Energy Emergencies

The State Legislative Role in Planning and Response

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Introduction

State governments serve vital functions in managing emergencies. They are responsible for mitigating the impacts of these events and facilitating a rapid recovery through comprehensive planning, preparation and coordination. While much of the immediate response work during an emergency falls to various state agencies, the role of state legislatures is to establish the framework for state emergency management operations—designating agency roles and responsibilities, establishing priorities and special powers, and allocating funding.

This is equally important when it comes to energy emergencies, which can impact people’s daily lives due to the foundational role that energy plays in modern society. Energy systems not only power and heat our homes and businesses, they fuel our vehicles and power hospitals and public safety institutions. In addition, there are many interdependencies between the energy sector and other critical infrastructure sectors, including communications and emergency services. Due to this, disruptions to key energy assets and critical energy infrastructure have the potential to threaten the health, safety and well-being of a community.

This primer outlines the role of state legislatures in preparing for and responding to energy emergencies. It also provides additional context around coordination between state and tribal governments during energy emergencies, and information about the roles of governors, state agencies and the federal government in coordinating responses.

Natural disasters include all types of severe weather, from hurricanes to tornadoes to wildfires, which have the potential to pose a significant threat to human health, safety and critical energy infrastructure.

Energy Emergencies

An energy emergency may be caused by single or multiple events—including natural disasters, cyberattacks, acts of terrorism or pandemics—that result in electric grid outages, oil and gas pipeline disruptions or fuel shortages. Energy disruptions can impact other essential services such as water and wastewater systems, food storage, telecommunications and transportation systems, among others.
State Legislative Role

While state legislatures play a vital role in emergency management, that role is primarily exercised long before any emergency is declared, often by passing statutory mandates that shape how the executive branch and state agencies are required to respond in emergency situations. This responsibility is no different when it comes to energy emergencies. State laws allow governors to declare an energy emergency, establish the framework for how state agencies prepare for and react to a declaration, create high-level state strategies and policies around planning and preparedness requirements, and provide funding for all of those efforts.

It is this legislative foundation—all of the work done prior to any emergency—that enables a coordinated response and recovery when disaster strikes.

Legislatures are intentionally burdened by the need to reach consensus, a requirement that allows for careful consideration and hampers rushed action. This is why every state grants emergency powers to the executive branch: because emergencies call for swift, decisive action—something legislative bodies, with dozens to hundreds of co-equal individuals, aren’t designed to accomplish. This division of responsibilities was established by design—often by legislative design—to play to the strengths of various state government bodies.

Once the winds die down, the waters recede and the restoration crews have gone home, state legislatures assess the state’s actions. Legislatures are well suited to consider changes that can better position the state for the next emergency.

It was through these assessments—and the recognition of the unique importance of energy systems to enable other critical services—that a number of state legislatures established statutes governing how states manage and respond to energy emergencies. The following sections discuss several key themes around how state legislatures have addressed energy emergencies in state law.

State legislative responsibilities

State legislatures play a key role in preparing states for energy emergencies, often by passing laws that shape how state agencies and the governor are required to prepare for and respond to declared emergencies. Legislative responsibilities include:

- Shaping the emergency management framework.
- Establishing energy emergency planning requirements.
- Granting emergency powers.
- Providing funding for emergency planning and response activities.

Shaping State Emergency Management

State legislatures dictate the structure and strategy underlying state emergency responses. By enacting laws, legislatures create the framework that establishes the responsibilities of various state agencies, how those agencies are intended to coordinate a cohesive response, and what planning and preparedness mandates are required of them.

This is equally as true of energy emergencies as it is for broader emergencies. In some states, statutes detailing the state energy emergency strategy are folded into the broader emergency management apparatus, with the state emergency coordinating agency responsible for state response and coordination around energy emergencies.

Utah, for example, designates a single agency to lead the state’s response to all emergencies, requiring that it coordinate with certain agencies with expertise specific to the type of disaster. The Utah Division of Emergency Management is responsible for coordinating the state’s response to emergencies and disasters.
With energy emergencies, the Division of Emergency Management is required to coordinate with the Division of Public Utilities; Division of Oil, Gas and Mining; Division of Air Quality; and the Department of Agriculture and Food with regard to weights and measures for fuel sales. In some cases, the Division of Public Utilities will take on a lead role, with other state agencies operating in a support function.

