

CHAPTER NO. 743

SENATE BILL NO. 3139

By McNally, Ketron, Crowe, McLeary, Kilby, Williams, Norris

Substituted for: House Bill No. 3094

By Rinks, Casada, Shaw

AN ACT to amend Tennessee Code Annotated, Title 7 and Title 58, relative to mutual aid, emergency and disaster assistance, and homeland security.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 58, is amended by adding the following as new Chapter 8:

58-8-101. This act shall be known and may be cited as the "Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004".

58-8-102. As used in this chapter, unless the context otherwise requires:

(1) "Activities under service agreements" means day-to-day cooperation and activities based upon interlocal service or operational agreements or contracts between or among governmental entities;

(2) "Aid" means the same as assistance except that aid is provided in an occurrence during any period of time when a state of emergency has not been declared;

(3) "Assistance" means the provision of personnel, equipment, facilities, services, supplies, and other resources to assist in firefighting, law enforcement, the provision of public works services, the provision of emergency medical care, the provision of civil defense services, or any other emergency assistance one governmental entity is able to provide to another in response to a request for assistance in a municipal, county, state, or federal state of emergency;

(4) "Disaster" means any natural, technological, or civil emergency that results in substantial injury or harm to the population or substantial damage to or loss of property of sufficient severity and magnitude that there is a declaration, resulting from the emergency, of a disaster by the governor under state law or the president under federal law;

(5) "Emergency" means an occurrence or threat of an occurrence, whether natural or man-made, that results in or may result in substantial injury or harm to the population or substantial damage to or loss of property and which results in a declaration of a state of emergency by a municipal mayor, a county mayor or executive, the governor, or the president;

(6) "Emergency assistance" means assistance provided by a participating governmental entity to another under this act;

(7) "Employee" means paid, volunteer, and auxiliary personnel and emergency management workers of a governmental entity;

(8) "Governmental entity" means any political subdivision of the state, including, but not limited to, any incorporated city or town, metropolitan government, county, utility district, school district, nonprofit volunteer fire department receiving public funds and recognized under Title 68, Chapter 102, Part 3, rescue squad, human resource agency, public building authority, airport authority, and development district, or any instrumentality of government created by one (1) or more of these named governmental entities or the general assembly, or any entity otherwise recognized by state law as a local governmental entity;

(9) "Occurrence" means the imminent threat of an event or an actual event and its aftermath, whether natural or man-made, that could lead to substantial bodily injury or property damage and that could lead to the declaration of a state of emergency;

(10) "Participating governmental entity" means any governmental entity in the state that requests or responds to a request for aid or assistance under this act;

(11) "Responding party" means a governmental entity that has received and responded to a request to provide mutual aid or assistance to another governmental entity under this act; and

(12) "Requesting party" means a governmental entity that requests aid or assistance from another governmental entity under this act.

58-8-103. (a) On and after July 1, 2004, the provision and receipt of mutual aid and assistance by participating governmental entities shall be governed by this act, and no separate agreement is necessary except with regard to aid or assistance provided to entities in other states, and governmental entities that decide to provide aid and assistance under a separate agreement. Governmental entities may choose by resolution of their governing bodies to continue agreements existing on July 1, 2004, until they expire or are terminated in accordance with their terms. Governmental entities may also by resolution extend existing agreements or make new agreements relative to mutual aid and assistance after July 1, 2004. When there is an agreement between or among governmental entities, the provisions of that agreement and applicable authorizing law govern activities under the agreement. For any governmental entity with no agreement with the particular requesting party governing mutual aid or assistance, the provisions of this act apply to both parties.

(b) It is not the intent of this act to affect activities under service agreements. Service and operational agreements may continue to be made and enforced under Sections 5-1-113, 5-1-114, 5-16-107, 5-19-106, 6-54-307, 6-54-601, Title 12, Chapter 9; Title 49, Chapter 2, Part 13, or other applicable law.

