

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2084

H.P. 1578

House of Representatives, January 18, 2002

**An Act Regarding Workers' Compensation and Liability Immunity
Coverage for Emergency Management Forces.**

Reported by Representative DUPLESSIE for the Commission to Study the Implementation of a Unified Emergency Response for Emergency Releases and Spills of Toxic or Hazardous Materials pursuant to Resolve 2001, chapter 65, section 7.

Reference to the Joint Standing Committee on Legal and Veterans Affairs suggested and printing ordered under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

2
4 **Sec. 1. 35-A MRSA §4332, sub-§1, ¶C**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

6 C. The Director of Civil Emergency Preparedness
8 Management.

10 **Sec. 2. 37-B MRSA §1**, as amended by PL 1997, c. 455, §31, is further amended to read:

12 **§1. Purpose**

14 The Department of Defense, Veterans and Emergency
16 Management, as previously established and referred to in this
18 Title as the "department," shall coordinate and improve the
20 discharge of the State Government's responsibility for military
 affairs, veterans' services and civil emergency preparedness
 management matters.

22 **Sec. 3. 37-B MRSA §701, first ¶**, as enacted by PL 1983, c. 460,
24 §3, is amended to read:

26 This chapter may be cited as the "Maine Civil Emergency
28 Preparedness Management Act." It is the purpose of this chapter
 to:

30 **Sec. 4. 37-B MRSA §701, sub-§§2 and 4**, as enacted by PL 1983,
 c. 460, §3, are amended to read:

32 **2. Local organizations.** Authorize the creation of local
34 organizations for civil emergency preparedness management in the
 political subdivisions of the State;

36 **4. Mutual aid.** Provide for the rendering of mutual aid
38 among the political subdivisions of the State and with other
40 states for the accomplishment of civil emergency preparedness
 management functions.

42 **Sec. 5. 37-B MRSA §703, sub-§1**, as amended by PL 1997, c. 580,
 §1, is repealed.

44 **Sec. 6. 37-B MRSA §703, sub-§§2-A and 2-B** are enacted to read:

46 **2-A. Emergency management.** "Emergency management" means
48 the coordination and implementation of an organized effort to
 mitigate against, prepare for, respond to and recover from a
 disaster.

2 **2-B. Emergency management forces.** "Emergency management
4 forces" means persons engaged in performing emergency management
6 activities, including, but not limited to, persons called out by
the Governor pursuant to an emergency proclamation under section
742 or persons called out pursuant to section 784-A.

8 **Sec. 7. 37-B MRSA §703, sub-§3,** as enacted by PL 1983, c. 460,
10 §3, is amended to read:

12 **3. Local organization for emergency management.** "Local
14 organization for civil emergency preparedness management" means
16 an organization created in accordance with this chapter by state,
18 county or local authority to perform local civil emergency
preparedness management functions.

20 **Sec. 8. 37-B MRSA §704, 3rd ¶,** as amended by PL 1991, c. 376,
22 §65, is further amended to read:

24 The director, subject to the direction and control of the
26 Adjutant General, ~~shall-be~~ is the executive head of the agency
28 and ~~shall--be~~ is responsible for carrying out the program for
30 civil emergency preparedness management. The director shall
32 coordinate the activities of all organizations for civil
34 emergency preparedness management within the State; shall
36 maintain liaison with and cooperate with civil emergency
38 preparedness management and public safety agencies and
organizations of other states, the Federal Government and foreign
countries, and ~~the~~ their political subdivisions ~~thereof~~; prior to
the annual meeting required in section 782, subsection 4, shall
provide to each of the local civil emergency preparedness
management organizations of the State an annual assessment of
each organization's degree of civil emergency preparedness
management and any other information pertinent to ensuring the
public's welfare and safety within the local organization's
jurisdiction; and ~~shall-have~~ has additional authority, duties and
responsibilities as may be prescribed by the Adjutant General.

