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Kentucky Emergency Management and Homeland Security Authorities Summarized

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Kentucky Emergency Management and Homeland Security Authorities Summarized

Summary

Kentucky's primary emergency management statutes create a statewide comprehensive emergency management program with an integrated emergency management system, and provide for assessment, mitigation, preparation, response, and recovery from threats to public safety and all major hazards. They confer emergency management powers upon the governor and the chief executives of local governments. The statutes also provide for mutual aid among the cities and counties, with other states, and the federal government.

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.

Contents

Entities with Key Responsibilities	1
Preparedness	2
Declaration Procedures	3
Types of Assistance	3
Mutual Aid	4
Funding	4
Hazard Mitigation	5
Continuity of Government Operations	5
Other	7
Key Terms	8
For Further Research	8

List of Tables

Table 1. Key Emergency Management and Homeland Security Terms Defined in Kentucky Statutes, with Citations	8
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Kentucky Emergency Management and Homeland Security Authorities Summarized

Entities with Key Responsibilities

Governor: The governor is authorized to make, amend, and rescind any executive orders as deemed necessary (Ky Rev. Stat. §39A.090) and to: enforce all laws and administrative regulations; assume direct operational control of all forces; require state agencies and request local governments and agencies to respond to emergencies; commandeer property and sell or lend same; exclude nonessential or uncooperative personnel from a disaster area; order curfews; prohibit or limit the sale or consumption of goods or commodities; and perform other actions necessary to secure the population (Ky Rev. Stat. §39A.100(1)(a-j)).

Division of Emergency Management: The statute created the Division of Emergency Management (DEM) to develop a program for response to all hazards, but primarily domestic hazards and threats, including natural, man-made, technological, industrial, or environmental emergencies or disasters. DEM must develop a response program in consultation with all levels of state and local government, and may accept any grant, contribution, or funding, federal or otherwise, to assist in meeting the costs of emergency management (Ky Rev. Stat. §39A.030). DEM is to: maintain the *Kentucky Emergency Operations Plan* (the *Plan*) and execute disaster and emergency assessment, mitigation, preparedness, response, and recovery activities for all hazards; coordinate all disaster and emergency responses by and between state and local agencies, political subdivisions, federal agencies, other states, and private organizations or companies. Also, DEM coordinates all recovery operations and mitigation initiatives subsequent to disasters or emergencies, along with public information activities (Ky Rev. Stat. §39A.050 (1)). The *Plan* must be submitted to the governor for approval following each gubernatorial election. DEM maintains the state Emergency Operations Center as the primary 24-hour warning point, as well as a communications and command center, from which the governor, cabinet secretaries, department heads, and other state agency officials can manage disaster and emergency response. DEM must: establish and operate area field offices; provide funds to cities and county governments to support the development and operation of local emergency management agencies; ascertain needs and procure emergency supplies, materials, and equipment; assess the threat of and the capacity for responding to acts of war or terrorism; and identify how state and federal funds will be allocated (Ky Rev. Stat. §39A.050 (2)(a-q)). The governor's Earthquake Hazards and Safety Technical Advisory Panel and the Emergency Response Commission are attached to DEM for administrative purposes (Ky Rev. Stat. §39A.040).

Director of Emergency Management: The director is appointed by the governor and serves under the general direction of the adjutant general of the Department of Military Affairs (Ky Rev. Stat. §39A.060). The director is authorized to: represent

the governor on all matters pertaining to emergency management; promulgate necessary administrative regulations, orders, and rules; supervise the development of the state emergency operations plan; advise the governor and adjutant general of any disaster or emergency; and recommend executive action. The director may: utilize personnel and equipment of existing offices and agencies; procure motor vehicles, communications and safety equipment, and other necessary supplies; give directions to the state or local boards of health as necessary; and enter into reciprocal aid agreements or compacts with other states, the federal government, or a province of a foreign country (Ky Rev. Stat. §39A.070).

Political Subdivisions: Units of local government may make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes (Ky Rev. Stat. §39A.180). All county governments are required to operate a local emergency management agency to develop, implement, and maintain a local comprehensive emergency management program, including a local emergency operations plan. County and city governments sharing territorial boundaries are encouraged to jointly create a single, unified local emergency management agency (Ky Rev. Stat. §39B.010).

