

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 326

S.P. 121

In Senate, February 7, 2013

An Act To Update the Maine Emergency Management Laws

Submitted by the Department of Defense, Veterans and Emergency Management pursuant to Joint Rule 204.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.
Cosponsored by Representative LONG of Sherman and
Representative: DION of Portland.

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

2 **Sec. 1. 37-B MRSA §701, sub-§3**, as enacted by PL 1983, c. 460, §3, is amended
3 to read:

4 **3. Emergency powers.** Confer upon the Governor and the executive heads of
5 governing bodies of the political subdivisions of the State certain emergency powers; ~~and~~

6 **Sec. 2. 37-B MRSA §701, sub-§4**, as repealed and replaced by PL 2003, c. 510,
7 Pt. A, §32, is amended to read:

8 **4. Mutual aid.** Provide for the rendering of mutual aid among the political
9 subdivisions of the State and with other states and provinces of Canada for the
10 accomplishment of emergency management functions; and

11 **Sec. 3. 37-B MRSA §701, sub-§5** is enacted to read:

12 **5. Homeland security.** Authorize the Maine Emergency Management Agency to
13 coordinate the State's homeland security-related preparedness, response, recovery,
14 prevention and protection activities.

15 **Sec. 4. 37-B MRSA §702**, as amended by PL 2001, c. 662, §73, is further
16 amended to read:

17 **§702. Policy**

18 It is declared to be the policy of the State that all emergency management and
19 homeland security functions be coordinated to the maximum extent with the comparable
20 functions of the Federal Government, including its various departments and agencies, of
21 other states and localities, and of private agencies so that the most effective preparation
22 and use may be made of the nation's workforce, resources and facilities for dealing with
23 any disaster that may occur.

24 **Sec. 5. 37-B MRSA §703, sub-§2-D** is enacted to read:

25 **2-D. Homeland security.** "Homeland security" means a concerted national effort to
26 prevent and disrupt terrorist attacks, protect against man-made and natural hazards and
27 respond to and recover from incidents that do occur.

28 **Sec. 6. 37-B MRSA §703, sub-§8** is enacted to read:

29 **8. Terrorism.** "Terrorism" means conduct that is designed to cause serious bodily
30 injury or substantial risk of bodily injury to multiple persons, substantial damage to
31 multiple structures whether occupied or unoccupied or substantial physical damage
32 sufficient to disrupt the normal functioning of a critical infrastructure.

33 **Sec. 7. 37-B MRSA §704**, as amended by PL 2007, c. 3, §1 and c. 167, §11, is
34 further amended to read:

1 **§704. Director; duties**

2 The Maine Emergency Management Agency, as previously established and in this
3 chapter called the "agency," is under the supervision of the Director of the Maine
4 Emergency Management Agency, who in this chapter is called the "director." The
5 director must be qualified by education, training or experience in managing emergencies
6 or in the emergency management profession and is appointed by the Governor upon
7 recommendation of the commissioner, subject to review by the joint standing committee
8 of the Legislature having jurisdiction over the Department of Public Safety and
9 confirmation by the Legislature. The director serves at the pleasure of the Governor.

10 The director may employ technical, ~~clerical, stenographic,~~ administrative and
11 operative assistants and other personnel, subject to the Civil Service Law, and make
12 expenditures, with approval of the commissioner, that are necessary to carry out the
13 purposes of this chapter.

14 The director, subject to the direction and control of the commissioner, is responsible
15 administratively to the commissioner, retains direct access to the Governor in the case of
16 an emergency and is responsible for notifying the Governor and the commissioner of all
17 emergencies. The director is the executive head of the agency and is responsible for
18 carrying out the program for emergency management. ~~The director shall represent the
19 Governor on all matters pertaining to the comprehensive emergency management
20 program and the disaster and emergency response of the State; shall coordinate the
21 activities of all organizations for emergency management within the State; shall maintain
22 liaison with and cooperate with emergency management and public safety agencies and
23 organizations of other states, the Federal Government and foreign countries, and their
24 political subdivisions; prior to the annual meeting required in section 782, subsection 4,
25 shall provide to each of the local emergency management organizations of the State an
26 annual assessment of each organization's degree of emergency management capability
27 and any other information pertinent to ensuring the public's welfare and safety within the
28 local organization's jurisdiction; and has additional authority, duties and responsibilities
29 as may be prescribed by the commissioner or the Governor.~~

