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Arkansas Emergency Management and Homeland Security Statutory Authorities Summarized

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Summary

The *Arkansas Emergency Services Act of 1973* confers emergency powers upon the governor and outlines extensive duties of the state Department of Emergency Management (DEM) as well as political subdivisions. Several funding mechanisms are established in state law, with initial capitalization levels specified and limits set on the use of the funds. Local governments may commit to interjurisdictional agreements for the provision of emergency services. An emergency volunteer reserve cadre is authorized to be established within the DEM. The *Arkansas Emergency Interim Legislative Succession Act* and *Emergency Interim Executive and Judicial Succession Act* provide for lines of succession for all levels of government. The governor may change the location of legislative sessions and call an emergency session in the event of an attack.

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, and three territories (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. This report will be updated as developments warrant.

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Arkansas Emergency Management and Homeland Security Statutory Authorities Summarized

Entities with Key Responsibilities

Governor: During any state of disaster emergency, the governor is commander-in-chief of all available forces, and may suspend the provisions of any statute, order, rule, or regulation if strict compliance would in any way prevent, hinder, or delay necessary action. The governor may utilize all available resources and transfer the direction, personnel, or functions of state departments and agencies. The governor may also commandeer property, compel evacuation, control ingress and egress to and from a disaster area, suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles, and make provisions for the availability and use of temporary emergency housing (Ark. Code §12-75-114).

Department of Emergency Management: The Department of Emergency Management (DEM) is established as a public safety agency of the state. The director is appointed by the governor, with the advice and consent of the Senate. An emergency reserve cadre of trained specialists may be established to assist regular employees during declared disaster response and recovery operations (Ark. Code §12-75-109). Staff of the DEM prepare the state disaster plan, which may include provisions for mitigation, response, emergency relief, areas of vulnerability, zoning, building, and land use controls, and coordination of federal, state, and local emergency management activities. DEM must provide a catalog of federal, state, and private assistance programs to state and local officials and establish criteria for determining catastrophic losses and enhanced levels of assistance (Ark. Code §12-75-110(a)). DEM determines requirements for and procures food, clothing, and other necessities; and procures them, promulgates standards for local and interjurisdictional disaster plans; provides for mobile support units; maintains a list of available equipment and temporary housing; and prepares executive orders, proclamations, and regulations for the governor (Ark. Code §12-75-111). DEM must maintain information systems to make available both voice and data links with FEMA, other federal agencies, and other states, state agencies, and local offices that are assigned an emergency management role (Ark. Code §12-75-112(a)).

State and local governmental entities - liaison officers: The head of any state department with an emergency management role appoints emergency services liaison officers to act as liaison with the department of emergency management. These officers are authorized to prepare agency annexes to state and local emergency operations plans, maintain files of agency resources, advise, assist, and evaluate the capabilities of counterpart local or federal government agencies, and designate personnel available for mobile support units and training (Ark. Code §12-75-116).

Political subdivisions and interjurisdictional offices: The governor may combine two or more established local offices of emergency services as an interjurisdictional office; the combined office must meet the same standards as a single-jurisdiction office to be eligible for state and federal emergency management funding and assistance. The statute sets out criteria for establishment of an interjurisdictional office (Ark. Code §12-75-117(a)). Local or interjurisdictional offices may be established as public safety agencies of their respective political subdivisions for the purposes of mitigation of, planning for, response to, and recovery from disaster and major emergency occurrences and for operation of public safety information networks. All counties and designated municipalities establish, fund, and maintain a local office of emergency services or make an interjurisdictional agreement to receive services. A non-designated municipality receives emergency services support from the county or counties in which it is located (Ark. Code §12-75-118(a-b)). The governor may require one or more contiguous political subdivisions to establish an office of emergency services jointly if it is unusually difficult to provide disaster or major emergency prevention, preparedness, response, or recovery services individually (Ark. Code §12-75-118(d)). Political subdivisions without an office of emergency services must have a liaison officer to facilitate cooperation and protection. The chief executive of each political subdivision exercises authority within his jurisdiction comparable to that which the governor exercises over the state government during disasters and major emergencies. Local and interjurisdictional offices must prepare emergency operations plans (Ark. Code §12-75-118(e-g)).

