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Codifying Murphy's Law: The Necessity of a Statutory Intrastate Mutual Aid Compact (IMAC) in Nebraska

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Taylor Brown*

Codifying Murphy's Law: The Necessity of a Statutory Intrastate Mutual Aid Compact (IMAC) in Nebraska

ABSTRACT

There is an adage that states, "whatever that can go wrong will go wrong." This idea leads emergency managers to develop ideas and programs which allow political entities to respond to and mitigate disasters. However, there will inevitably be situations where some loss is unavoidable. Ideally, lawyers are heavily involved before and throughout the response to improve these outcomes in a practice known as "litigation mitigation."

Litigation mitigation has three goals: reduce exposure to legal claims, improve safety, and enhance property protection. One way to accomplish all three of these goals is to seek external assistance when a disaster is beyond a local political entity's response capabilities. However, several potential problems must be considered when asking another political entity for help, i.e., loaning equipment, sending personnel, and allowing access to facilities. Some states, like Nebraska, do not have a fully

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comprehensive system for local governments and political entities to request help within the state.

For the law to be used as an effective mitigation and prevention tool in these circumstances, Nebraska needs a codified Intrastate Mutual Aid Compact (“IMAC”) to respond effectively to disasters within its borders so that the most vulnerable populations are not left unprotected when first responders are overwhelmed. Further, first responders should not be primarily concerned about what will happen to them if they are injured while responding to others in need. This Comment will evaluate what Nebraska already has in place, what Nebraska lacks in litigation mitigation, and how a well-structured IMAC solves these problems.

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I. INTRODUCTION

There is an adage that states, “whatever that can go wrong will go wrong.”¹ The term comes from an aerospace engineer, Edward Murphy, whose repeated failed experiments with new measurement devices earned the moniker “Murphy’s Law.”² This idea leads emergency managers to develop ideas and programs which allow political entities³ to

1.

NICK T. SPARK, A HISTORY OF MURPHY’S LAW (Mark Abrahams, 3d ed. 2013).

2.

Id.

3.

Throughout this Comment, the phrase “political entities” is used interchangeably with “municipalities,” and “political subdivisions” as defined in NEB. REV. STAT. § 81-829.39 (8) (Reissue 2014).

respond to and mitigate disasters.⁴ However, there will inevitably be situations where some loss is unavoidable. Ideally, lawyers are heavily involved before and throughout the response to improve these outcomes in a practice known as “litigation mitigation.”⁵

Litigation mitigation has three goals: reduce exposure to legal claims, improve safety, and enhance property protection.⁶ One way to accomplish all three of these goals is to seek external assistance when a disaster is beyond a local political entity’s response capabilities. However, several potential problems must be considered when asking another political entity for help, i.e., loaning equipment, sending personnel, and allowing access to facilities.⁷ Some states, like Nebraska, do not have a fully comprehensive system for local governments and political entities to request help within the state.⁸

The most effective emergency management measures are prevention and mitigation.⁹ For the law to be used as an effective prevention and mitigation tool in these circumstances, Nebraska needs a codified Intrastate Mutual Aid Compact (“IMAC”) to respond effectively to disasters within its borders so that the most vulnerable populations are not left unprotected when first responders are overwhelmed. Further, first responders should not be primarily concerned with what will happen to them if they are injured while responding to others in need. This Comment will evaluate what Nebraska already has in place, what Nebraska lacks in litigation mitigation, and how a well-structured IMAC solves these problems.

II. BACKGROUND

There are three levels of disaster response: federal, state, and local.¹⁰ The Federal Emergency Management Agency (“FEMA”) acts as the federal level of disaster response.¹¹ FEMA activates during large multi-state disasters such as hurricanes, wildfires, or terrorist-attacks.¹² If the response capabilities of a state are at their limits, the Governor can declare a state of emergency and request federal aid.¹³

4. As defined in NEB. REV. STAT. § 81-829.39 (2) (Reissue 2014).

5. WILLIAM C. NICHOLSON, EMERGENCY RESPONSE AND EMERGENCY MANAGEMENT LAW CASES AND MATERIALS 255–58 (Charles C. Thomas, 2d ed. 2012).

6. *See id.*

7. *See* 42 U.S.C. § 5192 (what the president may do in any emergency for state and local governments); 44 C.F.R. §§ 206.37(c)(2) and (d) (minimum requirements for a state or local government to request a major disaster declaration).

8. FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 7 (2021).

9. GEORGE D. HADDOW ET AL., INTRODUCTION TO EMERGENCY MANAGEMENT 125–26 (Steve Merken 6th ed. 2018).

10. HADDOW, *supra* note 9, at 26–27.

11. *Id.*

12. *Id.*

13. HADDOW, *supra* note 9, at 313.

A. The Beginning of Standardized Emergency Management

In 1972, before the creation of the FEMA, wildfires in California quickly overwhelmed the abilities of individual response agencies.¹⁴ Neighboring agencies came to the aid of the overrun response teams.¹⁵ However, communication between agencies was a perpetual and potentially crippling problem.¹⁶ Each agency had its own codes, call signs, and classifications.¹⁷ To overcome this setback, a communication system called FIREScope was created.¹⁸ FIREScope, over forty years of development, evolved into the Incident Command System (“ICS”).¹⁹ ICS has since been adopted by emergency departments across the country for standardized communication and understanding.²⁰ The Department of Homeland Security (“DHS”) later incorporated ICS into a more comprehensive National Incident Management System (“NIMS”), which has standardized multiple aspects of emergency management response.²¹

B. Federal Level: FEMA Creation and Modernization

Shortly after the creation of FIREScope, President Jimmy Carter established FEMA in 1979.²² The focus of FEMA was varied, from civil defense to nuclear attack planning, with only a small minority of plans focused on natural disasters.²³ In 1988, Congress passed the Stafford Act, which gave the President power to provide aid by request to states in need during natural disasters, among other things, later amended in 2013.²⁴ Following the terrorist attacks of September 11th 2001, President George W. Bush created the DHS by Executive Order in 2003, placing FEMA under the DHS.²⁵ The DHS’s founding mission was to protect the homeland from terrorist organizations and attacks.²⁶ As part of this new direction, President Bush issued Homeland Security Presidential Directive 5 (“HSPD-5”).²⁷ In this Directive, President Bush mandated intergovernmental cooperation for major incident

14. *History of ICS*, EMERGENCY MGMT. SERV. INT’L., <https://www.emsics.com/history-of-ics/> [https://perma.cc/7K3C-XL2F] (last visited Nov. 5, 2023).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. HADDOW, *supra* note 9, at 6–7.