40 **Sec. 9. 37-B MRSA §704, 2nd ¶ from the end,** as enacted by PL
42 1997, c. 580, §2, is amended to read:

44 The director, in consultation with the Office of Chief
46 Medical Examiner, shall prepare a plan for the recovery,
48 identification and disposition of human remains in a disaster.
The Office of Chief Medical Examiner is responsible for execution
of the plan, with full cooperation and assistance from all other
members of the civil emergency preparedness management forces.

50 **Sec. 10. 37-B MRSA c. 13, sub-c. II** is amended by repealing the
subchapter headnote and enacting the following in its place:

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SUBCHAPTER II

STATE EMERGENCY MANAGEMENT PROVISIONS

Sec. 11. 37-B MRSA §741, as enacted by PL 1983, c. 460, §3, is amended to read:

§741. Governor's powers

1. **Control during emergencies.** In the event of disaster beyond local control, the Governor may assume direct operational control over all or any part of the ~~civil~~ emergency ~~preparedness~~ management and public safety functions with the State.

2. **Cooperation.** In performing his duties required by this chapter, the Governor shall, directly or through the Adjutant General, cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries and the their political subdivisions ~~thereof~~, and with private agencies in all matters pertaining to the ~~civil~~ emergency ~~preparedness~~ management of the State and of the Nation.

3. **Authority.** In performing his duties required by this chapter, the Governor may:

A. Make, amend and rescind the necessary orders and rules to carry out this chapter within the limits of the authority conferred upon him the Governor 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~~ emergency ~~preparedness~~ management functions;

B. Prepare a comprehensive plan and program for the ~~civil~~ emergency ~~preparedness~~ management of this State. That plan and program shall must be integrated into and coordinated with the ~~civil~~ emergency ~~preparedness~~ management plans of federal agencies and with the plans of other states and foreign countries, and their political subdivisions, to the fullest possible extent;

C. Coordinate the preparation of plans and programs for ~~civil~~ emergency ~~preparedness~~ management by the political subdivisions of the State. These plans shall must be integrated into and coordinated with the ~~civil~~ emergency ~~preparedness~~ management plan and program of the State to the fullest possible extent;

2 D. In accordance with the plan and program for the civil
emergency ~~preparedness~~ management of the State, and
4 consistent with the civil emergency ~~preparedness~~ management
plans, programs and directives of the Federal Government,
6 procure supplies and equipment, institute training programs
and public information programs and take all other
8 preparatory steps, including the partial or full
mobilization of civil emergency ~~preparedness~~ management
10 organizations in advance of actual disaster or catastrophe,
~~insure~~ ensure the furnishing of adequately trained and
12 equipped forces of civil emergency ~~preparedness~~ management
personnel in time of need;

14 E. Conduct studies and surveys and take inventories of the
industries, resources and facilities of the State necessary
16 to ascertain the state's---civil State's emergency
~~preparedness~~ management capabilities, and plan for their
18 most efficient emergency use, including emergency economic
controls to ~~insure~~ ensure adequate production and equitable
20 distribution of essential commodities;

22 F. Whenever a shortage of critical material supplies
appears imminent in the State, establish emergency reserves
24 of those products necessary to ensure the health, welfare
and safety of the people of the State. To establish those
26 reserves, the Governor may purchase quantities of those
materials for resale on a cost plus expenses basis for
28 priority end users within the State;

30 G. On behalf of the State, enter into mutual aid
arrangements with other states and foreign countries, and
32 their political subdivisions, and coordinate mutual aid
plans between political subdivisions of the State. If an
34 arrangement is entered into with a jurisdiction that has
enacted the Interstate Civil Defense and Disaster Compact,
36 chapter 15, any resulting agreement or agreements may be
considered supplemental agreements pursuant to Article VI of
38 that compact. If the other jurisdiction or jurisdictions
with which the Governor proposes to cooperate have not
40 enacted that compact, he the Governor may negotiate special
agreements with the jurisdiction or jurisdictions. Any
42 agreement, if sufficient authority for the making thereof
does not otherwise exist, becomes effective only after
44 approval by the Legislature; and

46 H. Delegate any authority vested in him the Governor under
this chapter and provide for the subdelegation of that
48 authority.

