



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

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Via email to naomi.yamamoto.MLA@leg.bc.ca

February 10, 2015

Minister of State for
Emergency Preparedness
Room 227, Parliament Buildings
Victoria, BC V8V 1X4

Attention: Hon. Minister Yamamoto, Minister of State for Emergency Preparedness

Dear Minister Yamamoto:

With reference to your correspondence dated January, 2016, Re: Prepared and Resilient, the Council of the Township of Esquimalt at its Regular Meeting of February 1, 2016, made the following resolution:

"That Council, upon reviewing the recommendations attached to Staff Report CSS-16-004, directs staff to prepare a letter to Minister Yamamoto with the recommendations as amended, for changes to the Emergency Program Act."

Please find attached recommendations for your consideration. Should you have any further questions at this time, please contact me at Anja.nurvo@esquimalt.ca or 250-414-7135.

Yours truly,

Anja Nurvo, BA, LLB
Director of Corporate Services

Encl.

Township of Esquimalt Recommendations for the Prepared and Resilient Discussion Paper on the legislative framework in British Columbia (Emergency Program Act)

Discussion area A: Modernizing fundamental concepts and structure of the Act

Discussion 1: Phases of Emergency Management

Proposal 1: Renaming it to the Emergency Management Act

Recommendation: Support

Rationale: Renaming the Emergency Program Act (EPA) to the Emergency Management Act will reflect the four phases of emergency management, as recognized in Esquimalt's Emergency Management Bylaw, as well as the multidimensional nature of emergency management.

Proposal 2: Restructuring the Act so that it contains parts reflecting the phases of emergency management (i.e. a part dedicated to preparedness, a part dedicated to response etc.)

Recommendation: Support on principle contingent on additional information

Rationale: Recognizing and defining the phases of emergency management reflects current practices. Further elaboration is needed to understand what will be included in each phase, the roles and responsibilities of the Province and local government in each phase, as well as financial implications and funding mechanisms, in particular for mitigation.

The phases and definitions should align with the British Columbia Emergency Management System (BCEMS) which define the phases as mitigation, preparedness, response and recovery, rather than prevention, preparedness, response and recovery as listed in the paper.

A more comprehensive definition of recovery is needed, along with defining the Local Authority role within recovery. For example, Emergency Social Services covers the first 72 hours following an emergency where residents are displaced from their homes, but there is no direction given as to what, if any, responsibility Local Authorities have to support the recovery following this 72-hour period.

Proposal 3: Removing the term "emergency program" and references to "program" or "programs" throughout

Recommendation: Support removal when referring to Provincial entities, keep in place and define for local programs

Rationale: The EPA makes reference to both the Provincial emergency program(s) and Local Authority emergency programs. The removal of references to the Provincial emergency program is appropriate due to inconsistent referencing throughout the EPA. However, it is essential that the term Local Authority Emergency Program remain within the Act as this is common terminology and used in most local bylaws. The term "emergency program" should be defined, and this should include having an emergency plan, training programs and exercises, and public education.

Proposal 4: Defining an "emergency plan" as a plan under the Act to prepare for, prevent, mitigate against, respond to and recover from an emergency and its effects

Recommendation: Support, contingent on consistency

Rationale: It is important to define an emergency plan, but this definition needs to be consistent throughout BC's emergency management sector. The BCEMS (2015) definition states an emergency plan is: "a document that describes the actions that will be taken when an emergency occurs. It describes how people, property, and the environment will be protected in an emergency" (BCEMS, 2015:96).

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Discussion 2: Definition of “emergency”

Proposal 1: Consider removing the potential causes in the definition of ‘emergency’ and clarify that an emergency includes a disaster

Recommendation: Support removal of potential causes or hazards, request inclusion of potential consequences in definition

Rationale: Citing specific hazards or causes in the definition may fall outside the scope of the Act.

Proposal 2: Consider including damage to the environment in the definition of emergency

Recommendation: Support

Rationale: There have been several emergencies, such as the breach of the Mount Polly mine that does not fit the current definition of emergency. The environment is essential to communities and inclusion within the definition enhances the capabilities of all response agencies.

Discussion 3: Definition of “Local Authority”

Proposal 1: Consider changing the definition of ‘local authority’ to include Treaty First Nations, including the Nisga’a Lisims Government

Recommendation: Support, consider inclusion of non-Treaty First Nations,

Rationale: The definition needs to be changed to reflect provisions in the treaties. Consideration should be given for the addition of non-Treaty First Nations to be inclusive.