Emergency Response Commission: The Emergency Response Commission promulgates rules and regulations regarding hazardous material to establish uniform procedures for reporting and managing information as required by the federal Emergency Planning and Community Right-to-Know Act (12-82-102 to 104).

State Office of Hazardous Materials Emergency Management: The office is established to administer emergencies associated with releases of hazardous or toxic material (12-84-104 to 107).

Preparedness

Emergency Communications Act of 1991: The statute provides for the evaluation and funding of an emergency communication system to coordinate state, local, federal, and private sector emergency response personnel, equipment, and resources in the event of natural, technological, or national emergency-related disaster of catastrophic size and devastating impact (Ark. Code §12-78-101 to 105).

The governor or designated representative is authorized to create mobile support units as necessary to reinforce disaster organizations in stricken areas and appoint a commander for each unit. Mobile support units are called to duty by the governor or his director, and perform their functions in any part of the state or, under certain conditions, in other states (Ark. Code §12-75-120 (a)).

Emergency Volunteer Reserve Act of 1995: The statute establishes, within the Department of Emergency Management, an Emergency Volunteer Reserve Cadre of persons trained and experienced in certain functions related to disaster response and recovery operations (Ark. Code §12-83-101 to 105).

See also “Entities with Key Responsibilities”—*Department of Emergency Management*, “Hazard Mitigation,” and “Other.”

Declaration Procedures

The governor may declare a disaster emergency if he finds a disaster has occurred or is imminent. An executive order or proclamation is not needed when a disaster results in an interruption of utility services and a delay in obtaining an emergency declaration would delay the restoration of services. When time is critical, because of rapidly occurring disaster emergency events, the governor may verbally declare a disaster until a written executive order or proclamation can be completed. The state of disaster emergency continues until the governor terminates it or the emergency conditions no longer exist. The statute limits the length of a disaster emergency to 60 days unless renewed by the Governor. The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. Declaration of a state of disaster emergency activates disaster response and recovery aspects of state, local, and interjurisdictional disaster emergency plans and authorizes the deployment and use of any applicable forces (Ark. Code §12-75-107).

When events have exceeded, or will exceed, a local government’s ability to respond or recover without state assistance, the chief executive officer must declare a “local state of disaster or emergency” to signify intent to request resources of the state or federal government. Where the magnitude of the disaster is of such severity that the functions of local government have ceased or the leadership has become incapacitated, the governor may declare the local state of disaster or emergency in order to qualify for state or federal funds (Ark. Code §12-75-102(d)).

Local states of disaster or emergency may be declared only by the principal executive officer of a political subdivision or the governor under §12-75-102(d). They may not be continued or renewed for more than 60 days except by or with the consent of the governing body. A declaration activates response recovery, aid and assistance aspects of local or interjurisdictional disaster emergency plans. The principal executive officer may suspend provisions of any local regulatory ordinances or regulations for up to 30 days if strict compliance would prevent, hinder, or delay necessary actions. No interjurisdictional agency or official may declare a local disaster emergency unless expressly authorized by the interjurisdictional agency agreement (Ark. Code §12-75-108).

Types of Assistance

State financial assistance, including individual and public assistance, is available upon declaration of a disaster emergency (Ark. Code §§ 12-75-102(d); 12-75-107(f); 12-75-108(b)).

Individuals may deduct any loss sustained during the year that is not compensated for by insurance or otherwise when computing net income. State assistance is limited to losses of property not connected with a trade or business arising from fires, storms, shipwrecks, other casualty, or theft. Any loss attributable to a presidentially declared disaster, at the election of the taxpayer, may be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred (Ark. Code §26-51-424(a-c)).

