

## **CHAPTER 37-17.1 EMERGENCY SERVICES**

**37-17.1-01. Short title.** This chapter must be cited as the North Dakota Disaster Act of 1985.

**37-17.1-02. Purposes.** The purposes of this chapter are to:

1. Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or manmade disasters or emergencies, threats to homeland security, or hostile military or paramilitary action.
2. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters or emergencies.
3. Clarify the roles of the governor, state agencies, and local governments in prevention of, in mitigation of, preparation for, response to, and recovery from disasters or emergencies.
4. Authorize and provide for coordination of emergency management activities by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate.
5. Provide for a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates.

**37-17.1-02.1. Department of emergency services.** The department of emergency services consists of a division of state radio and a division of homeland security. The adjutant general is the director of the department. The adjutant general shall provide for shared administration of both divisions. The division of homeland security consists of the state emergency operations center section, the disaster recovery section, and the homeland security section. The adjutant general shall appoint a separate director of each division. A division director serves at the pleasure of the adjutant general. The adjutant general shall fix the compensation of a division director within limits of legislative appropriation.

**37-17.1-02.2. Advisory committee to department of emergency services.** The adjutant general shall create one or more advisory committees to the department of emergency services. An advisory committee may consist of not more than eleven members representing local and state interests in the department. Members must be appointed to four-year staggered terms. An advisory committee shall advise the department regarding collaboration with political subdivisions, and each member of an advisory committee shall report to the local interest each member represents concerning recommendations approved by the committee. Each member of the advisory committee is entitled to be paid sixty-two dollars and fifty cents per day for time spent in attendance at meetings and is entitled to be reimbursed for the member's actual and necessary expenses at the rates and in the manner provided by law for other state officers. The compensation and expenses must be paid out of department appropriations.

**37-17.1-03. Limitations.** Nothing in this chapter may:

1. Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.
2. Interfere with dissemination of news or comment on public affairs. Any communications facility or organization, including radio and television stations, wire services, and newspapers may be required to transmit or print public service

messages furnishing information or instructions in connection with a disaster or emergency situation.

3. Affect the jurisdiction or responsibilities of units of the armed forces of the United States or of this state, or of any personnel thereof, when on active duty. State and local emergency operational plans must place reliance upon the forces available for performance of functions related to disasters or emergencies.
4. Limit, modify, or abridge the authority of the governor to proclaim martial law, provide aid or assistance to civil authorities, or exercise any other powers vested in the governor under the Constitution of North Dakota, or statutes, common law, or sovereign powers of this state independent of, or in conjunction with, any provisions of this chapter.
5. Change or modify the responsibilities of the American National Red Cross as defined by the Congress of the United States in Public Law 58-4 [33 Stat. 599; 36 U.S.C. 1], as amended.

**37-17.1-04. Definitions.** As used in this chapter:

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision.
3. "Emergency" means any situation that is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to prevent, mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
5. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
6. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
7. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.

8. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.

**37-17.1-05. The governor and disasters or emergencies - Penalty.**

1. The governor is responsible to minimize or avert the adverse effects of a disaster or emergency.
2. Under this chapter, the governor may issue executive orders and proclamations, and amend or rescind them. Executive orders, proclamations, and regulations have the force of law.
3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the department of emergency services, the secretary of state, and the county or city auditor of the jurisdictions affected.
4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.
5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, the governor may:
  - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
  - b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.

- c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
  - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.
  - e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
  - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
  - g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
  - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.
  - i. Make provision for the availability and use of temporary emergency housing.
  - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
  - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.

**37-17.1-06. State division of homeland security.**

1. The division of homeland security must have professional, technical, secretarial, and clerical employees as necessary for the performance of its functions. The director of the division shall fix the compensation of the staff in conformity with state merit system regulations and may make such expenditures within the appropriations therefor, or from other funds made available to the director for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.
2. The division of homeland security shall prepare and maintain a state disaster plan and keep it current, which plan may include provisions for:
  - a. Averting or minimizing the injury and damage caused by disasters or emergencies.
  - b. Prompt and effective response to a disaster or emergency.
  - c. Emergency relief.
  - d. Identification of areas particularly vulnerable to a disaster or emergency.
  - e. Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other mitigation and preparedness measures.