23. *Id.* at 8–9.

24. *Id.* at 27–28.

25. *Id.* at 12.

26. *Id.*

27. *Homeland Security Presidential Directive No. 5*, 39 WEEKLY COMP. PRES. DOC. 263, 280–282 §15 (Mar. 7, 2003).

response.²⁸ Additionally, this cooperation was to be founded upon NIMS, a common communication network and clear chain of command.²⁹ With FEMA placed under the DHS, its mission shifted and FEMA no longer focused on natural disasters.³⁰ This left natural disaster response primarily up to the states.³¹ After the apparent failure of FEMA to aid states in the aftermath of Hurricane Katrina in 2005, the Post-Katrina Emergency Management Reform Act reorganized FEMA again, refocusing the organization on response to any disaster, known as an “all-hazards approach.”³² As FEMA developed, it separated the United States into regions.³³ Region 7 consists of Nebraska, Iowa, Kansas, and Missouri, which will be discussed below.³⁴

C. State Level Response: Emergency Management Assistance Compacts

In 1992, Hurricane Andrew tore through Florida.³⁵ Unfortunately, this was the latest in a long line of hurricanes ravaging the east coast. Hurricanes Fran, Hugo, Bob, and Eloise devastated infrastructure, uprooted families, and inflicted damage and devastation that society continues to struggle with to this day.³⁶ As the Southern and Eastern states sought to recover and rebuild, their governors decided to band together.³⁷ The Southern Governors Association put together a proposal for an agreement to ease the process of providing aid among the states.³⁸ However, such an agreement required the consent of Congress,³⁹ so the proposal was taken to the House of Representatives as House Joint Resolution 193.⁴⁰

When introducing the legislation on September 24th 1996, Pennsylvania Representative Gerkas called the resolution “unique legislation,” stating that the legislation “symbolizes the willingness of Americans to help other Americans in trouble.”⁴¹ The main architect of the bill, Representative Inglis of South Carolina, then took the floor to explain the purpose of the joint resolution:

28. *Id.*

29. *Id.*

30. HADDOW, *supra* note 9, at 19–21.

31. *Id.*

32. *Id.*

33. *Id.*

34. FEMA REGION 7, *supra* note 8.

35. HADDOW, *supra* note 9, at 9.

36. *Id.*

37. H.R.J. Res. 193, 104th Cong. (1996).

38. *Id.*

39. *See* U.S. CONST. art. I, §10, cl. 3.

40. H.R.J. Res. 193, 104th Cong. (1996).

41. 142 CONG. REC. H10819 (daily ed. Sept. 24, 1996) (statement of Rep. Gerkas).

The compact essentially handles two very important areas that heretofore have been a little bit murky. First, it deals with the compensation questions...such that [states] work that out in advance, and they know how the work is going to be accomplished, how it is going to be paid for. The second thing that the compact does is it deals with the question of liability All of that accomplishes a great deal because it means that states will now be much more able to send assistance and to know in advance what kind of situation they will find there.⁴²

When putting together a compact for responding to emergencies, it is telling that the most concerning issues that the states wanted to address were: (1) who would be responsible if something went wrong, and (2) who was going to pay for what.⁴³ When employing litigation mitigation, reimbursement and liability should be the first two questions on any lawyer's mind.⁴⁴

Thus, these are the focuses of a now fundamental part of multi-state disasters. If a disaster is not large enough to mobilize the federal government response system, but the state's resources are not sufficient to handle the problem, states can ask each other for help through Representative Inglis's bill, the Emergency Management Assistance Compact ("EMAC").⁴⁵ An excellent recent example of the compact in action is the California wildfires of early 2020, when various states sent personnel to assist in fighting the wildfires.⁴⁶ Eventually all fifty states, Puerto Rico, and the U.S. Virgin Islands ratified this revolutionary EMAC statute, allowing any state to have a blanket agreement in place in the event they must call for help or respond to calls for assistance.⁴⁷

III. WHERE IS NEBRASKA?

While the passage of the EMAC in 1996 is certainly a triumph in emergency management legislative history, Nebraska had already recognized that a similar compact within the state would be useful to help the political entities within the state.⁴⁸ In 1996, Nebraska passed the Emergency Management Act,⁴⁹ codified as Nebraska Revised Statutes § 81-829.31 and §§ 829.36-75. The Act sets out the different responsibilities of the Governor's emergency powers, the roles and duties of

42. 142 CONG. REC. H10822 (daily ed. Sept. 24, 1996) (statement of Rep. Inglis).

43. *Id.*

44. NICHOLSON, *supra* note 5.

45. FEMA REGION 7, *supra* note 8.

46. See Associated Press, *As 560 Wildfires Burn in California, Overwhelmed Firefighters Receive Aid from 10 States*, U.S.A Today (Aug. 22, 2020), <https://www.usatoday.com/story/news/nation/2020/08/22/california-wildfires-firefighters-receive-aid-10-states/3418583001/> [https://perma.cc/6N8H-ET6S].

47. FEMA REGION 7, *supra* note 8.

48. NEB. 94 LEGIS. J. L.B. 43 (Feb. 8, 1996) (statement of Sen. Wickersham).

49. Hereafter referred to as "Act" or "the Act."

the Adjutant General, and others.⁵⁰ For this Comment's purposes, the evaluation of the Act will be limited to the discussion of the local governments and their duties in § 81-829.46 and § 81-829.48.

A. Nebraska Emergency Management Act

The Act dictates specific requirements of local governments.⁵¹ The elected officers of local governments, "shall be responsible for ensuring that emergency management services are provided to their citizens and for coordinating emergency operations in their respective jurisdictions."⁵² Each local government in the state must have their own or be a part of an emergency management organization.⁵³ The organization must cooperate with and perform these services for every local government within the organization's boundaries.⁵⁴ However, in the event that an emergency management organization has a second emergency management organization within its boundaries (e.g., a town within a county), its responsibilities stop at the boundaries of the second organization.⁵⁵ In addition, each organization needs a director and a liaison to communicate with the Nebraska Emergency Management Agency ("NEMA").⁵⁶ However, the director can also serve as the liaison, and one individual can be a director for multiple emergency management organizations serving an area.⁵⁷ Each full-time member of an emergency management organization must be qualified and certified per criteria established by NEMA.⁵⁸

Despite these stipulations, the Nebraska legislature anticipated that there would be times when the resources of local municipalities would be overwhelmed.⁵⁹ During the floor debate for the Act, Senator Wickersham summarized the intent of the bill: "it simply increases every [political entity's] ability to respond to a disaster by calling upon their neighboring states for resources."⁶⁰ Section 81-829.48 states that the director of an emergency management organization, "shall, in collaboration with other public and private entities within this state, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of disaster, emergency, or civil defense emergency too great to be dealt with

50. Nebraska Emergency Management Act of 1996, NEB. REV. STAT. § 81-829.36–75 (Reissue 2014).

51. NEB. REV. STAT. § 81-829.46 (Reissue 2014).

52. *Id.* at § 81-829.46 (1).