(c) The purposes of this act are to authorize mutual aid and to enhance public safety and homeland security by facilitating assistance among governmental entities in any state of emergency or declared disaster while conforming to federal guidelines relative to reimbursement of costs for assistance rendered.

(d) Aid and assistance to entities in other states continues to be governed by the Interlocal Cooperation Act, compiled in Title 12, Chapter 9, and other applicable law.

58-8-104. (a) The mayor of a municipality or the mayor or county executive of a county or metropolitan government may declare a local state of emergency affecting such official's jurisdiction by executive order consistent with and governed by § 58-2-110(3)(A)(v).

(b) The mayor or executive of any municipality or county, or such official's designee, may declare a state of emergency for such official's municipality or county regardless of whether the event in question affects only that jurisdiction or multiple jurisdictions.

(c) The declaration of a state of emergency by a jurisdiction entitles the responding party or parties to cost reimbursement as provided in § 58-8-111. The requesting party is required to make this reimbursement to the responding party or parties.

(d) The municipal mayor or county mayor or executive may declare the state of emergency at any time during the imminent pendency or happening of the occurrence.

58-8-105. (a) When a governmental entity is affected by an occurrence that its resources will not be adequate to handle, the governmental entity may request aid through the appropriate emergency management employee or official, or a county or municipality may declare a local state of emergency as provided in § 58-8-104 and request assistance by communicating the request to a potential responding party or multiple potential responding parties. Requests for aid or for assistance must be made by the appropriate official or employee to the emergency communications dispatch center of potential responding parties or other officials authorized by the potentially responding party to respond to requests under this act.

(b) Each request for aid or assistance may be made verbally and should, to the extent possible, include the following:

(1) A statement that an occurrence is imminent, in progress, or has occurred. The statement should also indicate whether a declaration of a state of emergency has been made and give a general description of the occurrence or emergency, including an initial estimate of the damages and injuries sustained or expected;

(2) Identification of the service functions for which aid or assistance is needed and the particular type of aid or assistance needed;

(3) The amount of personnel, equipment, materials, and supplies needed;
and

(4) An estimated time and place for a representative of the requesting party to meet the responding party.

(c) Each request for aid or assistance may include the following if known or necessary:

(1) An estimate of the amount of time, aid, or assistance that will be needed.

(2) Identification of the types of infrastructure for which aid or assistance is needed (e.g., water and sewer, streets, gas, electric, or other infrastructure); and

(3) Identification of the need for sites, structures, or other facilities outside the requesting party's jurisdiction to serve as relief centers or staging areas for incoming emergency goods or services.

(d) All requests for assistance shall be confirmed in writing to the responding party or parties within thirty (30) days of the initial request. Parties shall keep records of all requests made for assistance under this act.

58-8-106. Any participating governmental entity may, upon receiving a request for mutual aid in an occurrence or for assistance from a requesting party in a municipal, county, state, or federal state of emergency, send its personnel and equipment outside its boundaries and into any other jurisdiction necessary to respond to the request.

58-8-107. (a) This act does not create a duty on participating governmental entities to respond to a request for aid or assistance nor to stay at the scene of an occurrence or emergency for any length of time. Upon receipt of a request for aid or assistance, a potential responding party shall determine whether and to what extent it will provide the aid or assistance. If the potential responding party determines in its complete discretion that it is not in its best interest to provide aid or assistance, it shall notify the requesting party of its decision as soon as possible. If the potential responding party determines that aid or assistance can be provided, it shall communicate the following information to the requesting party as soon as possible:

(1) A description of what personnel, equipment, and other resources it will provide;

(2) An estimate of the length of time aid or assistance will be available; and

(3) An estimated time of arrival at the scene or designated meeting place.

(b) The responding party may withdraw aid or assistance at any time. The responding party shall notify the requesting party as soon as possible of any decision to withdraw aid or assistance.

(c) The provisions of this section that require certain actions are directory rather than mandatory and do not create a public or special duty on the part of any participating governmental entity.