Local emergency management agency: The local agency is to be the organizational unit of city or county government under the office of county judge, executive, or mayor with primary jurisdiction, and is to exercise authority for all matters pertaining to the local comprehensive emergency management program. All local agencies are to be under the direction of the director of emergency management and the governor (Ky Rev. Stat. §39B.010 (3)). Local governments located within the territorial boundaries of the same county may jointly appoint a single local emergency management director (Ky Rev. Stat. §39B.020). The director is to: notify other local governments and DEM of an actual or impending emergency or disaster, recommend emergency actions; serve as chief advisor and primary on-scene representative of local government. The director supervises all paid or volunteer emergency management workers and all official operating units or personnel (Ky Rev. Stat. §39B.030). Each local emergency management director is to establish and maintain a local disaster and emergency services organization responsible for the performance of all disaster and emergency response functions, with the exception of forest fire emergency response (Ky Rev. Stat. §39B.050).

Emergency Response Commission: The statute established the Emergency Response Commission and directs the commission to develop policies related to the response of state and local governments to releases of hazardous substances as well as standards and reporting requirements. The statute also establishes emergency planning districts and local emergency planning committees in accordance with the federal Emergency Planning and Community Right-to-Know Act (Ky Rev. Stat., Chapter 39E *et. seq.*).

Preparedness

State and local emergency operations plans must include measures for control of traffic for rapid and safe movement in evacuation; traffic regulations; and prohibition or limitation of use of motor vehicles on public highways during any disaster or emergency (Ky Rev. Stat. §39A.150). State and local plans are to include

procedures for one multi-risk, multi-agency, unified incident command or management system to be used by all state agencies responding to the scene of an emergency, declared emergency, disaster, or catastrophe (Ky Rev. Stat. §39A.230).

DEM is to maintain an emergency operations center and necessary alternate locations, and activate the center on the order of the director, the adjutant general, or the governor. Upon request, each cabinet and independent agency of state government is to provide an authorized person who is charged to make decisions for the agency during an emergency or impending event (Ky Rev. Stat. §39A.240).

The adjutant general and DEM, utilizing federal funds and agency funds, shall establish and chair a working group of state and private agencies to help identify risks and needs. They must: assess the state's preparedness to respond to acts of war or terrorism, including nuclear, biological, chemical, agricultural, electromagnetic pulse, or cyber terrorism events; develop and implement statewide strategies to respond to acts of war or terrorism; and provide information on how individuals and private organizations can best prepare for and respond to incidents. The working group is to encourage private organizations to specifically commit to provide food, shelter, personnel, equipment, materials, consultation and advice, or any other services needed and conduct an annual assessment and report of capabilities subject to the continued availability of federal and agency funds (Ky Rev. Stat. §39A.287).

Declaration Procedures

In the event of the occurrence or threatened occurrence of a natural or man-made disaster, the governor may declare a state of emergency (Ky Rev. Stat. §39A.100(1)).

A county judge, executive, mayor or chief executive of other local governments or their designees may declare in writing that a state of emergency exists. Such officials may enforce all laws and administrative regulations; exclude nonessential, or uncooperative personnel from the scene of the emergency, declare curfews; purchase or rent essential goods and services; and request emergency assistance from any local government, special district or state agency (Ky Rev. Stat. §39A.100 (2)).

Each city or county government may declare a state of emergency and execute emergency powers and may: appropriate funds, make contracts, obtain equipment, materials, and supplies; provide for the health and safety of persons and property; enact orders or ordinances; provide, with or without compensation, local emergency management agency staff; and establish primary and secondary emergency operations centers. In a national or state emergency, local officials may waive procedures and formalities otherwise required by the law; and confer powers of peace officers upon members of the auxiliary police (Ky Rev. Stat. §39B.070).

Types of Assistance

The governor may: authorize any state agency to lease or lend any real or personal state property to the federal government; lease or loan any real or personal state property to any political subdivision; or permit state employees to engage in disaster and emergency response activities, within or without the state. State

employees assigned or volunteering for duty are to be considered employed by the agency to which they are regularly assigned, and continue to receive salary and benefits while engaging in disaster and emergency response work (Ky Rev. Stat. §39A.170).

See also “Funding.”

Mutual Aid

The *Emergency Management Assistance Compact* is codified (Ky Rev. Stat. §39A.950).

