

MAINE STATE LEGISLATURE

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1 (After Deadline)

2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE
5

6 Legislative Document

No. 1777

7
8 H.P. 1337

House of Representatives, June 20, 1983

9 Reference to the Committee on Aging, Retirement and Veterans is
10 suggested. Ordered printed and sent down for concurrence.

11 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 27.

EDWIN H. PERT, Clerk

Presented by Representative Hickey of Augusta.

12 Cosponsor: Senator Dow of Kennebec.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-THREE
17

18 AN ACT to Amend the Military Laws of
19 the State of Maine.
20

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

23 Sec. 1. 25 MRSA §1505, as amended by PL 1973, c.
24 625, §164, is further amended to read:

25 §1505. Reserve corps

26 The chief ~~is authorized to~~ may establish and
27 maintain a State Police Reserve Corps. To be eligi-
28 ble for membership in such reserve corps, applicants
29 shall meet such standards as may be determined by the
30 chief; shall enlist therein for a period of not less
31 than 3 years, and shall take the oath prescribed in
32 Title 37-A 37-B, section ~~65~~ 833. Upon the issuance by
33 the Governor of the proclamation provided for in

1 Title 37-A 37-B, section 57 742, the chief may order
2 any or all of the members of ~~said~~ the reserve corps
3 to active duty as State Police for the duration of
4 the proclaimed emergency or any part thereof. When
5 ordered to active duty, members of ~~said~~ the reserve
6 corps shall have the same status as regular members
7 of the State Police.

8 Sec. 2. 37-B MRSA §3, sub-§1, ¶D, as enacted by
9 PL 1983 c. 431, §3, is amended to read:

10 D. Have the following powers and duties.

11 (1) He shall administer the department sub-
12 ordinate only to the Governor.

13 (2) He shall establish methods of adminis-
14 tration consistent with the law necessary
15 for the efficient operation of the depart-
16 ment.

17 (3) He may prepare a budget for the depart-
18 ment.

19 (4) He may transfer personnel from one
20 bureau to another within the department.

21 (5) He shall supervise the preparation of
22 all state informational reports required by
23 the federal military establishment.

24 (6) He shall keep an accurate account of
25 expenses incurred and, in accordance with
26 Title 5, sections 43 to 46, make a full
27 report to the Governor as to the condition
28 of the military forces, and as to all busi-
29 ness transactions of the Military Bureau,
30 including detailed statements of expendi-
31 tures for military purposes.

32 (7) He shall be responsible for the cus-
33 tody, care and repair of all military prop-
34 erty belonging to or issued to the State for
35 the military forces and shall dispose of
36 military property belonging to the State
37 which is unserviceable. He shall account
38 for and deposit the proceeds from that dis-

1 posal with the Treasurer of State who shall
2 credit them to the General Fund.

3 (8) He may sell for cash to officers of the
4 state military forces, for their official
5 use, and to organizations of the state mili-
6 tary forces, any military or naval property
7 which is the property of the State. He
8 shall, with his annual report, render to the
9 Governor an accurate account of the sales
10 and shall deposit the proceeds of the sales
11 with the Treasurer of State who shall credit
12 them to the General Fund.

13 (9) He shall represent the state military
14 forces for the purpose of establishing the
15 relationship between the federal military
16 establishment and the various state military
17 staff departments.

18 (10) He shall accept, receive and adminis-
19 ter federal funds for and on behalf of the
20 State which are available for military pur-
21 poses or which would further the intent and
22 specific purposes of this chapter and chap-
23 ter 3.

24 (11) He shall acquire, construct, operate
25 and maintain military facilities necessary
26 to comply with this Title and Title 32 of
27 the United States Code and shall operate and
28 maintain facilities now within or hereafter
29 coming within the jurisdiction of the Mili-
30 tary Bureau.

31 (12) He may adopt rules pertaining to com-
32 pliance with state and federal contracting
33 requirements.

34 Sec. 3. 37-B MRSA §107, sub-§3, as enacted by
35 PL 1983 c. 431, §3, is amended to read:

36 3. Meet federal criteria for recognition. Meet
37 the criteria for federal recognition in the grade to
38 which appointed as prescribed by regulations govern-
39 ing the United States National Guard, except for time
40 in grade requirements.

