

ASSEMBLY HOMELAND SECURITY AND STATE  
PREPAREDNESS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1202**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JANUARY 26, 2004

The Assembly Homeland Security and State Preparedness Committee reports favorably and with committee amendments Assembly Bill No. 1202.

The bill, titled the "Emergency Management Act of 2004," would reform the existing emergency management statutes in order to establish a more comprehensive framework than what is currently provided by the statutes of New Jersey with respect to the appointment and qualifications of emergency management officials, their authority to act, and the resources at their disposal. The bill rewrites and reorganizes the existing emergency management statutes set forth in chapters 9 and 10 of Appendix A of the New Jersey Statutes (Emergency and Temporary Acts) by separately establishing the State, county, and municipal levels of governmental organization and their respective scopes of authority, and also amends various other parts of the statutory law in order to make all of the laws consistent.

***State Organization (Sections 4-14):*** At the State level, the bill would establish the State Office of Emergency Management and its director, the State Director of Emergency Management, based upon the creation and functions of the State office and director pursuant to Executive Order No. 101 (1980). The State office would be constituted within the Division of State Police in the Department of Law and Public Safety and would serve as the lead agency for coordinating all emergency management services in the State. The State office would also prepare, update, and conduct exercises of a comprehensive State Emergency Operations Plan. The State director would administer the work of the State office under the direction and supervision of the Attorney General, and perform other functions as assigned by the Attorney General or the Governor.

The Superintendent of the State Police would serve as the State Director of Emergency Management, continuing the State's existing emergency management command structure. See Reorganization Plan of the Office of Civilian Defense Director (July 22, 1976); Executive Order 101 (1980). However, the bill would provide the Governor

with the option to do away with this command structure and appoint another individual, with the advise and consent of the Senate, to serve as the director. If the Governor exercised this option, then the Senate's confirmation of the Governor's appointment would be an important consideration given the extraordinary amount of authority provided to the director by the bill.

Besides establishing the State Office of Emergency Management, the bill would create a State Emergency Management Council in, but not of, the Department of Law and Public Safety. The council would be chaired by the State director. The State council's membership would also include the State officials and officers responsible for implementing the many annexes of the State Emergency Operations Plan, as each annex addresses a particular type of emergency and would ensure diverse interests amongst the membership, and up to 10 additional members appointed by the Governor. The State council would be authorized to coordinate with the State Office of Emergency Management with respect to all State emergency management services.

The bill would also establish a State emergency operations center, which could be utilized during any emergency. The functions of the center which would differentiate it from the more day-to-day activities of the State Office of Emergency Management include: serving as the primary command center for the Governor and other State officers and personnel; determining threats and reviewing information relevant to emergency management services; distributing orders to emergency management personnel and the general public; and coordinating relief and recovery efforts by all public and private resources.

***County Organization (Sections 29-37):*** Similar to the State organization, each county of the State would establish a county office of emergency management, and the office would be under the supervision of a county emergency management coordinator. Each county would also establish a county emergency management council, chaired by the county coordinator, which would coordinate with the county office of emergency management with respect to county emergency management services. Besides the county coordinator, the membership of each council would also include the county's officials and officers responsible for implementing the many annexes of the county emergency operations plan, as prepared pursuant to the bill, and up to 10 additional members of the public appointed by the chief executive officer of the county.

The chief executive officer of each county would appoint the county's emergency management coordinator, subject to the approval of the State Director of Emergency Management. The county coordinator would serve for a three year term. However, any coordinator could be removed for cause by the State director, or by the county's chief executive officer acting with the approval of the State director.

The county coordinator would be required to successfully complete an initial course of study and training as determined by the State

director either prior to the time of the coordinator's appointment, or within one year following the appointment. Thereafter, the county coordinator would be required to complete continuing education and training requirements throughout the coordinator's term of appointment.

Any county coordinator appointed prior to the effective date of the bill, once enacted, could remain in his or her position, so long as the coordinator completed the new education and training requirements as prescribed by this bill.

The chief executive officer of each county would also appoint at least one deputy county coordinator, based upon the recommendations of the county coordinator. The deputy coordinator would serve at the will and pleasure of the county's chief executive officer. Like the requirements of the county coordinator position, any deputy coordinator would be required to complete an approved course of study and training as determined by the State director. Deputy coordinators appointed prior to the effective date of the bill, once enacted, could retain their appointment, but only if they fulfill the new education and training requirements as set forth in the bill.

The bill would require each county, in consultation with its county coordinator, to prepare and, from time to time, update a county emergency operations plan. The county plan would conform with the State Emergency Operations Plan and all relevant federal and State laws, and the county would need approval of the plan from the State director prior to the plan taking effect. Any county plan in existence prior to the effective date of this bill, once enacted, would remain in effect until the State director approved the county's new plan in accordance with the provisions of the bill.

