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Montana Emergency Management and Homeland Security Authorities Summarized

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Montana Emergency Management and Homeland Security Authorities Summarized

Summary

Montana's Disaster and Emergency Services statutes include authorities related to intergovernmental cooperation, planning, management, services and the Response to Hazardous Materials Incidents Act. The governor oversees all emergency and disaster operations and issues disaster or emergency declarations. Two mutual aid compacts, the Emergency Management Assistance Compact and the Interstate Emergency Services Act, allow local governmental entities to enter into mutual aid agreements with like entities from other states. Montana statutes also contain an intergovernmental stipulation that authorizes the governor to enter into mutual aid arrangements with Canadian provinces. Succession of power statutes delineate individuals responsible for continuity of government, as well as succession procedures for local governments and the relocation of the seat of government.

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. This report will be updated as developments warrant.

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Montana Emergency Management and Homeland Security Authorities Summarized

Entities with Key Responsibilities

Governor: The governor is authorized to suspend provisions of regulatory statutes if strict compliance would prevent action to cope with an emergency or disaster; direct evacuation of populations from emergency or disaster areas; control ingress and egress to and from an incident or emergency or disaster area; and issue executive orders, proclamations or regulations declaring or terminating a state of emergency or disaster (Mont. Code Ann. §10-3-104). During a state of emergency or disaster, the governor is commander-in-chief of the militia and all other forces that are available for emergency or disaster duty (Mont. Code Ann. §10-3-305). The governor is authorized to expend funds and incur liabilities and expenses (Mont. Code Ann. §10-3-310). Also, the governor exercises general direction and control of emergency resources management and all entities established under the emergency resource management plan; makes, amends, and rescinds orders and cooperates with federal government, other states, and private agencies for the management of resources (Mont. Code Ann. §10-3-503).

Department of military affairs: The department, through the Division of Disaster and Emergency Services, is responsible to the governor for carrying out the planning and program for disaster and emergency services (Mont. Code Ann. §10-3-105).

Division of Disaster and Emergency Services: The division is authorized to: prepare and maintain a comprehensive plan and program for disaster and emergency services, which must be coordinated with plans developed by the federal government, other states, political subdivisions and Canada; coordinate preparation of plans and programs with political subdivisions; coordinate disaster and emergency prevention and preparedness activities of all state departments; provide advice and assistance to political subdivisions about their disaster and emergency services response; make recommendations on forming interjurisdictional disaster and emergency services areas if individual political subdivisions cannot establish a local program due to funding and staffing limitations; survey industries, resources, facilities; review local and interjurisdictional plans and programs; develop mutual aid plans between federal government, other states, Canada and political subdivisions; make arrangements to use private facilities, services and property (with compensation); institute training and public information programs; direct disaster response, recovery and preparation activities; prepare executive orders for the governor; and maintain liaison with other emergency management organizations (Mont. Code Ann. §10-3-105).

Principal executive officer: The principal executive officers of local governments are authorized to direct and compel the evacuation of all or part of the population from an emergency or disaster area within a political subdivision to preserve life or provide disaster mitigation, response and recovery assistance. The officer is authorized to control ingress and egress to and from the area (Mont. Code Ann. §10-3-406).

Local and interjurisdictional emergency and disaster agencies and services: Each political subdivision designates an agency responsible for emergency and disaster prevention and preparedness and the coordination of response and recovery activities. Subdivisions receive assistance from the division for prevention, preparedness, response and recovery efforts. They must adhere to the state disaster and emergency plan and program; and must report to the division on providing emergency and disaster services (Mont. Code Ann. §10-3-201).

State Emergency Response Commission: The commission advises, consults, cooperates and enters into agreements with state agencies and the federal government on emergency response; collects and disseminates information on emergency response; accepts and administers grants, gifts, or other emergency response funds to the state; and prepares, implements and updates a plan that coordinates state and local emergency authorities (Mont. Code Ann. §10-3-1204).

Local Emergency Response Authorities: The governing body of each incorporated city and county must designate a local authority, develop an incident management system, and identify an incident commander. If an incident occurs in an area without a local authority, the presiding officer of board of county commissioners must be the authority (Mont. Code Ann. §10-3-1209).

Preparedness

The state disaster and emergency plan and program may provide for prevention and minimization of injury and damage from disaster; prompt and effective disaster emergency relief; identification of areas vulnerable to disasters; recommendations of preventive and preparedness measures to eliminate or reduce disasters and their impact; a chain of command; and coordination of federal, state, local disaster activities. The division is required to seek advice and assistance from local government, business, labor, industry, agriculture, civil groups in developing the plan and program (Mont. Code Ann. §10-3-301).

Local and interjurisdictional disaster and emergency plans prepared by political subdivisions are eligible to receive state funds. Plans must identify emergency responsibilities of agencies and officials, chain of command, evacuation authority, and other factors (Mont. Code Ann. §10-3-401).

The division coordinates emergency communications and assists political subdivisions in developing telecommunications systems complementary to the statewide network (Mont. Code Ann. §10-3-106).