Response efforts under state, local, and interjurisdictional disaster emergency plans are triggered by a declaration of a disaster emergency (Ark. Code §§ 12-75-102(d); 12-75-107(f); 12-75-108(b)).

The governor and the executive officers or governing bodies of political subdivisions are directed to utilize services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and political subdivisions to the maximum extent practicable (Ark. Code §12-75-121).

In emergency situations the governor, county sheriff, or municipal police chief may authorize and request retired law enforcement officers, including game wardens, to perform law enforcement functions (Ark. Code §12-75-130).

See also "Funding."

Mutual Aid

The Interstate Civil Defense and Disaster Compact is codified (Ark. Code §12-76-101 to 102).

The Emergency Management Assistance Compact is codified (Ark. Code §12-49-401 to 402).

If a vulnerable area lies only partly within the state and includes territory in another state or states the governor may establish an interstate relationship, mutual aid, or an area organization for disaster (Ark. Code §12-75-117 (b)(1)). Jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact will consider any resulting agreements supplemental to the Compact (Ark. Code §12-75-117 (b)(2)). The governor may negotiate a special agreement for jurisdictions that have not enacted the compact (Ark. Code §12-75-117(b)(3)(A)). Agreements without sufficient authority must be submitted to the General Assembly for approval (Ark. Code §12-75-117 (b)(3)(B)).

The Interstate Environmental Compact is codified (Ark. Code §8-8-101 to 103).

Political subdivisions assisted by the department of emergency management that do not participate in interjurisdictional arrangements are encouraged to conclude suitable arrangements for furnishing mutual aid. The governor may require an interjurisdictional agreement or arrangement if the area involved and political subdivisions have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and the political subdivisions have not made provisions for mutual aid. Public safety communications centers coordinate and

dispatch public safety and governmental agencies from adjacent political subdivisions to consolidate resources and improve response. Resources for immediate aid are authorized through a *de facto* mutual aid agreement during a declared disaster. Reimbursement between dispatching and receiving jurisdictions is authorized (Ark. Code §12-75-119).

Funding

The Budget Stabilization Trust Fund is used to make transfers to the State Highway and Transportation Department Fund (up to \$1,000,000 in any one fiscal year) to provide the state's proportionate share of each declared emergency or major disaster as required by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq) (Ark. Code §19-5-501(b)(6)).

Within the Office of the Governor four funds separate from the governor's standard emergency fund are established—a disaster response fund (initially funded at \$1 million); a disaster recovery fund (\$3 million initial funding); a catastrophic loss fund (no initial funding identified); and a hazard mitigation fund (\$3 million). The statute specifies that \$1 million is to be derived from the disaster recovery fund for individual assistance, \$2 million from the disaster recovery fund for public assistance, \$2.25 million from the hazard mitigation fund mitigation assistance, \$1 million to defray the cost of immediate emergency response, and \$3.25 million from the the catastrophic loss fund for losses suffered by both individuals and public entities.

The disaster response fund may be increased at the discretion of the governor. Individual and public assistance funds may only be used in the event of a declared disaster. The emergency response fund may be used only to defray immediate costs associated with response activities by emergency forces of state and local governments and registered private nonprofit forces. Expenditures from the hazard mitigation fund must be made by executive order.

The director of emergency management must maintain a current hazard vulnerability analysis of key critical public facilities eligible for assistance under the hazard mitigation fund. Expenditures from the catastrophic loss fund may only be made during a federally declared disaster, or a disaster with a separate gubernatorial proclamation that catastrophic losses have been suffered by individuals, public entities or both (Ark. Code §12-75-114(c)).

