

TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS
 Territory of the Virgin Islands
 REGULAR/SPECIAL SESSION 20____
 ROLL CALL

Bill No. 23-0218

Date: _____

Short Title: To enact the Emergency Management Assistance Compact Act

LEGISLATIVE HISTORY

- (a) Introduced and sent to Committee on.....Date.....
- (b) Reported from Committee and sent to Rules on.....
- (c) Reported from Committee on Rules.....
- (d) Recalled from Committee by Special Order.....
- (e) Adopted on.....
- (f) Rejected on.....
- (g) Vetoed by Governor on.....
- (h) Reconsidered by Legislature and passed or rejected
over Governor's Veto on.....

MEMBERS	YEA	NAY	NOT VOTING	ABSENT
BENNERSON, Gregory A.	1			
BERRY, Lorraine L.	2			
BRYAN, Adelbert M.		1	1 (92)	
OLE, Donald "Ducks"	11		2 (92)	
DAVID, Roosevelt St. C.	3			
DONASTORG, Adlah "Foncie"	4			
GOLDEN, Violet Anne	5			
GOMEZ, Judy M.				1
GOODWIN, George E.	6			
HANSEN, Alicia "Chucky"	7			
JN. BAPTISTE, Norman			1 (92)	
JONES, David S.	8			
LIBURD, Almando "Rocky"	9			
PETRUS, Allie-Allison				2
RICHARDS Vargrave A.	10			

Certified true and correct

11 1 2.1 2
Mencia M. Pteuh
 CLERK

06/08/00 – REPORTED OUT TO THE FLOOR

06/01/00 – AMENDED AND REPORTED OUT TO THE COMMITTEE ON RULES

BILL NO. 23-0218

**Twenty-Third Legislature of the Virgin Islands
of the United States**

APRIL 4, 2000

To ratify the Emergency Management Assistance Compact Act and for other related purposes

PROPOSED BY:

Senator Vargrave A. Richards By Request of Governor

1 BE IT ENACTED by the Legislature of the Virgin Islands:

2 SECTION 1. The Legislature of the Virgin Islands hereby authorizes the
3 Governor of the Virgin Islands to enter into a compact on behalf of the United States
4 Virgin Islands with any other state or territory joining therein in the form set forth
5 in Section 2. of this Act.

6 SECTION 2. Title 23, Chapter 11, Virgin Islands Code is amended by
7 designating the existing language as “Subchapter I Civil Defense”, by renumbering
8
9
10

existing sections as “sections 1091 to 1096” and by adding a new “Subchapter II” to read as follows:

“Subchapter II Emergency Management Assistance Compact

§1101. Short title

This subchapter may be cited as the “Emergency Management Assistance Compact Act”

§ 1102. Purposes 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 U.S. 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(s), whether arising from natural disaster, technological hazard, man-made 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 states’ National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

§ 1103. 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 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 that 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.

§1104. Party state responsibilities

(a) 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 section. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) 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, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

(2) 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.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) 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.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes.

(b) 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

1 authorized representatives. Requests may be verbal or in writing. If verbal, the requests
2 shall be confirmed in writing within 30 days of the verbal request. Requests shall provide
3 the following information:

4 (1) A description of the emergency service function for which
5 assistance is needed, such as but not limited to fire services, law enforcement,
6 emergency medical, transportation, communications, public works and
7 engineering, building inspection, planning and information assistance, mass care,
8 resource support, health and medical services, and search and rescue.

9 (2) The amount and type of personnel, equipment, materials and
10 supplies needed, and a reasonable estimate of the length of time they will be
11 needed.

12 (3) The specific place and time for staging of the assisting party's
13 response and a point of contact at that location.

14 (c) There shall be frequent consultation between state officials who have
15 assigned emergency management responsibilities and other appropriate representatives of
16 the party states with affected jurisdictions and the United States Government, with free
17 exchange of information, plans, and resource records relating to emergency capabilities.

18 **Section 1105. Limitations**

19 Any party state requested to render mutual aid or conduct exercises and training
20 for mutual aid shall take such action as is necessary to provide and make available the
21 resources covered by this compact in accordance with the terms hereof; provided that it is
22 understood that the state rendering aid may withhold resources to the extent necessary to
23 provide reasonable protection for such state. Each party state shall afford to the
24
25
26

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

13
14 **§ 1106. Licenses and permits**

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

22 **§ 1107. Liability**

23 Officers or employees of a party state rendering aid in another state pursuant to
24 this compact shall be considered agents of the requesting state for tort liability and
25
26

1 immunity purposes; and no party state or its officers or employees rendering aid in
2 another state pursuant to this compact shall be liable on account of any act or omission in
3 good faith on the part of such forces while so engaged or on account of the maintenance
4 or use of any equipment or supplies in connection therewith. Good faith in this section
5 shall not include willful misconduct, gross negligence, or recklessness.

6 **§ 1108. Supplementary agreements**

7 Inasmuch as it is probable that the pattern and detail of the machinery for mutual
8 aid among two or more states may differ from that among the states that are party hereto,
9 this instrument contains elements of a broad base common to all states, and nothing
10 herein shall preclude any state from entering into supplementary agreements with another
11 state or affect any other agreements already in force between states. Supplementary
12 agreements may comprehend, but shall not be limited to, provisions for evacuation and
13 reception of injured and other persons and the exchange of medical, fire, police, public
14 utility, reconnaissance, welfare, transportation and communications personnel, and
15 equipment and supplies.

