International Association of Emergency Managers

Testimony of Larry Gispert

Immediate Past President

International Association of Emergency Managers (USA)

Before the

Committee on Transportation and Infrastructure

U.S. House of Representatives

"An Independent FEMA: Restoring the Nation's Capabilities for Effective Emergency Management and Disaster Response"

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I am Larry Gispert, the Director of Emergency Management for Hillsborough County Florida. Hillsborough County is on the West Coast of Florida and has the City of Tampa as its county seat. The county's population is approximately 1.2 million. I am the immediate past President of the International Association of Emergency Managers (IAEM) and am testifying on behalf of the USA Council of IAEM (IAEM-USA). I have 28 years experience in emergency management with 15 as the Hillsborough County Director and have also served as President of the Florida Emergency Preparedness Association.

IAEM-USA is our nation's largest association of Emergency Management professionals, with more than 4,000 members including emergency managers at the state and local government levels, tribal nations, the military, colleges and universities, private business and the nonprofit sector. Most of our members are city and county emergency managers who perform the crucial function of coordinating and integrating the efforts at the local level to prepare for, mitigate the effects of, respond to, and recover from all types of disasters including terrorist attacks. Our membership includes emergency managers from large urban areas as well as rural areas.

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An Independent FEMA

The subject of this hearing is an important one and deserves a deliberate policy discussion on the substance. The beginning of a new administration is a time of opportunity for serious review and we appreciate the leadership of this committee.

I would like to clearly deliver the message to you today that IAEM-USA supports the Federal Emergency Management Agency (FEMA) being returned to its former status as an independent agency reporting to the President with a Director designated as a member of the President's cabinet. This position was unanimously endorsed by the IAEM-USA Board of Directors, and received a standing ovation when announced to our membership gathered at our annual meeting in Kansas City in 2008. IAEM did not take this step lightly or simply out of nostalgia for what "used to be" but because after a number of years within DHS it is obvious to us, as FEMA's primary customers, that remaining within this huge, fragmented bureaucracy will never achieve the level of competence or responsiveness that FEMA had when it was independent and also well led. IAEM is a professional, non-partisan organization whose only interest is in improving disaster management and restoring a truly effective national emergency management system. The people applauding this announcement of support for independence represent the folks who work with FEMA on a daily basis in all phases of emergency management – mitigation, preparedness, response and recovery. Emergency Managers are an extension of the national system of emergency management which FEMA is supposed to support.

A successful FEMA is an independent one that works closely with all stakeholders, and even closer with key stakeholders. As key stakeholders, State and local emergency managers are thoroughly involved with FEMA and disaster coordination before during and after the initial response phase. This involvement continues for the long months – and sometimes years – it takes to recover from a major disaster or emergency.

At the heart of our concern about the "shotgun marriage" between FEMA and the Department of Homeland Security (DHS) is the fundamental difference in their missions. The mission of the DHS is clearly to prevent the next terrorist attack on the United States of America, and to secure its borders. The mission of FEMA is clearly to prepare for, respond to, recover from, and mitigate the impact of all disasters, regardless of their cause. The mission of DHS is **vital** and we do not think DHS should be distracted by the mission of FEMA. At the National Emergency Management Association (NEMA) annual meeting in Portland, Oregon on September 10, 2008, Robert M. (Mike) Walker, former FEMA Deputy Director, observed that the current situation at the DHS, "...is like requiring the Department of Defense to do both war-fighting and diplomacy." Walker goes on to suggest that the missions of the Department of Defense and the Department of State could never be combined – and neither should consequence (dealing with the impacts) and crisis management (dealing with the perpetrators of the illegal act).

In addition to the fundamental and proper difference in missions, the organizational cultures of FEMA and DHS are drastically different. Earlier, we described a successful FEMA as working with stakeholders. A truly effective national system of emergency management must be based on two very solid principles: it must be comprehensive including all hazards, all players and all phases of disaster and it must be collaborative -- building true trust and partnerships at and among all sectors and levels of government. This organizational culture requires consensus building from the ground up. The DHS culture operates in a top down manner. This culture clash and the DHS lack of understanding of state and local methods frequently causes an immediate disconnect between the DHS and their state and local partners in the planning for, response to and recovery from and mitigation of the effects of all disasters.

Addressing Objections to FEMA Independence

Some, who believe that FEMA should stay within DHS, have advanced a number of reasons this should be the case. To date, those reasons have remained mostly unaddressed. IAEM-USA would like to take this opportunity to suggest some of the thoughtful and reasoned dialogue we believe should be engaged in when considering restoring FEMA to its former independent status.

