

# CRS Report for Congress

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## **Massachusetts Emergency Management and Homeland Security Authorities Summarized**

**March 23, 2004**

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# Massachusetts Emergency Management and Homeland Security Authorities Summarized

## Summary

The Massachusetts statutory code incorporates emergency management with civil defense authorities. The governor has power to control emergency management activities, exercise control over private and public resources in a state of emergency, and enter into agreements with the federal and other state governments. The Defense Council advises the governor on civil defense matters, and the director of civil defense is responsible for the state Emergency Management Agency. Political subdivisions establish local organizations for civil defense. Continuity of government provisions require state officers and directors to list five persons who can serve if such a position is vacant due to absence or disability. Funding from the Commonwealth security trust fund supports emergency response and responding to terrorism.

This report is one of a series that profiles emergency management and homeland security statutory authorities of the 50 states, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, and the U.S. Virgin Islands. Each profile identifies the more significant elements of state statutes, generally as codified. Congressional readers may wish to conduct further searches for related provisions using the Internet link presented in the last section of this report. The National Conference of State Legislatures provided primary research assistance in the development of these profiles under contract to the Congressional Research Service (CRS). Summary information on all of the profiles is presented in CRS Report RL32287. This report will be updated as developments warrant.

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# Massachusetts Emergency Management and Homeland Security Authorities Summarized

## Entities with Key Responsibilities

*Governor:* The governor exercises direction and control of the Emergency Management Agency (EMA), and is authorized to assume direct control over any or all parts of civil defense activities. The governor is authorized to: cooperate with the federal government and other states and private agencies about civil defense matters; propose a comprehensive plan for civil defense; institute training and public information programs; take preparatory steps (such as the mobilization of organizations) in advance of an actual disaster; make studies and surveys of the Commonwealth's capabilities for civil defense; and appoint metropolitan area directors (Mass. Ann. Laws Spec. L. Ch. S31 §4). After issuing a proclamation of a state of emergency, the governor may employ every agency and all staff to protect the lives and property of citizens and to enforce the law. The governor may take possession of land, building, equipment, vehicles, food sources and sell, lease, or freely distribute those goods among commonwealth inhabitants, within requirements set out. (Mass. Ann. Laws Spec. L. Ch. S31 §5). The governor is authorized to cooperate with federal authorities and the governors of other states on common defense and common welfare and to provide for the national defense or public safety at the request of the President (Mass. Ann. Laws Spec. L. Ch. S31 §6). During a state of emergency, the governor shall exercise any and all authority over persons and property, including inmates at all institutions, public utilities, protection of private property, means of communications, and transportation, among others (Mass. Ann. Laws Spec. L. Ch. S31 §7). The governor is authorized to exercise power in anticipation of a state of emergency (Mass. Ann. Laws Spec. L. Ch. S31 §8).

*Executive Office of Public Safety:* The office includes the department of public safety and the Massachusetts emergency management agency (Mass. Ann. Laws Ch. 6A §18).

*Emergency Commission:* When the governor determines an emergency exists, and that there may be potential shortage of food, fuel, shelter, or other necessities of life, he may designate in writing the adjutant general, director of civil defense, secretary of labor, and commissioner of public safety to act as an emergency commission. The commission is authorized to exercise authorities set out in the Commonwealth Defense Act, and operates under written designation which may be revoked by the governor at any time (Mass. Ann. Laws Ch. 23 §9H).

*Massachusetts Emergency Management Agency:* The agency operates under the direction of the director of civil defense (Mass. Ann. Laws Spec. L. Ch. S31 §2).

*Defense Council:* The governor appoints members of the council, which includes department heads and other commonwealth officers and the director of EMA. The council advises the governor and the director of civil defense on matters pertaining to civil defense (Mass. Ann. Laws Spec. L. Ch. S31 §3).

*Director of civil defense:* The director is appointed by the governor with the advice and consent of the Defense Council. The director coordinates activities of all organizations for civil defense within the commonwealth, and must cooperate and maintain liaison with the civil defense agencies of other states and the federal government. The executive head of the EMA is responsible to the governor for carrying out the commonwealth's civil defense program (Mass. Ann. Laws Spec. L. Ch. S31 §2).