16 **§1109. Compensation**

17 Each party state shall provide for the payment of compensation and death benefits
18 to injured members of the emergency forces of that state and representatives of deceased
19 members of such forces in case such members sustain injuries or are killed while
20 rendering aid pursuant to this compact, in the same manner and on the same terms as if
21 the injury or death were sustained within their own state.
22
23
24
25
26

§1110. 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 expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the cost 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. Section 1109 expenses shall not be reimbursable under this provision.

§ 1111. 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/service 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

1 agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for
2 such evacuees, for expenditures for transportation, food, clothing, medicines and medical
3 care, and like items. Such expenditures shall be reimbursed as agreed by the party state
4 from which the evacuees come. After the termination of the emergency or disaster, the
5 party state from which the evacuees come shall assume the responsibility for the ultimate
6 support of repatriation of such evacuees.

7 **§ 1112. Implementation**

8 (a) This compact shall become operative immediately upon its enactment into
9 law by any two (2) states; Thereafter, this compact shall become effective as to any other
10 state upon its enactment by such state.

11 (b) Any party state may withdraw from this compact by enacting a statute
12 repealing the same, but no such withdrawal shall take effect until 30 days after the
13 governor of the withdrawing state has given notice in writing of such withdrawal to the
14 governors of all other party states. Such action shall not relieve the withdrawing state
15 from obligations assumed hereunder prior to the effective date of withdrawal.

16 (c) Duly authenticated copies of this compact and of such supplementary
17 agreements as may be entered into shall, at the time of their approval, be deposited with
18 each of the party states and with the Federal Emergency Management Agency and other
19 appropriate agencies of the United States Government.

20 **§ 1113. Validity**

21 This Act shall be construed to effectuate the purposes stated in Section 1102
22 hereof. If any provision of this compact is declared unconstitutional, or the applicability
23 thereof to any person or circumstances held invalid, the constitutionality of the remainder
24
25
26

of this Act and the applicability thereof to other provisions and circumstances shall not be affected thereby.

§ 1114. Additional provision

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.”

Bill SUMMARY

The Emergency Management Assistance Compact (hereinafter “EMAC”) was initiated in September 1992, at the suggestion of Florida Governor Lawton Chiles in the wake of the Hurricane Andrew disaster. Almost four years after Governor Chiles original resolution, the compact was approved by the United States Congress (H. J. Res. 193), a necessary step under the Constitution. When Congress approved EMAC as PL 104-321, the compact became the first national, disaster-related compact since the Civil Defense and Disaster Compact of 1950.

To join EMAC. States must pass the necessary legislation in their legislatures. This is mandated in Section 1112, subsection (a) of the compact. Exact legislative terminology at the beginning and at the end of the legislature’s bill of enactment may vary slightly from state to state, but the language of the compact itself must be replicated in full within the bill, with only very slight variations permitted. States may alter the name of the compact, while keeping the text the same.

EMAC clarifies which state is responsible in tort for the actions of workers from an assisting state. Under EMAC, the requesting state is responsible. This is very important.

Since 1979, states have not been able to rely upon sovereign immunity outside their own borders. In the 1979 case, State of Nevada v. John M. Hall (440 U. S. 410), the Supreme Court ruled that Nevada could be sued by California resident John Hall in a California court for negligent activities of a Nevada state employee driving in California on official business. Nevada claimed that sovereign immunity protected it from such suit. The Supreme Court disagreed. Since then, one state may be sued in the courts of another state.

Without EMAC, emergency workers from an assisting state might be sued in the courts of a requesting state, and the assisting state government might find itself liable for millions of dollars. Under the terms of EMAC, the requesting state agrees to take tort responsibility for assisting state workers. This makes it more likely that states will agree to give assistance.

EMAC takes the uncertainty out of reimbursement. EMAC establishes rules for reimbursement. The standardization of the reimbursement process will put states more at ease when considering whether to send assistance. The state lending assistance is guaranteed payment, should it require it. It is up to the requesting state to provide the necessary funds itself or to secure federal funds for the purpose. The most important consideration is this: The state providing the assistance is guaranteed payment, whatever the source. Note, however, that a providing state may waive reimbursement if it chooses.

Section 1105 of EMAC makes the provision of aid mandatory to a certain extent (though a state may decline to send aid if that would leave it without "reasonable protection" for itself). The mandatory language of the Section gives EMAC a legally contractual aspect. This condition, according to the EMAC operations Subcommittee, reduces the documentation requirements for the recipient to submit to FEMA for reimbursement.

EMAC allows for a quick response to disaster with the unique resources possessed by government (personnel, equipment, and materials).

States cannot always rely on FEMA—they must develop the capacity to utilize the nation's full resources. Remember (i) Federal assistance, predominantly financial, is designed to supplement local/state efforts, (ii) not all disasters will be eligible for FEMA assistance.

Even where FEMA assistance is merited, mutual aid assistance may be more readily available. Under EMAC, interstate assistance may supplement federal assistance when it is merited, and take the place of federal assistance where it is not merited. In both cases, lives will be saved.

Section 1 authorizes the Governor to enter into the Emergency Management Assistance Compact. Section 2 amends title 23, which governs emergencies and disasters in the Virgin Islands, by adding the provisions of the EMAC, as required by the federal statute establishing the compact.

BR No. 00-1230/February 14, 2000/mr
G23-0020