

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 121 - L.D. 326

An Act To Update the Maine Emergency Management Laws

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

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

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

Sec. 2. 37-B MRSA §701, sub-§4, as repealed and replaced by PL 2003, c. 510, Pt.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

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

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

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

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

§702. Policy

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

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

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

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

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

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

§704. Director; duties

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

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

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

~~The director, in consultation with the Office of Chief Medical Examiner, shall prepare a plan for the recovery, 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 emergency management forces.~~

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

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

~~The director shall develop and conduct an annual program of comprehensive public education, using all appropriate means of communication to educate and inform members of the public and public officials about emergency preparedness, response, recovery and mitigation. The program must incorporate the use of appropriate accessible formats to educate and inform individuals with disabilities, individuals who are elderly and non-English speaking residents of Maine.~~

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

The director shall:

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

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

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

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

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

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

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

8. Exercises; evaluations; corrective actions. Develop and conduct an annual statewide program of emergency management exercises, evaluations and corrective actions to test and improve the policies and plans of the state, county and local emergency management agencies. The program must address all hazards and threats identified pursuant to section 783;

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

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

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

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

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

§709. Governor's homeland security advisor

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

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

A. Make, amend and rescind the necessary orders and rules to carry out this chapter within the limits of the authority conferred upon 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 emergency management or homeland security functions;

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

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

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

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

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

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

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

§745. Disaster Recovery Fund

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

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

A. All money appropriated for inclusion in the fund;

B. All interest from investment of the fund;

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

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

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

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

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

C. Emergency response costs for state agencies;

D. To provide low-interest loans to businesses for disaster ~~relief~~ recovery assistance when a federal disaster declaration is not received;

E. Disaster-related unmet needs of individuals and families following a federally declared disaster;

F. Matching funds for assistance to individuals in a federally declared disaster; and

G. Matching funds for assistance to state and local governmental units in a federally declared disaster.

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

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

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

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

§783. Disaster emergency plan

Each municipality, county and regional emergency management agency shall prepare and keep a current disaster emergency plan for the area subject to its jurisdiction. ~~That plan must include, without limitation:~~ The plan must be approved by the jurisdiction's governing body. The plan must follow the risk assessment and planning guidance provided by the director under section 704, subsection 10 and address the hazards and

threats that pose the greatest risk to the jurisdiction and the capabilities and actions needed to respond to and recover from disasters.

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

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

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

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

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

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

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

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

The Maine Emergency Management Agency and local organizations for emergency management may employ any person considered necessary to assist with emergency management activities. All persons called and employed for assistance shall proceed as directed by the Maine Emergency Management Agency or the local organization. Any person called and employed for assistance either within the State or in another state under chapter 16 or in a Canadian province under chapter 16-A is deemed to be an employee of the State for purposes of immunity from liability pursuant to ~~section~~ sections 822, 926 and 940 and for purposes of workers' compensation insurance pursuant to ~~section~~ sections 823, 928 and 942, except for persons excluded from the definition of employee pursuant to Title 39-A, section 102, subsection 11. ~~A health care worker licensed in this State, either designated by the Maine Emergency Management Agency to perform emergency management or health activities in this State in a declared disaster or civil emergency pursuant to section 742 or designated by the Maine Emergency Management Agency to render aid in another state under chapter 16, is deemed to be an employee of the State for purposes of immunity from liability pursuant to this section and section 926 and for purposes of workers' compensation insurance pursuant to sections 823 and 928, except~~

~~for persons excluded from the definition of employee pursuant to Title 39-A, section 102, subsection 11. A person holding a professional license in the State may be designated a member of the emergency management forces in that professional capacity only after the individual or the license issuer provides confirmation of a valid license.~~

Sec. 16. 37-B MRSA §823, first ¶, as repealed and replaced by PL 2003, c. 510, Pt. A, §38, is amended to read:

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

Sec. 17. 37-B MRSA §850, as amended by PL 2001, c. 662, §98, is further amended to read:

§850. Search and rescue plan

The ~~Director of the Maine Emergency Management Agency~~ director shall ~~prepare~~ compile a state search and rescue plan encompassing all activities including land, sea and air searches for persons, boats and airplanes. In the preparation of this plan, the director shall ~~review~~ include such individual agency plans as currently exist, seek the advice and counsel of all currently designated federal and state search and rescue agencies and obtain their approval of the final compiled plan. All other search and rescue agencies shall cooperate with the agency in preparation of this plan. Responsibility for execution of the plan is with the individual state agencies that have responsibility for the area being searched or for lost or downed aircraft, as appropriate. These agencies shall follow all the provisions of the approved plan.

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

Sec. 18. 37-B MRSA §§851 and 852 are enacted to read:

§851. Mass fatality plan

The director, in consultation with the Office of the Chief Medical Examiner, the Department of Health and Human Services and the Maine Center for Disease Control and Prevention within that department and other agencies as appropriate, shall prepare a plan for the recovery, identification and disposition of human remains in a disaster. The Office of the Chief Medical Examiner is responsible for execution of the plan, and all members of the emergency management forces shall cooperate and assist the office in executing the plan.

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

§852. Plans deemed part of statewide comprehensive plan

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

Sec. 19. 37-B MRSA §1118, sub-§1, ¶¶B and C, as enacted by PL 2001, c. 460, §3, are amended to read:

- B. All other dams, at least once every 6 ~~12~~ years;
- C. Any dam, within ~~30~~ 60 days of a request for an evaluation from the dam owner, the municipality in which the dam is located or the emergency management director of the county in which the dam is located; and

Sec. 20. 37-B MRSA §1119, sub-§1, ¶¶A to C, as enacted by PL 2001, c. 460, §3, are amended to read:

- A. All significant hazard potential dams, at least once every ~~4~~ 6 years;
- B. All high hazard potential dams, at least once every ~~2~~ 6 years;
- C. Any dam, within ~~30~~ 60 days of a request for an inspection from the dam owner or the municipality in which the dam is located; and

Sec. 21. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 37-B, chapter 13, subchapter 5, in the subchapter headnote, the words "search and rescue" are amended to read "special operational plans" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.