1 Sec. 4. 37-B MRSA §143, as enacted by PL 1983 c.
2 431, §3, is amended by adding after the first para-
3 graph a new paragraph to read:

4 Specific orders for active state duty, called by
5 the Governor, shall include a minimum pay based upon
6 at least 12 hours a day at the state minimum wage.

7 Sec. 5. 37-B MRSA §144, as enacted by PL 1983 c.
8 431, §3, is repealed and the following enacted in its
9 place:

10 §144. Civilian employees

11 The Commander in Chief may authorize the employ-
12 ment of civilian personnel in organizations in which
13 there are vacancies of necessary personnel when the
14 organizations are on duty under his orders or are
15 called upon in aid of civil authorities. These
16 civilian personnel, during this employment, are sub-
17 ject to the laws and regulations for the government
18 of the state military forces and shall receive pay
19 commensurate with these duties.

20 Sec. 6. 37-B MRSA §151 is enacted to read:

21 §151. Military Lodging Fund

22 The Military Bureau may operate and maintain
23 lodging facilities for military personnel and charge
24 a quarters fee of not more than \$5 each night to
25 authorized National Guard or active or reserve United
26 States military personnel. The fees shall be used to
27 provide funds to cover the cost of maintenance,
28 cleaning and laundry services for these lodging
29 facilities. Any balances remaining at the end of the
30 fiscal year shall not lapse but shall be carried for-
31 ward to be used for the purposes stated in this
32 section.

33 Sec. 7. 37-B MRSA §182, as enacted by PL 1983 c.
34 431, §3, is amended by adding at the end 2 new para-
35 graphs to read:

36 In the event of a proclamation of insurrection,
37 and without limiting any other powers of the Govern-
38 nor, whether inherent or conferred by other existing

1 laws, the Governor may issue rules reasonable under
2 the circumstances to avert additional damage,
3 destruction, injury or loss of life, including, but
4 not limited to, emergency rules for curfews, the
5 deployment of emergency medical supplies and facili-
6 ties, evacuations, the closing of liquor, arms, ammu-
7 nition, explosives or other stores and facilities,
8 access roads, temporary detours and other things,
9 whether of a same or a different nature.

10 In the event of the call up of military forces,
11 pursuant to section 181, and without limiting any
12 powers expressly and inherently possessed by or
13 otherwise vested in the Governor as Commander in
14 Chief, the Governor or Adjutant General, as his des-
15 ignee, may petition any Superior Court for ex parte
16 temporary restraining orders to restrain unlawful
17 interference with efforts to maintain peace or pre-
18 serve life and property. The court shall grant
19 appropriate temporary relief. The fact that those
20 interfering or threatening obstruction of efforts
21 are not known or identified by name, or are too
22 numerous to be identified by name, shall not be
23 grounds for the denial of any such order. The motion
24 and any order pursuant to it may make identity in
25 terms of the restraint of persons gathered, located
26 or interfering. Upon issuance of the order, the
27 Governor shall cause prompt notice of the order and
28 its effect to be broadcast, posted, announced or
29 otherwise publicized so as to reach the persons
30 effected. Any person aggrieved by the order is enti-
31 tled at any time it is in effect to bring a motion
32 for vacating the order. The motion shall lie in the
33 court from which the order was issued and the moving
34 parties shall serve notice of the motion upon the
35 Governor concurrent with it being filed, but, until
36 vacated, the order shall remain effective according
37 to its terms.

38 Sec. 8. 37-B MRSA §183, sub-§1, as enacted by PL
39 1983 c. 431, §3, is amended to read:

40 1. Activation of state military forces. In the
41 event of illness or injury creating an emergency
42 which requires specialized personnel or equipment of
43 the state military forces to prevent human suffering
44 or loss of life, the Governor, or his designee, may

1 order into active service of the State or in aid of
2 any civil authority the necessary personnel and
3 equipment of the state military forces. Any person
4 ordered into active service of the State, for the
5 purposes of this subsection, shall be considered a
6 state employee for purposes of the Maine Tort Claims
7 Act and his liability shall be limited by that Act.