Discussion Area B: Clarifying Roles and Responsibilities

Discussion 4: Emergency Management BC

Proposal 1: Establish Emergency Management BC in legislation and remove references to the Provincial Emergency Program.

Recommendation: Support

Rationale: The former Provincial Emergency Program is no longer in existence, and this should be reflected in the Act by changing the terminology to Emergency Management BC.

Proposal 2: Clarify the responsibilities of the director of EMBC to include the following:

- a. Lead the coordination of all provincial government emergency management activities

Recommendation: Support, based on clarification

Rationale: This proposal requires greater clarification. Currently the EPA Emergency Management Regulation Schedule 1 outlines which Ministry takes the lead coordination role for hazard groups. For example, the Ministry of Health is the lead agency responsible for the coordination of health related hazards and EMBC supports the lead Ministry. Clarification is needed to understand the implications of this proposed change for local authorities during response and recovery.

- b. Provide advice and assistance to other authorities—provincial and local authorities—in their emergency management responsibilities

Recommendation: Support, with removal of “advice” from proposal

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Rationale: It is the role of EMBC to provide assistance, but advice only as necessary. Local authorities should retain their legal authority within all phases of emergency management.

- c. Establish and maintain a provincial emergency management system to standardize provincial emergency response activities

Recommendation: Support

Rationale: The BCEMS provides a standardized system that is adhered to by the Esquimalt Emergency Program. It is essential to recognize EMBC as the agency that continue to maintain and review the system. (Consideration may be given to mandatory use of the system in BC to ensure all agencies can work together for response and recovery to emergencies).

- d. Reduce risk by promoting and supporting emergency preparedness, prevention and mitigation, response and recovery initiatives

Recommendation: Request clarification

Rationale: This proposal requires greater clarification and explanation including implications for the EPA Emergency Management Regulation, and how promotion and support will be funded.

Discussion 5: Assigning provincial emergency planning, response, and recovery responsibilities

Proposal 1: Consider removing the current scheme from the Act whereby the Lieutenant Governor in Council (LGIC) assigns emergency planning, response and recovery duties by regulation and provide for the following in the Act:

- a. An authority for the minister responsible for the Act to require other ministers, after consulting with them, to prepare emergency plans in relation to specified hazards.

Recommendation: Support

Rationale: This authority improves the Minister's ability to regulate emergency management initiatives for the Province.

- b. An authority for the Minister responsible for the Act to require, after consultation, that a minister, government corporation, or other prescribed public bodies prepare emergency plans in relation to carrying out specific emergency response and recovery duties.

Recommendation: Support in principle

Rationale: This authority improves the ability of the Minister responsible to ensure emergency preparedness; however, clear and transparent parameters should be established, additional consultation taken with these organizations, and considerations taken for financial implications of such plans.

Proposal 2: In order to support the proposed changes outlined above, other amendments would be required, including the following:

- a. Define 'hazard' as something that may cause, or contribute substantially to the cause of, an emergency.

Recommendation: Support

Rationale: The term 'hazard' is not currently defined in the Act, and the proposed definition reflects Discussion 2: Proposal 1 that removes prescriptive hazards from the definition of 'emergency.'

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- c. Move the existing requirements in section 3 of the Emergency Program Management Regulation respecting emergency planning to the Act.

Recommendation: Support

Rationale: Relocation of this section reflects the aforementioned changes.

- d. Provide an LGIC regulation creating the authority to prescribe public bodies for the purposes of the Act.

Recommendation: Support, with clarification

Rationale: This requires further consultation as increased responsibility for public bodies in emergency management also has time and financial implications.

Discussion 6: Ministerial authority to direct emergency planning

Proposal 1: Consider the addition of authority to provide that the Minister responsible for the Act may make an order requiring a local authority to change its local emergency plan where the minister has reviewed the plan and recommended modifications.

- The authority should only be available to the Minister after the Minister has recommended modifications to an emergency plan and this authority should parallel the authority of the Minister to require revisions/changes to provincial emergency plans established by other ministries, government corporations and other agencies.

Recommendation: Do not support

Rationale: The Esquimalt Emergency Program has concerns on expanding the authority of the Minister responsible for the Act to require a local authority to change its local emergency plan or make modifications. Checks and balances need to accompany an increase in the authority for a Minister to recommend modifications to a local authority plan. Clearly outlined parameters and benchmarks must be included in a schedule, including the process for requiring a local authority to make modifications to the emergency plan. Additional information is needed to understand the implications if a local authority deviates from or refuses to change their established emergency plan, as well as financial implications to implement required changes.