Other states treat energy emergencies more distinctly and task relevant state agencies with leading response efforts. The Hawaii Legislature made the chief energy officer of the Hawaii Energy Office the executive branch representative during declared energy emergencies. The state’s energy office is housed in the Hawaii Department of Business, Economic Development and Tourism, which is responsible for developing the state energy emergency plan.

In Connecticut the state energy office coordinates the implementation of their states’ response to a declared energy emergency, in addition to developing state energy emergency response plans. Other states, including New York and Ohio, designate their state’s public utilities commission (PUC) as the lead coordinating agency, while other states divide responsibilities based on fuel type.

Establishing Emergency Planning Requirements

Emergency response planning lays the groundwork for launching a cohesive, coordinated and effective response to energy emergencies. Due to this, quite a few states have enacted distinct planning requirements for energy emergencies. These laws are intended to iron out roles and responsibilities in order to monitor energy supply channels for potential disruptions and to create a coordinated and cohesive response in the event an energy emergency is declared. Legislatures have the power to establish and enhance these requirements through mandates on state agencies or regulatory bodies.

Illinois enables local planning

An Illinois law is geared toward enabling greater local planning and preparedness. The statute grants municipalities the authority to pass local ordinances that require any electric utility serving over 1 million customers that operates within a city’s corporate limits to provide the city with a local “emergency energy plan.” The plan must outline the utility’s planned course of action if the electricity supply is threatened.

Connecticut directs its energy office to engage in planning and preparedness activities related to energy emergencies. The Department of Energy and Environmental Protection (DEEP), is required to coordinate its planning with all relevant state, regional and federal organizations, including state departments of Emergency Services and Transportation and the Public Utilities Regulatory Authority. The statute also requires the state plan to establish standards for “allocation, rationing, conservation, distribution and consumption of available energy resources,” which may be necessary to suspend or modify in response to an energy emergency. It also empowers DEEP to establish regional agreements to coordinate energy resource programs with other states and the federal government. The DEEP commissioner has authority to revise and amend the state’s energy emergency plan as deemed necessary, though any changes must be approved by the General Assembly.
The New Jersey Department of Environmental Protection, which houses the state offices of energy and emergency response, is responsible for developing, “in advance of and during an energy emergency,” a coordinated public and private sector plan to mitigate the potential impacts of a given emergency. In this role, the department is required to evaluate the energy emergency response plans of other agencies and departments of state government and has the authority to require modifications deemed necessary to conform with the state plan. It also requires the commissioner of the Department of Environmental Protection to prepare and submit a comprehensive report on the state’s energy emergency preparedness plans every three years. The report must identify ways in which the department monitors and evaluates energy supply conditions which could lead to energy shortages, evaluate existing emergency response measures and their potential impacts, and review for continuity the energy emergency response plans of all relevant state agencies.

The Hawaii Department of Business, Economic Development and Tourism is tasked with maintaining the state energy emergency and preparedness plan, requiring the department to consult with representatives of federal, state and county governments, in addition to private sector energy suppliers, consumers and other stakeholder groups. The department must incorporate plans from state electric and gas utilities and other energy suppliers, in addition to developing an energy emergency communication plan to facilitate and coordinate the state response. In addition, each county is required to submit comprehensive energy emergency plans, which must be consistent with the state plan. The legislature worked to ensure a highly effective and cohesive response to energy emergencies by requiring widespread collaboration and coordination between different levels of government, the private sector and various stakeholders.

In Oregon, the governor is required to develop an extensive statewide contingency plan to “maintain emergency services, continue productivity and reduce hardship” during energy emergencies, which are defined in the law as severe fuel shortages.

Granting Emergency Powers

An efficient and effective response to any emergency requires a comprehensive plan outlining the response strategy and decisive leadership to implement and carry out the plan when disaster strikes. In recognizing the need for decisive action, each state’s legislature has granted special emergency powers—often to governors or their representatives—necessary to manage emergencies. These emergency powers include authority normally reserved for legislatures, including the ability to suspend existing statutes or effectively create new laws—even if those actions are only in force for the duration of a declared emergency.

In the case of energy emergencies, many states grant their governor additional powers to address the electricity or fuel disruption. In Virginia, the governor has authority to declare an electric energy emergency and, under that declaration, to issue generation requirements to capable electric generators in the state, waive various state environmental restrictions, and petition the president and U.S. Department of Energy for further assistance.