In order to test the abilities of each county's emergency management services, the State Office of Emergency Management, in consultation with the county office, would conduct an exercise of each county emergency operations plan at least annually. The State office would conduct, and the county office would participate in, any exercise in conformance with rules and regulations promulgated by the State director. The type, scope, and duration of any exercise would be determined by the State director.

***Municipal Organization (Sections 47-54):*** The provisions of the bill detailing the municipal organization for emergency management services are similar to those establishing the county organization, except each municipal organization would only be based around a municipal emergency management council. The municipal council, like the county councils, would be chaired by a municipal emergency management coordinator. The remainder of the council's membership would also parallel the membership of the county councils: the municipality's officials and officers responsible for implementing the many annexes of the municipal emergency operations plan, as prepared pursuant to the bill; and up to 10 additional public members appointed by the chief executive officer of the municipality. The municipal

council would be responsible for establishing an adequate organization to supervise and coordinate all emergency management services within the municipality.

A municipality could decide against establishing a municipal council, and instead designate the local emergency planning committee, created by federal law, with jurisdiction over the municipality to perform all of the functions assigned to the municipal council. See 42 U.S.C.A. §11001. The membership of these local planning committees include: State and local elected officials; first responders; health, environmental, and transportation officials; and media and community groups. Id.

Similar to the appointment of county coordinators, municipal and deputy municipal emergency management coordinators would be appointed by the chief executive officer of the municipality, however they would also be required to be residents of the municipality in which they would serve. The municipality's chief executive officer could remove the municipal coordinator at any time for cause, but only with the approval of the State Director of Emergency Management; and the vacancy could be filled temporarily by the State director if the chief executive officer failed to appoint a new coordinator within 10 days following the vacancy. Deputy coordinators, like their counterparts at the county and State level, would serve at the will and pleasure of the chief executive officer.

The municipal and deputy municipal coordinators would be required to complete a course of study and training approved by the State director, including the completion of an initial course within one year following the coordinator's appointment. Any coordinator or deputy coordinator appointed prior to the effective date of this bill, once enacted, could remain in his or her position, if the coordinator completes the new education and training requirements as set forth by the bill.

The bill would require each municipality, in consultation with its municipal coordinator, to prepare, and update at least annually, a municipal emergency operations plan. The plan, like the county plan, would conform with the State Emergency Operations Plan and all relevant federal and State laws, and need the approval of the State director before taking effect. Existing municipal plans in effect on the effective date of the bill, once enacted, would remain in effect until the State director approved the municipality's new plan in accordance with the provisions of the bill.

The emergency management capabilities of each municipality would be tested at least annually, as the State Office of Emergency Management would conduct an exercise of each municipal emergency operations plan. The State office would consult the municipal council regarding the exercise, and conduct the exercise in conformance with rules and regulations promulgated by the State director. As with exercises of the county plan, the type, scope, and duration of any municipal exercise would be determined by the State director.

*State, County, and Municipal Emergency Authority (Sections 15-28; 38-46; 55-67):* The use of emergency authority at the State, county, and municipal levels would be triggered by the declaration of an emergency at the respective level, based upon the conditions of an emergency and the ability of the State, county, or municipality to act in response to the emergency. The Governor would retain exclusive authority over the declaration of a state of emergency, while the county and municipal emergency management coordinators would be required to consult with the appropriate chief executive officers before proclaiming an emergency. This consulting requirement is intended to foster communication between county and municipal emergency management officials and chief executive officers so that the later can be more informed and take appropriate actions to assist with the county and municipal response and recovery efforts.

Following the declaration of an emergency, the Governor, or State Director of Emergency Management, if assigned the authority, or a county or municipal coordinator, could perform several actions. The Governor, director, or coordinator could implement the appropriate emergency operations plan, assume command of all emergency management services in a particular area, issue orders directing the general public or emergency management personnel and volunteers, and take and utilize the personal services or property of any person or private entity. Any such taking which occurred during the declaration of the emergency would be subject to the future payment of reasonable compensation, as provided by the Emergency Services Council pursuant to this bill.

Unlike the current statutes, the bill would generally categorize the orders directing emergency management activities into two distinct categories: emergency orders and emergency management orders. Emergency orders, at any level of government, could be directed at any person, entity, or property in the appropriate area declared to be in a state of emergency. As such, these orders would be issued in writing and electronically, and broadcast, using television, radio, or other means of mass communication, within the area affected by the order. The chief executive officers of any county or municipality affected by the emergency orders would also be immediately notified of the orders.

Regarding emergency management orders, these are intended only to direct emergency management personnel, volunteers, and services, so such orders would not be broadcast to the public. Only the appropriate personnel and volunteers would be notified of an emergency management order following the filing of such orders with the State director, the chief executive officer of each affected political subdivision, and county or municipal clerks.

