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## **TESTIMONY ON PROPOSED CHANGES TO TITLE 35**

Presented to the Joint Informational Hearing of the  
Veterans Affairs & Emergency Preparedness Committees  
Of the Senate and the House of Representative

Presented by  
Douglas E. Hill, Executive Director

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Harrisburg, PA

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 the current Pennsylvania Emergency Management Agency draft 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, and practices, and to integrate elements of other statutes as necessary.

Let me begin by noting that the draft is fairly new to us; although we had heard at the end of March about its completion (and that a group of local emergency management professionals had participated in much of the drafting process), we were not furnished a copy until two weeks ago and did not have an opportunity to talk to PEMA about it at length until Monday. We understand as well that there are elements of the proposal being redrafted, some of which we have seen. In addition, in our meeting with PEMA we discussed areas of concern which they indicated they would take under advisement for potential revision. Finally, we have received a commitment from PEMA that we will have the opportunity to participate in further discussions on matters of concern, and on issues others may raise.

I emphasize that these points should not be construed as being critical of PEMA – we have always enjoyed a close working relationship with the agency and have great respect for Director French and his staff – but to indicate to these joint Committees that we have not had as much time as we would have liked to fully vet the proposal with our policy committees, nor do we know with specificity the final language pertaining to some of the issues that have been raised. As a consequence, our comments today will be somewhat general regarding the proposal, accompanied by additional comments on principals that we believe must be recognized as the proposal progresses. And, with the Committees' permission, we will reserve the right to present additional comments as the proposal is further fleshed out.

It is important to note at the outset the counties' pivotal role in emergency management. For decades, going back 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 Public Safety Emergency Telephone 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 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. The question is whether technical, terminology, and practice updates are sufficient, or whether there also needs to be any fundamental change in the relationship among the Title's governmental partners. The draft before you at the moment does both and, while we concur with most of the terminology and practice changes, we have reservations about many of the changes in interrelationship.

Let me discuss some of these in turn.

First is the issue that has generated the most discussion, what to do about the approximately 40% of Pennsylvania municipalities that do not have current local emergency management plans in place. The draft initially before the Committees would have addressed this issue by requiring counties to develop the plans for all municipalities with a population of under 10,000, unless those municipalities opted to develop their own. One rough estimate is that this could have required counties to develop as many as 2,200 plans, with most of the more rural counties essentially acquiring responsibility for all plans within the county. Apart from the fiscal ramifications – a \$22 million property tax bill for county taxpayers if we could get by on \$10,000 plans – critical elements of the planning process like hazard vulnerability analysis and response contacts and resources inventory might never be done adequately or be kept current, and counties would lose services of the municipal coordinator, the local eyes-and-ears necessary for response coordination. The draft begged the question whether the county has sovereign capacity to compel municipal compliance with the county-developed plan.

The proposed alternative, to require municipalities under 5,000 to create joint councils of government for planning purposes, retains the municipal planning role at the municipal level, but may have its own problems. When the concept is discussed, the visceral reaction is that the under-5,000 municipalities would band together; in fact, because response requires a common border, the more likely scenario is that they are forced into a COG relationship with a neighboring larger municipality.

The problem is that the alternative lacks a mechanism for determination of how the relationship is to work, and with whom. Here in Dauphin County, Penbrook Borough (population 3,100) is situated between Harrisburg (49,000) and Susquehanna Township (22,000). How is the partnership determination made, and who has authority to compel either the city or township to form that partnership? The proposal is silent on funding issues so in this example the lack of funding from the Borough or another source is a disincentive for either Harrisburg or Susquehanna to undertake planning on its behalf.

Moreover, the requirement that it be done through a COG imposes a potentially unnecessary level of government, inasmuch as the plan can be accomplished on the Borough's behalf simply by an intergovernmental agreement. In our example, the COG requirement as currently drafted would mean that a governing body, composed of the (undefined) "elected executive officials" of each municipality, would be created and would become the managers of the

Harrisburg / Penbrook or Susquehanna / Penbrook emergency management program. We suspect this would also be a disincentive to both Harrisburg and Susquehanna.

The second issue that has received much discussion is the effect of county acceptance of municipal plans. The initial draft left the impression that the county was to review the sufficiency of the municipal plan, with its acceptance indicating the municipal plan was compliant with law. The notion was fraught with concerns for review costs and for county liability. The revised language indicates that review and acceptance “shall not imply approval or verification of ability to execute the plans . . .” While this resolves the first concern, it still means that, until we get to exercises or an actual event, we will not know whether there is substance behind the plan.

Third is the matter of extending workers’ compensation coverage to volunteers who lack other coverage by essentially treating them as employees of the deploying governmental entity, replacing a system of direct benefit payments by the Commonwealth. 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 is problematic in a couple respects. Currently, insurance providers are not required to offer the coverage, which could result in a limited and potentially expensive market and, while the proposal terms them employees for this purpose, we do not believe all of the employer protections available under the Workers’ Compensation Law (return to work programs for example) would accrue to the governmental “employer”. Moreover, it shifts the cost of coverage from the Commonwealth to county and local government. We suggest retention and expansion of the existing Commonwealth payment, most easily accomplished by substituting the proposal’s “worker weekly wage” language for the current statute’s defined benefit. We propose no change in existing law giving municipalities responsibility for workers’ compensation benefits for volunteer fire.

The last issue is the means by which county and municipal compliance is achieved. We are sorry to note that the proposal’s strategy is expansion of the penalty for noncompliance, and no increase in funding. Under current law, failure of a local agency to comply results in loss of “Federal personnel and administrative funding”, essentially limited to emergency preparedness. The proposal would also subject us to loss of “any and all Commonwealth funds . . .” We find this indefensible and vigorously oppose its inclusion in the proposal. As noted at the outset, we take our planning and response duties seriously, and have fulfilled them responsibly. In light of our current level of compliance, it offends us that the stick has gotten much, much bigger, and now threatens services to children and the mentally ill, highway and bridge infrastructure, probation and corrections programs, and more – counties are part of perhaps \$10 billion in Commonwealth appropriations. Compliance is a function of tools, time, and resources. Yet despite the increased responsibilities – the mandates -- flowing throughout this legislation, there is no hint of an increased Commonwealth appropriation to provide aid or incentive. We believe a responsible fiscal note must be prepared, and that the Commonwealth must fund this mandate accordingly.

Thank you for the opportunity to testify on this important issue. We look forward to working with you as development of this legislation continues.