

Testimony of the  
Department of Defense, Veterans and Emergency Management  
Maine Emergency Management Agency  
Robert McAleer, Director  
Before the Joint Standing Committee on Criminal Justice and Public Safety:

LD 326: An Act To Update the Maine Emergency Management Laws  
March 4, 2013

Senator Gerzofsky, Representative Dion, members of the Joint Standing Committee on Criminal Justice and Public Safety

My name is Robert McAleer. I am the Director of the Maine Emergency Management Agency, which is a bureau of the Department of Defense, Veterans and Emergency Management.

I am here to provide testimony in support of LD 326: An Act To Update the Maine Emergency Management Laws

This bill came about as a result of the statutory analysis requested of all Executive Branch agencies by Governor LePage, as part of the Zero-Based Budget initiative.

When we performed this analysis for MEMA, we looked at our governing statute, Title 37-B, against national standards for emergency management and our standard practices. We also looked at our ability to carry out existing mandates in the statute.

I have provided a detailed walk-through of each section of the bill, attached to this testimony.

Some of the changes we have proposed are truly "housekeeping" in nature, including editorial changes to language and nomenclatures, adding definitions, adjusting organization, etc.

I would like to summarize some of the changes for you:

1. Adding "coordination of homeland security" as a key element in the purpose of MEMA, and accordingly adding a reference to homeland security in several sections of the statute.
2. Adding in three functions which are core functions of emergency management according to national standards and which we currently perform, but are either not adequately described in statute or not described at all: Conducting a statewide training program, Establishing and maintaining a State Emergency Operations Center, and maintaining a Comprehensive Emergency Management plan (including providing planning guidance for local jurisdictions within the State).
3. Addressing an anomaly in Section 784-A of Title 37-B, "Right to call for and employ assistance". This section states that any person employed by MEMA or a local agency for emergency management for emergency management activities is considered an

employee of the State for the purpose of immunity from liability and worker's compensation coverage. This is an enormously important element of the law. Emergency management capability across the state is built on the efforts of volunteers, and this section of the statute allows us to assure volunteers in emergency management that they have these protections.

However, ambiguous language in the current statute implies that only MEMA can manage such volunteers, even if a local agency calls them into service. We have proposed amending that language so that the local agency can maintain management of their volunteers, and still ensure that those individuals will have liability and worker's compensation coverage. We have consulted with State risk management and worker's compensation officials, and have agreement on this language change.

Also in this section we propose updating the statute to ensure that individuals who are deployed out of state under the Emergency Management Assistance Compact (EMAC) or the International Emergency Management Assistance Compact (IEMAC) are included in this protection. And finally in this section, we seek to ensure that when we deploy anyone holding a professional license to another State or to a Canadian province, that we have verification of the license.

4. Proposing changes to the mandated frequency of hazard evaluations and condition inspections of state-regulated dams.

We propose changing the hazard evaluation recurrence interval from 6 to 12 years for all dams.

We propose changing the inspection frequency for condition to 6 years for both significant and high hazard dams. (Currently the inspection interval is every 4 years for significant hazard dams and every 2 years for high hazard dams.)

For both hazard evaluations and condition inspections, we proposed changing the response time to a request for an action from 30 to 60 days.

None of these changes impact our current policy of responding immediately to a concern of an imminent emergency, of performing more frequent site visits to dams about which we have a safety concern, or of working closely with dam owners to ensure safe dam operation while they address recommended repairs.

We feel that the proposed changes to the schedule of routine evaluations and inspections are more realistic in view of the rate of change of downstream hazards and in dam conditions. Most importantly we feel these changes will not impact public safety.

This concludes my testimony. As I noted, we have included with my written testimony a detailed walk-through of each section of LD 326. I will be happy to address any questions or concerns you may have.

## **LD 326: An Act To Update the Maine Emergency Management Laws Details by Section**

### **Sections 1, 2 and 3:**

Together, these three sections add a 5<sup>th</sup> element to the "Title; purpose" section of 37-B, authorizing MEMA to coordinate the State's homeland security activities.

This puts into statute what has been practice since 2001, when then-Governor King designated MEMA as the coordinating agency for these activities. Successive Governors have followed this practice.

### **Section 4:**

Title 37-B MRSA §702 declares the State's policy of coordinating emergency management activities with those of the Federal government. This bill would add coordination of homeland security activities to that policy as well.

### **Sections 5 and 6:**

These sections add definitions for "homeland security" and "terrorism". The Homeland Security definition is taken from the National Homeland Security Strategy. The "Terrorism" definition echoes the definition in Title 1 MRSA, §402, ¶ 3, sub-¶ L.