*Civil defense claims board:* The board, within EMA, acts upon and decides claims filed under the Civil Defense Act (Mass. Ann. Laws Spec. L. Ch. S31 §11A).

*Local organization for civil defense:* Each political subdivision is authorized to establish an organization for civil defense, the director of which is to be appointed by the chief local official. The organization must perform civil defense functions within its territorial limits and has power to enter into contracts and incur obligations to combat disasters, protect health and safety of persons and property, and provide emergency assistance to victims (Mass. Ann. Laws Spec. L. Ch. S31 §13).

*Hazardous materials mitigation emergency response advisory board:* The advisory board reviews standards, rules, procedures and regulations for response and recovery costs related to hazardous materials (Mass. Ann. Laws Ch. 21K, §2).

## **Preparedness**

In case of a natural disaster or public catastrophe, during which police are unable to preserve order and protect people and property, the commander-in-chief (governor) on his or her own initiative, or at the request of a mayor, sheriff, or city manager, may order the commander of any unit of the national guard to preserve order (Mass. Ann. Laws Ch. 33 §41).

The colonel of the State Police, at the request of the director of civil defense, may appoint civil defense employees as special state police officers for a maximum period of one year. Such officers receive training and have arrest powers (Mass. Ann. Laws Ch. 22C, §64).

The Massachusetts Oil and Hazardous Material Release Prevention and Response Act establishes requirements and timetables regarding spills and releases (Mass. Ann. Laws Ch. 21E §1 *et seq.*).

The civil defense director must establish standards for the construction of fallout shelters to protect families from enemy attack. Construction must proceed in accordance with standards and cannot violate zoning ordinances (Mass. Ann. Laws Spec. L. Ch. S31 §2A).

The statute requires that the state department of fire services prepare and update a hazardous materials mitigation emergency response plan (Mass. Ann. Laws Ch. 21K §3).

The civil defense director must designate a nuclear power plant area within a 10-mile radius of each nuclear power plant, and must publish and release annual preparedness and response plans that include evacuation plans and other emergency public information. Factors that could require modifications to the plans include changes in traffic patterns, population densities and new construction (Mass. Ann. Laws Spec. L. Ch. S31 §2B).

## **Declaration Procedures**

The governor may issue a proclamation of a state of emergency when he or she is informed that the commonwealth's peace and security are endangered by catastrophes such as an enemy attack on the United States, the occurrence of disasters resulting from attack, sabotage or hostile act, from fire, flood, earthquake or other natural causes, or drought. Such a proclamation may also be issued when the health and safety of the people may be endangered by fire, shortage of food or water, or when the accidental release of radiation from nuclear power plant could endanger people (Mass. Ann. Laws Spec. L. Ch. S31 §5). The governor is authorized to exercise power during a state of emergency through executive orders or regulations, and departments must act in conformity with orders or regulations issued by the governor (Mass. Ann. Laws Spec. L. Ch. S31 §8). Any laws, regulations, ordinances inconsistent with an order issued during a state of emergency are inoperative (Mass. Ann. Laws Spec. L. Ch. S31 §8A).

## **Types of Assistance**

The governor and executive officers or governing bodies of political subdivisions can use services, equipment, supplies and facilities and staff of existing departments of the commonwealth and its political subdivisions. The governor may assign a state agency any activity related to disaster preparedness and relief related to existing powers and duties; once assigned, it becomes the duty of the agency to undertake and carry out the activity (Mass. Ann. Laws Spec. L. Ch. S31 §16).

## **Mutual Aid**

Police departments in cities and towns can enter into mutual aid agreements (Mass. Ann. Laws Ch. 40 §8G).

