

MAINE STATE LEGISLATURE

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E. LOUISE LINCOLN, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Granting Energy Emergency Powers to the Governor.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, any shortages of petroleum products and electricity could threaten the health, safety and welfare of the people of the State; and

Whereas, any shortages of other similarly critical material supplies may be imminent; and

Whereas, immediate delegation of temporary emergency powers to the Governor are immediately necessary for the preservation of the public peace, health and safety; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 37-A, § 53, repealed and replaced. Section 53 of Title 37-A of the Revised Statutes, as enacted by section 1 of chapter 580 of the public laws of 1971, is repealed and the following enacted in place thereof:

§ 53. Definitions

As used in this chapter, unless the context otherwise requires, the following words shall have the following meanings.

1. **Civil emergency preparedness.** "Civil emergency preparedness" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots, or other hostile action, or by fire, flood, earthquake or other natural or man-made causes. These functions include, without limitation, fire fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, economic stabilization, allocation of critical materials in short supply, emergency transportation, existing or properly assigned functions of plant protection and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for the carrying out of the foregoing functions.

2. **Disaster.** "Disaster" means occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, critical material shortage, infestation, explosion, riot or hostile military or paramilitary action. Disaster includes, but is not limited to, all occurrences and threats thereof which are contemplated by the concept of "civil emergency preparedness."

3. **Energy emergency.** "Energy emergency" means an actual or impending acute shortage of usable energy resources which threatens the health, safety and welfare of the citizens of the State.

4. **Local organization for civil defense.** "Local organization for civil defense" shall mean an organization created in accordance with this chapter by state, county or local authority to perform local civil defense functions.

5. **Political subdivision.** "Political subdivision" includes counties, cities, towns, villages, townships, districts, authorities and other public corporations and entities whether organized and existing under charter or general law.

Sec. 2. R. S., T. 37-A, § 55, repealed and replaced. Section 55 of Title 37-A of the Revised Statutes, as enacted by section 1 of chapter 580 of the public laws of 1971, is repealed and the following enacted in place thereof:

§ 55. Rules and regulations; subpoena powers

1. **Rules and regulations.** Except where action may be required to be taken in an emergency declared pursuant to section 57, the director shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper, reasonable rules and regulations to carry out this chapter.

Such rules and regulations shall become effective when approved in writing by the Governor and Council and when a certified copy thereof has been filed with the Secretary of State.

Any person aggrieved by any such rule or regulation, or any act or order of the director in enforcing any such rule or regulation, may appeal by filing in the Superior Court a complaint within 30 days, and the court may affirm or reverse the rule, regulation, act or order of the director and the decision of the court shall be final.

2. Subpoena powers. In assembling such information as may be necessary to carry out the duties delegated to him pursuant to section 57 or otherwise required by this chapter, the director shall be empowered to compel by subpoena the attendance of witnesses, and the production of books, papers, records and documents of individuals, firms, associations and corporations; and all officers, boards, commissions and departments of the State, and the political subdivisions thereof, having information with respect thereto, shall cooperate with and assist him in making such investigations and surveys. The director shall be further empowered to afford confidential treatment to any materials or information turned over to him which is of a confidential or proprietary nature. Any justice of the Superior Court shall upon petition of the director enforce any subpoena lawfully issued pursuant to this section.

Sec. 3. R. S., T. 37-A, § 56, amended. Section 56 of Title 37-A of the Revised Statutes, as enacted by section 1 of chapter 580 of the public laws of 1971, is amended to read as follows:

§ 56. Civil Emergency Preparedness Council

A Civil ~~Defense~~ Emergency Preparedness Council, as heretofore established, shall be composed of 5 members. All members shall be appointed by the Governor, with the advice and consent of the Executive Council. They shall serve during the pleasure of the Governor and Executive Council. The Adjutant General shall be a member ex officio. The members thereof shall serve without compensation, but, other than state officers, may be reimbursed for their reasonable and necessary expenses incurred in the performance of their duty. The Civil ~~Defense~~ Emergency Preparedness Council shall meet as many times in each calendar year as it deems necessary and at the call of the chairman or the director of the ~~Bureau~~ bureau of Civil ~~Defense~~.