- f. Assistance to local officials in developing and maintaining local and regional emergency management systems.
  - g. Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
  - h. Preparation and distribution of emergency management assistance program guidance to the appropriate state and local officials.
  - i. Organization of manpower and chains of command.
  - j. Coordination of federal, state, regional, and local emergency management activities.
  - k. Coordination of state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
  - l. Other necessary matters.
3. The division of homeland security shall provide technical assistance for the development and revision of local and regional disaster or emergency operations plans prepared under section 37-17.1-07.
  4. In preparing and revising state disaster or emergency plans, the division of homeland security shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and regional emergency management organizations, the division shall encourage them also to seek advice from these sources.
  5. State disaster or emergency plans or any parts thereof have the force of law upon implementation by the governor.
  6. The division of homeland security, in coordination with lead and support agencies, shall:
    - a. Coordinate the procurement of supplies, materials, and equipment during disaster or emergency operations.
    - b. Provide guidance and standards for local and regional disaster or emergency operational plans.
    - c. Periodically review local and regional disaster or emergency operational plans.
    - d. Coordinate state or state and federal assistance to local and regional emergency management organizations.
    - e. Establish and operate or assist local and regional emergency management organizations to establish and operate training programs and programs for emergency public information.
    - f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and will be released only in aggregate form.

- g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
- h. Establish access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate and may enter agreements with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery.
- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization.
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

**37-17.1-07. Local or regional emergency management organizations.**

- 1. All areas of the state are within the jurisdiction of and must be served by the division of homeland security and by a local or regional emergency management organization.
- 2. Each county shall maintain an emergency management organization that serves the entire county or must be a member of a regional emergency management organization that serves more than one county.
- 3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. If a city provides an emergency management organization of its own, the city and county shall coordinate the city and county emergency plans.
- 4. The mayor or the president of the board of city commissioners in a city with an emergency management organization and the chairman of the board of county commissioners shall notify the division of homeland security of the manner in which the city and the county are providing or securing emergency management activities, identify each individual who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.
- 5. Each local or regional emergency management organization shall prepare and keep current a local disaster or emergency operational plan for its area.
- 6. Each local or regional emergency management organization shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the disaster or emergency responsibilities of their local agencies and officials.

**37-17.1-07.1. Hazardous chemicals preparedness and response program.**

1. Program components.
  - a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
  - b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
  - c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
  - d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.
2. Establishment of funds.
  - a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the legislative assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
  - b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
  - c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is four hundred seventy-five dollars. The division of homeland security shall transfer to the county hazardous chemicals

preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

- d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
  - e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response programs to include training, exercising, equipment, response, and salaries.
  - f. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.
  - g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
3.
    - a. A person who causes a release, as defined in 40 CFR 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in 40 CFR 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.
    - b. In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.
  4.
    - a. A person who violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], or fails to pay a state hazardous chemicals fee is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.
    - b. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous chemicals response personnel attempting to perform duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political

subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. If the director of the division of homeland security determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.

**37-17.1-08. Establishment of interjurisdictional disaster planning and service areas.** Repealed by S.L. 1985, ch. 398, § 22.

**37-17.1-09. Authority to utilize existing services and facilities.** In carrying out the provisions of this chapter, the governor and the executive officers or governing bodies of the counties and cities of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and of the counties and cities thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are required and directed to cooperate with and extend such reasonable services and facilities to the governor and to the emergency management organizations upon request.

