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Report RL32403

*Texas Emergency Management and Homeland Security
Statutory Authorities Summarized*

Keith Bea, L. Cheryl Runyon, and Kae M. Warnock, Government and Finance Division

September 22, 2005

Abstract. This report is one of a series that profiles the emergency management and homeland security statutory authorities of the 50 states, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, and the U.S. Virgin Islands. Each profile identifies the more significant elements of state statutes, generally as codified.

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Texas Emergency Management and Homeland Security Statutory Authorities Summarized

Summary

The Texas Disaster Act of 1975 contains the key emergency management provisions for the state of Texas (Tex. Government §418.001 et seq.). The governor is authorized to establish an emergency management council to provide advice on emergency management issues. The coordinator of the Division of Emergency Management for the state also serves as the lead drought officer for state. Wildfire and drought are significant natural disaster concerns for the state and are addressed in specific statutes. Continuity of government provisions call upon former legislators to serve as emergency interim successors.

This report is one of a series that profiles emergency management and homeland security statutory authorities of the 50 states, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, and the U.S. Virgin Islands. Each profile identifies the more significant elements of state statutes, generally as codified. Congressional readers may wish to conduct further searches for related provisions using the Internet link presented in the last section of this report. The National Conference of State Legislatures provided primary research assistance in the development of these profiles under contract to the Congressional Research Service (CRS). Summary information on all of the profiles is presented in CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by Keith Bea, L. Cheryl Runyon, and Kae M. Warnock. This report will be updated as developments warrant.

Contents

Entities with Key Responsibilities	1
Preparedness	3
Declaration Procedures	3
Types of Assistance	4
Mutual Aid	5
Funding	6
Hazard Mitigation	7
Continuity of Government Operations	8
Other	8
Key Terms	10
For Further Research	11

List of Tables

Table 1. Key Emergency Management and Homeland Security Terms Defined in Texas Statutes, with Citations	10
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Texas Emergency Management and Homeland Security Statutory Authorities Summarized

Entities with Key Responsibilities

Governor: The governor must meet dangers that could confront the state and the people as a result of disasters, as well as disruptions caused by energy emergencies, and may issue related executive orders and amend or rescind them. The governor serves as commander-in-chief of agencies, boards, and commissions with emergency responsibilities during a disaster as well as recovery after a disaster, and may delegate or assign this command authority. The governor is authorized to suspend any regulatory statute related to the conduct of state business; use all state and political subdivisions' resources to cope with disasters; and temporarily reassign staff, functions, and resources to assist with emergency services. In addition, the governor is authorized to commandeer private property (with compensation); recommend evacuation of all or part of the population from a stricken area, prescribe evacuation routes, transportation modes and destinations, and control ingress and egress; and suspend or limit sales of alcohol, firearms, and explosives. The governor is directed to decide which municipal corporations need emergency management programs based upon vulnerability and capability to respond, and to recommend the establishment and maintenance of such organizations (Tex. Gov't Code §§418.011, 418.012, 418.015(a)(2),(c), 418.016-019, 418.103).

Emergency Management Council: The governor is authorized to establish the council by executive order to advise and assist with disaster mitigation, preparation, response and recovery policies. Members include heads of state agencies, boards, commissions, and representatives of volunteer groups (Tex. Gov't Code §418.013).

Division of Emergency Management (DEM): The DEM, within the office of the governor, prepares and maintains the currency of the state emergency management plan, assists local governments with the design of plans, and coordinates federal, state, and local emergency management activities, among other actions. DEM officials determine the needs of victims; procure supplies and equipment; adopt standards for local and interjurisdictional emergency management plans; coordinate mobile support units; provide training and public information programs; survey industries and private resources; and establish registries of persons with training and skills, equipment and temporary housing, among other actions (Tex. Gov't Code §§418.041, 418.042, 418.043, 418.044). See also "Preparedness," below.

Coordinator of Division of Emergency Management: The coordinator serves as the state drought manager, is responsible for managing and coordinating drought response sections in the state water plan, and serves as chair of the drought preparedness council. The coordinator is charged with establishing an information and communications network to inform interested parties and the general public about drought potential (Tex. Water Code §§16.055 (a)).