The Department of Military Affairs cooperates in formulating plans for the rapid and safe movement of national defense units on highways, coordinate with departments of transportation and justice, and seek the cooperation of political subdivisions (Mont. Code Ann. §10-3-107).

The state emergency resource management plan must include emergency organization and emergency administrative policies and procedures to conserve, allocate, distribute and use essential resources available to the state following an emergency (Mont. Code Ann. §10-3-504).

Declaration Procedures

The governor's declaration of the existence of a state of emergency by executive order or proclamation activates the emergency response and disaster preparation component of the state disaster and emergency plan and program and authorizes the use of forces for the distribution of supplies, equipment and materials, for a maximum period of 20 days unless continuing conditions exist or a presidential declaration or legislative joint resolution affirms that continuing conditions exist (Mont. Code Ann. §10-3-302).

The governor declares a state of disaster by executive order or proclamation to activate the disaster response and recovery components of the disaster and emergency plan and authorize resource distribution for a maximum period of 30 days unless a presidential declaration or legislative joint resolution affirms that continuing conditions exist. The governor must terminate a declaration when the emergency or disaster has passed, or conditions no longer exist, or the legislature terminates the declaration by joint resolution (Mont. Code Ann. §10-3-303).

All executive orders or proclamations declaring and terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and conditions that resulted in the declaration or termination of the emergency (Mont. Code Ann. §1-3-104(3)).

The statute requires prompt dissemination of an executive order or proclamation to bring the public's attention to the matter and prompt filing of the order or proclamation (Mont. Code Ann. § 10-3-304).

At the request of a local governing body the governor may issue an executive order and activate disaster and emergency plan pertaining to incident response. The governor is authorized to spend \$10,000 maximum per incident, not to exceed \$100,000 per biennium (Mont. Code Ann. §10-3-310).

The governor is to declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. If the legislature is not in session the governor must convene a special session within 45 days. The governor may issue, amend, or enforce orders to control rationing, price fixing, distribution of food, clothing, commodities, prevention of waste, communications, power production, transportation, labor supply, education, welfare, childcare, and other civil needs. The governor's proclamation and orders must be filed with the secretary of state and county clerk. The governor's power is terminated by a joint resolution of the

legislature or a presidential or congressional declaration terminating the emergency. The statute provides for a maximum period of six months for each declaration, with renewal possible only by joint resolution of the legislature (Mont. Code Ann. §10-3-505). The governor's declaration is subject to judicial inquiry by the state supreme court (Mont. Code Ann. §10-3-506).

The principal executive officer of a subdivision may issue an emergency proclamation or disaster declaration, both of which terminate when the emergency no longer exists (Mont. Code Ann. §10-3-402, 403). The proclamation or declaration must indicate the nature of an emergency or disaster, the areas threatened, conditions resulting in proclamation or termination, and must be disseminated to the general public and filed with division and local recording office (Mont. Code Ann. §10-3-404).

Types of Assistance

When an emergency or disaster has been declared the governor may approve incurring liabilities and expenses from the general fund to meet contingencies and pay for damage to state or political subdivision property when failure to make repairs would affect public health and safety. In order to approve expenditures, political subdivisions must have exhausted all emergency levies, and the emergency must be found to be beyond their financial capability, or federal funds must require a match from the state or political subdivisions for disaster assistance. No reimbursement is made by the state if a political subdivision failed to meet national flood insurance program requirements (Mont. Code Ann. §10-3-311).

When an emergency or disaster is declared, the governor can expend \$12 million maximum per biennium from the general fund and \$500,000 maximum per biennium as a state match for a presidentially declared disaster (Mont. Code Ann. §§10-3-312, 10-3-313).

The governor may apply for community disaster loans for political subdivisions that suffer substantial loss of tax and other revenues resulting from an emergency or disaster and that demonstrate need for financial assistance for government functions. The loan maximum is 25% of a subdivision's annual operating budget. The governor is authorized to recommend canceling repayment. Proceeds from the loans are appropriated to the governor for disbursement of approved loans to applicant political subdivisions (Mont. Code Ann. §10-3-314).

Mutual Aid

The *Emergency Management Assistance Compact* is codified (Mont. Code Ann. §10-3-1001).

The *Interstate Emergency Services Mutual Aid Act* permits one or more fire protection services, emergency medical care providers, or local government subdivisions to enter into mutual aid agreements with like entities from other states (Mont. Code Ann. § 10-3-1101).

The division promotes mutual aid agreements among political subdivisions, fire departments, and public and private agencies. Local officials may assist the governor in negotiating with adjoining states and political subdivisions (Mont. Code Ann. §10-3-202).

The *Interstate Mutual Aid Compact* is codified (Mont. Code Ann. §10-3-207).

The governor is authorized to enter into a interstate mutual aid compact with any state where joint action meets common intergovernmental problems of emergency and disaster planning, prevention, response and recovery. The governor may enter into intergovernmental arrangements with neighboring provinces of Canada to exchange disaster and emergency services (Mont. Code Ann. § 10-3-204).