30 ~~The director, in consultation with the Office of Chief Medical Examiner, shall
31 prepare a plan for the recovery, identification and disposition of human remains in a
32 disaster. The Office of Chief Medical Examiner is responsible for execution of the plan,
33 with full cooperation and assistance from all other members of the emergency
34 management forces.~~

35 ~~This plan must be reviewed and updated as necessary. The director shall see that the
36 plan and the reviews receive suitable dissemination on a timely basis.~~

37 ~~The director shall conduct periodic assessments at least once every 2 years, beginning
38 January 15, 2007, of the use of public safety radio frequencies in emergency situations to
39 ensure that first responders obtain sufficient training to understand and comply with
40 adopted protocols and procedures.~~

41 ~~The director shall develop and conduct an annual program of comprehensive public
42 education, using all appropriate means of communication to educate and inform members~~

1 of the public and public officials about emergency preparedness, response, recovery and
2 mitigation. The program must incorporate the use of appropriate accessible formats to
3 educate and inform individuals with disabilities, individuals who are elderly and non-
4 English speaking residents of Maine.

5 The director shall develop and conduct an annual statewide program of emergency
6 management exercises to test the policies and plans of the state, county and local
7 emergency management agencies. The program must address all disasters identified
8 pursuant to section 783, subsection 1.

9 The director shall:

10 **1. Emergency management; disaster response.** Represent the Governor in all
11 matters pertaining to the comprehensive emergency management program and the
12 disaster and emergency response of the State;

13 **2. Coordination.** Coordinate the activities of all organizations for emergency
14 management within the State;

15 **3. Liaison.** Maintain liaison with and cooperate with emergency management and
16 public safety agencies and organizations of other states, the Federal Government and
17 foreign countries and their political subdivisions;

18 **4. Local emergency management; assessment.** Prior to the annual meeting
19 required in section 782, subsection 4, provide to each of the local emergency
20 management organizations of the State an annual assessment of each organization's
21 degree of emergency management capability and any other information pertinent to
22 ensuring the public's welfare and safety within the local organization's jurisdiction;

23 **5. Public safety radio frequencies; assessment.** Conduct periodic assessments at
24 least once every 2 years of the use of public safety radio frequencies in emergency
25 situations to ensure that first responders obtain sufficient training to understand and
26 comply with adopted protocols and procedures;

27 **6. Public education.** Develop and conduct an annual program of comprehensive
28 public education, using all appropriate means of communication to educate and inform
29 members of the public and public officials about emergency preparedness, response,
30 recovery, prevention and mitigation. The program must incorporate the use of appropriate
31 accessible formats to educate and inform individuals with disabilities, individuals who are
32 elderly and non-English-speaking residents of the State;

33 **7. Training program.** Develop and conduct an annual statewide program of
34 emergency management training, including the assessment, development and
35 implementation of appropriate training for state, county and local emergency
36 management and response and support personnel, public officials and the public. The
37 program must address all hazards and threats identified pursuant to section 783;

38 **8. Exercises; evaluations; corrective actions.** Develop and conduct an annual
39 statewide program of emergency management exercises, evaluations and corrective
40 actions to test and improve the policies and plans of the state, county and local emergency

1 management agencies. The program must address all hazards and threats identified
2 pursuant to section 783;

3 **9. Emergency operations center.** Maintain and operate a primary State Emergency
4 Operations Center and designate an alternate State Emergency Operations Center
5 pursuant to section 741, subsection 3, paragraph G-1;

6 **10. Risk assessment; emergency planning guidance.** Develop and disseminate
7 risk assessment and emergency planning guidance in conformance with current federal
8 requirements and national standards for use by the agency and county, regional and
9 municipal jurisdictions;

10 **11. Comprehensive emergency management plan.** Develop and maintain a
11 comprehensive emergency management plan for the State that is in conformance with
12 guidance developed under subsection 10; and

13 **12. Additional duties and authority.** Carry out any additional duties and assume
14 such additional authority as may be prescribed by the commissioner or the Governor.