2 **3. Structure of interjurisdictional and regional agencies.**
The director, with the approval of the Governor, shall determine
4 the organizational structure of interjurisdictional and regional
civil emergency preparedness management agencies, including the
6 manner in which the directors of those agencies shall--be are
appointed by governing bodies of the municipalities involved.

8 **4. List of agencies.** The agency shall publish and maintain
a current list of municipal, interjurisdictional, county and
10 regional ~~civil~~ emergency preparedness management agencies
established pursuant to this section.

12 **Sec. 14. 37-B MRSA §782,** as amended by PL 1991, c. 376, §66,
14 is further amended to read:

16 **§782. Agency directors**

18 A director must be appointed for each local ~~civil~~
~~preparedness emergency management~~ agency. A director of a ~~civil~~
20 an emergency preparedness management agency may not be at the
same time an executive officer or member of the executive body of
22 a municipality or interjurisdictional or regional agency of the
State or a county commissioner. Notwithstanding this section or
24 any other law, a town manager or administrative assistant may
also be appointed to serve as the director of a ~~civil~~ an
26 emergency preparedness management agency or as a liaison
officer. A director may be removed by the appointing authority
28 for cause.

30 **1. Municipal agency director; liaison officer.** The
municipal officers shall appoint the director of the
32 municipality's ~~civil~~ emergency preparedness management agency.
In each municipality that is not required to establish an agency
34 of its own, the municipal officers shall designate a liaison
officer to the appropriate interjurisdictional agency to
36 facilitate cooperation in the work of disaster prevention,
preparedness, response and recovery.

38 **2. County agency director.** The county commissioners shall
40 appoint the director of that county's ~~civil~~ emergency
~~preparedness management~~ agency.

42 **3. Interjurisdictional and regional agency directors.** The
44 director of an interjurisdictional or regional ~~civil~~ emergency
~~preparedness management~~ agency shall--be is appointed in the
46 manner prescribed by the director in accordance with section 781,
subsection 3, and shall must be approved by the director.

48 **4. Annual meeting with Director of Maine Emergency**
50 **Management Agency.** The director of each local organization for

2 civil emergency preparedness management in the State and the
3 respective appointing authority shall meet each year with the
4 Director of the Maine Emergency Management Agency or the agency's
5 successor, in order to review the performance of the local civil
6 emergency preparedness management organization in carrying out
7 its federal and state mandate and to jointly set new goals for
8 the coming year.

10 **Sec. 15. 37-B MRSA §783, first ¶,** as amended by PL 1987, c.
11 370, §17, is further amended to read:

12 Each municipal, interjurisdictional, county and regional
13 civil emergency preparedness management agency, in consultation
14 with the agency, shall prepare and keep a current disaster
15 emergency plan for the area subject to its jurisdiction. That
16 plan shall must include without limitation:

18 **Sec. 16. 37-B MRSA §783, last ¶,** as enacted by PL 1983, c. 460,
19 §3, is amended to read:

20 Each municipal, interjurisdictional, county and regional
21 civil emergency preparedness management agency, as part of the
22 development of a disaster emergency plan for the area subject to
23 its jurisdiction, shall consult with hospitals within its
24 jurisdiction to ~~insure~~ ensure that the disaster plans developed
25 by the agency and the hospitals are compatible.

28 **Sec. 17. 37-B MRSA §784,** as enacted by PL 1983, c. 460, §3,
29 is amended to read:

30 **§784. Mutual aid arrangements**

31
32 The director of each local organization for civil emergency
33 preparedness management shall, in collaboration with other public
34 and private agencies within the State, develop or cause to be
35 developed mutual aid arrangements for reciprocal civil emergency
36 preparedness management aid and assistance in case of a disaster
37 too great to be dealt with unassisted. These arrangements shall
38 must be consistent with the state civil emergency preparedness
39 management program, and in time of emergency it shall-be is the
40 duty of each local organization for civil emergency preparedness
41 management to render assistance in accordance with the mutual aid
42 arrangements. For this purpose, political subdivisions are
43 authorized when geographical locations make mutual aid
44 arrangements desirable to enter into mutual aid arrangements
45 subject to the approval of the director.