Indiana grants the governor authority to declare an energy emergency with the following additional powers:

- Establish programs, priorities and quotas for the conservation and consumption of energy resources.
- Suspend and modify state pollution control standards and relevant transportation standards that could slow down the state’s response.
- Establish and implement intrastate regional programs and agreements to coordinate state actions with those of the federal government and other states.
- Issue emergency orders on private energy companies.

These powers granted under an energy emergency declaration do not replace, but rather supplement the broader emergency powers granted to the governor under an emergency declaration. However, these powers are often checked by the state legislature. Indiana allows the governor to declare an energy emergency—which remains in effect for 60 days—and to extend it once if necessary. Any additional extensions must be approved by the legislature.
Some state legislatures may establish temporary committees to oversee emergency response work and serve as liaisons between the executive branch and the legislature throughout the duration of an emergency. In Connecticut, a joint legislative committee is established upon an emergency declaration—including energy emergencies. The committee is expected to convene within 72 hours of a declaration and has the power to terminate the governor’s energy emergency declaration by majority vote. If the committee approves, the declaration remains in effect and the committee is expected to reconvene every 60 days to reconsider. The committee can terminate the declaration at any time. The committee establishes legislative oversight of the state’s response, while providing a channel for communication between the executive and legislative branches.

**Providing Funding**

The power of the purse is substantial and important—and it extends to energy emergencies. While much of the initial response is delegated to agencies, a relatively quick way for a state legislature to respond to emergencies is through special or supplemental appropriations.

State legislatures ensure that state agencies and local governments receive necessary funding to respond to energy emergencies. These appropriations can be made through transfers from state rainy day funds or through supplemental appropriations, and can help states, municipalities and communities weather or recover from an energy emergency. They can also establish interstate and intrastate mutual aid agreements.

Additionally, appropriations to state agencies and programs related to emergency planning and preparedness help ensure responsible entities have the resources they need to carry out their mission. These funds can be set aside specifically for planning and training exercises.

**State Energy Emergency Management Response**

State laws provide the framework for state energy emergency management and response, prescribing how governors and state agencies plan for, respond to and recover from energy emergencies. These laws grant governors the power to declare energy emergencies, as well as define the powers and duties of the governor and other relevant state agencies when such a declaration is made.

This section briefly discusses the roles and responsibilities of various state agencies in response to an energy emergency declaration.

**GOVERNOR’S ROLE**

Governors are responsible for declaring a state of energy emergency. Upon such a declaration, they may be required to oversee and lead the state’s response or to use the emergency powers granted them by the state legislature to enable a rapid restoration and recovery. The governor may also request a federal emergency declaration from the White House.

The governor’s office often takes the lead in public communications throughout an emergency. It also issues waivers to assist in the recovery process—these can take the form of suspending state fuel carrier rules on driving hours or cargo weight, or tax waivers for workers and companies involved in restoration work. Governors may also request temporary waivers or permits related to federal regulations, such as fuel carrier requirements, certain environmental regulations and electric generation permits.

In addition, governors have the authority to activate the National Guard or mutual aid agreements.
PUBLIC UTILITY COMMISSIONS, ENERGY OFFICES AND OFFICES OF EMERGENCY MANAGEMENT

In response to a governor’s energy emergency declaration, state PUCs, state energy offices and state offices of emergency management (OEM) are often relied upon throughout a state’s response. The responsibilities of these agencies are often outlined in state law and state energy response planning activities, which vary state by state. These include planning and other preparatory activities prior to an energy emergency, in addition to coordinating the state response upon a governor’s emergency declaration.

These agencies can also be responsible for coordinating with federal partners through the Federal Emergency Management Agency’s (FEMA) National Response Framework (NRF), a comprehensive approach to coordinating a unified response to disasters and emergencies from the local, state and federal levels. The NRF is the nation’s guiding document for how the various levels of government should respond to all types of disasters and emergencies. The NRF is designed to be scalable, flexible and adaptable to allow all government jurisdictions, businesses, nongovernmental organizations and communities to develop and integrate continuity plans and build capacity to respond to all types of potential cascading failures.

The NRF establishes an organizational structure for how the nation responds to emergencies. The NRF established 15 functional categories called Emergency Support Functions (ESFs), each one designating the federal roles and responsibilities required to carry out a coordinated national response. Many states have used the ESF to structure how their response is organized.