Drought Preparedness Council: The council is responsible for the assessment of and public reports on drought monitoring and water supply conditions; advising the governor on drought conditions; developing state drought response provisions for the state emergency management and water plans; advising regional groups on plans; coordinating with state, federal and local agencies; and reporting to the legislature on drought conditions (Tex. Water Code §16.055 (b, e)).

Regional wildfire coordinator: The coordinator trains, prepares, and coordinates fire fighters to respond to wildfires locally, regionally, and statewide; informs the statewide coordination center about wildfires and resource needs; communicates with federal agencies; assists and promotes mutual aid agreements; develops wildfire strike teams; assesses training needs; coordinates response activities with state disaster districts; and acquires federal equipment (Tex. Education Code §88.119 (b-c)).

Texas Forest Service: The service is the lead agency in providing and coordinating training to fight wildfires (Tex. Education Code §88.120). The director of the State Forest Service must coordinate wildfire control in rural areas or in areas where rural and urban areas meet. The six regions established by the director must share the same boundaries as state disaster districts, if practicable. The director must establish a regional command post to assist in coordinating response to wildfires and other disasters, and must have mobile communications equipment (Tex. Education Code §88.119).

Statewide Fire Coordinator Center: The center provides dispatching services, monitors wildfires, coordinates response, provides liaison with the state emergency operations center, and assists in obtaining resources (Tex. Education Code §88.118).

Presiding officer of governing body of political subdivision: The presiding officer of a local government must notify DEM about the local emergency management program and identify the agency responsible for the program, along with other information (Tex. Gov't Code §418.101).

County: Each county must maintain an emergency management program or participate in a local or interjurisdictional emergency management program, and serves as the first channel for requesting assistance. If requests exceed the capability of a county, the request is forwarded to the state in accordance with the state emergency management plan. Each county employs a liaison officer to work with state and federal emergency management counterparts on mitigation, preparedness, response and recovery (Tex. Gov't Code §§418.102,418.105). Counties affected by droughts must publish a notice of a disaster declaration due to drought conditions and give notice to the chair of a regional water planning group and developers of water conservation plan, who in turn implement their plan (Tex. Water Code §16.055 (g)).

Disaster emergency funding board: See “Funding,” below.

Preparedness

The comprehensive state emergency management plan maintained by DEM must be developed with the advice of local government, business, and labor. The plan must identify areas vulnerable to disasters, recommend zoning and building restrictions, as well as land use controls and mitigation measures (Tex. Gov’t Code §418.042).

DEM must monitor weather conditions. If precipitation may result from “weather modification operations” and create a disaster, or contribute to the severity of a disaster, the division shall request suspension of permits for such operations. No permits for such operations may be issued until the disaster has passed (Tex. Gov’t Code §418.048).

Each local or interjurisdictional agency must prepare and maintain an emergency management plan with wage, price and rent controls to cope with economic impacts from disasters, including curfews, blockades, limits on utility use in disaster areas, ingress and egress, and security measures. Plans must identify the disaster responsibilities of local agencies and officials and channels of assistance (Tex. Gov’t Code §418.106).

Fire departments must develop and maintain incident management systems and train personnel, in accordance with National Fire Protection Association standards (Tex. Gov’t Code §419.044).

A fire chief may inspect chemicals on-site to plan fire department activities in case of an emergency. Facility operators must provide information for emergency planning purposes to the appropriate fire chief or local emergency planning committee about the types and amounts of hazardous chemicals at facilities (Tex. Health & Safety Code §§506.008, 507.007).

County building authorities may include civil defense shelters in underground facilities (Tex. Local Gov’t Code §293.031).

The state drought preparedness council develops and implements state drought preparedness plans to mitigate effects of drought. Plans must provide organizational structure for sharing information, identify duties and responsibilities for agencies, coordinate with state and federal agencies, and provide an inventory of state and federal programs (Tex. Water Code §16.0551).