48 **Sec. 18. 37-B MRSA §784-A** is enacted to read:

50 **§784-A. Right to call for and employ assistance**

2 The Maine Emergency Management Agency and local
4 organizations for emergency management may employ any person
6 considered necessary to assist with emergency management
8 activities. All persons called and employed for assistance shall
10 proceed as directed by the Maine Emergency Management Agency.
12 Any person called and employed for assistance is deemed to be an
14 employee of the State for purposes of immunity from liability
16 pursuant to section 822 and for purposes of workers' compensation
18 insurance pursuant to section 823, except for persons excluded
20 from the definition of employee pursuant to Title 39-A, section
22 102, subsection 11.

24 **Sec. 19. 37-B MRSA §785**, as amended by PL 1985, c. 785, Pt.
26 B, §176, is further amended to read:

28 **§785. State Civil Service Appeals Board services**

30 Local ~~civil~~ emergency preparedness management agencies
32 organized pursuant to this subchapter may accept the services of
34 the Bureau of Human Resources and adopt board rules for the
36 purpose of qualifying for federal funds. The Bureau of Human
38 Resources may enter into agreements with the ~~civil~~ emergency
40 preparedness management agencies for the purpose of furnishing
42 merit system coverage for ~~civil~~ emergency preparedness management
44 employees or employees of other agencies and departments assigned
46 full time to ~~civil~~ emergency preparedness management duties. The
48 Bureau of Human Resources may charge for services rendered. The
50 fee ~~shall~~ must be consistent with the cost of coverage per state
employee multiplied by the number of local, interjurisdictional,
county or regional employees covered. Fees received by the board
~~shall~~ must be credited to the General Fund.

34 **Sec. 20. 37-B MRSA §822**, as corrected by RR 1993, c. 1, §110,
36 is amended to read:

38 **§822. Immunity**

40 Neither the State nor any of its agencies or political
42 subdivisions nor a person called out pursuant to section 784-A,
44 including a voluntary and uncompensated grantor of a permit for
46 the use of the grantor's premises as a--~~civil~~ an emergency
48 preparedness management shelter, may, while engaged in any ~~civil~~
50 emergency preparedness management activities and while complying
with or attempting to comply with this chapter or any rule
adopted pursuant to this chapter, be liable for the death of or
injury to any person, or damage to property, as a result of those
activities. This section does not affect the right of any person
to receive benefits to which that person would otherwise be
entitled under this chapter, under the Maine Workers'

2 Compensation Act of 1992, under any pension law or under any act
of Congress.

4 **Sec. 21. 37-B MRSA §823, first ¶**, as amended by PL 1995, c.
462, Pt. A, §72, is further amended to read:

6
8 All members of the civil emergency preparedness management
forces are deemed to be employees of the State while on, or
10 training for, civil emergency preparedness management duty. They
have all the rights given to state employees under the former
12 Workers' Compensation Act or the Maine Workers' Compensation Act
of 1992. All claims must be filed, prosecuted and determined in
14 accordance with the procedure set forth in the former Workers'
Compensation Act or the Maine Workers' Compensation Act of 1992.

16 **Sec. 22. 37-B MRSA §823, sub-§2**, as amended by PL 1995, c.
462, Pt. A, §72, is further amended to read:

18
20 **2. Setoff.** Any sums payable under any act of Congress or
other federal program as compensation for death, disability or
22 injury of civil emergency preparedness management workers must be
considered with the determination and settlement of any claim
24 brought under this section. When payments received from the
Federal Government are less than an injured member would have
26 been entitled to receive under this section, the injured member
is entitled to receive all the benefits to which the injured
28 member would have been entitled under this section, less the
benefits actually received from the Federal Government.

30 **Sec. 23. 37-B MRSA §824, sub-§2**, as enacted by PL 1983, c.
460, §3, is amended to read:

32
34 **2. For local emergency management expenses.** Each political
subdivision may make appropriations for the payment of expenses
36 of its local organization for civil emergency preparedness
management in the same manner as for its other ordinary
38 expenses. In making those appropriations, the political
subdivision shall specify the amounts and purposes for which the
money appropriated may be used by the local organizations.

