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GOVERNOR

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AUGUSTA, MAINE
04333-0001

March 10, 2025

Honorable Joseph Baldacci, Chair
Honorable Suzanne Salisbury, Chair
Joint Standing Committee on State and Local Government
State House, Room 214
Augusta, Maine 04333

Re: LD 551, *An Act to Restore Balanced Emergency Powers*

Dear Senator Nangle, Representative Stover and members of the Joint Standing Committee on State and Local Government:

I am writing to convey the opposition of the Governor's Office to LD 551, a bill that is substantially similar to LD 1872, which failed in the 131st Legislature. This bill would seriously undermine the authority of this and future Governors to protect the public health, safety, and welfare during civil emergencies. We believe such legislation is unnecessary to ensure the Legislature retains adequate authority to influence a Governor's emergency response as it sees fit.

The Governor's emergency powers are primarily set forth at 37-B M.R.S. § 741 *et seq.* These statutes, first enacted in 1983, are designed to allow the nimble and efficient decision-making that is critical to an effective emergency response. They provide the Governor and officials acting under her direction the authority to react rapidly to changing and unpredictable conditions as they unfold. LD 551 would make that authority more cumbersome and less effective, while also inviting new litigation challenging elements of an emergency response. These changes are contrary to the public interest.

Legislatures are effective policy making bodies, but are not well suited to make numerous, fact-specific, emergency management decisions in quick succession in response to continually emerging circumstances. That responsibility must necessarily fall to the Executive. The context for the bill now before you may be the COVID-19 pandemic, but the next occasion for a Governor to declare a state of emergency may well be dramatically different – a terrorist attack, extreme natural or man-made disaster, or some other now unimaginable scenario. It would be a profound mistake for this Legislature to constrain future Governors from exercising



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the necessary authority to safeguard Maine people when the State is next confronted with the need for an effective emergency response.

This is especially true given that the current statute retains for the Legislature the ultimate tool for protecting against executive overreach. The Legislature may terminate any emergency declaration "at any time" by a simple majority vote of each body. 37-B M.R.S. § 743(2). If there were broad concern within the Legislature that a Governor were abusing emergency powers, a termination resolution is the appropriate response. Given that the Legislature already possesses the authority to terminate a declared state of emergency at any time, it would be misguided to enact legislation re-wiring the Governor's emergency management authority in a manner that undermines executive discretion to respond appropriately in the future.

In addition to altering the Governor's emergency powers, LD 551 would amend the Administrative Procedures Act (APA) to prevent agencies from adopting emergency rules unless the Governor first declares a State of Emergency. This makes no sense. Agencies often use their emergency rulemaking authority under circumstances that are both routine but also critically important to protect public safety. For example, the Department of Marine Resources issues dozens of emergency rules every year to close specific shellfish beds due to the presence of bacterial contamination or biotoxins. It would be ridiculous to require the Governor to declare a state of emergency for each of these shellfish bed closures rules. LD 551's proposed amendment to the APA is unnecessary and ill-considered.

We ask you to reject this legislation, which would make unnecessary and imprudent changes to a critically important statutory framework. Thank you for your consideration.

Sincerely,



Gerald D. Reid
Chief Counsel
Office of Governor Mills



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