Declaration Procedures

The governor, by executive order or proclamation, may declare a state of disaster, which continues until the governor finds that the threat has passed or emergency conditions no longer exist. A declaration remains in force for a maximum of 30 days, subject to renewal by the governor. The order must be disseminated to the public and filed as specified. The governor is to terminate a declaration by an executive order. The legislature may terminate a declaration at any time, at which point the governor

must issue an executive order ending the declaration. Executive orders or proclamations issued pursuant to this authority must describe the nature of the disaster, the area threatened, and conditions that resulted in the declaration or its termination (Tex. Gov't Code §418.014). The governor's disaster declaration activates preparedness and response aspects of the disaster recovery and rehabilitation sections of state emergency management plan (Tex. Gov't Code §418.015(a,b)).

The presiding officer of the governing body of a political subdivision may declare a local state of disaster, for a maximum period of seven days, with renewals or extensions possible with the approval of the governing body. A local order declaring or terminating a disaster must be given general publicity and filed with the appropriate city secretary or county clerk. A local declaration activates the response and rehabilitation aspects of the appropriate local emergency management plan (Tex. Gov't Code §418.108).

Types of Assistance

The state comptroller of public accounts is authorized to assist any taxpayer regarding business records damaged or destroyed by natural disaster (Tex. Gov't Code §403.018).

The governor may purchase or lease temporary housing and make it available to political subdivisions for use by disaster victims. In addition, the governor is authorized to acquire sites for temporary housing by advancing or loaning funds from any appropriation; allocating funds provided by any public or private agency, or executing temporary housing projects in partnership with political subdivisions. The governor may suspend public health and safety statutes and regulations related to zoning, transportation, or other matters in order to assist with temporary housing, for a maximum period of 60 days. Political subdivisions may lease or purchase temporary housing sites for the needs of disaster victims (Tex. Gov't Code §418.020).

The governor is authorized to apply to the federal government for a loan, and to disburse the proceeds of the loan to a unit of local government, if the political subdivision has suffered tax or revenue losses due to a disaster and needs financial assistance to perform governmental functions. The amount of the loan cannot exceed 25% of the annual operating budget of the locality for the fiscal year when the disaster occurs. The governor may recommend the cancellation of all or part of the repayment for three fiscal years after the disaster if revenue is insufficient to meet operating expenses (Tex. Gov't Code §418.021).

The governor may accept federal grants to provide financial assistance to individuals and families so they may meet disaster-related expenses and is authorized to agree to provide a 25% state match to receive assistance. The Department of Human Services or another other state agency may be designated to provide financial aid (Tex. Gov't Code §418.022).

If the governor or the President issues a disaster declaration, the governor, working through the emergency management council, may order that debris which threatens public health and safety be cleared from public or private property. The governor may accept federal funds to provide grants to units of local government for

the removal of debris or wreckage from public or private land and water. Except where a delay presents risks to public health and safety, workers must obtain authorization for debris removal, and the state must receive indemnification for removal of debris from private property. During such activities state employees are not liable for death or injury to persons or damage to property (Tex. Gov't Code §418.023).

Private aviators conducting search and rescue functions may be reimbursed for actual operation costs (Tex. Gov't Code §418.046); DEM is authorized to provide financial assistance to the Texas wing of the civil air patrol for disaster-related activities, training and exercises (Tex. Gov't Code §418.0461).

Businesses are not subject to *ad valorem* taxes if they: (1) provide their own fire prevention and fire control services; (2) operate equipment at least equivalent to rural fire prevention districts; or (3) provide emergency services (emergency response, rescue, disaster planning) as recognized by specified state entities and provide equipment, training and facilities to handle emergencies and protect the business and neighbors. They are not exempt, however, from sales and use taxes (Tex. Health & Safety Code §§775.032, 776.032).

The state comptroller may grant an extension, for a maximum period of 90 days, for a victim of a natural disaster to file a tax return or to pay the tax due. Persons must request an extension, and interest accrues after the 91st day (Tex. Tax. Code §111.058).