40
42 **Sec. 24. 37-B MRSA §825**, as enacted by PL 1983, c. 460, §3,
is amended to read:

44 **§825. Acceptance of aid**

46 Whenever the Federal Government or any of its agencies or
48 officers or any person, firm or corporation offers to the State
or to any of its political subdivisions services, equipment,
supplies, materials or funds by way of gift, grant or loan, for
50 purposes of civil emergency preparedness management, the State,

2 acting through the Governor, or the political subdivision, acting
3 through its executive officer or governing body, may accept that
4 offer. Upon acceptance, the Governor of the State or the
5 executive officer or governing body of the political subdivision
6 may authorize any officer of the State or of the political
7 subdivision, as the case may be, to receive those services,
8 equipment, supplies, materials or funds on behalf of the State or
9 the political subdivision subject to the terms of the offer and
10 the rules and regulations, if any, of the agency making the
11 offer.

12 **Sec. 25. 37-B MRSA §826**, as amended by PL 1983, c. 816, Pt.
13 B, §18, is further amended to read:

14 **§826. Transfer of equipment**

15 Subject to the approval of the Governor, the director may
16 convey equipment, supplies, materials or funds by sale, lease or
17 grant to any political subdivision of the State for ~~civil~~
18 emergency ~~preparedness~~ management purposes. The conveyance ~~shall~~
19 be is subject to the terms of the offer and the applicable state
20 rules and federal regulations.
21

22 **Sec. 26. 37-B MRSA §§829, 831 and 832**, as enacted by PL 1983,
23 c. 460, §3, are amended to read:

24 **§829. Enforcement**

25 It ~~shall-be~~ is the duty of every agency for ~~civil~~ emergency
26 ~~preparedness~~ management established pursuant to this chapter and
27 of the officers to execute and enforce orders and rules adopted
28 by the Governor under authority of this chapter. Each ~~civil~~
29 emergency ~~preparedness~~ management agency shall have available for
30 inspection at its office all orders and rules made by the
31 Governor or issued under ~~his~~ the Governor's authority.
32

33 **§831. Utilization of existing services and facilities**

34 In carrying out this chapter, the Governor and the executive
35 officers or governing bodies of the political subdivisions of the
36 State shall utilize the services and facilities of existing
37 departments, offices and agencies of the State and all ~~the~~ their
38 political subdivisions ~~thereof~~ to the maximum extent
39 practicable. The officers and personnel of all departments,
40 offices and agencies shall cooperate with and extend their
41 services and facilities to the Governor and to the ~~civil~~
42 emergency ~~preparedness~~ management organizations of the State upon
43 request.
44

45 **§832. Political activity prohibited**

2 ~~No-civil~~ An emergency preparedness management organization
3 established under the authority of this chapter may not
4 participate in any form of political activity, ~~and~~ and may ~~it~~ not
5 be employed directly or indirectly for political purpose.

6 **Sec. 27. 37-B MRSA §§1005 and 1006**, as amended by PL 1991, c.
7 797, §18, are further amended to read:

10 **§1005. Intentional injury or interference with property**

12 Whoever intentionally destroys, impairs, injures, interferes
13 or tampers with real or personal property with reasonable grounds
14 to believe that that person's act will hinder, delay or
15 interfere with the preparation of the United States or of any of
16 the states for defense or for war, or with the prosecution of war
17 by the United States, or with preparations and plans for civil
18 emergency preparedness management, or with the execution ~~thereof~~
19 of those preparations and plans under chapter 13 commits a Class
20 B crime.

22 **§1006. Intentional defects**

24 Whoever intentionally makes or causes to be made or omits to
25 note on inspection any defect in any article or thing with
26 reasonable grounds to believe that the article or thing is
27 intended to be used in connection with the preparation of the
28 United States or any of the states for defense or for war, or for
29 the prosecution of war by the United States, or with preparations
30 and plans for civil emergency preparedness management, or with
31 the execution of those preparations and plans under chapter 13,
32 or that the article or thing is one of a number of similar
33 articles or things, some of which are intended so to be used,
34 commits a Class B crime.