One of the most frequent suggestions we hear is that another re-organization would cause disruption at FEMA. Mr. Chairman, you recognized the implications of burying FEMA in a large department with a different mission from the beginning and you were correct. It is time to take a long term view of what is the best structure for success of both missions and correct it, not the short term view of avoiding a needed reorganization process. Even if there is short term inconvenience, the risk to the country of having FEMA not function is of greater concern. A successful disaster response is dependent on rapid decision-making and flexible, decentralized ability to take action. DHS's culture, bureaucratic processes, and size are unsuited to this kind of activity. What we need is a more nimble agency which can act fast and change course without a lot of approval seeking. There are times, when after years of effort, that an amicable divorce is the best option – and we believe that is the case for this shotgun marriage.

Another of the suggestions from those believing it is necessary to keep FEMA within DHS is the benefit of using DHS resources. In response to that, IAEM-USA would simply point out that the Stafford Act gives the President the authority which is delegated to FEMA to mission task any appropriate federal asset, regardless of its location. For example, FEMA currently utilizes Department of Defense assets – and those assets are not located within the DHS. This delegated authority remains intact regardless of the location of FEMA, or regardless of the location of the necessary asset. This means, essentially, that FEMA has the same clout in tasking federal resources whether or not it is within DHS. Furthermore, FEMA should be able to request the most effective and appropriate assets for the mission and not just be focused on those in DHS.

By the same token, some suggest that if FEMA were removed from DHS, it would be necessary for DHS to develop a similar consequence management capability to replace it. This ignores or

rejects the concept of consequence management as being what FEMA does. Based on the fact that this is the mission of FEMA, there is no reason why DHS would have to re-create another consequence management organ. DHS would simply call upon FEMA to provide those things they have always provided when the disaster is terroristic in origin—as they did in 1995 in Oklahoma City and in 1993 and 2001 in New York City. To extend this line of thought further – does it make sense that if the U.S. Coast Guard were being removed from DHS, that capability would have to be re-created elsewhere within the Department?

Others have suggested that the structure of FEMA being within DHS doesn't matter. Leadership is vital but structure is also important for success. We would strongly suggest that structure does matter because of the significant structural impediments created by the subordination of FEMA to DHS. Some of these include:

- Not accepting the congressionally mandated role of the Administrator of FEMA as "providing the Federal Leadership necessary to prepare for, protect against, respond to, recover from or mitigate against a natural disaster, act of terrorism and other man-made disaster – including…managing such response." (P.L. 109-295).

- The continued insistence by DHS on a Principal Federal Official (PFO) leads to confusion over the chain of command in disasters. This confusion perpetuates the potential for failures in future disaster responses. Recognizing this, Congress included a General Provision in the FY 2009 DHS Appropriations Act which prohibited funding for any position designated as a Principal Federal Official for Stafford Act declared disasters or emergencies. However, the FY 2010 Budget Request deletes General Provision 526 and includes the explanation, "This provision restricts the Secretary's ability to manage disaster response."

- The Office of Operations Coordination was created shortly after the enactment of PKEMRA and it was assigned several responsibilities that PKEMRA assigned to FEMA notwithstanding PKEMRA's prohibition on transferring functions, responsibilities, etc. outside of FEMA. These include, but are not limited to:

    - Coordinating activities related to incident management
    - The national planning scenarios
    - The Integrated Planning System
    - Duplicating the role of the Office of Disaster Operations in FEMA.

- Budget is important. Through budget requests one sets priorities and obtains financial and personnel resources to achieve those priorities. FEMA does not have the authority to submit its budget request and justification directly to OMB for consideration—it must go through DHS before going to the Office of Management and Budget.

- Regulations are an important technical tool to implement policy and legislation. For 25 years FEMA had direct regulatory authority. The additional layers of DHS review make it difficult for FEMA to have regulations promulgated. Our perception is that there is now a lengthy process after FEMA completes its work and sends draft regulations through the layers at DHS, layers where FEMA regulations are not a top priority and they do not have detailed knowledge of the FEMA programs.

- Having control of the President's Stafford Disaster Relief Fund is important. FEMA served as a "piggy bank" for DHS in the last administration. Congress should make certain that this does not happen again.

Post Katrina Emergency Management Reform Act (P.L. 109-295)

After the failures of Katrina, Congress passed the Post Katrina Emergency Management Reform Act to give FEMA the clear authority and tools to do its job and put a fence around it to give it the protection for its mission and resources within the Department. Some contend that the passage of the Act has resolved the mission competition within the Department.

However, key provisions of the Post Katrina Reform Act have not been implemented; the law is being ignored. Homeland Security Presidential Decision Directives 5 and 8 have not been revised to coincide with the law. We have always thought that Public Law trumps Presidential Directives.

Some specific examples from the Act which we believe are not being followed include:

- Sec. 611(12) of Post Katrina which amends Sec. 504 of the Homeland Security Act (HAS) struck and replaced the "Secretary" of Homeland Security with the "Administrator" of FEMA in order to explicitly transfer the statutory responsibility for leading and managing all aspects of disasters to the Administrator of FEMA [Specifically, this amended the Homeland Security Act of 2002 by "striking the matter preceding paragraph (1)" which contained the language, "the Secretary acting through…" and inserted instead the following language. "In General – The Administrator shall provide Federal Leadership necessary to prepare for, protect against, respond to, recover from or mitigate against a natural disaster, act of terrorism and other man-made disaster – including…managing such response.]