If mandatory emergency planning and modifications to plans are required, a mechanism should be considered to provide provincial funding similar to the structure employed in the USA. Consideration also needs to be given to oversight, and the capacity of EMBC to take on this role under its existing structure.

Discussion 7: Private sector and non-government agencies

Proposal 1: Consider changes to the Emergency Program Act similar to Manitoba's to define "critical services" and require providers of these services to undertake business continuity planning as prescribed by regulation.

Recommendation: Support, with additional clarification

Rationale: Currently the Act does not set out responsibilities of private sector and non-government organization (NGOs) for emergency planning or for the provision of information regarding their assets. Although this information could be useful for emergency management purposes, the definition of "critical services" requires clarification, as this could have a financial impact on local businesses that are deemed "critical."

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Similar to Discussion 6, if “critical services” are required to undertake business continuity planning, there are questions regarding the capacity of EMBC to assess plans and ensure compliance, as well as the implications for the ability to provide support to local government.

Proposal 2: Consider an authority to require owners of critical infrastructure assets to provide information about these assets as prescribed by regulation for the purposes of supporting efficient and effective emergency planning, prevention/mitigation, response and recovery.

Recommendation: Support, with clarification

Rationale: This proposal is supported but also requires greater clarification as it is anticipated that there will be pushback from the targeted organizations to the proposal, primarily because this information is currently not shared due to cited security concerns regarding intentional acts against such assets. These concerns around confidentiality, secure data storage and data access protocols would need to be addressed. Additionally, in order for the information to be useful during response, Local Authorities need to access to integrate this information into operational emergency plans. Clear parameters should be set to understand when and how this information is shared with Local Authorities and how data access will be restricted.

Discussion Area C: Supporting Emergency Response and Recovery

Discussion 8: Shared Responsibility for Emergency Response

Proposal 1: Consider the addition of provisions in the Act that set out the following in respect of local authorities:

a. Establish that a local authority is responsible for:

- Assessing the threat to health, safety, or welfare of people or damage to property and the environment posed by an emergency;
- Assessing the resources required to respond to and recover from the emergency; and
- Implementing its local emergency plan and using local authority resources to respond to and recover from the emergency.

Recommendation: Support, with changes

Rationale: Clarification is necessary as it does not differ significantly from current legislation, and to understand potential financial implications for Mutual Aid. local authorities should not be responsible for “Assessing the threat to health...” as this is a Provincial responsibility.

b. Provide that a local authority may implement one or more provisions of its local emergency plan in relation to responding to and recovering from an emergency if:

- If the local authority is of the opinion that an emergency exists or is imminent in the local authority’s jurisdictional area; the local authority has declared a state of emergency; or a provincial state of emergency has been declared.

Recommendation: Support, with clarification

Rationale: Clarification is necessary as it does not differ significantly from current legislation.

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Proposal 2: Consider the addition of provisions in the Act that set out the following in respect of the provincial government:

a. A Minister (or designate) is responsible for implementing one or more provisions of the Minister's provincial emergency plan to provide provincial assistance and support to a local authority's response to and recovery from an emergency if the following occur:

- The scale of the emergency exceeds the response and recovery resources of the local authority and or
- The Minister is required under provincial law to provide provincial resources for emergency response and recovery.

b. Emergency Management BC is responsible for:

- Communicating with a local authority in relation to an emergency within the jurisdictional area of the local authority, which includes:

- Monitoring the needs of a local authority in responding to and recovering from emergencies;

Providing advice when necessary to local authorities responding to and recovering from emergencies; and

- Communicating and providing advice when necessary to a Minister in relation to an emergency in the jurisdictional area of a local authority

Recommendation: Support, with clarification

Rationale: This provision is similar to the current Act and it is unclear whether these changes will have implications for Provincial cost recovery provisions that currently enable local authorities to manage emergencies that would otherwise rapidly exceed their response and recovery resources. Changes to these financial assistance mechanisms would severely restrict local authority emergency management capacity, and if such arrangements are unchanged then defining and assessing a threshold where local authority resources are exceeded becomes problematic. Clarification is necessary to determine whether the provincial responsibilities outlined in this proposal supersede the local authority responsibilities of the current Act.

Discussion 9: State of emergency

Proposal 1: Consider the addition of criteria or a test to guide local authorities or the provincial government in the declaration of a state of emergency and the making of orders during a declared emergency.

- For example, criteria could include that a head of a local authority or the Minister responsible for the Act must believe that the declaration of a state of emergency is required because the use of one or more emergency powers under the Act is necessary and essential to protect the health, safety or welfare of persons or to limit damage to property.