36 **Sec. 28. 37-B MRSA §1009**, as enacted by PL 1983, c. 460, §3,
37 is amended to read:

38 **§1009. Unlawful entry on property**

40 Any individual, partnership, association, corporation,
41 municipal corporation or state or any of its political
42 subdivisions engaged in, or preparing to engage in, the
43 manufacture, transportation or storage of any product to be used
44 in the preparation of the United States or of any of the states
45 for defense or for war, or in the prosecution of war by the
46 United States, or with preparations and plans for civil emergency
47 preparedness management, or with the execution of these
48 preparations and plans under chapter 13, or the manufacture,
49 transportation, distribution or storage of gas, oil, coal,
50

2 electricity or water, or any individual, partnership,
3 association, corporation, municipal corporation or state or any
4 of its political subdivisions operating a public utility, whose
5 property, except where it fronts on water or where there are
6 entrances for railway cars, vehicles, persons or things, is
7 surrounded by a fence or wall, or a fence or wall and buildings,
8 may post around that property at each gate, entrance, dock or
9 railway entrance and every 100 feet of ~~water-front~~ waterfront a
10 sign reading "No Entry Without Permission." Any person who
11 intentionally enters upon premises posted in that manner without
12 the permission of the owner is guilty of a Class E crime.

13 **Sec. 29. 37-B MRSA §1011, first and 2nd ¶¶**, as enacted by PL
14 1983, c. 460, §3, are amended to read:

15 Any individual, partnership, association, corporation,
16 municipal corporation or state or any of its political
17 subdivisions engaged in or preparing to engage in the
18 manufacture, transportation or storage of any product to be used
19 in the preparation of the United States or any of the states for
20 defense or for war, or in the prosecution of war by the United
21 States, or with preparations and plans for ~~civil~~ emergency
22 preparedness management, or with the execution of those
23 preparations and plans under chapter 13, or in the ~~manufacturer~~
24 manufacture, transportation, distribution or storage of gas, oil,
25 coal, electricity or water, or any individual, partnership,
26 association, corporation, municipal corporation or state or any
27 of its political subdivisions operating a public utility, who has
28 property so used ~~which he~~ that the person or it believes will be
29 endangered if public use and travel is not restricted or
30 prohibited on one or more highways or parts ~~thereof~~ of a highway
31 or highways upon which the property abuts, may petition the
32 highway commissioners of any city, town or county to close one or
33 more of those highways or parts ~~thereof~~ of a highway or highways
34 to public use and travel or to restrict by order the use and
35 travel upon one or more of the highways or parts ~~thereof~~ of a
36 highway or highways.

37
38 Upon receipt of the petition, the highway commissioners
39 shall set a day for a hearing and publish notice of the hearing
40 in a newspaper having general circulation in the city, town or
41 county in which the property is located. The notice shall must be
42 published at least 7 days prior to the date set for the hearing.
43 If, after the hearing, the highway commissioners determine that
44 the public safety and the safety of the property of the
45 petitioner require, they shall, by suitable order, close to
46 public use and travel, or reasonably restrict the use of and
47 travel upon one or more of those highways or parts ~~thereof~~ of one
48 or more of those highways. The highway commissioners may issue
49 written permits for travel over the closed or restricted highways
50

2 to responsible and reputable persons for such term, under such
3 conditions and in such form as they may prescribe. Appropriate
4 notices in letters at least 3 inches high shall must be posted
5 conspicuously at each end of any highway closed or restricted by
6 the order. The highway commissioners may at any time revoke or
7 modify the order.

8

SUMMARY

10

11 This bill is the recommendation of the Commission to Study
12 the Implementation of a Unified Emergency Response for Emergency
13 Releases and Spills of Toxic or Hazardous Materials. It
14 clarifies who may call out and be called out to assist with
15 emergency management activities. It also clarifies who, while
16 assisting with emergency management activities, may be deemed to
17 be an employee of the State for purposes of immunity from
18 liability and for purposes of workers' compensation coverage.
19 The bill also changes the term "civil emergency preparedness" to
20 "emergency management."