



**TESTIMONY ON SB 1019
REWRITE OF THE EMERGENCY MANAGEMENT SERVICES CODE**

Presented to the Senate Committee on
Veterans Affairs & Emergency Preparedness

Presented by
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Good morning. I am Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania. The CCAP is a non-profit, non-partisan association providing legislative, educational, insurance, research, technology, and similar services on behalf of all of the Commonwealth's 67 counties.

We appreciate the opportunity to appear before you today to present our comments on SB 1019, the rewrite of the Emergency Management Services Code, commonly called Title 35.

The proposal is intended to recodify and update the title to current needs, terminology, technology and practices, and to integrate elements of other statutes as necessary.

It is important to note at the outset the counties' pivotal role in emergency management. For decades, going back at least to the old civil defense statutes, counties were seen as the level of government best able to plan for and coordinate the response to area-wide disasters. This role was reinforced in the current statute, and was expanded by subsequent enactments including the 911 Emergency Communications Services Act under which counties and their telecommunications partners built the state's 911 system, the Hazardous Material Emergency Planning and Response Act under which counties are responsible for hazardous materials inventories and hazardous materials incident response planning, and the Counterterrorism Planning, Preparedness and Response Act (Act 227 of 2002) which gave counties a key role in planning for homeland security. While municipalities, volunteers, and others – and in some circumstances state and federal resources – form the core of our disaster response and have their own planning responsibilities, the primary planning and coordination role is ours. This fundamental public safety task is one which we undertake with utmost conviction and diligence, and one which we believe we fulfill with professionalism and care.

Title 35 and related statutes, regulations, and guidelines set out the interrelationships and prerogatives among state, county, and local government, and how their respective responsibilities are to be accomplished. For the reasons noted, we concur that revision of Title 35 is necessary.

We also acknowledge the amount of time and effort that has gone into this legislation. We first appeared before this Committee to discuss the initial draft in 2008. The original caused us much concern, in part by the nature of its changes in relationships among counties and its partners and in part due to provisions that would have imposed significant planning, administration, and cost burdens on counties. Subsequent drafts addressed many of these concerns, and so a commentary we furnished in 2012 listed a couple of items that warranted further discussion, a couple substantive issues, and a number of technical and terminology questions.

The hiatus since 2012 was due in large part to the time, resources, and deliberative effort devoted by PEMA, this Committee and its House counterpart, and our partner stakeholder groups to our rewrite of the 911 statute, now Act 12 of 2015. Although it put us off track on development of this Title 35 legislation, we all certainly agree that the product of the 911 effort

was well worth it – representing a significant advancement in our capacity to provide exceptional 911 service and to plan for and implement next generation technologies.

We note this for another reason though, and that is to acknowledge that the 911 program is representative of the close working relationship among PEMA, this and the House committee, the many stakeholders, and us. From the initial stages of development of the legislation, and carrying forward to today's work of the 911 Board and its subcommittees, all parties are actively at the table, understand and respect each other's role in the system, and stand together in a common mission to place us at the forefront in addressing the safety needs of all Pennsylvanians.

This cooperative relationship has been part of the development of the Title 35 revisions. We have had outreach from this Committee, discussions with other stakeholder groups, and as recently as last week additional review of scope and content with PEMA Director Rick Flinn and his senior staff.

As with any set of complex legislation, and particularly legislation such as this which rewrites an entire statute and which involves delineation of complex processes, there inevitably will be technical issues and some substantive questions. While some remain with SB 1019 – we have attached an outline to this testimony and will discuss one remaining substantive issue in these remarks – we nonetheless believe the legislation is approaching final form and is ready for consideration and movement.

That said, the single substantive issue we need to highlight relates to the provisions of section 7706, currently titled "Compensation for accidental injury" and retitled "Workers' compensation." In short, current law provides volunteers deployed in an emergency and who are ineligible for workers' compensation, a lump sum payment of \$20,000 for accidental death, or up to \$15,000 for medical expenses, and \$200 per week for up to six months if the injury prevents ability to work. The expense of these benefits is borne exclusively by the Commonwealth.

The proposal instead deems qualified volunteers as the employee of the Commonwealth, the county or municipality "by whose program they are deployed" for the purposes of workers' compensation coverage, and grants them under an "irrebuttable presumption ... at least ... the Statewide average weekly wage."

We readily understand the interest in increasing the benefit to volunteers harmed in providing emergency services. We truly appreciate the services of our volunteers and no one questions the untold cost we would incur were these citizens not willing to step forward. Still, extending workers' compensation coverage in this fashion, can be problematic if not clearly written.

