

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1876

H.P. 1201

House of Representatives, May 3, 2023

**An Act to Enhance Legislative Participation in the Governor's Use
of Emergency Powers**

Reference to the Committee on State and Local Government suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative LEE of Auburn.
Cosponsored by Senator KEIM of Oxford and
Representatives: ARATA of New Gloucester, BRADSTREET of Vassalboro, DANA of the
Passamaquoddy Tribe, LOOKNER of Portland, SHAW of Auburn, WARREN of Scarborough,
WHITE of Waterville, Senator: BENNETT of Oxford.

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

2 **Sec. 1. 37-B MRSA §741**, as amended by PL 2013, c. 146, §§9 to 12, is further
3 amended to read:

4 **§741. Governor's powers**

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

8 **2. Cooperation.** In performing the duties required by this chapter, the Governor shall,
9 directly or through the commissioner, cooperate with all departments and agencies of the
10 Federal Government, with the offices and agencies of other states and foreign countries and
11 their political subdivisions and with private agencies in all matters pertaining to the
12 emergency management capability of the State and of the Nation.

13 **3. Authority.** In performing the duties required by this chapter, the Governor, in direct
14 consultation with the Legislative Council, may:

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

20 B. Prepare a comprehensive plan and program for the emergency management
21 functions of this State. That plan and program must be integrated into and coordinated
22 with the emergency management plans of federal agencies and with the plans of other
23 states and foreign countries, and their political subdivisions, to the fullest possible
24 extent;

25 C. Coordinate the preparation of plans and programs for emergency management
26 functions by the political subdivisions of the State. These plans must be integrated into
27 and coordinated with the emergency management plan and program of the State to the
28 fullest possible extent;

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

37 E. Conduct studies and surveys and take inventories of the industries, resources and
38 facilities of the State necessary to ascertain the State's emergency management
39 capabilities, and plan for their most efficient emergency use, including emergency
40 economic controls to ensure adequate production and equitable distribution of essential
41 commodities;

42 F. Whenever a shortage of critical material supplies appears imminent in the State,
43 establish emergency reserves of those products necessary to ensure the health, welfare

1 and safety of the people of the State. To establish those reserves, the Governor may
2 purchase quantities of those materials for resale on a cost plus expenses basis for
3 priority end users within the State;

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

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

19 H. Delegate any authority vested in the Governor under this chapter and provide for
20 the subdelegation of that authority.

21 In carrying out the duties of this section, the Governor shall narrowly tailor the
22 Governor's actions to address the public health or safety emergency to which the actions
23 are directed while limiting the extent to which the actions deviate from the actions that
24 would be permissible in the absence of a declared emergency.

25 The Maine Superior Court has jurisdiction over cases brought by individuals adversely
26 affected by actions taken pursuant to this section, and shall determine in such matters
27 whether the Governor's actions are sufficiently narrowly tailored. Pursuant to the Maine
28 Rules of Civil Procedure, Rule 65, the court may provide for a temporary restraining order
29 or preliminary injunction in those cases. In the event a temporary restraining order or
30 preliminary injunction is issued against the Governor's action or actions pursuant to this
31 section, an appeal by the Governor of the order or injunction to the Maine Supreme Judicial
32 Court must be expedited.

33 **Sec. 2. 37-B MRSA §742, sub-§1**, as amended by PL 2021, c. 28, Pt. C, §1, is
34 further amended to read:

35 **1. Emergency proclamation.** Emergency proclamations must be issued as follows.

36 A. Whenever a disaster or civil emergency exists or appears imminent, the Governor
37 shall, by oral proclamation, declare a state of emergency in the State or any section of
38 the State. If the Governor is temporarily absent from the State or is otherwise
39 unavailable, the next person in the State who would act as Governor if the office of the
40 Governor were vacant may, by oral proclamation, declare the fact that a civil
41 emergency exists or appears sufficiently imminent to activate emergency plans in any
42 or all areas of the State. A written copy of the proclamation must be filed with the
43 Secretary of State within 24 hours of the oral proclamation.

1 B. Subject at all times to the further direction and order of the Governor, an executive
2 proclamation of emergency activates the emergency plans applicable to the affected
3 areas and is the authority for the deployment and use of any forces or resources to
4 which the plan or plans apply.