53. *Id.* at § 81-829.46 (2).

54. *Id.*

55. *Id.*

56. NEB. REV. STAT. § 81-829.46 (3) (Reissue 2014).

57. *Id.*

58. *Id.* at § 81-829.46 (6).

59. *See* NEB. REV. STAT. § 81-829.48 (Reissue 2014).

60. NEB. 94 LEGIS. J. L.B. 43 (Feb. 8, 1996) (statement of Sen. Wickersham).

unassisted.”⁶¹ To satisfy this statutory requirement, different local governments or organizations can enter contracts or agreements to provide mutual aid.⁶² They can also enter into agreements with political subdivisions in other states with the Governor’s approval.⁶³ It is important to note that this Act does not provide a baseline agreement for political entities to draw upon, but merely creates the *option* of such entities to create agreements amongst themselves.⁶⁴

During that same floor debate, Senator Wickersham emphasized another important principle: mitigation.⁶⁵ He stated, “[The Act] also puts in place as one of the objectives of the agency the mitigation of hazards rather than just simply the response to them.”⁶⁶ This indicates that the Nebraska Legislature understood that there was a need to be prepared and, if possible, stop problems before they occurred.⁶⁷ The Nebraska Emergency Management Act established a strong basis for a litigation mitigation strategy in the state.

B. Nebraska Response to EMAC Passage

Three years after Congress approved an agreement between the states for an EMAC, and three years after the Nebraska Unicameral passed the Nebraska Emergency Management Act, the Unicameral once again had emergency management legislation in committee. They were asked to ratify the EMAC in Nebraska.⁶⁸ In the Committee on Government, Military, and Veterans Affairs, the senators heard testimony from General Stanley Heng, the Adjutant General of the Nebraska National Guard and Head of the newly formed Nebraska Emergency Management Agency.⁶⁹ In his testimony before the Committee, General Heng described multiple examples in which disasters had occurred within the state and surrounding states, including blizzards, floods, and wildfires.⁷⁰ Nebraska helped South Dakota with snow removal.⁷¹ Then South Dakota returned the favor by helping Nebraska with wildfires.⁷² The assistance with snow removal is of particular note because this was not just for the stereotypical “first responders” discussed in

61. NEB. REV. STAT. § 81-829.48 (1) (Reissue 2014).

62. *Id.*

63. *Id.* at § 81-829.48 (2).

64. *Id.*

65. NEB. 94 LEGIS. J. L.B. 43 (Feb. 8, 1996) (statement of Sen. Wickersham).

66. *Id.*

67. *Id.*

68. L.B. 83, 96th Leg., 1st Sess. (Neb. 1999).

69. *Emergency Mgmt. Assistance Compact: Hearing on L.B. 83 Before the Comm. on Gov’t, Mil., and Veterans Aff.*, 96th Leg. 16–29 (Neb. 1999).

70. *Emergency Mgmt. Assistance Compact: Hearing on L.B. 83 Before the Comm. on Gov’t, Mil., and Veterans Aff.*, 96th Leg. 16–29 (Neb. 1999) (statement of Gen. Heng, Adjutant Gen., Neb. Nat’l Guard).

71. *Id.*

72. *Id.*

emergencies (i.e., police, fire, EMS). It shows that first responders can include personnel and support in all public works needs and duties such as snow removal. Of these examples, General Heng's recollection of his experiences as a responder to Nebraska wildfires is particularly compelling.⁷³

In 1989 at Pine Ridge near Nebraska's northern border with South Dakota, wildfires had become nearly uncontrollable.⁷⁴ There were so-called "hotspots" within the fire in the canyon that were proving inaccessible to standard fire-control tactics and required air support.⁷⁵ General Heng, knowing the resources in Lincoln would be several hours away and not able to help, understanding the legal and monetary risks involved, called in support from South Dakota.⁷⁶ Of the incident, General Heng said:

Examples have occurred without a compact being signed, but let me tell you it isn't easy and it takes time and when you're in an emergency situation, you can't have a situation where you're waiting around for hours or even maybe would be days for legal approvals and forms to be signed and so forth. I speak from experience on that. . . .⁷⁷

However, it is not difficult to imagine what would have occurred if there had been an unforeseen problem with the South Dakotan air support: property damage, injury, death, and an endless litigation battle over liability. General Heng recognized this problem as well: "The intent of a compact is to have all the legalities and agreements available before the assistance is provided. And without a compact future assistance from our neighbors could be, obviously, more difficult."⁷⁸ Luckily, the scenario recounted by General Heng was resolved through interstate cooperation, and the Nebraska Legislature did ratify EMAC. However, it is worth asking: what can happen when incident management remains solely within the state?

C. Local Level: Nebraska's Vulnerability

On a local level, the response is familiar. Citizens call 9-1-1 in the event of an emergency, and the resources within the jurisdiction respond.⁷⁹ If there is a fire, 9-1-1 is called, and the fire trucks arrive. A medical emergency summons the ambulance, etc. However, there is

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Frequently Asked Questions*, NAT'L 911 PROGRAM, <https://www.911.gov/calling-911/frequently-asked-questions/> [<https://perma.cc/HEP8-QJSR>] (last visited Nov. 14, 2023).

a weak spot in response plans when the hazard⁸⁰ is large enough to overwhelm those local response capabilities but is not large enough for a state's Governor to declare an emergency. Asking for additional aid can take many different forms, and many local governments do not have a standardized approach when responding to smaller disasters within their jurisdiction that are not large enough to take to the state.⁸¹ The most common method takes the form of mutual aid agreements (sometimes referred to as a Memorandum of Understanding ("MOU")) between different jurisdictions, allowing additional resources to come to the requesting political jurisdiction's aid in certain circumstances.⁸² However, despite the best efforts of the legislature to anticipate the needs of the state, there are two glaring problems in Nebraska regarding local government abilities during disasters.