Emergency Response Fund Act: The Act is administered by the director of the Department of Environmental Quality, who is authorized to purchase commodities or services necessary to deal with a release or a threatened release of hazardous substances and to reimburse costs incurred by the department. The statute outlines regulations and limitations on expenditures, penalties, and appeals (Ark. Code Title 8, Chapter 7, Subchapter 4). The statute establishes a trust fund to be known as the Emergency Response Fund to consist of all moneys received as gifts and donations to the fund, interest earnings, and penalties for water, air and environmental violations. The Emergency Response Fund is used to protect the public's health and safety and the environment and to provide emergency response capabilities from releases of hazardous substances. Collections exceeding \$150,000 are deposited in

the Hazardous Substance Remedial Action Trust Fund administered by the Department of Environmental Quality under Ark. Code § 8-7-501 et seq (Ark. Code §§ 8-7-410 and 19-5-929).

The Disaster Assistance Fund consists of moneys received from the Budget Stabilization Trust Fund, up to \$9.5 million per fiscal year, in amounts required for each declared emergency or major disaster. The chief fiscal officer of the state may authorize temporary loans from the Budget Stabilization Trust Fund to the Disaster Assistance Fund to make immediate payments to individuals, families, and public assistance grants for those eligible for federal assistance. Temporary loans must be repaid upon receipt of any federal funds for each declared emergency (Ark. Code § 19-5-1006).

Political subdivisions may make appropriations for the payment of expenses associated with the emergency services or natural disaster relief expenses of its local organization. The statute authorizes the acceptance of grants by the federal government or others for services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of emergency management (Ark. Code § 12-75-123).

The director of the Department of Finance and Administration may accept gifts to the state to fund the Arkansas Disaster Relief Program. Such gifts are to be deposited in the Disaster Relief Program Trust Fund. The statute provides for disaster relief income tax checkoffs to be listed on state income tax forms. The Department of Finance and Administration certifies quarterly the amount contributed to the program and the State Treasurer deducts from the Income Tax Withholding Fund the amount to be credited. (Ark. Code § 26-35-1101 to 1104)

The statute makes available money in the State Aid Road Fund to “disaster counties” to restore and repair county bridges or roads which are destroyed, or which have suffered extensive damage as a result of natural disasters. Together with county funds, necessary matching moneys are required to enable disaster counties to obtain federal disaster relief funds. A disaster county is qualified to receive state aid road funds and is eligible for ninety percent (90%) state aid. Not less than ten percent (10%) must be provided by county matching funds. Funds may also be used to match federal disaster relief funds (Ark. Code § 27-72-314).

Hazard Mitigation

The director of Department of Environmental Quality must respond to the release or threatened release of hazardous substances, and may enter any public or private property, unless the director is assured the person responsible will mitigate the hazard in timely fashion (Ark. Code § 8-7-408).

State agencies, including those charged with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards must make studies of means to reduce or avoid damage caused by possible disasters. The governor then makes recommendations to the General Assembly, local governments, and other appropriate public and private entities to facilitate measures for prevention or reduction of the harmful consequences of disasters. The governor

may request legislative action appropriate to mitigate the impact of disaster when necessary, and may suspend or modify building standards and land use controls pending action by the general assembly. The governor's action is subject to judicial review (Ark. Code §12-75-115).

Arkansas Earthquake Preparedness Act of 1989: The statute charges the Earthquake Preparedness Program, administered by the Arkansas Department of Emergency Management, with the responsibility for carrying out the earthquake preparedness program and requiring that all earthquake mitigation, preparedness, response, and recovery-related functions be coordinated with comparable functions of the federal government and other states. The statute created the state earthquake program to assess seismic risk and to train and educate state and local officials and citizens (Ark. Code §12-77-101 to 104).

All public structures must be designed and constructed to resist destructive forces when an earthquake occurs in the New Madrid Seismic Zone (Ark. Code §12-80-101 to 107).

