

REWRITE OF TITLE 35, PART V
EMERGENCY MANAGEMENT SERVICES

WRITTEN COMMENTS PRESENTED TO THE
SENATE VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS COMMITTEE

BY

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We appreciate the opportunity to offer written comments on behalf of the County Commissioners Association of Pennsylvania (CCAP) on the proposed rewrite of Part V of Title 35, commonly referred to as the Emergency Management Services law. The revisions are currently based on a draft by the Pennsylvania Emergency Management Agency, and are currently embodied in Senate Bill 35 and in a pending House draft.

The CCAP is a non-profit, non-partisan association providing legislative, educational, insurance, research, technology, and similar services on behalf of all of the Commonwealth's 67 counties.

It is important to note at the outset the counties' pivotal role in emergency management. For decades, going back to the old civil defense statutes, counties were seen as the level of government best able to plan for and coordinate the response to area-wide disasters. This role was reinforced and expanded in the current statute to encompass all-hazards planning and response, and was augmented by subsequent enactments including among others the Public Safety Emergency Telephone Act and its new successor 911 Emergency Communications Services law, under which counties and their telecommunications partners built and manage the state's 911 system, the Hazardous Material Emergency Planning and Response Act under which counties are responsible for hazardous materials inventories and hazardous materials incident response planning, Act 227 of 2002 which gave counties a key role in planning for homeland security, and even provisions of Act 13 of 2012 relating to shale gas. Other initiatives have expanded or clarified our responsibility including, for example, task forces on bioterrorism and on pandemic planning.

While municipalities, volunteers, private providers and others – and often state and federal resources – form the core of our disaster response and have their own planning responsibilities, the primary planning and coordination role is ours. This fundamental public safety task is one which our counties undertake with utmost conviction and diligence, and one which they fulfill with professionalism and care.

Title 35, Part V and related statutes, regulations, and guidelines set out the interrelationships and prerogatives among state, county, and local government, and how their respective responsibilities are to be accomplished. In the years since its enactment, we have seen the need to plan for new or newly-recognized hazards (some recognized by special statute or state initiative as noted previously), we have seen vast change in technology including planning, communication and response capability, there has been change and evolution in best practices in both coordination and response, we have witnessed decline in volunteer capacity and a shift in providers for core services, notably EMS, and we have a new overlay of federal statutes governing planning, response, and communications.

For the reasons noted, we concur that a full revision of Title 35 is necessary. The question is whether technical, terminology, and practice updates are sufficient, or whether there also needs

to be any fundamental change in the relationship among the Title's governmental partners. The current Senate and House drafts before you do both and, while we agree with most of the terminology and practice changes, we offer several thoughts and questions about the current language, which are in the appendix to these remarks and which focus on the current printer's number of SB 35. While it has not yet been introduced, the House draft contains many of the same provisions as SB 35, and incorporates a number of the technical changes that we have suggested in the appendix.

We appreciate that the bill and draft incorporate the National Incident Management System (NIMS) into state law and believe that changes to Pennsylvania statute should be consistent with federal emergency management system changes and updates.

Yet to be considered is integration of the federally-based First Responder Network Authority (FirstNet). Organized under an independent federal authority and now under development here under the auspices of the Pennsylvania State Police, the intent is "to build, operate and maintain the first high-speed, nationwide wireless broadband network dedicated to public safety." The goal is to provide a single interoperable platform for emergency and daily public safety communications.

The FirstNet requirement is just one part, though, of our critical need to update the law with regard to communications and systems interoperability in its broadest context. While connectivity statewide has improved, we are still working with a system that includes use of multiple frequencies and platforms, often within the same county, coupled with aging systems and overlaid with continuing shifts in the addition, reassignment, and deletion of available frequencies and bandwidths.

Resolving these communications issues will not be an easy task. Certainly, both FirstNet and the Next Generation planning and deployment underway within the 911 system offer us new opportunities to evolve voice and data communications improvements. But many obstacles remain, including cost and in particular recognition of current investments. Lacking statutory guidance or a statewide strategy, and driven by system obsolescence and, in some cases, loss of frequency spectrum, many counties over the last decade have invested heavily in new communications systems. While these systems are all to current standards and provide largely seamless interoperability within the counties (often requiring the counties to subsidize improvements to first responder equipment as well), the systems are not uniform from county to county. And so, while CCAP supports an eventual goal of a fully-integrated statewide system, it will be imperative to consider the investments that counties have made and the best way to incorporate those updates into a statewide approach.