The council shall advise the Governor and the director on all matters pertaining to civil ~~defense~~ emergency preparedness. The council shall not interfere with any of the operational duties of the director, which have been assigned to him by section 54. Nothing herein contained shall be construed to mean that the council cannot advise on such affairs, or that the creation of this council relieves the director of his responsibility for carrying out the civil ~~defense~~ emergency preparedness program, pursuant to section 54.

Sec. 4. R. S., T. 37-A, § 57, repealed and replaced. Section 57 of Title 37-A of the Revised Statutes, as enacted by section 1 of chapter 580 of the public laws of 1971, is repealed and the following enacted in place thereof:

§ 57. Emergency proclamation; Governor's powers

1. Disaster proclamation. Whenever any disaster or catastrophe exists or appears imminent arising from attack, sabotage, riot, or other hostile action, or by fire, earthquake or other natural or man-made causes, the Gover-

nor shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State.

If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of Governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State. A copy of such proclamation shall be filed with the Secretary of State. The Governor, either directly or through the Adjutant General, shall have general direction and control of the bureau and shall be responsible for the carrying out of this chapter, and in the event of disaster or catastrophe beyond local control, the Governor may assume direct operational control over all or any part of the civil defense and public safety functions within the State.

In performing his duties under this chapter, the Governor, directly or through the Adjutant General, is authorized and directed to cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to the civil defense of the State and of the nation.

In performing his duties under this chapter, the Governor is further authorized and empowered:

A. Orders, rules and regulations. To make, amend and rescind the necessary orders, rules and regulations to carry out this chapter within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized civil defense functions;

B. Plans and program. To prepare a comprehensive plan and program for the civil defense of this State, such plan and program to be integrated into and coordinated with the civil defense plans of federal agencies and with the plans of other states and foreign countries, and the political subdivisions thereof, to the fullest possible extent, and to coordinate the preparation of plans and programs for civil defense by the political subdivisions of this State, such plans to be integrated into and coordinated with the civil defense plan and program of this State to the fullest possible extent;

C. Training and public information programs. In accordance with such plan and program for the civil defense of this State, and consistent with the civil defense plans, programs and directives of the Federal Government, to procure supplies and equipment, to institute training programs and public information programs, and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster or catastrophe, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need;

D. Studies and surveys. To conduct such studies and surveys and to take such inventories of the industries, resources and facilities of this State as may be necessary to ascertain the capabilities of the State for civil defense, and to plan for the most efficient emergency use thereof, including

emergency economic controls to insure adequate production and equitable distribution of essential commodities;

E. Critical material reserves. Whenever a shortage of critical material supplies in the State appears imminent, to establish emergency reserves of such products as may be necessary to ensure the health, welfare and safety of the people of this State and in aid thereof to purchase quantities of such materials for resale on a cost plus expenses basis for priority end users within the State;

F. Mutual aid arrangements. On behalf of this State, to enter into mutual aid arrangements with other states and foreign countries, and the political subdivisions thereof, and to coordinate mutual aid plans between political subdivisions of this State;

G. Delegation of authority. To delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority.

2. Energy emergency proclamation.

A. Proclamation. Whenever an actual or impending acute shortage in usable energy resources threatens the health, safety or welfare of the citizens of the State, the Governor shall, by proclamation, declare that an energy emergency exists in any or all sections of the State, in the manner set forth in the first paragraph of subsection 1.

B. Powers. Upon the issuance of an energy emergency proclamation, the Governor is authorized to exercise all the powers granted in this chapter, except as may be specifically limited by this subsection and such powers shall include without limitation the authority to:

- (1) Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources;
- (2) Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained;
- (3) Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft;
- (4) After consulting, when appropriate, with the New England governors, and upon the recommendations of the Maine Public Utilities Commission, regulate the generation, distribution and consumption of electricity;
- (5) Establish temporary state and local boards and agencies;
- (6) Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities;
- (7) Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations;

- (8) Regulate the storage, distribution and consumption of home heating oil.