58-8-108. The representative or representatives of the requesting party authorized to be in charge of emergency response at the scene shall be in command at the scene as to strategy, tactics, and overall direction of the operations. The requesting party may delegate command as needed. Generally accepted incident command procedures shall be implemented and followed. The responding party shall designate supervisory personnel for its employees sent to render aid or assistance. All orders or directions regarding the operations of the responding party shall be relayed to the responding party through these designated supervisory personnel unless a different arrangement is determined by the parties in the field to be more advantageous.

58-8-109. (a) When employees of the responding party are sent from the employing jurisdiction to other jurisdiction or jurisdictions in response to a request for aid or assistance under this act, they have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they normally function.

(b) Employees of the responding party will be considered as the responding party's employees at all times while performing their duties under this act for purposes of the workers' compensation law and for that purpose will be considered as acting within the course and scope of their employment with the responding party.

(c) Under § 29-20-107(f), for liability purposes only, employees of the responding party are to be considered employees of the requesting party while performing their duties under this act at the scene of the occurrence or emergency or other locations necessary for the response while under the supervision of the requesting party. At all other times in the response, including traveling to the scene and returning to the employing jurisdiction, such employees are to be considered for liability purposes to be employees of the responding party.

58-8-110. Nothing in this act shall be construed to remove any immunity from, defenses to, or limitation on liability provided by the Tennessee Governmental Tort Liability Act or other law.

58-8-111. (a) Except as provided in this section, the requesting party shall pay the responding party all documented costs incurred by the responding party in extending assistance to the requesting party under this act. The requesting party is ultimately responsible for reimbursement of all eligible expenses, not to exceed the Federal Emergency Management Agency's reimbursement fee schedules.

(b) Eligibility for reimbursement begins immediately upon the declaration of the state of emergency. The responding party is entitled to receive payment for 1/2 its reimbursable costs for the first six (6) hours of its response after the state of emergency is declared. The responding party is entitled to one hundred percent (100%) reimbursement of eligible costs incurred after six (6) hours are exceeded. Time periods for the response subject to reimbursement shall be calculated from the time the state of emergency is declared or the time the responding party leaves its jurisdiction, whichever occurs later, to the time it returns. Reimbursement of personnel, equipment, and materials and supply costs are all subject to the limitations of this subsection.

(c) During the period of assistance, the responding party shall continue to pay its employees according to then-prevailing wages, including benefits and overtime. The requesting party shall reimburse the responding party for all direct and indirect payroll costs, including travel expenses, incurred during the period of assistance, including but not limited to, employee retirement benefits as determined by generally accepted accounting principles. The requesting party is not responsible for reimbursing any amounts paid or due as benefits to responding party's personnel under the terms of the Tennessee Workers' Compensation Act, compiled in Title 50, Chapter 6.

(d) The requesting party shall reimburse the responding party for the use of its equipment during the period of assistance according to the Federal Emergency Management Agency fee schedules for hourly rates. For instances in which the costs are reimbursed by the Federal Emergency Management Agency, eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228.

(e) The requesting party shall reimburse the responding party for all material and supplies furnished by it and used or damaged during the period of assistance, except for the cost of equipment, fuel, and maintenance materials, labor, and supplies, which shall be included in the equipment rate unless it is damaged and the damage is caused by the gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of the responding party's personnel. The measure of reimbursement shall be determined in accordance with 44 C.F.R. Part 13 and applicable Office of Management and Budget (OMB) circulars.

(f) The responding party shall maintain records and submit invoices for reimbursement by the requesting party. For instances in which costs are reimbursed by the Federal Emergency Management Agency, the requesting party must submit requests for reimbursement to the Tennessee Emergency Management Agency on forms required by Federal Emergency Management publications, including 44 C.F.R. Part 13 and applicable OMB circulars. The reimbursement request shall include the certification or level of training of the personnel who responded and the type of equipment that was sent.

(g) The responding party shall forward the reimbursable costs with an itemized invoice to the requesting party as soon as possible, but no later than sixty (60) days after the provision of assistance has ended.