Senate Bill 35 includes a generalized provision regarding the issue on a statewide basis, also incorporating Next Generation 911, and including specific responsibility at the county level. The House draft includes a new chapter on statewide public safety communications and

interoperability, requiring development of a Statewide Communications Interoperability Plan and establishing a Statewide Public Safety Communications and Interoperability Advisory Committee that would be responsible for advising PEMA and the governor on emergency communications planning. While we still have the structure, objectives, and inter-jurisdictional issues of the House version under review, we note that at least by definition the system is required to be “locally driven and (involving) multijurisdictional and multidisciplinary planning.”

We know that development of a statutory update that recognizes these issues, and positions the Commonwealth to address the continuing evolution of emergency services planning and response, will be complex and time-consuming. Counties are committed to assuring the needs of our mutual constituents are met – efficiently, expeditiously, and cost-effectively, and within a framework that respects the capacity and capabilities of each level of government – and look forward to working with the Committee, Administration, and stakeholders on statutory change that meets these objectives.

We appreciate the opportunity to present these comments on this important issue, and will be pleased to answer your questions or provide additional information.

APPENDIX

Analysis of SB 35, P.N. 341

- We recommend that the term “local government” be replaced with “political subdivision” or “municipality,” as appropriate (for example, see page 34, line 26, and page 35, line 15).
- Page 7, line 28 through page 8, line 8 – the definition of “incident command system” should include a term or statement such as “recognized under (or consistent with) the National Incident Management System.”
- Page 8, lines 12-15 – under the definition of “incident management team,” the term “regional” should be added to the Federal and State guidelines, to reflect the regional task forces created by this legislation.
- Page 13, line 2 – the definition of “person” needs to read “including the Commonwealth and its political subdivisions.”
- Pages 15, lines 7-16 – it appears the specialized regional response teams must be organized in accordance with FEMA and PEMA standards, but the specialized statewide response teams do not have the same obligation, and we seek further clarity on that point.
- Page 22, lines 28-29 – with the proposed amendment, this clause now refers to a “political subdivision authority.” Is there a need for an additional comma here, or further definition of what a “political subdivision authority” is? (Occurs again on page 23, lines 3-4 and on page 23, line 30 to page 24, line 1).
- Page 22, line 30 – should this be “authorized nonprofit” or “authorized nongovernmental” organization? The definition of “emergency services” on page 6, line 30, refers to “nongovernmental organizations.” (Occurs again on page 23, line 4 and on page 24, line 1)
- Page 28, lines 8-12 – these lines allow PEMA to withhold state and federal public assistance funds from political subdivisions that do not have a current emergency operations plan or current hazard mitigation plan. This should be a point of further discussion; we understand this is tied to voluntary grants, but there may be mitigating circumstances and it is unclear what degree of discretion PEMA will have.
- Page 34, line 26 – we would seek further clarity on why schools are taken out of the list of entities that might receive assistance from PEMA under the state’s emergency plan, as it is ambiguous as to whether they would fall under the definition of “dependent care facility.” Later on in the legislation, schools are listed in addition to dependent care facilities (page 36,

line 28, regarding recipients of technical guidance; and page 76, lines 29-30, regarding development of all-hazards emergency plans under PEMA guidelines).

- Page 34-35 – we notice some inconsistency in the terminology between “Commonwealth” and “state” (needs to be reviewed throughout).
- Page 35, lines 22-27 – this clause indicates that PEMA, in its plan, can provide for accreditation programs for county and local emergency management programs, as well as qualification standards for appointed emergency management coordinators. Will any of these changes be subject to regulatory review or otherwise open to stakeholder comment?
- Should there be more consistency throughout regarding working with either the “political subdivision” or the “county emergency management program” or “local emergency management program”? On page 36, lines 24-39, and page 46, lines 15-16, the language favors the latter, while on page 41, lines 8-21, there is a reference to “political subdivisions” regarding coordination of all search and rescue activities, as there is on page 45, line 26 to page 46, line 2 and in other locations.
- Page 46, lines 24-29 – rather than being authorized to establish a local emergency management organization, political subdivisions are required to establish an emergency management program consistent with the commonwealth’s plan within two years. Further discussion is needed regarding this timeframe, as it is not known how recently any of the political subdivisions have updated their plans, and with the Department of Health to provide technical assistance under the new Chapter 83, we imagine it will take some time for the department to be prepared to do so as well.
- Page 49, lines 9-17 – the language on intergovernmental cooperation is a significant improvement over prior versions.
- Page 49, line 27 to page 50, line 1– all county and local emergency management programs would be required have a coordinator who meets standards of education and certification established by PEMA, and any other qualifications it deems necessary. Similar to our prior comment, will any of these changes be subject to regulatory review or otherwise open to stakeholder comment?
- Page 50, lines 12-21 – this language makes changes to the appointment of county coordinators; we need to verify that this is consistent with county hiring practices, including the designation of the chief elected executive officer as the appointer as opposed to the governing body of the political subdivision.