**37-17.1-10. Local disasters or emergencies.**

1. Unless so declared in accordance with the provisions of subsection 4 of section 37-17.1-05, a local disaster or emergency may be declared only by the principal executive officer of the county or city. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the county or city. Any order or proclamation declaring a local disaster or emergency must be given prompt and general publicity and must be filed promptly with the county or city auditor.
2. The effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of any and all applicable local disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder.

**37-17.1-10.1. Burn ban - Penalty.** An order or proclamation under section 37-17.1-10 which includes a ban on open burning may provide for a penalty for a violation of the ban through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ban established by a local order or proclamation under this section is guilty of a class B misdemeanor.

**37-17.1-11. Disaster or emergency mitigation.**

1. In addition to disaster or emergency mitigation measures as included in the state and local disaster or emergency operational plans, the governor shall consider, on a continuing basis, steps that could be taken to mitigate or reduce the harmful consequences of disasters or emergencies. At the governor's direction, and pursuant to any other authority and capability they have, state agencies charged with responsibilities in connection with floodplain 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, shall make studies of disaster or emergency mitigation-related matters. The governor, from time to time, shall make recommendations to the legislative assembly, local governments, and other appropriate public and private entities as may facilitate measures for mitigation or reduction of the harmful consequences of disasters or emergencies.

2. The North Dakota state engineer and the water commission, in conjunction with the division of homeland security, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection must concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences thereof.
3. If the division of homeland security determines, in coordination with lead and support agencies, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster or emergency; and changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.
4. The governor, at the same time that the governor makes recommendations pursuant to subsection 3, may suspend the standard or control which the governor finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control remains in effect until rejected by concurrent resolution of both houses of the legislative assembly or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation must be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review in accordance with chapter 28-32 but is not subject to temporary stay pending litigation.

**37-17.1-12. Compensation - Entitlement - Time - Amount.**

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively prevent, mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered that person's services or property without compensation.
2. Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property must be only if the property was commandeered or otherwise used in management of a disaster or emergency declared by the governor and its use or destruction was ordered by the governor.
4. Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim

for compensation must be received by the office of management and budget within one year after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.

5. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

**37-17.1-13. Communications.** The department of emergency services shall ascertain what means exist for rapid and efficient communications in times of a disaster or emergency. The department shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state and federal telecommunications or other communications system or network, including the military installations. In studying the character and feasibility of any system or its several parts, the department shall evaluate the possibility of multipurpose use thereof for general state and local governmental purposes. The department shall make recommendations to the governor as appropriate.

**37-17.1-14. Mutual aid.**

1. Counties and cities must be encouraged and assisted by the division of homeland security to conclude suitable arrangements for furnishing mutual aid in emergency management. The arrangements must include provision of aid by persons and units in public employ.
2. In review of local disaster or emergency plans, the division of homeland security shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

**37-17.1-14.1. Mutual aid - Cooperation.**

1. The division of homeland security shall encourage and assist political subdivisions to enter mutual aid agreements with other public and private agencies within the state for reciprocal aid and assistance in responding to and recovering from actual and potential disasters or emergencies.
2. In reviewing emergency operations plans and programs of political subdivisions, the division of homeland security shall consider whether the plans and programs contain adequate provisions for mutual aid.
3. Local emergency management organizations may assist in negotiation of mutual aid agreements between the governor and an adjoining state or province or a political subdivision of an adjoining state or province and shall carry out arrangements of any such agreements relating to the local political subdivision.

**37-17.1-14.2. Interstate mutual aid agreements.**

1. This state may enter into an interstate mutual aid agreement or compact with any state that has enacted or shall enact the compact substantially in the form contained in section 37-17.1-14.5.
2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster prevention, preparedness, mitigation, response, and recovery.

3. The governor may deny the request of a requesting state as the governor determines necessary.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency prevention, preparedness, response, recovery, or mitigation must be reviewed and made current every four years.
5. If a person holds a license, certificate, or other permit issued by any state or political subdivision evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster, and this state shall give due recognition to the license, certificate, or other permit.
6. When considered of mutual benefit, the governor may, subject to the limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster or emergency resources.