15 **Sec. 8. 37-B MRSA §709** is enacted to read:

16 **§709. Governor's homeland security advisor**

17 The Commissioner of Defense, Veterans and Emergency Management serves as the
18 Governor's homeland security advisor.

19 **Sec. 9. 37-B MRSA §741, sub-§3, ¶A,** as repealed and replaced by PL 2003, c.
20 510, Pt. A, §34, is amended to read:

21 A. Make, amend and rescind the necessary orders and rules to carry out this chapter
22 within the limits of the authority conferred upon the Governor and not inconsistent
23 with the rules, regulations and directives of the President of the United States or of
24 any federal department or agency having specifically authorized emergency
25 management or homeland security functions;

26 **Sec. 10. 37-B MRSA §741, sub-§3, ¶D,** as repealed and replaced by PL 2003, c.
27 510, Pt. A, §34, is amended to read:

28 D. In accordance with the plan and program for the emergency management
29 functions of the State, and consistent with the emergency management and homeland
30 security plans, programs and directives of the Federal Government, procure supplies
31 and equipment, institute training programs and public information programs and take
32 all other preparatory steps, including the partial or full mobilization of emergency
33 management organizations in advance of actual disaster or catastrophe, to ensure the
34 furnishing of adequately trained and equipped forces of emergency management
35 personnel in time of need;

36 **Sec. 11. 37-B MRSA §741, sub-§3, ¶G,** as amended by PL 2009, c. 252, §1, is
37 further amended to read:

1 G. On behalf of the State, enter into mutual aid arrangements with other states and
2 foreign countries, and their political subdivisions, and coordinate mutual aid plans
3 between political subdivisions of the State. If an arrangement is entered into with a
4 jurisdiction that has enacted the Emergency Management Assistance Compact,
5 chapter 16, or the International Emergency Management Assistance Compact,
6 chapter 16-A, any resulting agreement or agreements may be considered
7 supplemental agreements pursuant to those compacts. If the other jurisdiction or
8 jurisdictions with which the Governor proposes to cooperate have not enacted one of
9 those compacts, the Governor may negotiate special agreements with the jurisdiction
10 or jurisdictions. Any agreement, if sufficient authority for its making does not
11 otherwise exist, becomes effective only after approval by the Legislature; ~~and~~

12 **Sec. 12. 37-B MRSA §741, sub-§3, ¶G-1** is enacted to read:

13 G-1. Establish and ensure maintenance of a primary facility designated as the State
14 Emergency Operations Center from which the emergency coordination of response to
15 and recovery from a disaster may be effectively carried out and ensure the
16 identification of an alternate site that may be used for this purpose if necessary; and

17 **Sec. 13. 37-B MRSA §745**, as amended by PL 2009, c. 252, §§2 to 4, is further
18 amended to read:

19 **§745. Disaster Recovery Fund**

20 **1. Fund established.** There is established the Disaster ~~Relief~~ Recovery Fund,
21 referred to in this section as "the fund," to be administered by the agency.

22 **2. Sources of fund.** The following must be paid into the fund:

23 A. All money appropriated for inclusion in the fund;

24 B. All interest from investment of the fund;

25 C. Any other money deposited in the fund from the Department of Defense, Veterans
26 and Emergency Management, Disaster Assistance Relief, Other Special Revenue
27 Funds account; and

28 D. Reimbursement received from the Federal Government or other legal entity for
29 disaster ~~relief~~ recovery assistance expenditures made from the fund.