5 C. After the filing of the emergency proclamation and in addition to any other powers
6 conferred by law, the Governor, in direct consultation with the Legislative Council,
7 may:

8 (1) Suspend the enforcement of any statute prescribing the procedures for conduct
9 of state business, or the orders or rules of any state agency, if strict compliance
10 with the provisions of the statute, order or rule would in any way prevent, hinder
11 or delay necessary action in coping with the emergency;

12 (2) Utilize all available resources of the State Government and of each political
13 subdivision of the State as reasonably necessary to cope with the disaster
14 emergency;

15 (3) Transfer the direction, personnel or functions of state departments and
16 agencies, or units thereof, for the purposes of performing or facilitating emergency
17 services;

18 (4) Authorize the obtaining and acquisition of property, supplies and materials
19 pursuant to section 821;

20 (5) Enlist the aid of any person to assist in the effort to control, put out or end the
21 emergency or aid in the caring for the safety of persons;

22 (6) Direct and compel the evacuation of all or part of the population from any
23 stricken or threatened area within the State, if the Governor determines this action
24 necessary for the preservation of life or other disaster mitigation, response or
25 recovery;

26 (7) Prescribe routes, modes of transportation and destinations in connection with
27 evacuations;

28 (8) Control ingress and egress to and from a disaster area, the movement of persons
29 within the area and the occupancy of premises therein;

30 (9) Suspend or limit the sale, dispensing or transportation of alcoholic beverages,
31 explosives and combustibles;

32 (10) Make provision for the availability and use of temporary emergency housing;

33 (11) Order the termination, temporary or permanent, of any process, operation,
34 machine or device which may be causing or is understood to be the cause of the
35 state of emergency for which this proclamation was made;

36 (12) Take whatever action is necessary to abate, clean up or mitigate whatever
37 danger may exist within the affected area; and

38 (13) During a state of emergency declared by the Governor in accordance with
39 this section due to the outbreak of COVID-19:

40 (a) Reasonably adjust time frames and deadlines imposed by law for state,
41 county and municipal governments and other entities when such an adjustment
42 is reasonably necessary to mitigate an effect of the emergency;

1 (b) In consultation with the Public Utilities Commission, suspend the
2 termination of residential electricity and water services during the period of
3 emergency and up to 60 days after the state of emergency is terminated; and

4 (c) Modify or suspend the requirements for professional or occupational
5 licensing or registration by any agency, board or commission if strict
6 compliance with such requirements would in any way prevent, hinder or delay
7 necessary action in dealing with the emergency.

8 The powers granted in divisions (a) and (c) terminate 30 days following the
9 termination of the state of emergency.

10 E. In dealing with a declared state of emergency under this subsection, the Governor
11 shall ensure that:

12 (1) Medical privacy and confidentiality requirements, including but not limited to
13 requirements under the federal Health Insurance Portability and Accountability Act
14 of 1996, are followed; and

15 (2) Health care services and surgeries are not considered to be nonessential
16 services.

17 F. The Governor, during the pendency of a state of emergency, may not reissue or
18 renew an emergency proclamation, issue another emergency proclamation that is
19 substantially similar to one that expired or reissue an emergency proclamation
20 terminated by the Legislature without approval of the Legislature.

21 G. The Governor, during the pendency of a state of emergency, shall provide a detailed
22 written weekly briefing to the Legislative Council. At minimum, the briefing must
23 detail all actions taken pursuant to this section and, with respect to such actions, must
24 detail how and whether the actions have been successful in abating the public health or
25 safety emergency. Compliance with this section does not by itself satisfy the
26 Governor's obligations to directly consult the Legislative Council when acting pursuant
27 to this section, when applicable.

28 **Sec. 3. 37-B MRSA §743, sub-§2**, as enacted by PL 1983, c. 594, §34, is amended
29 to read:

30 **2. Limitation.** ~~No~~ As long as each House of the Legislature is able to assemble either
31 in person or remotely as authorized by a joint order passed by the Legislature, a state of
32 emergency may not continue for longer than 30 days unless it is renewed by the Governor
33 a 3/5 vote of each House of the Legislature. If either House of the Legislature is unable to
34 assemble within 30 days, it shall take a renewal vote as soon as practicable. If the state of
35 emergency is not renewed following a vote by the Legislature, the Governor shall issue an
36 executive proclamation ending the state of emergency within 24 hours of the vote not
37 renewing the state of emergency. The Legislature, by joint resolution, may terminate a
38 state of emergency at ~~anytime~~ any time by the vote of a majority of each House of the
39 Legislature. ~~Thereupon, the~~ The Governor shall then issue an executive proclamation
40 ending the state of emergency.

41 **SUMMARY**

42 This bill:

- 1 1. Requires that the Governor, in performing the Governor's duties related to
2 emergency management functions and emergency powers, consult directly with the
3 Legislative Council;
- 4 2. Requires the Governor to narrowly tailor actions to address the public health or
5 safety emergency;
- 6 3. Provides that the Maine Superior Court has jurisdiction over cases brought by
7 individuals adversely affected by actions taken pursuant to the Governor's emergency
8 powers. The Governor may appeal to the Maine Supreme Judicial Court and that appeal
9 must be expedited;
- 10 4. Prohibits the Governor from reissuing or renewing an emergency proclamation, that
11 is substantially similar to one that expired or was terminated by the Legislature, without
12 Legislative approval;
- 13 5. Requires the Governor, during a state of emergency, to provide a detailed written
14 weekly briefing to the Legislative Council detailing actions taken to address the
15 emergency; and
- 16 6. Provides that, as long as each House of the Legislature is able to assemble, a state of
17 emergency may not continue for longer than 30 days unless it is renewed by a 3/5 vote of
18 each House.