(h) Nonparticipating governmental entities and participating governmental entities that have separate agreements with nonparticipating governmental entities, may by agreement provide for different reimbursement provisions.

(i) The preceding provisions of this section do not apply to aid or assistance provided under § 58-2-113 at the request of the Tennessee Emergency Management Agency. Reimbursement of costs for aid or assistance provided in these situations is governed by § 58-2-113 and any other applicable provision of Title 58, Chapter 2.

58-8-112. Governmental entities that are parties to existing mutual aid agreements may by resolution of their governing bodies determine to continue to operate under those agreements until they expire or are terminated. If a governmental entity does not affirm the continued existence of the agreement, it shall expire on July 1, 2004, and the provisions of this act apply. If the governmental entity affirms an

agreement, the terms of the agreement and applicable authorizing law will continue to govern activities under the agreement. Mutual aid agreements between Tennessee governmental entities and governmental entities in other states are not affected by this act and continue to be authorized and governed by the Interlocal Cooperation Act compiled in Title 12, Chapter 9, Part 1, and other applicable law. Except for the continuation of existing agreements as provided in this section, any new agreements made after July 1, 2004, and aid or assistance provided at the request of Tennessee Emergency Management Agency under § 58-2-113, this act is the exclusive method for providing mutual aid and emergency assistance between governmental entities.

58-8-113. In addition to any other authority provided by this act, any governmental entity may provide aid or assistance in any area of the state to any state or federal agency upon request by the state or federal agency, and the governmental entity and its employees will be subject to the same protections and immunities they have under this act in furnishing aid or assistance to other governmental entities. The provisions of this section and any other portion of this act are in addition to and not in substitution for, and do not diminish, the authority provided in § 58-2-113 or any other provision of law that authorizes a local governmental entity to respond to a request for aid or assistance from the Tennessee Emergency Management Agency or any other state or federal agency. "Nothing in this chapter shall be construed to require that employees of the responding party are to be considered employees of the state or any of its agencies for any purpose."

58-8-114. When any other state provides that it will recognize and enforce the Tennessee Governmental Tort Liability Act and other Tennessee laws governing the tort liability of Tennessee's governmental entities and their employees in any case brought in that state's courts against the governmental entity or its employees arising from aid or assistance provided by a Tennessee governmental entity in that state, Tennessee shall recognize and enforce that state's laws relative to the tort liability of its political subdivisions and their employees and agents in any case brought in a Tennessee court against the political subdivision or its employees and agents arising from aid or assistance provided by the political subdivision of that state in Tennessee.

58-8-115. (a) Notwithstanding the provisions of Section 58-8-111(b), a governmental utility system that is a responding party is eligible for reimbursement and entitled to one hundred percent (100%) reimbursement of eligible costs after the state of emergency is declared.

(b) For purposes of a governmental utility system that is a responding party, the words "then-prevailing wages, including benefits and overtime" in Section 58-8-111(c) mean the present wage structure, including benefits and overtime, of the governmental utility system that is a responding party.

(c) For purposes of this section, "governmental utility system" means a governmental entity that provides electric, gas, sewer, water, wastewater, telephone, cable or other like service, or any combination of these services, and is limited to these operations of the governmental entity and does not extend to other operations of function of the governmental entity.

SECTION 2. Tennessee Code Annotated, Section 58-2-111, is amended by deleting subsections (a) and (b), and subdivisions (1) through (9) of subsection (c).

SECTION 3. The Tennessee Code Commission is directed to recodify Tennessee Code Annotated, § 58-2-111(c)(10), as a section in Title 7, Chapter 51.

SECTION 4. Tennessee Code Annotated, Section 58-2-112, is deleted in its entirety.

SECTION 5. If any part of this act is declared invalid, other portions of the act that can be given effect without the invalid part shall remain in effect, and to that end the provisions of this act are declared severable.

SECTION 6. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 6, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of May 2004


PHIL BREDESEN, GOVERNOR