Recommendation: Do not support

Rationale: Additional criteria or tests to guide local authorities is an unnecessary step and would hinder response in an emergency situation. Instead of including this in legislation, EMBC should work to incorporate criteria examples into education materials for the local authority and test these through joint exercises.

Proposal 2: Consider the addition of emergency powers not currently provided under section 10 of the Emergency Program Act. Some additional emergency powers that should be considered are as follows:

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- a. Authority to collect, use or disclose information during a state of emergency that could not otherwise be collected, used or disclosed under any enactment.
- b. Consideration must be given to including limits on any additional power respecting the collection, use and disclosure of information during an emergency. For example, in Ontario the information must only be collected, used or disclosed for the purpose of preventing, responding to or alleviating the effects of an emergency and for no other purpose.
- c. Authority to fast track the accreditation of medical or other essential personnel from other Canadian jurisdictions who may arrive to provide assistance during a state of emergency.
- e. A further potential emergency power to be considered is the authority for a local authority or the province to vary a license, permit or other authorization the local authority or province, as applicable, has issued under an enactment.

Recommendation: Support

Rationale: Additional emergency powers will be beneficial for response; however, expanding the emergency powers requires clear guidance to the local authorities on the parameters and limitations to additional powers.

Discussion area 10: Evacuation Orders

Proposal 1: Consider adding authority for police to apprehend any person who refuses to comply with an evacuation order issued under a declared state of emergency for the purpose of taking the person to a place of safety similar to sections 18.1 to 18.3 of the Manitoba Emergency Measures Act.

As part of this proposal, also consider the following supporting provisions:

- a. Providing police with a right of entry and use of reasonable force to enforce an evacuation order;
- b. Limiting the period of apprehension to be no longer than reasonably required to take a person to a place of safety; and
- b. Authority for the province (in a state of provincial emergency) or a local authority (in a state of local emergency) to order a person who was apprehended to pay the costs incurred by police in taking the action to enforce the evacuation order.

Recommendation: Requires clarification

Rationale: There are concerns about amending the Act to include forced evacuations beyond the existing provisions in law concerning minors and supporting forced tactical evacuations. Clarification is required regarding the need to include this authority, as well as implications for local government in terms of responsibility and liability. For example, where will the apprehended evacuees go? A reception centre is not appropriate for those forcibly evacuated, and once evacuees are taken to safety, they would still have the ability to return home. Police and other first responders carrying out evacuation orders should also be consulted to fully understand implications. If this authority is granted, those who require apprehension should pay any costs incurred by the local government.

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Discussion Area 11: Employment Protection

Proposal 1: Consider whether employment protection should be limited only to the duration of a state of emergency or whether the protection should extend to cover, for example, travel to and from the emergency or a time period after an emergency if the person is still required to provide assistance.

- a. A further consideration here could include situations where a person is recovering from illness or injury as a result of providing assistance during an emergency.

Recommendation: Support

Rationale: Employment protection should extend to cover travel to and from the emergency until the emergency personnel are no longer required to provide assistance.

- b. Consideration should also be given to whether volunteers or other persons who assist in responding to and recovering from an emergency or disaster are entitled to employment protection in circumstances where they have not been ordered to provide assistance.

Recommendation: Do not support

Rationale: Volunteers that have not been ordered to provide assistance should not be protected.

Proposal 2: Consider expanding the protection against loss of employment in section 25 of the Act to include the same protections as those provided for a person on jury duty under section 56 of the Employment Standards Act.

- This would add protection for employment benefits and benefits based on seniority, as well as provide that a person who is providing assistance is deemed to be on leave and must not be terminated as a result of being required to provide assistance or because the person is absent or unable to perform employment duties while on deemed leave.

Recommendation: Support

Rationale: Amendments to the act that further protect emergency workers against loss of employment are a benefit to volunteers. Further, additional amendments are recommended to protect emergency workers in the areas of liability, Worksafe provisions and damage to equipment.

Additional Questions:

1. Engagement process beyond March

- What are the considerations that would preclude further engagement with local authorities?
- Is there anything that precludes transparent engagement with the main stakeholder groups as the legislation is drafted?
- What is the consultation process with the other stakeholders cited in the discussion paper?

2. Cost/Funding implications

- Has consideration been given to the cost implications of several proposals contained in the discussion paper?

Increase of powers under amended legislation

- Is there strategy in place to deal with the anticipated pushback from the main stakeholders cited in the discussion paper?