

SYMPOSIUM: Interstate Cooperation



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Homeland Security: Interstate Mutual Aid

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Interstate cooperation is not a new concept for the emergency management field. But in a modern age of new threats and hazards, the Emergency Management Assistance Compact has evolved to become a valuable tool in the ability of states to help one another during times of disaster.

The hurricane season of 2004 provided a stark reminder to the Gulf States, and indeed the nation, that terrorism is just one of many hazards that can affect life in America. The Gulf Region is accustomed to the threat of adverse weather, and it is one of the best prepared areas for the threat of hurricanes. Yet no one could have predicted the likelihood of four hurricanes hitting the region in the span of seven weeks. The appearance of Hurricanes Frances, Ivan and Jeanne in September 2004 compounded an already difficult situation created by widespread damage from Hurricane Charley, which hit the Florida coastline in late August.

The size and scope of the response and recovery efforts for these hurricanes have already broken records. According to the Federal Emergency Management Agency (FEMA), the response to all four hurricanes is the largest mobilization of FEMA resources—both human and material—and the most significant provision of disaster aid in the agency's history.¹ The hurricanes of the 2004 season have affected no less than 13 states and three U.S. territories. The hardest hit states were Alabama and Florida, which sustained multiple direct hits.

The impact of natural disasters can affect jurisdictions irrespective of state lines. With the help of the Emergency Management Assistance Compact (EMAC), a cooperative interstate mutual aid agreement, the rapid response to such disasters is also not constrained by geographic or political boundaries.

Established in 1996, EMAC is a powerful interstate mutual aid compact that serves

as the legal mechanism to allow states to share resources during times of disaster. The compact was implemented on a major scale in response to the Florida Wildfires Disaster and Hurricane Georges in 1998, Hurricane Floyd in 1999, the New York World Trade Center attacks in 2001, Hurricane Lili in 2002, and the Space Shuttle Columbia disaster, Rhode Island club fire, and Hurricane Isabel in 2003.

The History of Interstate Cooperation for Disaster Management

EMAC was originally conceived following Hurricane Andrew, which devastated south Florida in 1992. Florida's then Gov. Lawton Chiles, and several other southern governors wanted to more effectively assist each other in response to disasters of this magnitude. Since then, 48 states, two territories and the District of Columbia have joined EMAC by passing the necessary language in their legislatures.

In the field of emergency management, state to state assistance and cooperation is not a new concept. The U.S. Constitution (Article 1) specifically forbids states from entering compacts with each other without the consent of Congress. In 1950, at the beginning of the Cold War Era, Congress approved the Federal Civil Defense Act of 1950, title II, § 201(g), giving broad authority to states to enter compacts for the purposes of civil defense—the precursor of the emergency management discipline.² This compact however, stopped short of mandating training and the development of standard operating procedures to guide the states in implementing the agreement consistently.

With the end of the Cold War, the com-

compact fell into disuse and lagged behind in its applicability to new, modern threats. But the value of mutual aid was never lost among states and in 1967 the Southern and Midwestern Governors' conferences approved the National Guard Mutual Aid Assistance Compact, an agreement similar to the Civil Defense Act but specifically allowing the sharing of National Guard assets. However, this compact never achieved Congressional approval.³

Following the events of Hurricane Andrew and at the prompting of the Southern Governors' Association, the interstate compact now known as EMAC was born. The compact was originally titled the Southern Regional Emergency Management Assistance Compact (SREMAC) and was intended to be exclusive to the southern region, but in 1994 the southern governors voted to open membership to all states. Again recognizing the benefits of state to state assistance for the purposes of disaster response, Congress ratified EMAC in 1996.

How does EMAC work?

EMAC is a legally binding agreement that addresses four critical issues for states that may otherwise severely limit or exclude the ability of states to share resources: liability protections, workers' compensation coverage, reimbursement of expenses and the portability of licenses.

- **Liability:** For the purposes of tort liability and immunity, personnel responding to a disaster in another state under EMAC are considered agents of the requesting state and therefore are protected through its liability provisions as long as the employee is acting in good faith.

- **Workers' Compensation:** Complicated legal issues can arise when government employees are injured on the job, especially when those injuries are sustained in another jurisdiction. EMAC makes it clear that employees are covered under the protections and injury benefits of the jurisdiction that employs them.
- **Reimbursement:** Although some states may decide not to charge for personnel services or equipment rendered in a mutual aid response, under EMAC the requesting state commits to reimburse for agreed upon expenses. These expenses are documented and approved prior to the deployment of the resource.
- **Licenses and Permits:** The recognition of licenses and permits across political subdivisions is important, particularly for public health and medical personnel who may respond to a jurisdiction with different medical licensing authorities. EMAC provides for the legal recognition of licenses and permits by other states unless otherwise excluded by executive order. It is therefore incumbent upon the EMAC member states to examine the differences in their licensing authorities and scope of practice before mutual aid is promised.

Because these provisions are agreed to upon entry into EMAC through legislative approval, states can focus on the operation and not on the multitude of legal issues surrounding the use of personnel. The language is broad enough to apply to all disciplines, thus allowing the deployment of medical personnel, law enforcement officers, emergency managers, transportation officials, etc.

Even city and county personnel can be deployed to a jurisdiction in another state, as long as their home state has the appropriate agreements in place to designate them as an "agent of the state." The ability to deploy local personnel to serve as back-up support for city and county emergency management staff was a significant asset in the recent response to Florida and Alabama.

The compact is administered by the National Emergency Management Association, located in Lexington, Kentucky.