C. Exclusions. In dealing with a declared energy emergency, the following powers granted by this chapter may not be invoked:

- (1) The eminent domain powers granted in section 58;
- (2) The enforcement powers granted in the 3rd and 4th paragraphs of section 59 and the enforcement powers granted in section 69, unless the Governor specifically invokes these powers by an order issued pursuant to an energy emergency proclamation. Such order shall specify those emergency orders, rules or regulations which shall be enforceable pursuant to this paragraph and shall further specify the enforcement activities civil defense organizations are to pursue. No enforcement action may be taken pursuant to this paragraph without publication of the order authorizing such action in a manner reasonably calculated to give persons affected thereby adequate notice of the order, rule or regulation to be enforced and the sanctions to be applied.

D. Environmental regulations.

(1) Except as provided in subparagraph (2), nothing contained in this subsection shall be construed to authorize the Governor to suspend or to modify orders, regulations, standards or classifications issued or enforced by the Department of Environmental Protection or the Land Use Regulation Commission.

(2) At any time an energy emergency proclamation is in effect, the Governor may call the Board of Environmental Protection into extraordinary session to consider temporary waivers or suspensions of rules and standards related to air and water quality necessary to relieve then existing energy shortages. Thereupon, the board is empowered notwithstanding any other provision of law to approve such suspensions or waivers as it determines are necessary to relieve or avoid an energy shortage and will not result in environmental degradation of a permanent or enduring nature. In no event shall any suspension or modification be granted which will result in a circumvention of Title 38, sections 481 to 488, 541 and 557. No such waiver or suspension shall remain in effect longer than 60 days or after the date on which the board renders a further order issued pursuant to the regular procedures specified in Title 38, whichever shall first occur.

E. Approval of Executive Council.

(1) All orders, rules and regulations proposed by the Governor pursuant to the powers granted by this subsection shall be transmitted to the Executive Council and shall not be effective until approved by a majority of the Executive Council. In the event the council takes no action within 5 days of the transmittal date, such orders, rules or regulations shall become effective as proposed.

(2) In the event of an emergency in which it is not feasible to secure the prior approval of the Executive Council, an order, rule or regulation

shall be made immediately effective and shall be promptly transmitted to the chairman of the council. Not later than 5 days following such communication, the council may by majority vote reverse any such order, rule or regulation.

F. Judicial enforcement. The Superior Court of the county in which there occurs a failure to obey an order, rule or regulation promulgated in accordance with this subsection shall have jurisdiction to issue a restraining order or injunction to enforce said order, rule or regulation. Such proceeding shall be held in accordance with Rule 65 of the Maine Rules of Civil Procedure.

G. Expiration. The authority conferred by this subsection shall terminate on midnight, February 28, 1975. All orders, rules and regulations issued pursuant thereto and still in effect on that date shall cease to be effective, except that criminal proceedings then pending may proceed to final judgment and sentence.

3. Termination of emergency. Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the State and posted in such places as the Governor, or the person acting in that capacity, deems appropriate.

Sec. 5. R. S., T. 37-A, § 58, amended. The first paragraph of section 58 of Title 37-A of the Revised Statutes, as enacted by section 1 of chapter 580 of the public laws of 1971, is amended to read as follows:

When the Governor has issued a proclamation as provided for in section 57, subsection 1, and when thereafter in his judgment for the better protection and welfare of this State or its inhabitants, the situation so requires as a matter of public necessity or convenience, he may take possession of any property, real or personal, located within this State for public uses in furtherance of this chapter.

Sec. 6. R. S., T. 37-A, § 67, amended. The first sentence of section 67 of Title 37-A of the Revised Statutes, as enacted by section 1 of chapter 580 of the public laws of 1971, is repealed and the following enacted in place thereof:

Upon the issuance of a proclamation as provided in section 57, the Governor shall have the power and authority to utilize any available property and enlist the aid of any person to assist in the effort to control, put out or end the disaster, catastrophe or emergency or aid in the caring for the safety of persons.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.