The legal system as a whole is reactionary.⁸³ However, the most effective emergency management measures are prevention and mitigation.⁸⁴ In the event there are needs above and beyond the capabilities of an individual organization, foresight is required to be able to write a contract or agreement to meet that specific need.⁸⁵ This would require fulfilling all elements of a valid contract: offer, acceptance, and consideration.⁸⁶ These requirements may seem easy to fulfill; however, if there is a small town without adequate resources, there may be difficulty proving proper consideration on both sides of the contract. Additionally, if there is no contract for a specific hazard, there is room to argue that the contract does not cover that specific type of response.⁸⁷ Further, if the two public entities then try to negotiate a contract during an emergency response, there would be an argument for an invalid contract due to duress.⁸⁸ Naturally, when a house is burning down, the owner would be willing to pay anything to put it out and would certainly be in no position to negotiate fairly. As a result, multiple entities have opted for a mutual benefits approach, where the agreement pays

80. The term hazard is used here interchangeably with the definition of disaster located in NEB. REV. STAT. § 81-829.38 (2) (Reissue 2014).

81. FEMA REGION 7, *supra* note 8.

82. NEB. REV. STAT. § 81-829.48 (1) (Reissue 2014).

83. HADDOW, *supra* note 9.

84. *Id.*

85. RESTATEMENT (SECOND) OF CONTRACTS § 71 (1981).

86. *Id.* ("To constitute consideration, a performance or a return promise must be bargained for."). See *Hamer v. Sidway*, 124 N.Y. 538 (N.Y. 1891) (holding that the contract was valid in that it was made with the required elements of offer and acceptance but there was debate as to whether there was consideration, something being gained by both parties in the agreement).

87. RESTATEMENT, *supra* note 85.

88. *Id.* at § 177 (explaining when undue influence makes contract voidable). See *Alaska Packers' Ass'n v. Domenico*, 117 F.99 (9th Cir. 1902) (holding a newly formed contract invalid due to duress after fishermen extorted their bosses while out to sea for an extra fee per fish brought in).

lip service to the statutory requirement in § 81-829.48.⁸⁹ However, the agreement itself lacks fundamental follow through.

As it stands, the Emergency Management Act, requires every public entity to be part of an emergency management organization.⁹⁰ Most systems are designed to react to one disaster at a time.⁹¹ The fire department can handle a certain number of fires before getting overwhelmed.⁹² Hospitals have a capacity they reach before they are forced to turn patients away.⁹³ By law in Nebraska, organizations are required to have an agreement in place if their response capabilities are overwhelmed.⁹⁴ But the Act allows disasters of a certain in-between scale to fall through the cracks, as it does not provide a scenario for them. What if it is just one fire over the limit? Or just two or three extra patients? As was repeatedly seen with the COVID-19 response, what if a hospital contracted to take extra patients from a neighboring jurisdiction cannot fulfill those obligations? There is no need to mobilize the Nebraska National Guard, but it is still beyond the capabilities of that specific organization. To fix this problem, the Governor would have to negotiate with the specific counties and get approval from the legislature to create a new agreement.⁹⁵ The alternative solution being the counties would have to sign a contract targeting that specific problem on their own, the vulnerabilities of which were discussed above.⁹⁶

This issue was also brought up during the Committee debate when General Heng testified about an EMAC in Nebraska.⁹⁷ Senator Vrtiska, a former firefighter turned Nebraska legislator and Committee member, recalled that whenever his district needed help, they would “call [their] neighbor[s]” for aid.⁹⁸ He also acknowledged that there was no kind of legal basis or protection for such an informal agreement, but it

89. NEB. REV. STAT. § 81-829.48 (1) (Reissue 2014).

90. *Id.*

91. Mary Leigh Meyer, *What Happens When a Hospital is Full?*, TEXAS A&M VITAL RECORD (Sept. 27, 2022, 12:56 PM), <https://vitalrecord.tamhsc.edu/what-happens-when-a-hospital-is-full/> [https://perma.cc/68QY-92L9].

92. See Ringgold Volunteer Fire and Rescue Staff Writer, *Pandemic Adds Stress to Already Strained Rural Fire Departments Due to Workload, Trauma*, U.S.A. TODAY (Nov. 10, 2021), <https://www.usatoday.com/story/news/nation/2021/11/10/rural-fire-departments-strained-pandemic-workload/6368857001/> [https://perma.cc/GH6R-PUNG] (“Fire Chief J.T. Wallace Jr. of Benton Fire District No. 4 in rural Louisiana said he does not have enough firefighters, paid or volunteer, to respond to structural fires.”).

93. Meyer, *supra* note 91.

94. NEB. REV. STAT. § 81-829.48 (1) (Reissue 2014).

95. *Id.* at § 81-829.48 (3).

96. *Id.* at § 81-829.48 (1).

97. *Emergency Mgmt. Assistance Compact: Hearing on L.B. 83 Before the Comm. on Gov’t, Mil., and Veterans Aff.*, 96th Leg. 16–29 (Neb. 1999) (statement of Gen. Heng, Adjutant Gen., Neb. Nat’l Guard).

98. *Id.* at 23–24 (statement of Sen. Vrtiska, Member, Comm. on Gov’t, Mil., and Veterans Aff.).

happened anyway.⁹⁹ While not pertinent to the discussion of an EMAC, as it was a local agreement, Senator Vrtiska's experience is incredibly relevant to this Comment. This kind of "neighbors informally helping neighbors" assistance is given regularly, many times without any sort of mutual aid agreement in place; most of the time it does not have an adverse effect.¹⁰⁰ The help is given, and everyone walks away happy. However, in the next section, this Comment will explore what happens when a party does not walk away happy.