8 Sec. 9. 37-B MRSA §185, sub-§1, as enacted by PL
9 1983 c. 431, §3, is amended to read:

10 1. Immunity from civil and criminal liability. No member of the state military forces may be
11 liable civilly or criminally for any act done or
12 caused, ordered or directed to be done by him while
13 on active duty in the performance of his duty. If an
14 action of any nature has been commenced in any court
15 by any person against an officer or enlisted man of
16 the state military forces for such an act, done or
17 caused, ordered or directed to be done, all expenses
18 of the defense of the action, including fees of wit-
19 nesses for the defense, defendant's court costs, and
20 all costs for transcripts of records and abstract
21 thereof on appeal, shall be paid by the State out of
22 the Military Fund. Where the action is civil, it
23 shall be the duty of the Attorney General to defend
24 that officer or enlisted man. Where the action is
25 criminal, the Adjutant General shall designate a
26 judge advocate of the National Guard or other author-
27 ized state military or naval force to conduct the
28 defense of the member. If the services of a judge
29 advocate are not available, the Adjutant General
30 shall select some other competent attorney to conduct
31 the defense. ~~The judge advocate or other attorney~~
32 ~~selected shall receive a reasonable compensation for~~
33 ~~his professional services which shall be paid out of~~
34 ~~the Military Fund.~~ In any civil action, the defendant
35 may require the person instituting the action to file
36 security for payment of costs that may be awarded the
37 defendant, which costs, if paid out of the Military
38 Fund, when received, shall be paid into the State
39 Treasury and credited to the Military Fund.
40

41 Sec. 10. 37-B MRSA §185, sub-§4 is enacted to
42 read:

1 4. Rights of a law enforcement officer. A com-
2 missioned officer member of the state military forces
3 when called to active duty under section 181, in ad-
4 dition to such other rights conferred by this chapter
5 and otherwise by law, shall have the rights, author-
6 ity and immunities of a law enforcement officer.

7 Sec. 11. 37-B MRSA §189 is enacted to read:

8 §189. Reemployment rights

9 Any member of the state military forces called to
10 active state service, in accordance with this sub-
11 chapter, shall, upon release from active state ser-
12 vice, be permitted to return to his former position
13 of employment with seniority, status, pay and vaca-
14 tion rights which he would have had if he had not
15 been absent for active state service, provided that
16 he apply for reemployment within 30 days after his
17 release from active state service or his discharge
18 from hospitalization incident to that active state
19 service.

20 Sec. 12. 37-B MRSA §266, sub-§1, as enacted by
21 PL 1983 c. 431, §3, is amended to read:

22 1. Destruction of equipment. Any person who
23 willfully or maliciously destroys, injures or defaces
24 any article of military property belonging to the
25 State or the United States, or uses it for an
26 unauthorized purpose, or has or retains the property
27 in violation of law or rule is guilty of a ~~civil~~
28 violation for which a forfeiture not to exceed \$50
29 may be adjudged Class E crime. In case an officer or
30 enlisted man of the state military forces through
31 carelessness or inattention loses, destroys or causes
32 the loss or destruction of government property which
33 has been issued for his use, the Adjutant General
34 shall retain, out of the pay, allowances or moneys
35 due the officer or enlisted man for any military ser-
36 vices an amount equal to the value of the property
37 lost or destroyed. That portion of the money which
38 is for state property shall be turned ~~into~~ in to the
39 Treasurer of State and credited to the Military Fund.
40 That portion which is for United States property
41 shall be turned into the United States Treasury and
42 credited to the State on its property returns.