Mutual Aid

The Emergency Management Assistance Compact is codified (Tex. Health & Safety Code §778.001).

The South Central Interstate Forest Fire Protection Compact is codified (Tex. Education Code §88.116).

Political subdivisions in the state may render aid to other subdivisions under mutual aid agreements (Tex. Gov't Code §418.107 (c)).

DEM is to encourage local governments to participate in interjurisdictional arrangements and determine whether there are adequate provisions for local and interjurisdictional mutual aid. DEM may require that mutual aid agreements be developed if sufficient resources exist. Assistance may be provided by local governments if it is consistent with mutual aid agreements and the policies of the local governing body (Tex. Gov't Code §418.109).

DEM must develop a statewide mutual aid program for fire emergencies (Tex. Gov't Code §418.110).

Local governments may provide emergency assistance to other local governments, whether or not previously agreed on or contracted to, if a state of civil emergency exists and the local governments authorize the assistance (Tex. Gov't Code §791.027).

A county or municipality may authorize the establishment of a mutual aid law enforcement task force, or provide law enforcement mutual aid, but only when local officials declare a state of civil emergency or because of a disaster or threat of concealed explosives (Tex. Local Gov't Code §362.002).

A unit of local government may provide emergency assistance to another local government, whether or not previously agreed on or contracted to, if a state of civil emergency exists and the governing body authorizes the assistance by resolution (Tex. Gov't Code §791.027).

A licensed professional in another state may render aid in Texas during an emergency or disaster (Tex. Gov't Code §418.171).

The governor may recommend that political subdivisions form interjurisdictional emergency management programs (Tex. Gov't Code §418.104).

Funding

DEM may hire temporary employees using state, federal or disaster contingency funds. Merit system provisions do not apply (Tex. Gov't Code §418.045).

The statute established the Disaster Emergency Funding Board, comprised of the governor, lieutenant governor, the commissioners of insurance and human services, and the director of DEM. The governor, with the concurrence of the board, may make funds available to state and local agencies from the disaster contingency fund (Tex. Gov't Code §§418.072, 418.073).

The governor or the presiding officer of a political subdivision may accept and dispense gifts, grants, loans of supplies, equipment, or funds from the federal government or other public or private agencies or individuals to be used by the state or political subdivisions for disaster or emergency services. Funds received by the state are to be deposited in special accounts and disbursed by the comptroller on the order of the governor. Officials are not required to obtain bids to purchase equipment, supplies, or commodities (Tex. Gov't Code §418.074).

The governor, board of regents of Texas A&M University, or the director of the State Forest Service may accept gifts, grants, federal grants and assistance for deposit in the statewide fire contingency account. Private gifts, grants and assistance, and other funds may be used to: pay direct costs of using state forest service equipment and personnel to support local firefighting to suppress fires; pay direct costs of local firefighters responding to wildfire emergencies; and pay the expenses of the state forest service when fires are fought under compact agreements or with the assistance of federal resources. Funds cannot be transferred except for these purposes. Excesses of over \$1 million in the account must be transferred to the general revenue fund on August 31 each year (Tex. Education Code §88.117).

Political subdivisions are authorized to make appropriations for emergency management services (Tex. Gov't Code §418.107).

The Texas Department of Health is authorized to collect annual fees from operators of nuclear reactors. The fee cannot exceed the actual expenses for emergency planning (Tex. Health & Safety Code §401.302).

A local fire control, prevention and emergency medical services district may finance all program costs through the issuance of bonds (Tex. Local Gov't Code §344.151).

If a municipal governing body certifies that the area needs redevelopment or rehabilitation because of a flood, fire, hurricane, earthquake, storm, or other catastrophe, and the governor has certified a need for federal disaster assistance, then the governing body may approve urban renewal plan and projects (Tex. Local Gov't Code §374.903).

The governing body of a tax unit in an area declared a natural disaster may authorize the reappraisal of all property damaged by disaster. Taxes are to be prorated in the year a disaster occurred (Tex. Tax Code §23.02).