- Page 51, lines 9-23 – we recommend the language on appointment of local coordinators be reviewed by the municipalities.
- Page 51, line 29, to page 52, line 6 – this language refers to conditions under which a coordinator may be removed from his position; we need to ensure this does not preclude other local reasons for which an individual may need to be removed from his office.
- Page 52, lines 12-16 – are the counties and municipalities currently reimbursing these expenses, or is someone else?
- Page 54, lines 6-7 – the language clarifies that county and local emergency management must equip emergency operations centers “in accordance with agency directives”; is this already a matter of practice?
- Page 55, lines 9-12 – requires the county emergency management program to coordinate resource management to ensure that county and appropriate municipal resource are properly organized, trained and equipped and have adequate plans to safely and effectively accomplish assigned missions. How is the county to accomplish this task, as it can verify but has no capacity to ensure compliance?
- Page 55, lines 19-21 – requires the county program to monitor the progress by municipalities within the county in National Incident Management System implementation and provide assistance where feasible. Again, how can the county monitor the municipalities? The responsibility should be on the municipality to monitor and make reports to the county.
- Page 55, line 30 to page 56, line 2 – requires the county program to coordinate and monitor planning activities by municipalities within the county and providing assistance. Again, counties advise the municipalities but do not have sufficient capacity to monitor all municipalities’ planning activities, nor the capability to enforce.
- Page 56, lines 5-6 – requires the county program to maintain the training records of local municipal coordinators. Currently, counties maintain the records that are required by the state for certification purposes, but this statement is so broad that it appears counties would be required to maintain all training records. In addition, on page 56, lines 27-29, municipalities are required to keep their own training records and certification documentation, so additional clarity is needed on this point.
- Page 57, lines 1-3 – requires a county to participate in planning for continuity of municipal government; this should be a municipal function, as indicated under local emergency management programs on page 59, lines 14-15.

- Page 57, line 29 to page 58, line 4 – requires a county to develop and maintain a countywide animal rescue capability; does this mean the county will be responsible to fund and keep the CART going?
- Page 69, line 18 and forward – each regional task force must prepare an all-hazards emergency operations plan in accordance with this section and guidelines developed by PEMA. What is the process for approval of a plan – majority rules? Must all parties agree? How must county, municipal and regional task force plans correspond and complement each other, if it at all? How are costs to be apportioned?
- Page 71, lines 7-8 – regional task forces must attend training as directed by PEMA; we would seek some clarity as to whether this is in addition to the training already needed for county and local coordinators?
- Page 71, lines 9-10 – regional task forces must participate in/conduct exercises as required by the federal government and PEMA, and participate in/conduct capabilities-based planning activities and assessments. As above, clarity is sought as to whether this is in addition to any exercises and activities already happening as part of a county or local plan?
- Page 72, lines 4-7 – a regional task force may establish one or more specialized response teams, which may be activated and deployed by the Governor or the board of the regional task force. Further clarity is needed on the entity responsible for costs if the Governor deploys the specialized response team (under urban search and rescue task forces on page 70, line 29 to page 71, line 4, the language specifies that costs are paid by the deploying agency).
- Page 77, lines 6-17 – requires large event plans where a disaster emergency could overwhelm the resources of emergency response. Conceptually, we agree with this idea, but would seek additional clarity on the details, such as who determines what a “congregation of a large number of people” is, and who if anyone has the authority to enforce.
- Page 84, lines 4-17 – changes volunteers’ workers’ compensation from specific eligible benefits to considering them to be employees of the commonwealth or county/local emergency management when deployed, going to or returning from emergency, or in scheduled training or exercises. While we understand the concern this language is trying to address, designating volunteers as county employees is likely to cause issues with return-to-work obligations under workers’ compensation, as the county would have no way to help these individuals return to work with their regular employer. We recommend further discussion on this issue.

- Page 93, lines 14-29 – If quarantined individuals are within the jurisdiction of a local health department, that county or municipality at its expense must provide food, water, shelter and appropriate medical care; if not in a local health jurisdiction, then the commonwealth provides. Is this a change from current law/regulation?