Funding

Whenever the federal government offers to the state or to any political subdivision services, equipment, supplies materials or funds in the form of gifts, grants, or loans for purposes of emergency or disaster services, the governor, or the executive officer of political subdivision, may accept the offer (Mont. Code Ann. §10-3-203).

Local governments must estimate emergency expenditures and levy emergency millage for purposes of taxation to cover such expenses, with limitations specified. Expenditures require the approval of the local levying body, with excess funds remaining in the emergency fund (Mont. Code Ann. §10-3-405).

Hazard Mitigation

No specific provisions, see “Preparedness.”

Continuity of Government Operations

The seat of state government is Helena, except during emergencies resulting from disaster or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution, only during the period of emergency that affects a particular office or government operation (Mont. Constitution Art. III § 2).

Following an enemy attack, if the governor, lieutenant governor, president pro tempore, and speaker of house are killed or are unable to serve, the senior member of the legislature shall act as governor and call the legislature into emergency session at a safe location within the state. Such a legislature meeting in joint session is to elect a governor. The statute establishes a procedure for seniority to determine who will serve as acting governor (Mont. Code Ann. §2-16-513).

The *Continuity of Government Act* sets out procedures for filling vacancies and ensuring the continuity of government after enemy attack (Mont. Code Ann. §10-3-601 et seq.). County commissioner board vacancies that occur during or following an enemy attack may be filled with appointments by other district judges if the judge

or judges of a judicial district with vacancies are not able to make the appointment (Mont. Code. Ann. § 10-3-603).

If members of a city or town council or commission are not available following an enemy attack, the board of county commissioners in which the city or town is located is authorized to appoint successors to act in place of the unavailable members (Mont. Code Ann. §10-3-604).

If the executive head of a city or town is unavailable following enemy attack, the members of a city or town council who are available shall choose the successor by majority vote (Mont. Code Ann. §10-3-605).

If, after an enemy attack, the legislature or any council, board or commission is unable to assemble a quorum, then available members shall constitute the body, and quorum requirements shall be suspended (Mont. Code Ann. §10-3-606).

If Helena cannot serve as seat of government, the statute authorizes a move to an alternate location within the state by proclamation of the governor and specifies factors to be considered. The alternate location serves as the seat of government until it is moved again by governor's proclamation or legislative action (Mont. Code Ann. §10-3-607).

The seat of local government may be moved following an enemy attack if, in the opinion of the political subdivision's governing body, it is unsuitable for use (Mont. Code. Ann. §10-3-608).

Statutory provisions regarding continuity of government become inoperative after the first legislature convenes after the emergency which caused the provisions to become operative (Mont. Code Ann. §10-3-609).

Other

In the event of emergency, a governing body may waive the second reading of ordinances. An ordinance passed in response to an emergency must include the facts of the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance remains effective upon passage and approval and remains effective for up to 90 days (Mont. Code Ann. §7-5-104).

The statute establishes immunity from liability for civil defense actions taken under specified conditions (Mont. Code Ann. §§10-3-111, 10-3-1210, 10-3-1217).

Political involvement of emergency management employees is prohibited, and a loyalty oath is required of the same (Mont. Code Ann. §10-3-112).

Key Terms

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

Terms	Citations
Civil defense	Mont. Code Ann. §10-3-103 (1)
Disaster	Mont. Code Ann. §10-3-103 (3)
Disaster and emergency services	Mont. Code Ann. §10-3-103 (4)
Duration of response	Mont. Code Ann. §10-3-1203 (3)
Emergency	Mont. Code Ann. §10-3-103 (6)
Enemy attack	Mont. Code Ann. §10-3-502 (2)
Emergency resources management plan	Mont. Code Ann. §10-3-502 (1)
Hazardous substance	Mont. Code Ann. §10-3-1203(6)
Hazardous material	Mont. Code Ann. §10-3-1203 (4)
Hazardous material incident response team	Mont. Code Ann. §10-3-1203 (5)
Incident	Mont. Code Ann. §§10-3-1203 (7), §10-3-103 (7)
Incident commander	Mont. Code Ann. §10-3-1203 (8)
Local emergency operations plan	Mont. Code Ann. §10-3-1203 (9)
Local emergency response authority	Mont. Code Ann. §10-3-1203 (10)
Mutual aid agreement	Mont. Code Ann. §10-3-1103 (4)
Orphaned hazardous material	Mont. Code Ann. §10-3-1203(11)
Party emergency service	Mont. Code Ann. §10-3-1103 (5)
Radioactive material	Mont. Code Ann. §10-3-1203(13)
State hazardous materials incident response team	Mont. Code Ann. §10-3-1203(14)
Temporary housing	Mont. Code Ann. §10-3-103(10)
Threat of release	Mont. Code Ann. §10-3-1203(15)

For Further Research

The citations noted above and other elements of the state code for Montana may be searched at: [http://leg.state.mt.us/css/mtcode_const/default.asp].