**37-17.1-14.3. Authority to join interstate mutual aid agreements - Interstate compacts.**

1. The governor, in the name of the state, may join with other states in the interstate mutual aid agreement or compact.
2. The governor may negotiate and execute such supplemental agreements as may be necessary and proper to fully carry out the terms and provisions of the interstate mutual aid agreement or compact as set forth in section 37-17.1-14.5.

**37-17.1-14.4. Text of the mutual aid agreement or compact.** Repealed by S.L. 1997, ch. 315, § 5.

**37-17.1-14.5. Text of the mutual aid agreement or compact.** The interstate mutual aid agreement or compact referred to in sections 37-17.1-14.2 and 37-17.1-14.3 reads as follows:

INTERSTATE MUTUAL AID AGREEMENT OR COMPACT

Article I - Purpose and Authorities

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, manmade disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact or by mutual agreement between states.

Article II - General Implementation

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in

managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

#### Article III - Party State Responsibilities

1. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:
  - a. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, manmade disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.
  - b. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.
  - c. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
  - d. Assist in warning communities adjacent to or crossing the state boundaries.
  - e. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.
  - f. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.
  - g. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.
2. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:
  - a. A description of the emergency service function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building

inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

- b. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.
  - c. The specific place and time for staging of the assisting party's response and a point of contact at that location.
3. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

#### Article IV - Limitations

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

#### Article V - Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

#### Article VI - Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

#### Article VII - Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception

of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

#### Article VIII - Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

#### Article IX - Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expenses incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

#### Article X - Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

#### Article XI - Implementation

1. This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.
2. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.
3. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

#### Article XII - Validity

This Act shall be construed to effectuate the purposes stated in article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII - Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under section 1385 of title 18, United States Code.

**37-17.1-15. Weather modification.** The division of homeland security shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the division determines that precipitation resulting from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, the division shall direct the officer or agency empowered to issue permits for weather modification operations to suspend the issuance of the permits. No permits may be issued until the division informs the officer or agency that the danger has passed.

**37-17.1-16. Immunity and exemption.**

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. The state, a county or city, any disaster or emergency worker, or any other person providing goods or services during an emergency if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity, complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is not liable for the death of or injury to persons, or for damage to property, as a result of any such activity. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, or under workforce safety and insurance law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.
2. Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized disaster or emergency worker who, in the course of performing the worker's duties, practices the professional, mechanical, or other skill during a disaster or emergency.
3. This section does not affect any other provision of law that may provide immunity to a person that is providing volunteer assistance.

**37-17.1-17. No private liability.** Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of emergency management activities during an actual, impending, mock or practice disaster or emergency, is, together with their successors in interest, if any, not civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises or for loss of, or damage to, the property of such person.

**37-17.1-18. Appropriations and authority to accept services, gifts, grants, and loans.**

1. Each county or city has the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such county or city for the payment of expenses of its local emergency management organization.
2. Whenever the federal government or any agency or officer thereof or any person, firm, corporation, or limited liability company offers to the state, or through the state to any county or city thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the state, acting through the governor or the emergency management director, or such county or city, acting through its executive officer or governing body, may accept such offer and may authorize any officer of the state, county, or city, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such county or city, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

**37-17.1-18.1. Crisis relocation plans - Public expenditures prohibited.** The expenditure of or authorization for an expenditure by any official or employee of the state or any political subdivision of the state of any funds, whether derived from the state, federal government, or any other source, for the purpose of planning, developing, or implementing any type of crisis relocation program or plan, the primary purpose of which is to effect a mass evacuation of this state's civilian population in the event of the threat of nuclear war, is prohibited. This section does not prohibit the use of state, federal, or other funds for other disaster planning needs and activities as authorized by law.