1 Sec. 13. 37-B M RSA §301, sub-§1, ¶¶A to C, as
2 enacted by PL 1983 c. 431, §3, are repealed and the
3 following enacted in their place:

4 A. When the Governor determines it is necessary,
5 municipalities shall provide land for the con-
6 struction of armories, training areas and target
7 ranges. The suitability of the land shall be
8 determined by the Director of Facilities Engi-
9 neering of the Military Bureau and approved by
10 the Adjutant General. The Military Bureau may
11 erect, and maintain on the land or sites, armor-
12 ies and other necessary buildings to be used for
13 military purposes. In accordance with applicable
14 federal law and regulations and after consulta-
15 tion with the municipal officers, the Adjutant
16 General may fix a reasonable sum to be paid by
17 the municipality as a contribution to the cost of
18 erection of these armories and other necessary
19 buildings. Buildings and sites shall be used
20 exclusively for military purposes, unless joint
21 utilization is authorized by regulations estab-
22 lished by the Adjutant General, and may be
23 jointly used by the National Guard and other
24 reserve components of the United States Armed
25 Forces. In all instances of joint utilization,
26 the armory custodian shall be compensated by and
27 remain an employee of the Military Bureau.

28 B. The legislative body of a municipality may
29 raise money for purchasing, leasing, constructing
30 and maintaining, or may accept by, gift or other-
31 wise, real estate and personal property to be
32 used for armories, other necessary buildings and
33 target ranges for units of the state military
34 forces located in the municipality.

35 Sec. 14. 37-B M RSA §301, sub-§2, as enacted by
36 PL 1983 c. 431, §3, is amended to read:

37 2. Gifts to the State. The Governor may accept,
38 in the name of the State, donations of real estate
39 and personal property to be used for military pur-
40 poses by the state military forces upon such condi-
41 tions as the ~~dener~~ donor may prescribe. The Governor
42 may prescribe further rules pertaining to donated
43 property. ~~The Adjutant General may approve for pay-~~

1 ment from the appropriation for armory rentals neces-
2 sary sums for the maintenance and operation of the
3 property-

4 Sec. 15. 37-B MRSA §§303, 304 and 305, as
5 enacted by PL 1983 c. 431, §3, are repealed.

6 Sec. 16. 37-B MRSA §307, as enacted by PL 1983
7 c. 431, §3, is repealed and the following enacted in
8 its place:

9 §307. Penalty for violation of this section

10 Any municipal officer who fails to comply with
11 this subchapter is guilty of a Class E crime. Any
12 fine imposed under this section shall be paid into
13 the State Treasury and credited to the General Fund.

14 Sec. 17. 37-B MRSA §342, sub-§5, as enacted by
15 PL 1983 c. 431, §3, is amended to read:

16 5. Employment; leave of absence. Any person who
17 willfully deprives a member of the state military
18 forces of his employment, prevents his employment,
19 interferes with his employment rights or otherwise
20 obstructs him or his employer with respect to his
21 occupation or business because of his membership in
22 the state military forces, or who dissuades any
23 person from enlisting in the state military forces by
24 threat of injury to his occupation or business, is
25 guilty of a Class E crime.

26 All officials and employees of the State who are mem-
27 bers of the state military forces, or reserves of the
28 United States Armed Forces, shall have a leave of ab-
29 sence from their respective duties, without loss of
30 pay or time, when engaged in all annual training duty
31 days authorized by the Governor or under federal laws
32 and regulations and without loss of time or leave on
33 all inactive duty, full-time training duty and active
34 duty training days during which they are so engaged.

35 Sec. 18. 37-B MRSA §383, as enacted by PL 1983
36 c. 431, §3, is repealed and the following enacted in
37 its place:

38 §383. Awards, medals and prizes

1 The Governor may prescribe the award of medals,
2 prizes, citations and other suitable means of public
3 recognition for distinguished service, longevity,
4 marksmanship, acts of valor, dependability, meritori-
5 ous achievement and other qualities. The awards may
6 be made to members of the state military forces or to
7 individuals not members who have rendered appropriate
8 service to the military establishment. The Governor
9 shall promulgate rules to carry out this section.
10 Expenses for procurement of these awards shall be
11 provided from the Military Fund.

12 Sec. 19. 37-B MRSA §403, sub-§4 is enacted to
13 read:

14 4. Activation. The Governor may order to active
15 state service any member or former member of the
16 state military forces for purposes of asserting
17 jurisdiction in connection with prosecuting an
18 offense alleged to have occurred while the person was
19 in active state service.