D. Litigation: First Responders Bear the Burden

Rusty Hauber was a city firefighter who was also a member of the volunteer rescue dive team.¹⁰¹ When the county sheriff's department received a call for a rescue, they requested the volunteer rescue dive team for assistance.¹⁰² However, when the request came from the sheriff's department, Hauber was on duty at his regular fire station.¹⁰³ He received permission from his battalion chief to respond to the rescue request and responded with the rest of the rescue dive team.¹⁰⁴ Sadly, Hauber was one of four divers that died in the attempted rescue, and Hauber's wife brought a wrongful death suit against the county.¹⁰⁵ In Washington, firefighters are permitted to both collect workers' compensation and bring negligence-related suits against their employers.¹⁰⁶ However, volunteers on search and rescue teams are only entitled to worker's compensation.¹⁰⁷ In *Hauber v. Yakima County*, the court noted that if the firefighter had responded to the call as a city firefighter as a request via mutual aid agreement, then a negligence suit would be permitted; but if he responded to the request as a volunteer on the search and rescue team, then a negligence suit would not be proper.¹⁰⁸ Additionally, the court noted that search and rescue dive teams were not included in the regional mutual aid agreement, nor did the responding fire department ever request mutual aid from the city fire department.¹⁰⁹ The court also rejected the argument that the area's

99. *Id.*

100. *Id.*

101. *Hauber v. Yakima Cnty.*, 56 P.3d 559 (Wash. 2002).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 560–61.

106. *Id.* citing WASH. REV. CODE §§ 51.04.010, 41.26.281 (2002) (firefighters and police officers are entitled to collect workers' compensation benefits and bring related negligence suits against their employers).

107. *Id.* citing WASH. REV. CODE §§ 38.52.260, .010(4) (2002) (search and rescue volunteers are entitled to worker's compensation benefits), §38.52.190 (2002) (search and rescue volunteers are barred from bringing suit for injury or death arising out of activities as an emergency responder).

108. *Id.* at 661.

109. *Id.* at 562–63.

“Comprehensive Emergency Management Plan” constituted a mutual aid agreement.¹¹⁰ Ultimately, the court held that Hauber was responding as a volunteer, and therefore his estate was barred from a negligence suit against the county.¹¹¹

This case is distinctive for two main reasons: (1) a mutual aid agreement between the requesting sheriff's department and the city fire department did not exist, and (2) the regional mutual aid agreement that did exist did not cover receiving help *specifically* from a search and rescue dive team.¹¹² *Hauber* highlights not only the need for a “baseline” mutual aid agreement, but also a need for flexibility in determining the hazards/disasters that the agreement applies to.

Allowing flexibility for unforeseeable circumstances is critical when dealing with emergency management.¹¹³ This concept is also demonstrated in a case that took place in Arizona, a state that does not provide a statewide standardized approach to local governments providing mutual aid to one another.¹¹⁴ In *Garcia v. City of South Tucson*, the South Tucson police department responded to a gunman firing shots from his residence.¹¹⁵ South Tucson called for assistance and Officer Garcia was among those that responded from a neighboring police department.¹¹⁶ In a maneuver to neutralize the threat, Officer Garcia was shot in the back by an officer from South Tucson and was paralyzed.¹¹⁷ In this case, there was a mutual aid agreement between the two police departments, with sections describing who was ultimately in charge of the responding officers and who would be liable in the event of damages caused by the assisting officers.¹¹⁸ However, the agreement did not foresee an instance in which an assisting officer was shot by an officer from the requesting jurisdiction. Because the mutual aid agreement did not include *this particular scenario*, a long and costly court case was the only way for Officer Garcia to get adequate compensation for his debilitating injury.¹¹⁹

110. *Id.* at 563.

111. *Id.*

112. *Id.*

113. FED. EMERGENCY MGMT. AGENCY, DISASTER OPERATIONS LEGAL REFERENCE P-1084, at 1-6 (2017) (“[The all-hazards operations cycle] reflects a present day statutory scheme that provides a *flexible and* dynamic construct for the federal government to respond to all hazards whenever state and local governments are overwhelmed.”) (emphasis added).

114. FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 9 (2021).

115. *Garcia v. City of South Tucson*, 640 P.2d 1117, 1119 (Ariz. Ct. App. 1981).

116. *Id.*

117. *Id.*

118. *Id.* at 1119–20.

119. *Id.* at 1122.

Consider another case, this time in New Jersey. New Jersey, like Nebraska, has no standardized mutual aid agreement.¹²⁰ In *Lauria v. Borough of Ridgefield*, a fire department called for aid from a neighboring jurisdiction.¹²¹ While responding, one of the firefighters was injured.¹²² The responding jurisdiction sought reimbursement for the workers' compensation claim.¹²³ The court noted that New Jersey law authorized local governments to enter into mutual aid agreements which could, but were not required to, include provisions providing for reimbursement of payments lawfully made to a firefighter's dependents.¹²⁴ Because the mutual aid agreement in question included no such provision, the responding jurisdiction could not obtain reimbursement from the requesting jurisdiction.¹²⁵

Another example comes from North Carolina, a state which allows contracts between political subdivisions with no standardized statewide approach.¹²⁶ In *Taylor v. Town of Garner*, Garner loaned a mounted police officer to the local university to work security for a football game.¹²⁷ This way, the university could have an adequate police presence to respond to the influx of people during the game.¹²⁸ Mounted officers provided a distinct advantage during the crowded game, and the University did not have any such officers.¹²⁹ During the course of his duties, the mounted police officer ran into a guidewire and injured his hand.¹³⁰ This injury eventually led to the amputation of his thumb.¹³¹ The injury should not have been a problem, as North Carolina State University had a mutual aid agreement with the town of Garner.¹³² The two political entities already agreed on payment, liability, and the authority under which loaned officers were operating.¹³³ However, when it came time to pay for the officer's injury, both the town and the university denied responsibility.¹³⁴ Instead of having a blanket liability plan in place, the officer had to resort to litigation to

120. FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 2 (2021).

121. *Lauria v. Borough of Ridgefield*, 291 A.2d 155 (Bergen Cnty. Ct. 1972), *aff'd*, 305 A.2d 78 (N.J. Super. Ct. App. Div. 1973).

122. *Id.*

123. *Id.* at 159.

124. *Id.*

125. *Id.*

126. FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 4 (2021).

127. *Taylor v. Town of Garner*, 694 S.E.2d 206, 207 (N.C. Ct. App. 2010).

128. *See id.*

129. *Id.*

130. *Id.* at 208.

131. *Id.*

132. *Id.* at 207.

133. *Id.*

134. *Id.* at 208.

receive compensation.¹³⁵ This reveals the primary downside of private agreements. The burden is placed on the first responders, the people these agreements are supposed to protect. Such scenarios could lead to political subdivisions being reluctant to loan out any of their specialized equipment or personnel.