The director of a local organization for civil defense may develop mutual aid arrangements for reciprocal civil defense aid and assistance in case of a disaster that requires assistance. Arrangements must be consistent with the state civil defense

plan and program. The statute specifies that it is the duty of a local organization to render assistance in accord with provisions of mutual aid arrangements. The director, with the approval of the governor, may enter into mutual aid arrangements with civil defense agencies in other states (Mass. Ann. Laws Spec. L. Ch. S31 §14). Cities and towns may authorize police departments to aid other jurisdictions to suppress civil disturbances or other violence (Mass. Ann. Laws Spec. L. Ch. S31 §11(b)). Heads of police and fire departments may provide services elsewhere in the Commonwealth, with limits placed on use of auxiliary police (Mass. Ann. Laws Spec. L. Ch. S31 §11 (c-e)).

The statute requires officers of the state and subdivisions to cooperate with the governor and the director of civil defense in civil defense matters (Mass. Ann. Laws Spec. L. Ch. S31 §20).

The *Interstate Emergency Management Assistance Compact* is codified (Mass. Ann. Laws Spec. L. Ch. S140 §1).

The *International Emergency Management Assistance Compact* with Canada is codified (Mass. Ann. Laws Spec. L. Ch. S141 §1).

The compact with other New England states for military aid in an emergency is codified (Mass. Ann. Laws Spec. L. Ch. S91).

The compact with New York for military aid in an emergency is codified (Mass. Ann. Laws Spec. L. Ch. S93).

Any municipality, water district, or fire district may contract with another political subdivision for interconnection of water distribution systems and provide pumping equipment to supply water for fires and other purposes (Mass. Ann. Laws Spec. L. Ch. S31 §15C).

## **Funding**

The Commonwealth Security Trust Fund is established and funded with revenues from United We Stand license plates. Some of the funds are to be used for grants to police and fire departments to enhance emergency response, including responding to terrorism (Mass. Ann. Laws Ch. S10 §67).

The Department of Fire Services Hazardous Materials Emergency Mitigation Response Recovery Trust Fund is established to reimburse member departments for responding to hazardous materials incidents (Mass. Ann. Laws Ch. 29 §2DDD).

The Dam Safety Trust Fund provides funding for the office of dam safety (Mass. Ann. Laws Ch. 29 §2FFF).

Political subdivisions have the power to make appropriations for civil defense. If the federal government offers a gift, grant, or loan, either the governor or officials of the political subdivision may accept the offer (Mass. Ann. Laws Spec. L. Ch. S31 §15).

To meet expenditures, a city, town or county may raise taxes or issue bonds for civil defense (Mass. Ann. Laws Spec. L. Ch. S31 §15A). A city auditor or financial official making expenditures for civil defense must file an annual report with the director of accounts for the state Department of Corporations and Taxation, of liabilities incurred and expenditures made (Mass. Ann. Laws Spec. L. Ch. S31 §15B).

EMA may expend appropriated sums to carry out authorized duties (Mass. Ann. Laws Spec. L. Ch. S31 §21).

## **Hazard Mitigation**

No specific provisions

## **Continuity of Government Operations**

The General Court of the state legislature has full power and authority to provide for the succession of powers of public offices, especially when incumbents are unavailable in periods of emergency from disaster caused by enemy attack. The court may adopt measures necessary and proper to insure the continuity of government in the commonwealth and its political subdivisions (Mass. Const. Art. 83).

During a state of emergency the administrative justice of any district court may direct that a district court may be convened in any place outside the district where the court has jurisdiction. The administrative justice may direct justices, clerks, probation officers and other personnel to work in other districts (Mass. Ann. Laws Spec. L. Ch. S31 §16A).

The commissioner of each commonwealth executive or administrative department, including the secretary of state, attorney general, treasurer, and receiver-general, and the auditor and director of each division of each department, must designate five persons (by name or position) who shall exercise duties in the event of absence or disability. Each designation is subject to the governor's and the Defense Council's approval. Such designation remains in effect until revoked by the officer who made it. Persons designated shall perform duties only in succession to persons authorized under other statute provisions (Mass. Ann. Laws Spec. L. Ch. S31 §20A).

Any vacancy in any office that is to be filled by the governor with the advice and consent of the defense council may be filled by the governor without the advice and consent of the council if the vacancy results from enemy attack and the attack prevents a quorum from being present. Any such appointment is temporary, pending appointment in the usual manner when circumstances permit (Mass. Ann. Laws Spec. L. Ch. S31 §20B).