Hazard Mitigation

The governor is required to consider steps to mitigate disasters. State agencies with specified duties must, as directed, study mitigation efforts. The governor must make recommendations to the legislature, local governments, and public and private entities about mitigation measures (Tex. Gov't Code §418.121).

The Texas Natural Resources Conservation Commission and other state agencies must keep land use and construction standards under continuing study and identify high risk areas (Tex. Gov't Code §418.122).

DEM must recommend changes to regulations or legislative action related to building standards, land use controls, and zoning regulations to mitigate the impact of potential disaster. Such recommendations must be reviewed by the governor and acted upon (Tex. Gov't Code §418.123).

The governor may suspend a standard found deficient if it is inadequate to protect the public health and safety, and is to replace it with a new standard that is effective until the legislature rejects or the governor amends the regulation. The replacement standard is subject to judicial review but not subject to temporary stay (Tex. Gov't Code §48.124).

State agencies may buy property damage insurance to qualify for federal disaster assistance funds, and are authorized to petition the disaster emergency funding board to purchase insurance on the agencies' behalf. The board is authorized to spend funds for this purpose (Tex. Gov't Code §418.172).

The Flood Control and Insurance Act encourages participation in the National Flood Insurance Program (Tex. Water Code §16.311 et seq.)

See also discussions under "Entities with key responsibilities," above.

Continuity of Government Operations

The Texas Emergency Interim Legislative Succession Act requires that the executive director of the Texas Employees' Retirement System submit a list of the names of persons who meet specified criteria in each legislative district to serve as emergency interim successors. The statute provides for backup designation processes. Emergency interim successors exercise powers and assume duties but cannot designate their own emergency interim successors. Quorum requirements are suspended in the event of an attack, but the same proportion of those present and voting is required to pass legislation (Tex. Gov't Code §304.001 et seq.).

The legislature shall have the power and duty to ensure prompt and temporary succession to the powers and duties of public offices whether filled by election or appointment, if the incumbents are unavailable to carry out powers and duties. During an emergency or threat of enemy attack, the legislature may suspend procedural rules related to legislative business, quorum, the three-day requirement for reading bills, committee referral of bills, or effective date of laws. When an emergency or attack threat exists, the governor (after discussions with the lieutenant governor and the speaker of the House) may suspend the requirement to hold the legislative session in Austin. The governor is to determine the place where the legislature will hold sessions and provide notification, taking appropriate security precautions in releasing the information. The governor must issue a proclamation declaring a period of emergency. Suspension of normal legislative procedures is required for a maximum period of two years to assure continuity of government; the House and Senate must concur by a majority of members present and pass a resolution. The suspension may be renewed if the governor issues a new proclamation and the House and Senate concur (Tex. Const. Art. III §62).

Other

A state employee engaged in public safety emergency response activity may be reimbursed for compensatory time at the regular rate of pay if the employer determines that using compensatory time would disrupt critical functions (Tex. Gov't Code §659.015(g)).

Bank officers may close operations during an emergency if they determine that the emergency has affected the bank, even if the state banking commissioner has not issued emergency proclamation. Bank officers are to decide when the emergency is over, to a maximum of three days without the commissioner's approval (Tex. Finance Code §37.002). The banking commissioner is to decide when an emergency exists in all or part of the state, and may issue a proclamation for banks to close all or part of their offices. Banks are to remain closed until the commissioner proclaims emergency has ended (Tex. Finance Code §37.003).

A safe deposit company may relocate safe deposit boxes or open boxes to relocate them to another location if security is threatened or destroyed by a natural disaster. Two employees must open each box and inventory its contents (Tex. Finance Code §59.108). Credit unions may relocate safe deposit boxes during an emergency,

and must provide notice to box holders of the new location within 90 days (Tex. Finance Code §125.507).

Savings and loan association officers may decide not to open offices or close offices because of an emergency. Offices are to remain closed until officers determine the emergency has ended, for a maximum period of two days (Tex. Finance Code §63.009).

Savings banks may be closed for emergencies, but require the commissioner's approval to remain closed more than 48 hours (Tex. Finance Code §93.011).