To have effective litigation mitigation to prevent scenarios similar to those mentioned above, a generic contract, accessible to everyone, which legally covers unknown scenarios and allows neighboring jurisdictions to easily assist, is necessary. This generic contract is known as an Intrastate Mutual Aid Compact (IMAC).¹³⁶

IV. INTRASTATE MUTUAL AID COMPACT (IMAC)

An IMAC acts as a versatile group agreement for any local government that needs to request aid with a lower-level response.¹³⁷ Of the fifty states, forty have an IMAC in some form.¹³⁸ Sixteen of the forty have opt-in provisions,¹³⁹ while the other twenty-four have opt-out provisions.¹⁴⁰ The only states that do not have any form of an IMAC are Hawaii, Idaho, Nebraska, New Hampshire, New Jersey, North Dakota, Rhode Island, South Dakota, Vermont, and Wyoming.¹⁴¹

135. *Id.*

136. FEMA REGION 7, *supra* note 8.

137. *Id.*

138. See FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 1 (2021); FEMA REGION 2, *supra* note 120; FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 3 (2021); FEMA REGION 4, *supra* note 126; FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 5 (2021); FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 6 (2021); FEMA REGION 7, *supra* note 8; FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 8 (2021); FEMA REGION 9, *supra* note 114; FED. EMERGENCY MGMT. AGENCY, MUTUAL AID FOR BUILDING DEPARTMENTS: REGION 10 (2021).

139. See MASS. GEN. LAWS ch. 40, § 4J(c)(1); VA. CODE ANN. § 44-3.2(2); ALA. CODE § 31-9-09; FLA. STAT. § 23.1225; GA. CODE ANN. § 38-3-29; KY. REV. STAT. ANN. § 39A.030; MISS. CODE ANN. § 33-15-19; N.C. GEN. STAT. § 166A-19.72; S.C. CODE ANN. § 6-11-1810; MICH. COMP. LAWS § 30.410(2); MINN. STAT. § 12.331; WIS. STAT. § 66.0314; IOWA CODE § 29C.22; COLO. REV. STAT. § 29-1-203; ARIZ. REV. STAT. ANN. § 26-308; CAL. GOV'T CODE § 8550.

140. CONN. GEN. STAT. § 28-22a; ME. STAT. tit. 37-B, § 784-B; N.Y. EXEC. LAW § 29(h); DEL. CODE ANN. tit. 20, § 3203; MD. CODE ANN., PUB. SAFETY § 14-803; 35 PA. CONS. STAT. § 7331; W. VA. CODE § 15-5-28(c); TENN. CODE ANN. § 58-8-103; 20 ILL. COMP. STAT. 3305 / 2; IN. CODE § 10-14-3-10.8; OHIO REV. CODE ANN. § 5502.41; ARK. CODE ANN. § 12-75-119; LA. STAT. ANN. § 29:739; N.M. STAT. ANN. § 12-10B-4; OKLA. STAT. tit. 63, § 695.2; TEX. GOV'T CODE ANN. §§ 418.111–1181; KAN. STAT. ANN. § 48-950; MO. REV. STAT. § 44.090.5; MONT. CODE ANN. § 10-3-902; UTAH CODE ANN. § 53-2a-306; NEV. REV. STAT. §§ 414.020–340; ALASKA STAT. §§ 26.23.010–240.; OR. REV. STAT. § 402.210; WASH. REV. CODE § 38.56.020.

141. See FEMA reports cited *supra* note 138.

Within FEMA Region 7, Nebraska is the only state that does not have a codified IMAC.¹⁴² Kansas, Iowa, and Missouri's IMACs follow a simple and uniform approach that states can modify according to their needs.¹⁴³ The twelve sections of the IMAC, very similar in structure to the EMACs discussed earlier, can be divided into three main categories: who is involved, how to request aid, and what is covered in that response.

A. Who Is Involved

The first category of sections describes participants in the IMAC.¹⁴⁴ These are cities, villages, counties, school districts, public power districts, natural resources districts, and any other unit of government below the state level.¹⁴⁵ Here, the other states within FEMA Region 7 differ. In Kansas and Missouri, the IMAC automatically includes every political subdivision.¹⁴⁶ If a local municipality does not wish to participate, it need only notify the state emergency management agency to be withdrawn within thirty or sixty days.¹⁴⁷ Iowa, however, ratified an IMAC but left it to the individual political subdivisions of Iowa to opt-in.¹⁴⁸ Of the forty states that have an IMAC, fifteen have an opt-in provision like Iowa.¹⁴⁹ However, it is worth noting that two of the four litigation examples mentioned previously took place in opt-in states.¹⁵⁰ The opt-out approach seen in Kansas and Missouri protects against misunderstandings wherein subdivisions believe they are already a part of the agreement but are not, leading to a lack of coverage. The opt-out approach also prevents misunderstanding from more remote or rural locations that are not up to speed on every new bill going through the legislature. If a specific municipality decides the IMAC agreement is unnecessary, they can opt-out and achieve the same result.

In Nebraska, these can include local public agencies pursuant to the Interlocal Cooperation Act.¹⁵¹ If a disaster overwhelms the ability of local response teams, these political subdivisions can request help from participating subdivisions.¹⁵² In an interview with Director Darrin

142. FEMA REGION 7, *supra* note 8.

143. *See* KAN. STAT. ANN. § 48-952; IOWA CODE § 29C.22; MO. REV. STAT. § 44.090.

144. *See supra* Part IV.

145. NEB. REV. STAT. § 81-829.39 (8) (Reissue 2014). *See* KAN. STAT. ANN. § 48-952; IOWA CODE § 29C.22 ART. 1; MO. REV. STAT. § 44.090.1.

146. KAN. STAT. ANN. § 48-950; MO. REV. STAT. § 44.090.5.

147. KAN. STAT. ANN. § 48-950; MO. REV. STAT. § 44.090.5.

148. *See* IOWA CODE § 29C.22.

149. *See* statutes cited *supra* note 140.

150. The first litigation example occurred in Washington. Nine years after this case was decided, Washington passed its own version of an opt-out IMAC agreement. *See* RCWA T. § 38.56. The last occurred in New Jersey, which has no IMAC.

151. NEB. REV. STAT. § 81-829.39 (8) (Reissue 2014).

152. *See* KAN. STAT. ANN. § 48-950; IOWA CODE § 29C.22 ART. 1; MO. REV. STAT. § 44.090.1.