All of the orders distributed pursuant to the bill could only be issued following the declaration of an emergency, with the exception of the State's emergency management orders. Recognizing a need for emergency management procedures to continually improve, and a

desire for uniformity throughout the State with these general procedures, the Governor or State director could issue emergency management orders at any time concerning a variety of matters, such as: sequences of deployment; protocols for requesting emergency management assistance; and the appropriate use of resources, vehicles, and equipment.

The Governor, State director, and county and municipal coordinators would also be capable of calling upon assistance during any emergency, either from within the State from other political subdivisions, or from outside the State from the federal government or other states by way of mutual aid agreements entered into pursuant to the provisions of the bill. Any mutual aid agreement, once implemented, would control the use of emergency management services based upon the terms of the mutual aid agreement.

Any order issued, or other action taken, during any declared state of emergency would terminate upon a declaration that the state of emergency is terminated. However, any specific order or action could continue, if the declaration of the end of the state of emergency specifically designated an order or action to do so.

***Compensation from the Emergency Services Council (Sections 78-90):*** While the amendatory sections between 69 and 119 generally ensure consistent language and update the necessary legal citations throughout the statutory law to account for the provisions of the bill, the amendatory sections also include substantive changes to the existing Governor's Advisory Council for Emergency Services. The council, which is already authorized to provide reimbursements from an emergency services fund to counties and municipalities for damages or excessive costs sustained due to an emergency, would be given the additional authority to award compensation to petitioners for the taking and use of their personal services or property during an emergency.

The membership of the council, which currently includes several members of the Governor's Cabinet, the President of the Board of Public Utilities, and the Executive Director of the New Jersey Public Broadcasting Authority, would increase to include the Commissioner of Health, the State Treasurer, the State Director of Emergency Management, and the Director of the Division of Fire Safety. The expanded membership of the council would reflect its increased authority for providing compensation to petitioners.

The entire compensation process, from the filing of petitions to the payment of awards, would proceed in accordance with rules and regulations promulgated by the council. The council would review petitions and determine the amount of compensation to be paid to a petitioner, if any, based upon the prevailing established rate for services or property of a like or similar nature. A petitioner who disagreed with the outcome of a petition for reasonable compensation could appeal the decision of the council to the Superior Court.

***Repealed Statutes (Section 120):*** Finally, the sections to be

repealed by the bill are all located within chapters 9 and 10 of Appendix A of the New Jersey Statutes, which consists of Emergency and Temporary Acts. The bill would reconstitute, as heretofore explained, the statutes in chapters 9 and 10 pertaining to the organization and authority of emergency management at the State, county, and municipal levels of government. However, with respect to chapter 10, it should be noted that most of these emergency management statutes would simply be repealed and not reconstituted anywhere in the bill. These sections, pertaining to grant and loan programs in effect only during World War II, are expired and no longer needed in the statutory law. See N.J.S.A. App.A:10-1 et seq.

COMMITTEE AMENDMENTS:

The amendments to the bill: establish the new State Emergency Management Council; clarify that the Superintendent of the State Police will serve as the State Director of Emergency Management (unless the Governor exercises an option to appoint another individual); alters the membership of both the county and municipal emergency management councils; and reestablishes the advisory label and bureaucratic independence of the existing "Governor's Advisory Council for Emergency Services."

The addition of the State Emergency Management Council would make the State level organization more similar to the county organization created by the original bill. There would be both a State office, which would oversee day-to-day emergency management operations, and a State-level council, which would assist the office with day-to-day operations as needed, as well as examine broader policy issues concerning emergency management.

In clarifying that the Superintendent of the State Police would serve as the State Director of Emergency Management, the amendments follow the existing emergency management command structure, as established by the Reorganization Plan of the Office of Civilian Defense Director (July 22, 1976) and Executive Order 101 (1980). The Governor could appoint another individual to be the director, but without any such appointment the amendments establish that the default command structure would be based around the Superintendent.

While the original bill listed specific public officials to serve as members of the county and municipal emergency management councils, the amendments would make the council membership more flexible to meet the changing demands of emergency management. These councils would still be chaired by the county and municipal emergency management coordinators, and each would still include up to 10 public members, but the additional membership would be based upon those officials and officers responsible for the implementation of the annexes of the appropriate emergency operations plans. Each annex is meant to address a particular type of emergency, and as annexes are added or deleted from emergency operations plans, or

otherwise updated to address new concerns, the council membership would change accordingly. This membership structure is also utilized by the new State Emergency Management Council established by the amendments.

Finally, the Governor's Advisory Council for Emergency Services, which the original bill renamed, would regain its label as an advisory council and be called the "Governor's Advisory Council for Emergency Management Services." The amendments would also remove the council from its placement in the Department of Law and Public Safety, as proposed by the original bill, to better ensure the council's independence with respect to its advisory role.