The emergency management statute does not limit the governor's emergency management authority, nor generally allow interference with labor disputes or the dissemination of news, but such activities cannot interfere with the jurisdiction of the police, firefighters, or armed forces or modify governor's martial law authority (Tex. Gov't Code §418.003).

Individuals must manage their own affairs and property to assist and not detract from efforts to respond to an emergency (Tex. Gov't §418.151).

Compensation is to be provided for services obtained and property used, only as specified (Tex. Gov't Code §418.152). Compensation must be filed with DEM (Tex. Gov't Code §418.153). Compensation cannot be provided for cutting timber related to firebreaks or water releases related to flooding (Tex. Gov't Code §418.154).

Members of the state emergency management council or a local emergency planning committee are not liable for civil damages for performance of their official duties (Tex. Gov't Code §418.174).

Emergency management planning information gathered about physically or mentally disabled, or medically fragile persons, is confidential (Tex. Gov't Code §418.175).

The state electronic government project management office must direct and facilitate electronic government projects, including the West Texas Disaster Recovery and Operations Center, which is to be used to consolidate data operations and recovery information (Tex. Gov't Code §2055.059).

A state employee called to active duty in the military reserves during a national emergency is entitled to an unpaid leave of absence and retains vacation, sick leave, and seniority benefits (Tex. Gov't Code §661.904).

A state employee who is volunteer firefighter or EMS volunteer is allowed a leave of absence to attend training sessions, for a maximum period of five days per year. State agencies may provide leave with pay to such employees who respond to fire or medical situations if they have established policies for granting leave (Tex. Gov't Code §661.905).

A state employee who is an American Red Cross disaster services volunteer is entitled to 10 days of leave per year without a loss of salary, vacation, or sick leave,

with the approval of the governor. A maximum of 350 state employees may be excused on Red Cross leave at any one time during a fiscal year. DEM must coordinate the list of eligible employees, and the American Red Cross must report to the Legislative Budget Board within 60 days about the reason for such a request (Tex. Gov't Code §661.907).

State agencies may reimburse employees' travel expenses for state business if they are unable to conduct business because of a natural disaster and would have been reimbursed had the business been conducted (Tex. Gov't Code §660.009).

Persons not otherwise covered by workers' compensation who volunteer during a disaster or emergency response training under the direction of state officers or employees are entitled to medical benefits for injuries sustained in the course of providing services, as specified (Tex. Labor Code §501.026).

Members of state military forces who respond to natural and manmade disasters may be offered tuition assistance in order to encourage membership, improve the educational level and diversity composition of forces, and enhance the workforce. Eligibility for tuition assistance grants is determined by the adjutant general, based on the number of eligible people, the funds available and the needs of the military forces. The number of grants is limited, as specified, unless there is a compelling need. The Texas Higher Education Coordinating Board must be consulted, determines if funds are available, and may reduce awards, pursuant to the Texas Education Code §54.2155 (Tex. Gov't Code §431.090).

Key Terms

Table 1. Key Emergency Management and Homeland Security Terms Defined in Texas Statutes, with Citations

Terms	Citations
Attack	Tex. Gov't Code §304.002(1)
Disaster	Tex. Gov't Code §418.004 (1);Tex. Labor Code §501.026 (a)
District	Tex. Local Gov't Code §344.002
Emergency	Tex. Finance Code §§37.001, 93.011(d)
Interjurisdictional agency	Tex. Gov't Code §418.004 (4)
Local emergency planning committee	Tex. Health & Safety Code §§506.004 (17), 507.004 (17)
National Flood Insurance Act	Tex. Water Code §16.313 (2)
Organized volunteer group	Tex. Gov't §418.004 (5)

Terms	Citations
Political subdivision	Tex. Gov't §418.004 (6), Tex. Water Code §16.313 (1)
State emergency response commission	Tex. Health & Safety §§506.004 (22), 507.004 (21)
Temporary housing	Tex. Gov't §418.020 (7)

For Further Research

The citations noted above and other elements of the state code for Texas may be searched at: [<http://www.capitol.state.tx.us/statutes/statutes.html>].