ESF-12 represents the energy function as it relates to any emergency, for which the U.S. Department of Energy (DOE) is the lead federal agency. In this role, DOE is responsible for coordinating with state, local and industry partners, providing expertise, sharing information, and coordinating response activities during events. Each state designates ESF-12 coordinators—agencies tasked with coordinating with DOE during these events. These agencies are often at the center of a state’s response apparatus, with most of their activities devoted to state-level response management. In most cases, PUCs, state energy offices and OEMs receive this designation, with support from other agencies.

There are three common organizational structures for ESF-12 coordination:

1. **PUCs as the primary ESF-12 coordinator:** While PUCs take the lead in planning and serve as the central point of contact and coordination with DOE during emergencies, state energy offices and OEM provide important support functions.

2. **State energy office or OEM as the primary ESF-12 coordinator:** In this model, the state energy office or OEM takes on the lead role, with the PUC serving in a support capacity.

3. **ESF-12 coordinator responsibilities split:** ESF-12 coordinator responsibilities are split equally between PUCs and state energy offices or OEM. In some cases, responsibilities are split based on the emergency—with the PUC leading during power outages, while the state energy office or OEM will lead in the event of fuel shortages. In other states, the state energy office is closely tied to the PUC, granting shared responsibilities during emergency responses.

**Federal Coordination with States**

Coordination between government agencies is vitally important to implementing a coherent and rapid response. In the case of energy emergencies, DOE is the lead federal coordinating agency, supported by a dozen other federal agencies. DOE’s role is to assist state, tribal, local, territorial and federal governments, nongovernmental organizations and private industry by coordinating government capabilities, services, technical assistance and engineering expertise during disasters. DOE is tasked with identifying interdependencies and potential cascading impacts to other jurisdictions, critical sectors and industries, in addition to providing information and notifications in the lead-up to potential disasters.
In this role, DOE works directly with state ESF-12 coordinators from affected states to help leverage federal and regional capacity across sectors through its close coordination with FEMA, which in turn works closely with all ESFs. This can result in DOE deploying personnel to emergency operations centers in affected states and regions to coordinate with state and local counterparts and industry representatives—both prior to and during disaster scenarios. The focus of these initiatives is to identify potential problems that could arise, along with any issues that could require federal assistance.

DOE’s on-the-ground responders can provide expertise to state officials and industry partners in order to enhance restoration efforts, while daily coordination calls work to ensure a unified response is taking place. DOE also provides situation reports and coordinates with utilities, FEMA and the U.S. Army Corps of Engineers on temporary emergency power requirements.

While DOE acts in a coordinating capacity, the responsibility for restoring critical infrastructure and assets remains with the facility owners—whether private or public. State, tribal, territorial and local governments can work with energy asset owners and operators to prioritize the restoration of critical infrastructure to ensure that normal operations and services are restored.

Following each response, DOE analyzes the processes, procedures, roles and responsibilities to advance its emergency response capabilities for future response and recovery support.

**State Coordination with Tribes**

In addition to coordinating with federal and local partners, states must consider and plan to coordinate any response with tribal governments. As sovereign nations, tribes retain authority to declare emergencies on tribal lands and may request a presidential declaration of emergency independent of any state request.

Effective coordination between states and tribes is vital to ensuring that tribes have access to the resources and support necessary to recover during and after an emergency. This is particularly important during energy emergencies, which impact energy resources and infrastructure located across state and tribal jurisdictions. States that designate specific offices and tribal liaisons to serve as points of contact for energy emergencies, both in the planning and recovery phases, are better positioned to successfully coordinate with tribal partners. State legislatures can require that state agencies designated to act as primary agencies for energy emergency support functions coordinate and consult with tribes to better facilitate an effective response before, during and after energy emergencies. NCSL’s primer on State-Tribal Coordination in Energy Emergency Planning and Response provides an in-depth review of state and tribal protocols that facilitate coordination across jurisdictions.

**Conclusion**

States benefit from comprehensive energy emergency management laws that establish the framework and structure necessary to build out the planning and response capacity necessary to facilitate a rapid recovery. These laws make planning for energy emergencies a state priority, establish planning and mitigation requirements, grant emergency powers and provide funding for related activities. They prepare state agencies to coordinate effectively with federal, tribal and local partners, ensuring emergency responses are cohesive and effective.
Resources


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