quarantine ordered by the State Health Officer or a local health officer, including a criminal penalty for failing to obey a written directive, and revises the hearing procedures.

POSSIBLE STUDY APPROACH

In conducting these studies, the committee should seek information from all state and local entities involved in emergency management and responsible for responding to disasters and emergencies, including public health emergencies. After receiving this information, the committee may evaluate the effectiveness of the response systems, identify areas that may need improvement, and seek solutions for any deficiencies identified.

ATTACH:2