During an enemy attack any officer subject to removal by the governor with the advice and consent of the council may be so removed without advice and consent, provided that the removal is based on grounds and that the removal is temporary until



approved by council. The governor may fill a vacancy resulting from removal without advice and consent of council (Mass. Ann. Laws Spec. L. Ch. S31 §20C).

## **Other**

The second Sunday in May is Massachusetts Emergency Responders Memorial Day to honor first responders, national guard, disaster assistance, and emergency management personnel killed in line of duty (Mass. Ann. Laws Ch. 6, §15RRR).

Emergency Management Week follows the second Sunday in May, with special attention paid to mitigation, preparedness, response and recovery through public information programs and training exercises (Mass. Ann. Laws Ch. 6, §15 SSS).

Leave of absence is authorized for commonwealth employees who serve as Red Cross volunteers, up to a maximum of 15 days per calendar year. Each chapter of the Red Cross in the Commonwealth must compile an annual report of state employees granted a leave of absence, and number of days absent (Mass. Ann. Laws Ch. 30, §9I).

If a taxpayer is affected by a presidentially declared disaster, terrorist attack, or a military action, the commissioner of revenue may waive that person's tax liability for one year (Mass. Ann. Laws Ch. 62C, §87).

If property acquired by imminent taking is diminished in value due to a presidentially declared disaster, the damages not compensated by insurance are fixed at fair market value prior to the disaster (Mass. Ann. Laws Ch. 79, §12A).

Regular, special and reserve members of police and fire forces and state guard members may enter private property to enforce blackout rules (Mass. Ann. Laws Spec. L. Ch. S31 §10).

Local government officials may appoint, train and equip volunteer auxiliary firemen and police and equip them under approval of EMA; auxiliary units that protect life and property and members are granted immunity from liability claims (Mass. Ann. Laws Spec. L. Ch. S31 §11).

Immunity from civil liability is extended to persons engaged in civil defense activities (Mass. Ann. Laws Spec. L. Ch. S31 §12).

Immunity from civil liability is extended for persons owning or controlling real estate who permit a political subdivision to use the property to shelter persons during enemy attack (Mass. Ann. Laws Spec. L. Ch. S31 §12A).

No civil defense organization shall participate in political activity (Mass. Ann. Laws Spec. L. Ch. S31 §17).

The statute requires a loyalty oath for civil defense employees (Mass. Ann. Laws Spec. L. Ch. S31 §18).

The commonwealth civil defense statute becomes inoperative by adoption of joint resolution by the house and senate (Mass. Ann. Laws Spec. L. Ch. S31 §22).

Courts do not have jurisdiction to review adequacy of emergency mitigation response, except with regard to the recovery of costs from persons legally responsible for the release of hazardous material (Mass. Ann. Laws Ch. 21K §§5-6).

## Key Terms

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

Terms	Citations
Act of God	Mass. Ann. Laws Ch. 21K, §1
Civil defense	Mass. Ann. Laws Spec. L. Ch.S31
Emergency mitigation response	Mass. Ann. Laws Ch. 21K, §1
Hazardous material	Mass. Ann. Laws Ch. 21K, §1
Hazardous materials mitigation emergency response plan	Mass. Ann. Laws Ch. 21K, §1
Imminent threat	Mass. Ann. Laws Ch. 21K, §1
Incident commander	Mass. Ann. Laws Ch. 21K, §1
Local organization for civil defense	Mass. Ann. Laws Spec. L. Ch. S31, §1
Release	Mass. Ann. Laws Ch. 21E, §2
Respond	Mass. Ann. Laws Ch. 21E, §2
Team leader	Mass. Ann. Laws Ch. 21K, §1
Threat of release	Mass. Ann. Laws Ch. 21E, §2

## For Further Research

Some of the citations noted above and other elements of the state code for the Commonwealth of Massachusetts may be searched at: [<http://www.state.ma.us/legis/laws/mgl/index.htm>]. Many of the provisions were included in Special Law Chapter §31, “Civil Defense Act,” which was not codified as of the date of this report.