The statute authorizes DEM to enter into agreements with other states for the provision of emergency management services or mutual aid. City and county emergency management agencies may make written agreements with similar local agencies in adjoining states. Agreements are subject to the same rights and privileges as state agreements, but are limited to two years, unless renewed. The statute protects the standard rights and privileges of state and local paid or volunteer emergency management personnel working outside the state and extends the same rights and privileges to emergency management personnel of other states; this provision does not apply to peace officers unless approved in writing by the governor or the General Assembly. The statute extends workers’ compensation protection to paid employees or volunteers from other states, but excludes hazardous materials emergency response operations above the first-responder operations level. Workers from another state who hold a license or certification from their state to practice a profession for which a license is required are to be considered certified in Kentucky (Ky Rev. Stat. §39A.260).

City and county employees rendering aid outside their jurisdiction have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they are normally employed (Ky Rev. Stat. §39B.080).

A local emergency management director may develop mutual aid arrangements with special districts and other public and private agencies within the state for reciprocal disaster and emergency response aid. Such arrangements must be consistent with state and local emergency operations plans. Local directors are authorized to assist DEM in the negotiation of reciprocal mutual aid agreements between Kentucky and other states or foreign states or provinces (Ky Rev. Stat. §39B.040).

Funding

The statute authorizes the state or a political subdivision to accept a federal or other grant for services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of disaster and emergency response (Ky Rev. Stat. §39A.200).

The state is to encourage and assist counties, cities, and other local governments to maintain emergency management capabilities by authorizing the expenditure of

supplementary state funds for local emergency management agencies. Funds must be allocated by DEM on a reimbursement basis not to exceed 50% of the total local funds expended by the local agencies in any given year for the comprehensive emergency management programs. The fund is to be used to help local agencies develop comprehensive emergency management programs and response capabilities, and to maintain and improve these agencies through enhanced training, planning, staffing, administration, operations, and equipment acquisition. The director of DEM has overall responsibility for policy, guidance, administration, and proper utilization of the fund. The statute created an advisory committee appointed by the director which assists in making initial funding annual allocations and quarterly adjustments, and also setting eligibility requirements. DEM administers the supplementary state funding program and, by administrative regulations, promulgates and applies eligibility requirements and standards of performance to be achieved by all local emergency management agencies (Ky Rev. Stat. Chapter 39C *et. seq.*).

A separate emergency management agency fund account is to be included in the city or county budget ledgers. All local emergency management financial matters involving DEM funds are handled through the local treasury and financial system (Ky Rev. Stat. §39B.010(3)).

Hazard Mitigation

During a threatened or impending disaster or emergency, the governor, adjutant general, or the director of DEM may authorize the use of public employees, equipment, supplies or other publicly owned or supported resources to assist in the mitigation of the potential effects of the disaster or emergency. During the response phase of a disaster the governor, adjutant general, or the director may authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resource to assist in the operations of government. Following the active phase of the disaster, they may authorize the use of any of these publicly owned or supported resources. Such actions do not require a formal declaration of disaster or emergency (Ky Rev. Stat. §39A.270).

City or county (or combined) emergency operations plans must include provisions to assess, mitigate, prepare for, respond to, and recover from all disaster or emergency incidents. Local plans must be submitted to the county judge, executive, mayor, or chief executive of a unit of local government immediately after each regular election. County plans are to prevail in conflicts if the incident, or its consequences, extend beyond the boundaries of the city (Ky Rev. Stat. §39B.060).

Continuity of Government Operations

During a state of emergency, when it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the governor shall designate a temporary location for the seat of government. If practicable, the temporary location should conform to that provided for in the state emergency operations plan. The temporary location shall remain the seat of government until the governor establishes a new location or until the emergency is over (Ky Rev. Stat. §39D.010).

During a state of emergency, when it becomes imprudent or impossible to conduct local government at its regular location, the governing body may be called to establish an emergency temporary location of government within or without the state. The governing body and other officers conducting public business at the emergency temporary location may exercise all of their executive, legislative and judicial powers and functions. If practicable, the location should conform to that provided for in the local emergency operations plan (Ky Rev. Stat. §39D.020).

The governing body of each county, urban-county government, charter county government, and city must enact ordinances and resolutions necessary to provide for the continuity of government throughout the duration of a state of emergency. They must also provide a method for making temporary emergency appointments to public office, except as limited by the constitution (Ky Rev. Stat. §39D.030).