30 **3. Use of fund.** The fund must be the first resource used when section 742 or 744 is
31 invoked. The fund may be used for any of the following at the discretion of the Governor
32 or Governor's designee:

33 A. To provide disaster ~~relief~~ recovery assistance to individuals and families when a
34 federal disaster declaration is not received;

35 B. To provide disaster ~~relief~~ recovery assistance to local governmental units of the
36 State for infrastructure repair and response when a federal disaster declaration is not
37 received;

38 C. Emergency response costs for state agencies;

- 1 D. To provide low-interest loans to businesses for disaster ~~relief~~ recovery assistance
2 when a federal disaster declaration is not received;
- 3 E. Disaster-related unmet needs of individuals and families following a federally
4 declared disaster;
- 5 F. Matching funds for assistance to individuals in a federally declared disaster; and
- 6 G. Matching funds for assistance to state and local governmental units in a federally
7 declared disaster.

8 **4. Fund balance.** The fund's balance may not exceed \$3,000,000, except by order of
9 the Governor. In the absence of such an order, any amount, including interest, that
10 accrues in excess of \$3,000,000 must be transferred by the State Controller to the Maine
11 Budget Stabilization Fund, established in Title 5, section 1532. Beginning July 1, 2010,
12 the fund's maximum allowable balance must be adjusted annually on July 1st by any
13 percentage change in the Consumer Price Index from January 1st to December 31st of the
14 previous year, but only to a maximum increase of 2%.

15 **5. Annual report.** The director shall submit a written report by January 15, 2007
16 and annually thereafter to the Governor and the Legislature on the fund's balance and
17 expenditures.

18 **6. Rules.** The agency shall adopt rules governing the process for the expenditure of
19 funds from the fund. Rules adopted pursuant to this subsection are major substantive
20 rules as defined in Title 5, chapter 375, subchapter 2-A.

21 **Sec. 14. 37-B MRSA §783,** as amended by PL 2003, c. 404, §10 and c. 510, Pt.
22 A, §36, is further amended to read:

23 **§783. Disaster emergency plan**

24 Each municipality, county and regional emergency management agency shall prepare
25 and keep a current disaster emergency plan for the area subject to its jurisdiction. ~~That~~
26 ~~plan must include, without limitation:~~ The plan must be approved by the jurisdiction's
27 governing body. The plan must follow the risk assessment and planning guidance
28 provided by the director under section 704, subsection 10 and address the hazards and
29 threats that pose the greatest risk to the jurisdiction and the capabilities and actions
30 needed to respond to and recover from disasters.

31 ~~**1. Identification of disasters.** Identification of disasters to which the jurisdiction is~~
32 ~~or may be vulnerable, specifically indicating the areas most likely to be affected;~~

33 ~~**2. Action to minimize damage.** Identification of the procedures and operations~~
34 ~~which will be necessary to prevent or minimize injury and damage in the event those~~
35 ~~disasters occur;~~

36 ~~**3. Personnel, equipment and supplies.** Identification of the personnel, equipment~~
37 ~~and supplies required to implement those procedures and operations and the means by~~
38 ~~which their timely availability will be assured;~~

1 ~~4. Recommendations.~~ Recommendations to appropriate public and private agencies
2 of all preventive measures found reasonable in light of risk and cost; and

3 ~~5. Other.~~ Other elements required by agency rule.

4 Each municipal, county and regional emergency management agency, as part of the
5 development of a disaster emergency plan for the area subject to its jurisdiction, shall
6 consult as it considers appropriate with ~~hospitals~~ institutions, organizations and
7 businesses within its jurisdiction to ensure that the disaster plans developed by the
8 municipality or agency and ~~the hospitals~~ those institutions, organizations and businesses
9 are compatible. Institutions, organizations and businesses with which the municipality or
10 agency may consult include, but are not limited to, hospitals, schools, health care
11 facilities, group homes and day care centers.