Continuity of Government Operations

Emergency Interim Legislative Succession Act: The Act provides for emergency interim succession to the legislature. Members must designate emergency interim successors and specify the order of succession. The statute provides for a contingent designation method for emergency interim successors. Emergency interim successors must meet constitutional and statutory requirements, take the oath of office, and keep generally informed as to the duties, procedures, practices and current business of the General Assembly (Ark. Code §10-6-101 to 109).

In the event of an attack the governor must call the General Assembly into session within 90 days. The General Assembly automatically convenes if the governor fails to issue a call. Limitations on session length and the subjects that may be acted upon are suspended (Ark. Code §10-6-110). In the event of an attack, or when an attack may be imminent, the governor may change the place of session to any place within or without the state, whichever he deems safer and convenient (Ark. Code §10-6-111). Quorum requirements are suspended and proportional voting requirements are amended (Ark. Code §10-6-113). The authority of emergency interim successors expires two years following the inception of an attack. The governor, by proclamation, or the General Assembly, by concurrent resolution, may extend or restore authority or the operation of any provisions when necessary, for up to one year (Ark. Code §10-6-115).

When, due to an enemy attack or an anticipated attack, it becomes imprudent or impossible to conduct state government at its regular location, the governor may declare an emergency temporary location of government within or without the state. This location remains the seat of government until the General Assembly, by law, establishes a new location, or until the governor declares the emergency has ended (Ark. Code §25-1-101).

When, due to an enemy attack or an anticipated attack, it becomes imprudent or impossible to conduct local government at its regular location, the governing body of each local jurisdiction may be called to establish an emergency temporary location of government within or without the state (Ark. Code §14-14-308).

Emergency Interim Executive and Judicial Succession Act: The Act provides for additional successors to the governor if the successors provided for constitutionally are unable to assume the position. The statute authorizes state officers to designate emergency interim successors and specifies their order of succession. The governing bodies of cities, towns, villages, townships, and counties are authorized to provide for emergency interim successors to offices. Officers of political subdivisions and school, fire, power, and drainage districts designate deputies or emergency interim successors or any combination and specify their order of succession. The governor must designate “special emergency justices” for each member of the supreme court, and the chief justice of the supreme court must designate the same for all other courts of record and must specify the order of their succession. The judge of the circuit court designates at least three special emergency judges for courts not of record within that circuit, and specifies their order of succession. Emergency judges are required to take the oath of office. Officials authorized to act as the governor, emergency interim successors, and special emergency judges are empowered to discharge the duties of an office only after an attack upon the United States. The General Assembly, by concurrent resolution, may terminate the authority of emergency interim successors and special emergency judges at any time (Ark. Code §21-1-301 to 311).

The line of succession for the governor is the president of the senate, then the speaker of the house (Ark. Constitution Article 6, Sections 12 and 13).

Other

Arkansas Hazardous and Toxic Materials Emergency Notification Act: The Act creates within the Department of Emergency Management a system to notify local, state, and federal emergency response and recovery forces, and those of other governmental and private sector entities, with a mandated responsibility for emergency services after the release of hazardous and toxic substances. Reporting requirements are specified (Ark. Code §12-79-101 to 106).

Each person must conduct himself, and manage property, to assist the state and not detract from efforts to manage disaster emergencies (Ark. Code §12-75-124(a)).

Compensation must be provided for services, or for the taking or use of property, to the extent a claimant’s customary obligation is exceeded or a claimant did not volunteer his services or property without compensation. An exception is provided for timber affected by flooding or to provide a fire break. Compensation has to be provided for property only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered. Owners must file a claim with the State Claims Commission (Ark. Code §12-75-124).

Immunity is granted from civil liability to persons who voluntarily, with or without compensation, permit their property to be used as a public shelter during an actual, impending, mock, or practice attack. The same immunity is extended to persons who have voluntarily, and with or without compensation, granted the use of automotive vehicles, boats or similar equipment, or aircraft (Ark. Code §12-75-125).

Subversive activities against the government by emergency services workers are prohibited, and loyalty oaths and uniforms are required (Ark. Code §12-75-127).