**37-17.1-19. Temporary housing for disaster victims and site acquisition and preparation.** The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of temporary housing for disaster victims adversely affected by a disaster or emergency. The governor is authorized:

1. To receive temporary housing units to be occupied by disaster or emergency victims from any agency of the United States and to make such units available to any county or city of the state.
2. To assist any county or city of this state which is the site of temporary housing for disaster or emergency victims, to acquire and to prepare sites necessary for such temporary housing, and to "pass through" funds made available by any agency, public or private.

Any county or city of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster or emergency victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

The governor shall establish guidelines necessary to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

**37-17.1-20. Community disaster loans.** The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a presidentially declared "major disaster", a program of community disaster loans in those cases when communities are unable to meet or provide for their essential governmental functions. Upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a disaster and has demonstrated a need for financial assistance to perform its governmental functions, the governor may apply to the federal government, on behalf of the local government, for a loan and receive and disburse the proceeds of any approved loan to any applicant local government.

The governor may:

1. Determine the amount needed by any applicant local government to restore or resume its governmental functions and certify the same to the federal government. No application amount may exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the disaster occurs.
2. Recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, within three fiscal years following the disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a county or city.

**37-17.1-21. Debris and wreckage removal in disasters or emergencies.** The governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of debris and wreckage removal caused by a disaster. The governor is authorized:

1. Notwithstanding any other provision of law, through the use of state departments or agencies, or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety, or threaten public or private property, in any disaster or emergency declared by the governor.
2. To accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

Authority under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 may not be exercised, except upon state-owned lands, unless the affected local government, corporation, limited liability company, organization, or individual first presents an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against any claim arising from such removal.

Whenever the governor provides for clearance of debris or wreckage pursuant to subsection 1 or 2, employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

Except in cases of willful misconduct, gross negligence, or bad faith, any state employee or agent complying with orders of the governor and performing duties pursuant thereto under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 is not liable for death of or injury to persons or damage to property.

The governor shall establish guidelines to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

**37-17.1-22. Disaster or emergency response and recovery costs.** Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state response and recovery operations in accordance with an agreement with the federal government or in accordance with procedures established by the governor in the case of a state-declared disaster or emergency. Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or

emergency exists, and the commission immediately shall grant and direct the transfer to the department of the governor's designated representative of an amount equal to that certified in such application by the governor.

**37-17.1-23. Disaster or emergency recovery funding - Loan authorization.**

1. When approved by the emergency commission, the division of homeland security is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the division of homeland security shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the division shall submit a request to the emergency commission for:
  - a. Approval to make an application for a loan from the Bank of North Dakota;
  - b. Approval for additional personnel required to perform the anticipated recovery activities; and
  - c. Authority to spend additional state and federal funds for the recovery program.
2. If the request is acceptable, the emergency commission shall approve the request and issue a notice of its action to the division, Bank of North Dakota, and the office of management and budget. The division shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The emergency commission is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. If at the end of the biennium a balance exists on the loan, the emergency commission shall request the legislative assembly for a deficiency appropriation to repay the loan.

**37-17.1-24. Definitions.** Repealed by S.L. 2009, ch. 308, § 2.

**37-17.1-25. Intrastate mutual aid.** Repealed by S.L. 2009, ch. 308, § 2.

**37-17.1-26. Intrastate mutual aid agreements.** The department of emergency services shall prepare and distribute to political subdivisions guidelines and model intrastate mutual aid agreements to provide a system for mutual assistance among political subdivisions in the prevention of, response to, and recovery from a local disaster or emergency. To access state funds for disaster response and recovery during a nonfederally declared disaster, counties and cities shall participate in intrastate mutual aid and shall take all necessary steps to ensure eligibility for federal funds.

**37-17.1-27. State disaster relief fund - Creation - Uses.** There is created in the state treasury a state disaster relief fund. Moneys in the fund are to be used subject to legislative appropriations for providing funding for defraying the expenses of state disasters, including providing funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Any interest or other fund earnings must be deposited in the fund.