Lewis, the Director of Emergency Management of Buffalo County and the City of Kearney, he gave a key example of when non-traditional districts in Nebraska could have benefitted from the ability to quickly ask for aid via an IMAC.¹⁵³ During a blizzard in 2016, the mayor of a town within Buffalo county told the local municipal utility director that the roads needed to be cleared within two days.¹⁵⁴ The utility director reached out to Director Lewis asking for advice, since they did not have the proper equipment to clear the roads within that time frame.¹⁵⁵ The county's resources would not be able to assist, as they were busy clearing their own roads and could not get to the town in time.¹⁵⁶ Director Lewis asked if there was a possibility of asking the county to the north, since the northern county's snowfall was not nearly as heavy as Buffalo.¹⁵⁷ The utility director expressed concern because the mutual aid agreement the municipality had with the county was for fires and tornados, not snow removal.¹⁵⁸ In light of this new information, Director Lewis then facilitated a discussion between this northern country and the municipality utility director.¹⁵⁹ A contract was negotiated and signed, and the county's trucks were able to clear the snow in the Buffalo County town with time to spare.¹⁶⁰ After this incident, the town and the northern county created a mutual aid agreement specifically for snow removal for future incidents.¹⁶¹ This instance, recounted by Director Lewis, demonstrates a critical need for utility assistance, a service not usually covered by mutual aid. However, under an IMAC agreement, a utility district, not usually considered when creating mutual aid, would be able to request aid quickly and easily from neighbors without having to negotiate a contract before aid can be given.

B. How to Request Aid

The second category of an IMAC agreement describes how the political subdivisions can ask for help and what circumstances allow them to do so.¹⁶² An important feature in requesting aid is agency implementation and use of NIMS.¹⁶³ Statewide use of NIMS ensures standardized communication and understanding throughout any given response.¹⁶⁴

153. Telephone Interview with Darrin Lewis, Dir. of Emergency Mgmt., City of Kearney and Buffalo Cnty. (Sept. 9, 2022).

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *See supra* Part IV.

163. KAN. STAT. ANN. § 48-952; MO. REV. STAT. § 44.090.8.

164. *See History Of ICS, supra* note 14.

It is also the responsibility of the entity asking for help to identify the type of emergency that needs response, such as fire, earthquake, flood, tornado, hazardous material incident, terrorist incident, or other such man-made or natural emergency disaster or public safety need.¹⁶⁵ In addition to wide use of NIMS, a responding agency must have authorized representatives who can request or deploy mutual aid assets and obligate funds.¹⁶⁶

The provision requiring authorized representatives prevents not only self-deployment of first responders, but also chaos if there are multiple agencies vying for superiority.¹⁶⁷ In Director Lewis' interview, he described his frustration with the wildfire response within his jurisdiction.¹⁶⁸ While setting up an Incident Command for Buffalo County, in accordance with NIMS guidelines, Lewis finds other fire agencies setting up similar commands within their own sections. This results in confusion, misinformation, and misallocation of resources.¹⁶⁹ The requirement for all agencies to abide by NIMS guidelines would solve this problem.¹⁷⁰

As well, according to IMAC stipulations, in the event of an identified emergency that overwhelms the capability of the local political subdivision, requests can be made via the authorized representatives of that subdivision.¹⁷¹ If there is an agreement already in place (such as the mutual aid agreements discussed above), the IMAC does not impact any existing agreements.¹⁷² Nor does an IMAC prevent any political subdivision from creating a separate agreement or contract.¹⁷³ However, there cannot be any additional contracts to reduce staffing by either party.¹⁷⁴

Finally, there is a severability clause within an IMAC that states that if any provision of the Act or its application is held invalid, the remainder of the compact is not affected.¹⁷⁵ The severability clause can also determine if a particular agency can administer or govern the mutual aid system, usually the department of public safety or the

165. KAN. STAT. ANN. § 48-952; IOWA CODE § 29C.22 ART. 3; MO. REV. STAT. § 44.090.3.

166. KAN. STAT. ANN. § 48-952; IOWA CODE § 29C.22 ART. 3; MO. REV. STAT. § 44.090.3.

167. For, in the author's opinion, a masterclass in leadership and establishing chain of command when multiple agencies are vying for control, see *Arlington County After Action Report on the Response to the September 11 Terrorist Attack on the Pentagon*, TITAN SYS. CORP., <https://www.policinginstitute.org/wp-content/uploads/2018/07/pentagonafteractionreport.pdf> [https://perma.cc/M4QY-BPHT] (last visited Dec. 26, 2023).

168. Telephone Interview with Darrin Lewis, *supra* note 153.

169. *Id.*

170. See *supra* Part II, Section A.

171. KAN. STAT. ANN. § 48-952; IOWA CODE § 29C.22 ART. 3; MO. REV. STAT. § 44.090.3.

172. KAN. STAT. ANN. § 48-950; IOWA CODE § 29C.22 ART. 7; MO. REV. STAT. § 44.090.2.

173. KAN. STAT. ANN. § 48-950; IOWA CODE § 29C.22 ART. 7; MO. REV. STAT. § 44.090.2.

174. MO. REV. STAT. § 44.090.2.

175. KAN. STAT. ANN. § 48-958; IOWA CODE § 29C.22 ART. 12; MO. REV. STAT. § 44.090.6.

emergency management agency.¹⁷⁶ In Nebraska, the Nebraska Emergency Management Agency currently oversees the emergency response on the state level.¹⁷⁷

C. What Is Covered

The third and final category of IMAC sections dictates what protections are provided by an IMAC.¹⁷⁸ This section starts by making licenses and permits reciprocal across municipalities for the duration of the emergency or authorized drill, subject to the limits and conditions of state law.¹⁷⁹ Such a requirement would have been useful for Wayne County's emergency manager, Nic Kemnitz.¹⁸⁰ He recalls that when transporting patients via EMS, Wayne County EMS personnel could not perform certain medical/life-saving functions once they crossed over into a neighboring political jurisdiction.¹⁸¹ The lack of license/permit coverage in this instance prevented ease of transport and EMS from preparing the patient for the next stage of care.¹⁸² The IMAC section also stipulates that when assistance is requested, assisting jurisdictions may withhold resources to ensure reasonable protection within their jurisdiction.¹⁸³ Additionally, political subdivisions shall be subject to all law provisions as if they were providing service within their jurisdiction.¹⁸⁴

For liability purposes, all deployed personnel are considered agents of the requesting jurisdiction for tort liability and immunity.¹⁸⁵ Workers' compensation coverage for employees and insurance coverage for equipment is covered by their respective political subdivisions as though they were responding to an emergency within their jurisdictions.¹⁸⁶ This is essentially an adaptation of the "borrowed servant" doctrine, where more than one employer can become responsible for workers' compensation, such as when an employee of one employer is lent to, or borrowed by, another employer.¹⁸⁷ This can also be done statutorily, which would be the case in Nebraska through codification of an IMAC.¹⁸⁸ Participating political subdivisions and the deployed

176. MO. REV. STAT. § 44.090.6.

177. NEB. REV. STAT. § 81-829.40–41 (Reissue 2014).

178. *See supra* Part IV.