### **Section 7:**

Title 37-B MRSA §704 outlines the duties of the MEMA Director. Currently, most of this section is in the form of one large paragraph. This bill would break up the statutory language into more readable sub-paragraphs, but would also make the following substantive additions:

Core functions of emergency management (as defined by national standards) that MEMA conducts but are currently absent in the Statute have been added to this section. These functions are in accordance with national standards and include:

1. Conducting a statewide training program,
2. Operating an Emergency Operations Center, and
3. Preparing a Comprehensive Emergency Management Plan, including risk assessment and planning guidance.

The existing provision in this section for preparation of a plan in coordination with the Office of the Chief Medical Examiner is to be moved elsewhere in the statute (see Section 17, below)

### **Section 8:**

This language designates the Commissioner of Defense, Veterans and Emergency Management as the Governor's homeland security advisor. This codifies the arrangement that has been in place since 2001.

**Sections 9, 10, 11 and 12:**

These sections address 37-B MRSA §741, Governor's powers, specifically paragraph 3, Authority. Where sub-paragraphs A and D address coordinating with the Federal government emergency management programs, we add the reference to homeland security.

In Section 12, we propose adding language to designate a State Emergency Operations Center. (which would then be the responsibility of the MEMA Director to operate the EOC pursuant to the language in Section 7 of this bill.)

**Section 13:**

This language would change the designation of the Disaster Relief Fund to the Disaster Recovery Fund. The purpose of this change is to differentiate the State fund with an existing Disaster Relief Fund which is maintained by the United Way in coordination with Maine Voluntary Organizations Active in Disaster (VOAD).

The United Way fund has been in existence since the 1998 Ice Storm. The United Way has agreed to continue to administer this fund, to which the public could make donations in a large-scale disaster. The fund would be used to support the activities of all VOAD agencies that are providing immediate relief service to disaster survivors.

The term "Recovery" also more properly describes the intent of this State account, to provide support for longer term recovery efforts across the State. It should be noted that this account is currently not funded.

**Section 14:**

Current language in Title 37-B MRSA §783 related to municipal and county emergency planning is prescriptive, and does not allow for changing times, and changing emphases in emergency planning.

It is our intent to simplify this language, and make reference to planning guidance that MEMA will commit to provide.

It is no way our intention to add to a municipal burden for emergency. Rather we wish to make sure planning guidance can easily be adapted and kept current, so as to better support local emergency planning.

We also add in Section 7 of this bill a requirement for MEMA to provide updated guidance to local and county officials for emergency planning.

The current statute also requires local plans to coordinate with local hospitals. We are proposing to broaden this language to encompass all appropriate local partners.

**Section 15:**

This would amend Title 37-B MRSA §784-A, the Right to call for and employ assistance.

This section of statute provides emergency management volunteers with protection from tort liability and also guarantees workers compensation coverage for those engaging in emergency management activities at the state and local level.

The current statute allows for local agencies to activate volunteers; we make what we feel is a critical correction, to allow those local agencies to direct the forces as well.

We also amend this section to explicitly cover volunteers who are deployed to other states under EMAC and IEMAC. We remove specific reference to health care workers, but add a provision that a license holder in any profession (to include health care workers) can be deployed in that profession only after validation of the license. This protects both the deploying agency, but also potentially any state or province to which we might deploy the individuals.

**Sections 16 and 17:**

These sections reorganize current statutory language that refers to plans involving other agencies.

Section 16 makes it clear that the Agency's role in search and rescue planning is a coordinating one, and that authority for planning for search and rescue operations remains with the agencies that have statutory jurisdiction over those activities.

Section 17 moves the language regarding collaboration with the Office of the Chief Medical Examiner to this section of the statute. It also specifies that other agency emergency plans, while remaining under lead agency jurisdiction are part of the State's overall Comprehensive Emergency Plan, thus ensuring consistency in State-level response planning.

**Sections 18 and 19:**

These sections change the hazard evaluation and condition inspection intervals in Maine's Dam Safety statutes.

Section 18 addresses hazard evaluations, changing the minimum inspection interval from once every 6 years to once every 12 years, and the response time to address a request for hazard evaluation from 30 to 60 days.

Hazard evaluations are typically not emergency actions, but nothing in these changes would prevent a more immediate response to an evaluation request should conditions warrant.

Section 19 changes the minimum condition inspection interval for significant and high-hazard dams. The inspection interval for significant hazard dams would change from every 4 years to every 6 years. The inspection interval for high hazard dams would change from every 2 years to every 6 years. The time frame to respond to a request for an inspection changes from 30 to 60 days.

This does not affect emergency inspections of dams, which are currently performed immediately if there is a perceived immediate risk to public safety. The provision in the law for an inspection at any time under such conditions is unchanged.

**Section 20:**

This is a housekeeping change, directing the Revisor's Office to change a subchapter heading within title 37-B in accordance with the reorganizing of the statute proposed in this bill.