12 **Sec. 15. 37-B MRSA §784-A**, as amended by PL 2005, c. 630, §2, is further
13 amended to read:

14 **§784-A. Right to call for and employ assistance**

15 The Maine Emergency Management Agency and local organizations for emergency
16 management may employ any person considered necessary to assist with emergency
17 management activities. All persons called and employed for assistance shall proceed as
18 directed by the Maine Emergency Management Agency or the local organization. Any
19 person called and employed for assistance either within the State or in another state under
20 chapter 16 or in a Canadian province under chapter 16-A is deemed to be an employee of
21 the State for purposes of immunity from liability pursuant to ~~section~~ sections 822, 926
22 and 940 and for purposes of workers' compensation insurance pursuant to ~~section~~ sections
23 823, 928 and 942, except for persons excluded from the definition of employee pursuant
24 to Title 39-A, section 102, subsection 11. ~~A health care worker licensed in this State,~~
25 ~~either designated by the Maine Emergency Management Agency to perform emergency~~
26 ~~management or health activities in this State in a declared disaster or civil emergency~~
27 ~~pursuant to section 742 or designated by the Maine Emergency Management Agency to~~
28 ~~render aid in another state under chapter 16, is deemed to be an employee of the State for~~
29 ~~purposes of immunity from liability pursuant to this section and section 926 and for~~
30 ~~purposes of workers' compensation insurance pursuant to sections 823 and 928, except~~
31 ~~for persons excluded from the definition of employee pursuant to Title 39-A, section 102,~~
32 ~~subsection 11.~~ A person holding a professional license in the State may be designated a
33 member of the emergency management forces in that professional capacity only after the
34 individual or the license issuer provides confirmation of a valid license.

35 **Sec. 16. 37-B MRSA §850**, as amended by PL 2001, c. 662, §98, is further
36 amended to read:

37 **§850. Search and rescue plan**

38 The ~~Director of the Maine Emergency Management Agency~~ director shall ~~prepare~~
39 compile a state search and rescue plan encompassing all activities including land, sea and
40 air searches for persons, boats and airplanes. In the preparation of this plan, the director
41 shall ~~review~~ include such individual agency plans as currently exist, seek the advice and

1 counsel of all currently designated federal and state search and rescue agencies and obtain
2 their approval of the final compiled plan. All other search and rescue agencies shall
3 cooperate with the agency in preparation of this plan. Responsibility for execution of the
4 plan is with the individual state agencies that have responsibility for the area being
5 searched or for lost or downed aircraft, as appropriate. These agencies shall follow all the
6 provisions of the approved plan.

7 This plan must be reviewed and updated as necessary. The director shall see that the
8 plan and its revisions receive suitable dissemination on a timely basis. Individual
9 agencies shall submit revisions of their search and rescue plans to the director for
10 comment and incorporation into the agency's ~~statewide~~ comprehensive emergency
11 management plan for the State.

12 **Sec. 17. 37-B MRSA §§851 and 852** are enacted to read:

13 **§851. Mass fatality plan**

14 The director, in consultation with the Office of the Chief Medical Examiner, shall
15 prepare a plan for the recovery, identification and disposition of human remains in a
16 disaster. The Office of the Chief Medical Examiner is responsible for execution of the
17 plan, and all members of the emergency management forces shall cooperate and assist the
18 office in executing the plan.

19 This plan must be reviewed and updated as necessary. The director shall see that the
20 plan and its revisions receive suitable dissemination on a timely basis.

21 **§852. Plans deemed part of statewide comprehensive plan**

22 An operational plan developed by an agency of the State that has jurisdiction over
23 responding to an emergency is deemed to be part of the comprehensive emergency
24 management plan for the State.

25 **Sec. 18. 37-B MRSA §1118, sub-§1, ¶¶B and C**, as enacted by PL 2001, c.
26 460, §3, are amended to read:

27 B. All other dams, at least once every ~~6~~ 12 years;

28 C. Any dam, within ~~30~~ 60 days of a request for an evaluation from the dam owner,
29 the municipality in which the dam is located or the emergency management director
30 of the county in which the dam is located; and

31 **Sec. 19. 37-B MRSA §1119, sub-§1, ¶¶A to C**, as enacted by PL 2001, c. 460,
32 §3, are amended to read:

33 A. All significant hazard potential dams, at least once every ~~4~~ 6 years;

34 B. All high hazard potential dams, at least once every ~~2~~ 6 years;

35 C. Any dam, within ~~30~~ 60 days of a request for an inspection from the dam owner or
36 the municipality in which the dam is located; and