A threshold issue is that it transfers what is currently a Commonwealth liability to counties and municipalities, but we concede that in many respects it is a moot point because some current statutes already establish this relationship and require workers' compensation coverage at the local level; volunteer fire is one example.

Where our problem lies is deeming the volunteer as the employee of "the Commonwealth or of the county or municipality by whose program they are deployed ..." At minimum the language is confusing; if the language can be read to transfer the employment relationship to either the county or the Commonwealth as the deploying entity under rules of command and control despite creation and function at another level of government, it creates a potentially uninsurable risk, given that neither the county nor the Commonwealth can know, year over year, what teams it will deploy or how.

Instead the language should be clarified to indicate volunteers are, for the purposes of workers' compensation, employees of the government at which level the teams are created, organized, or chartered. The bill's continuation of language from current law acknowledging precedence of other existing workers' compensation coverage, along with its addition of language declaring self-deployment and unauthorized deployment ineligible, is helpful in this respect.

Thank you for your consideration of these comments, and for the work that has gone into development of SB 2019 to date. We look forward to working with you to moving the legislation forward.



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- Page 15, lines 8-16 – The specialized regional response teams must be organized in accordance with FEMA and PEMA standards, but the specialized statewide response teams do not have the same requirement.
- Page 22, lines 13 and 17; page 23, line 14 – “Authorized nonprofit” instead should be “authorized nongovernmental” organization, per the definition of “emergency services” on page 7, line 28
- Page 35, lines 9-14 – This clause indicates that PEMA, in its plan, can provide for accreditation programs for county and local emergency management programs, as well as qualification standards for appointed emergency management coordinators. We are interested in assuring that the standards are comparable with other accreditation programs and include stakeholder input.
- Page 49, lines 10-21 – All county and local emergency management programs will be required to have a coordinator who meets standards of education and certification established by PEMA, and any other qualifications it deems necessary. Similar to our prior comment, we are interested in assuring that the standards are comparable with other certification programs and include stakeholder input.
- Section 7502, page 49 and following – We concur with, and appreciate, the deletion of language requiring PEMA director approval of the county’s emergency management coordinator appointment, noting that provisions regarding training, certification and removal serve the intended purpose. While there is some concern with the language of 7502(b) (page 50, lines 2-9) regarding the manner of appointment of the coordinator, as compared to structure and procedure in traditional county boards, its concept is understood in practice.
- Page 54, lines 2-3 – The language clarifies that county and local emergency management must equip emergency operations centers “in accordance with agency directives”; to the extent this is not already a matter of practice, the manner of enforcement is not clear.
- Page 55, lines 5-8 – The county emergency management program is to coordinate resource management to ensure that county and appropriate municipal resources are properly organized, trained and equipped and have adequate plans to safely and effectively

accomplish assigned missions. The county does not have tools to fully accomplish this task as it relates to its municipalities; it can verify but has no capacity to ensure compliance.

- Page 56, lines 1-2 – The county program is required to maintain the training records of local municipal coordinators. Currently, counties maintain the records that are required by the state for certification purposes, but this language appears broad enough to require counties to maintain all training records. In addition, on page 58, lines 28-30, municipalities are required to keep their own training records and certification documentation, so additional clarity is needed on this point.
- Page 56, lines 27-29 – The county is required to participate in planning for continuity of municipal government; this should be a municipal function, as indicated under local emergency management programs on page 59, lines 10-11.
- Page 57, lines 25-30 – The county is required to develop and maintain a countywide animal rescue capability; this could be taken to obligate the county to fund and keep the CART going.
- Page 73, lines 21-22 and page 75, lines 4-13 – Regional task forces must attend training and must participate in/conduct exercises as directed by PEMA; clarity is needed as to whether this is in addition to the training and exercises already required for county and local coordinators and county plans.
- Page 80, line 24 to page 81, line 5 – The sponsoring organization of a large event must file a large event plan where a disaster emergency could overwhelm the resources of emergency response. Conceptually, we agree with this idea, but additional clarity is needed on the details, such as who determines what a “congregation of a large number of people” is, and who has the authority to enforce and how they are able to do so.
- Section 7706, page 87, line 10 and following – The section changes volunteers’ workers’ compensation from specific eligible benefits provided by the Commonwealth, to considering them to be employees of the Commonwealth or county/local emergency management when deployed, going to or returning from emergency, or in scheduled training or exercises. Additional clarity is needed on the use of the word “deployment” to assure that liability is not unintentionally transferred from the level of government at which the team is organized to the level that is managing the response.