Because the compact is a collaborative effort among and for states, it is governed by an Executive Task Force of member states who make decisions about the application and operations of the compact. For 2004-2005, the state of New York is the chair of EMAC. The chair state serves as the EMAC National Coordinating Group which works daily to facilitate the transition of resources, to ensure the compact is executed in a manner consistent with the standard operating procedures, and to address issues brought forth by the participating parties.

The Future of Interstate Mutual Aid

Today, interstate mutual aid is a cornerstone in the homeland security doctrine and policies developed by the federal government. In July 2002, the Bush administration released the National Strategy for Homeland Security, which advocated that state and local governments sign mutual aid agreements to "facilitate cooperation with their neighbors in time of emergency."⁴

The National Incident Management System, the management plan issued by the Department of Homeland Security (DHS) for the multi-jurisdictional and multi-agency response to domestic incidents, emphasizes mutual aid as an indispensable tool for the swift and coordinated response to disasters of all kinds.

In addition, EMAC recently received grant funding from DHS to conduct activities related to mutual aid, including the development of a model intrastate mutual aid agreement for use by local jurisdictions, the enhancement of Web-based support services, and the establishment of a standardized, field deliverable EMAC training course.

The Embodiment of "States Helping States"

The value of interstate cooperation in disaster response is best demonstrated in terms of the resources that are provided and in the testimonials of its beneficiaries. During Hurricane Isabel in 2003, approximately 120 personnel from no less than 12 states responded to requests for assistance before and after the storm hit, to conduct damage assessments, to serve as backup

staff to state and local emergency operations centers, to assist stricken victims in obtaining aid, and to supply specialized rescue services and equipment.

To assist in integrating resources into the requesting state's operations, personnel are matched with the needs as indicated by the requesting state. Because EMAC also serves as a facilitating mechanism for the deployment and demobilization of people and equipment, the affected states do not have to dedicate significant manpower to ensuring the resources are seamlessly integrated into the workforce.

For the response to Hurricanes Charley, Frances, Ivan and Jeanne, more than 775 emergency responders and millions of dollars worth of equipment from around the country were mobilized to assist Alabama and Florida in managing donations, providing shelter and care for hurricane victims, working with communities in their recovery efforts, facilitating the delivery of basic human services, coordinating logistics, transporting goods, and filling in for state and local emergency management staff who were stretched thin in the affected areas.

In addition, emergency management personnel from several states were deployed to the DHS National Emergency Operations Center in Washington, D.C. to facilitate mutual aid in tandem with federal disaster assistance efforts.

It is important to note that the request for assistance from other states through EMAC is not intrinsically tied to federal disaster assistance, and as such does not have a bearing on the determination for federal aid through a presidential declaration.⁵ As such, emergency assistance still operates on the precept of 1) deploying the most appropriate resource, 2) from a location closest to the disaster scene, 3) in the most expedient manner possible. The states are not required to collectively exhaust their resources before federal assistance is brought in. In addition, states only volunteer their resources when they are not needed for other current or anticipated disaster operations, and states can withdraw resources at any time.

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slightly broader terms: "Governors, unfortunately, are subject to all the ills that flesh it [sic] heir to."³

Alabama's alphabetical neighbor, by contrast, is in the same precarious situation as Illinois. Article III, Section 12 of the Alaska constitution declares, succinctly: "Whenever for a period of six months, a governor has been continuously absent from office or has been unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. *The procedure for determining absence and disability shall be prescribed by law.*" The brevity of the passage would be admirable, were it not for the fact that almost 50 years after Alaska attained statehood, there is still not legislative elaboration of procedure and or conditions. The state Legislative Affairs Agency in its guide to the constitution, wryly observes:

To avoid a tedious recitation of procedures similar to those found in the 25th Amendment to the U.S. Constitution, the drafters of the constitution assigned to the legislature responsibility for specifying how the office of governor could be declared vacant. The legislature has not yet done so, which may be unfortunate if the task became complicated by the circum-

stances of a particular situation warranting the use of this section.⁴

Conclusion

"Inability," whether strictly medical or understood more broadly, is ambiguous and subjective in a way that death, resignation and removal are not. Some states have neither substantive nor procedural rules controlling when a governor has become incapable of retaining office, and are plainly vulnerable to chaos. Those states that do have rules have, in many cases, passed a few trials. But the number of empirical data points is small, and it is not difficult to identify bothersome or problematic scenarios even in the states with detailed, modern constitutional and statutory provisions. Inability is rare, but it should nonetheless be a live issue. In the aftermath of September 11, the Continuity Commission has been exploring weaknesses and flaws in provisions for handling emergencies and crises in all branches of the federal government. Every state could profit from making similar assessments.

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²Thomas B. Littlewood, *Horner of Illinois*, (Evanston, IL: Northwestern University Press, 1969).

³*Official Proceedings of the Constitutional Convention of the State of Alabama, May 21st, 1901, to September 3rd, 1901*, Vol. 1 (Wetumpka, AL: Wetumpka Printing Co., Printers and Publishers, 1940).

⁴*Ibid.*

Bio

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The purpose of EMAC is to supplement the capabilities of a state to respond to and recover from disasters with the resources of another. As such, it leverages the assets of an entire nation to respond to a disaster, no matter how regional or isolated. The response to Hurricanes Charley, Frances, Ivan and Jeanne is the most expansive use of state to state mutual aid in the 12 year history of the compact.

Endnotes

¹Federal Emergency Management Agency, New Archives, 2004.

²*The Emergency Management Assistance Compact Guidebook and Standard Operating Procedures*, (Lexington, KY: The National Emergency Management Association, September 2003).

³*Ibid.*

⁴National Strategy for Homeland Security, (Office of Homeland Security, July 2002).

⁵Letter from James Lee Witt, Federal Emergency Management Agency, Dated February 23, 1996.

Bio

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