Emergency service workers and volunteers are entitled to civil immunity except for willful misconduct, gross negligence, or bad faith (Ark. Code § 12-75-128).

Qualified emergency services workers and volunteer workers are deemed local government or state employees and are eligible for workers' compensation and death benefits in like manner as regular local government or state employees. Weekly compensation benefits for emergency services volunteer workers are to be calculated based upon the wages received from their regular or usual employments, the same as a regular local or state employee, with respect to injury, disability, or death (Ark. Code §12-75-129).

The Department of Emergency Management is authorized to provide a 5.5% salary increase to certain employees exposed to hazardous or disastrous conditions for each full pay period of 80 hours worked in a job which requires the provision of on-site emergency disaster relief services in cases of wartime, man-made, or natural disasters. Pay rates are specified (Ark. Code §12-75-131).

Under the Disaster Service Volunteer Leave Act, employees of state agencies or state-supported colleges trained and certified as disaster service volunteers by the American Red Cross may be granted leave from work with pay (with employer's consent) for not more than 15 working days in any calendar year to participate in specialized disaster relief. Loss of seniority, pay, annual leave, sick leave, compensatory time, offset time, or overtime wages is prohibited (Ark. Code §12-85-102).

The number of state employees and employees of state-supported colleges certified as disaster service volunteers is limited to 100 participants at any one time. Eligibility list must be maintained, reports and guidelines are specified (Ark. Code §12-85-103).

The state Office of Emergency Services was renamed the Arkansas Department of Emergency Management in 1999 (Ark. Code §29-20-108).

Key Terms

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

| Term | Citation |
|--|--|
| Accredited local emergency services organization | Ark. Code §12-75-103(14) |
| Attack | Ark. Code §§10-6-103, 21-1-303(4) |
| Certified disaster service volunteer | Ark. Code §12-85-101 (1) |
| Disaster | Ark. Code §§12-85-101(2), 12-75-103(2) |
| Emergency interim successor | Ark. Code § 21-1-303(2) |
| Emergency management | Ark. Code §§12-75-103(1), 12-84-103(1) |
| Emergency management requirements | Ark. Code §12-75-103(21) |
| Emergency management standards | Ark. Code §12-75-103(20) |
| Emergency Volunteer Reserve Cadre | Ark. Code §12-83-103(2) |
| Established local office of emergency services | Ark. Code §12-75-103(18) |
| Hazard mitigation assistance | Ark. Code §12-75-103(17) |
| Hazardous materials | Ark. Code §8-7-101(a)(2) |
| Hazardous and toxic materials | Ark. Code §§12-79-103(3), 12-84-103(2) |
| HAZMAT | Ark. Code §12-79-103(4) |
| Individual assistance | Ark. Code §12-75-103(15) |
| Interjurisdictional agreement | Ark. Code §12-75-103(19) |
| Local emergency planning committee | Ark. Code §12-84-103(3) |
| Local organization for emergency services | Ark. Code §12-75-103(4) |
| Major emergency | Ark. Code §12-75-103(3) |
| Mobile support unit | Ark. Code §12-75-103(5) |

| Term | Citation |
|--|--------------------------|
| Operational control | Ark. Code §12-75-103(7) |
| Public assistance | Ark. Code §12-75-103(16) |
| Public safety agency | Ark. Code §12-75-103(11) |
| Public safety officer | Ark. Code §12-75-103(12) |
| Qualified emergency services worker | Ark. Code §12-75-103(13) |
| Response assistance | Ark. Code §12-75-103(22) |
| Specialized disaster relief | Ark. Code §12-85-101(3) |
| State department/agency liaison office | Ark. Code §12-75-103(6) |

For Further Research

The citations noted above and other elements of the state code for Arkansas may be searched at: [<http://www.arkleg.state.ar.us/NXT/gateway.dll?f=templates&fn=default.htm&vid=blr:code>]