179. KAN. STAT. ANN. § 48-954; IOWA CODE § 29C.22 ART. 5; MO. REV. STAT. § 44.090.10.

180. Telephone Interview with Nic Kemnitz, Dir. of Emergency Mgmt., Wayne Cnty. (Sept. 9, 2022).

181. *Id.*

182. *Id.*

183. KAN. STAT. ANN. § 48-953.

184. IOWA CODE § 29C.22 ART. 4, MO. REV. STAT. § 44.090.4.

185. KAN. STAT. ANN. § 48-957; IOWA CODE § 29C.22 ART. 6; MO. REV. STAT. § 44.090.13.

186. KAN. STAT. ANN. § 48-956; IOWA CODE § 29C.22 ART. 8; MO. REV. STAT. § 44.090.12.

187. 3 LARSON'S WORKERS' COMPENSATION L. (MB) § 67.01 (Nov. 1, 1987).

188. 3 LARSON'S WORKERS' COMPENSATION L. (MB) § 67.04 (Nov. 3, 1991).

personnel will not be liable for any act or omission made in good faith.¹⁸⁹ Good faith does not include willful misconduct or gross negligence.¹⁹⁰ In the event of injury or death, applicable benefits, ordinarily available to personnel while performing duties for their jurisdiction, will also be available.¹⁹¹ Responders will be eligible for the same state and federal benefits for line-of-duty deaths or injuries if such services are otherwise provided for them within their jurisdiction.¹⁹²

When requesting assistance, that jurisdiction must reimburse the requesting subdivision for the expense of running equipment, providing any service in answering a request, and any damage or loss.¹⁹³ The reimbursement policy should be within the given political subdivision's local, state, and federal guidelines.¹⁹⁴ However, cost for workers' compensation or insurance on equipment usage is not necessarily reimbursable, except under certain conditions.¹⁹⁵

This category of IMAC sections was a key consideration for Director Paul Johnson, the Director of Emergency Management for Douglas County.¹⁹⁶ In an interview, Director Johnson recalls two separate instances of employees crossing jurisdictional lines. In the first instance, there were one too many fire alarms within city limits for the Omaha firefighters to respond to, so volunteer districts outside the city boundaries of Omaha were requested to assist the city.¹⁹⁷ Director Johnson was concerned that Omaha's mutual aid agreements with the volunteers did not have effective reimbursements for volunteer agencies, since they were volunteers and performing work that was usually for paid city firefighters.¹⁹⁸ Naturally, the reimbursement policy would cover any damages to the volunteers' equipment, but being volunteers, *ipso facto* payment for work is not included. Director Johnson was concerned that if this kind of agreement was made statewide, emergency response work would be "farmed out" to volunteers, and political subdivisions would be able to avoid paying for emergency services.¹⁹⁹

This section of an IMAC prevents such reimbursements for reducing emergency service personnel, thus taking care of this concern. The second situation Johnson recalled involved a small municipality in Douglas County that needed to have a city structure evaluated,

189. KAN. STAT. ANN. § 48-957.

190. *Id.*

191. KAN. STAT. ANN. § 48-956; IOWA CODE § 29C.22 ART. 8; MO. REV. STAT. § 44.090.12.

192. MO. REV. STAT. § 44.090.12.

193. KAN. STAT. ANN. § 48-955; IOWA CODE § 29C.22 ART. 9; MO. REV. STAT. § 44.090.11.

194. MO. REV. STAT. § 44.090.11.

195. KAN. STAT. ANN. § 48-956.

196. Interview with Paul Johnson, Dir. of Emergency Mgmt., City of Omaha and Douglas Cnty. (Sept. 16, 2022).

197. *Id.*

198. *Id.*

199. *Id.*

but did not have a city engineer.²⁰⁰ Director Johnson pointed out that normally the engineer from Omaha would “do them a favor” and take care of the inspection on a lunch break.²⁰¹ Needless to say, this type of example lines up with the type of response Senator Vrtiska was discussing during the EMAC Committee hearings.²⁰² Under an IMAC, the workers’ compensation would be taken care of if not already expressly discussed in a mutual aid agreement, and non-traditional emergency needs would be met.

V. CONCLUSION

A final quote that is particularly poignant is from General Heng’s testimony: “I don’t think that’s a question of [if], but when it’s going to happen. . . Without a compact, Nebraska’s leadership could find their hands tied when it comes to . . . either asking or receiving a plea for help.”²⁰³ The General’s statements resemble the words of Murphy’s Law. While General Heng’s statements refer to Nebraska’s ability to ask for and give aid to neighboring states, the statement is still directly applicable to the political entities within the state. Without a compact, local governments will find their hands tied when asking for or giving aid to neighboring political entities. Local governments can try to make agreements with their neighbors, but it is impossible for anyone to thoroughly and accurately cover every possible emergency that could affect their jurisdiction.²⁰⁴ These small political jurisdictions will find themselves having to hurriedly create a contract for help, requesting state help that will be slow in coming, or just allowing the disaster to overwhelm them.²⁰⁵

If something can go wrong, it will go wrong.²⁰⁶ Nebraska needs a codified IMAC to respond effectively to disasters within its borders so that the most vulnerable populations are not left in the cold when they are overwhelmed. First responders should not be primarily concerned about what will happen to them if they are injured while responding to others in need. They should not need to spend years in court to get proper compensation for their injuries. The question is not if, but when disaster will strike, and a codified IMAC in Nebraska is the answer.

200. *Id.*

201. Interview with Paul Johnson, *supra* note 196.

202. *Hearing, supra* note 98 (statement of Sen. Vrtiska).

203. *Hearing, supra* note 70, at 21 (statement of Gen. Heng, Adjutant Gen., Neb. Nat’l Guard).

204. RESTATEMENT, *supra* note 85.

205. *Id.* at § 177.

206. SPARK, *supra* note 1.