The statute authorizes state officers to designate deputies or emergency interim successors and specify their order of succession (Ky Rev. Stat. §39D.040(2)). Each cabinet, department, and agency of state government must appoint emergency interim successors for each position specified in the *Plan* (Ky Rev. Stat. §39D.040(3)).

The statute requires that local government legislative bodies provide for emergency interim successors and specify the order of succession for each department or agency identified in the *Plan* (Ky Rev. Stat. §39D.040(4)). The executive heads of political subdivisions not otherwise provided for designate emergency interim successors and specify their order of succession (Ky Rev. Stat. §39D.040(5)). Emergency interim successors must meet constitutional and statutory qualifications to hold office (Ky Rev. Stat. §39D.040(6)). Officials authorized to act as governor and emergency interim successors are empowered to discharge the duties of office only during the continuance of an emergency. The General Assembly, by joint resolution, may at any time terminate the authority of the emergency interim successors (Ky Rev. Stat. §39D.040(8)).

The statute requires that the Archives and Records Commission: establish a system for the preservation of essential state public records necessary for the continuity of governmental functions in the event of an emergency, disaster, or catastrophe; require every state cabinet, department, and independent agency to establish a preservation program for essential records; and advise political subdivisions on preservation of essential public records, among other provisions (Ky Rev. Stat. §39D.050).

Each state agency, board, or commission must develop emergency operations procedures consistent with *Plan* to ensure the ability to operate and protect its vital records, and designate at least four persons who may act for the agency during an emergency or disaster (Ky Rev. Stat. §39A.220).

The state constitution provides for a line of succession for the office of the governor (Ky. Constitution Section 87).

Other

The statute provides that compensation be provided for property taken for temporary use, and addresses refusals to accept compensation, and the appeals and payment process (Ky Rev. Stat. §39A.110-140).

The statute disqualifies persons involved in subversive activities from employment with emergency management agencies (Ky Rev. Stat. §39A.210).

The statute limits the liability of a state or local emergency management agency for failure to respond to a disaster or other emergency and exempts state and political subdivisions from liability for personal injury or property damage sustained by a volunteer emergency management agency member, or other disaster and emergency services workers. Volunteer or auxiliary disaster and emergency response workers must be enrolled or registered with a local disaster and emergency services organization or with the division (Ky Rev. Stat. §39A.280(1-4), (6)).

The statute grants immunity from civil liability to persons who voluntarily and without compensation permit property to be used as a public shelter during an actual, impending, mock, or practice disaster or emergency (Ky Rev. Stat. §39A.280(5)).

Volunteers and auxiliary disaster and emergency response workers are to have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions who perform similar work (Ky Rev. Stat. §39A.280(7)).

Local emergency management agencies and other local emergency management agency-supervised units or personnel, paid or volunteer, are eligible for workers' compensation benefits when performing emergency assessment, mitigation, preparedness, response, or recovery functions, with certain limitations (Ky Rev. Stat. §39C.110).

Rescue squads are authorized to be formed and to operate within specific jurisdictions and must be formally affiliated with the local disaster and emergency services organization. The statute also provides funding from DEM for rescue squads (Ky Rev. Stat., Chapter 039F00 *et. seq.*).

Key Terms

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

Terms	Citations
Catastrophe	Ky Rev. Stat. §39A.020(2)
Comprehensive emergency management program	Ky Rev. Stat. §39A.020(3)
Declared emergency	Ky Rev. Stat. §39A.020(5)
Disaster	Ky Rev. Stat. §39A.020(7)
Disaster and emergency response	Ky Rev. Stat. §39A.020(8)
Emergency	Ky Rev. Stat. §39A.020(10)
Emergency interim successor	Ky Rev. Stat. §39D.040(1)(a)
Integrated emergency management system	Ky Rev. Stat. §39A.020(11)
Local disaster and emergency services organization	Ky Rev. Stat. §39A.020(12)
Local emergency management agency	Ky Rev. Stat. §39A.020(13)
Local emergency management director	Ky Rev. Stat. §39A.020(14)
State emergency management agency	Ky Rev. Stat. §39A.020(15)

For Further Research

The citations noted above and other elements of the state code for Kentucky may be searched at: [<http://www.lrc.state.ky.us/Statrev/frontpg.htm>].