- Section 503 Federal Emergency Management Agency
    - (b)(2)Specific Activities – In support of the primary mission of the Agency, the Administrator –
    - (A) lead the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic accidents.

- (H) develop and coordinate the implementation of a risk-based, all hazards strategy for preparedness that builds on those common capabilities necessary to respond to natural disasters, acts of terrorism, and other man-made disasters while also building the unique capabilities necessary to respond to specific types of incidents that pose the greatest risk to our Nation

- Section 503 (c)(4)(A) In General – The Administrator is the principal advisor to the President, the Homeland Security Council, and the Secretary for all matters relating to emergency management in the United States.

- Sec. 503 (c) (5) Cabinet Status –

  - (A) In General – The President may designate the Administrator to serve as a member of the Cabinet in the event of natural disasters, acts of terrorism, or other man-made disasters.

  - (B) Retention of Authority – Nothing in the paragraph shall be construed as affecting the authority of the Secretary under this Act.

We believe that DHS frequently and mistakenly quotes Section 502(c)(5)(B) regarding the authority of the Secretary and the Administrator as being applicable across the entire act when, in fact, it is limited in scope only to paragraph (5). We strongly request the committee to provide continual oversight of DHS on these matters to ensure they are following the clear and direct law on these issues.

Congress also rejected the DHS Stage 2 Reorganization and clearly and unambiguously moved all Preparedness functions and personnel to FEMA. IAEM believes that Section 506 (c) (1) and (2) of the Homeland Security Act as amended by the Post Katrina Reform Act clearly prohibits the transfer of any asset, function or mission from FEMA without a specific Act of Congress. A major function of FEMA is to rebuild relationships with State and local officials. Therefore, the Intergovernmental Affairs function assumes a much higher level of importance. Despite the clear prohibition on moving this function from FEMA, we understand there are still 11 positions performing this vital role still under the National Protection and Programs Directorate (outside of FEMA) on a non-reimbursable detail. These positions and funding should be immediately transferred to FEMA for intergovernmental. However, the President's FY 2010 Budget request for DHS includes a provision to move 17 positions and $2,000,000 from FEMA to fund the DHS Intergovernmental Programs Office.

PKEMRA clearly and unambiguously placed FEMA in charge of preparedness and management of the federal response to a disaster or emergency. The role, therefore, of the Office of Operations Coordination would appear to be in violation of this provision. One of the controversies originating from this office is an internal discussion within DHS regarding perceived differences between Incident Management and Emergency Management. IAEM-USA

believes we can help put the discussion of these terms to rest. Emergency Management is the broader, overarching and systematic approach to the issue of dealing with all disasters and emergencies, whether natural, technological, or homeland security. Incident management, while important, is a much more narrowly focused sub-element of response, one of the four phases of emergency management (mitigation, preparedness, response and recovery). To insist otherwise is to ignore the evidence of reality – and, a tacit acknowledgement on the part of DHS that they fail to understand the broader implications of the overall emergency management system.

DHS and FEMA Leadership

I would like to point out that we have great respect for Secretary Napolitano and are pleased that the President selected a governor. We sent a strong letter of support. We also applaud the selection of Craig Fugate to be the Administrator of FEMA. Craig is a former local emergency management director and is highly respected in the emergency management community for the program he has run in Florida and for his innovative approach. In addition we strongly support Tim Manning, the Director of Homeland Security and Emergency Management of New Mexico, who has been confirmed as Deputy Administrator of FEMA for National Preparedness.

We commend the President for selecting professional emergency managers who are strong leaders with proven track records and we look forward to working with the new leadership team at FEMA.

We have said that we are pleased with the confirmation of Secretary Napolitano and (nominated) Administrator of FEMA Fugate. In particular, we are pleased with their competence and ability to lead. We believe that their chances for success will be greatly increased if they are independently allowed to pursue the separate missions of their respective agency and Department.

Conclusion

In conclusion, we recognize that removing FEMA from DHS will need to be done carefully. All the functions of the emergency management cycle (mitigation, preparedness, response, and recovery) must remain intact within FEMA. The differences in the mission and cultures between FEMA and DHS are not compatible. We now have a DHS Secretary with better understanding and who may place more trust in FEMA. However, that was not the case in the last Administration and may not be true in the future. We should fix the structure. In order to give the country the emergency management system that our citizens demand and deserve, FEMA should be returned to its independent status as a standalone agency reporting directly to the President with a Director designated as a member of the President's cabinet. We understand this will be a joint decision of the President and the Congress.

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