20 Sec. 20. 37-B MRSA §405, as enacted by PL 1983
21 c. 431, §3, is amended to read:

22 §405. State judge advocate

23 The Adjutant General shall appoint a judge advo-
24 cate for the Army National Guard and a judge advocate
25 for the Air National Guard. The Adjutant General
26 shall appoint as state judge advocate one of the
27 judge advocates from the National Guard.

28 Sec. 21. 37-B MRSA §406, sub-§3, as enacted by
29 PL 1983 c. 431, §3, is amended to read:

30 3. By civil authority. Any civil officer having
31 authority to apprehend offenders under the laws of
32 this State may apprehend a deserter or a member of
33 the military forces absent without leave and deliver
34 him into the custody of the appropriate component of
35 the military force. Without limiting the authority
36 granted in this subsection, upon written certifica-
37 tion from the Adjutant General that a member is ab-
38 sent without leave from military duty, the civil
39 officer, upon the Adjutant General's request, shall
40 apprehend the member and deliver him to duty in ac-
41 cordance with the request.

1 Sec. 22. 37-B MRSA §415, sub-§1, as enacted by
2 PL 1983 c. 431, §3, is amended to read:

3 1. Limitations. Under rules prescribed by the
4 Governor, limitations may be placed on the kind and
5 amount of punishment authorized by this section and
6 on the categories of commanding officers and warrant
7 officers exercising command authorized to impose that
8 punishment. The Governor may also prescribe rules
9 for the suspension of punishment authorized by this
10 section. Punishment may not be imposed under this
11 section if the person charged with an offense demands
12 a trial by court-martial prior to imposition of pun-
13 ishment. Notwithstanding the foregoing, punishment
14 may not be imposed upon any member of the state mili-
15 tary forces under subsections 2 and 3, if the member
16 has, before imposition of this punishment, requested
17 that the matter be disposed of by a nonjudicial pun-
18 ishment panel pursuant to subsection 10. Punishment
19 may not be imposed, under subsections 2 and 3 or sub-
20 section 10, if the member has, before the imposition
21 of punishment under subsection 2 or 3 or before the
22 convening of a nonjudicial punishment panel under
23 subsection 10, demanded a trial by court-martial.

24 Sec. 23. 37-B MRSA §415, sub-§2, ¶A, as enacted
25 by PL 1983 c. 431, §3, is amended to read:

26 A. Upon officers of his command:

27 (1) Restriction to certain specified
28 limits, with or without suspension from
29 duty, for not more than 10 consecutive days;
30 or

31 (2) If imposed by a general officer, arrest
32 in quarters for not more than 14 consecutive
33 days; forfeiture of not more than 1/2 of one
34 month's base pay entitlement per month for 2
35 3 months; a fine in an amount not greater
36 than that which could be forfeited; restric-
37 tion to certain specified limits, with or
38 without suspension from duty, for not more
39 than 14 consecutive days; or detention of
40 not more than 1/2 of one month's base pay
41 entitlement per month for 3 months; and

1 Sec. 24. 37-B MRSA §415, sub-§2, ¶B, as enacted
2 by PL 1983 c. 431, §3, is amended to read:

3 B. Upon other personnel of his command:

4 (1) Correctional custody for not more than
5 7 consecutive days;

6 (2) Forfeiture of not more than 7 days¹ 1/2
7 of one month's base pay entitlement for one
8 month or a fine in an amount not greater
9 than that which could be forfeited;

10 (3) Reduction to the next inferior pay
11 grade, if the grade from which demoted is
12 within the promotion authority of the offi-
13 cer imposing the reduction or any officer
14 subordinate to the one who imposes the
15 reduction;

16 (4) Extra duties, including fatigue or
17 other duties, for not more than 10 consecu-
18 tive days;

19 (5) Restriction to certain specified
20 limits, with or without suspension from
21 duty, for not more than 10 consecutive days;

22 (6) Detention of not more than 14 days¹ 1/2
23 of one month's base pay entitlement for one
24 month; or

25 (7) If imposed by an officer of the grade
26 of major or above, correctional custody for
27 not more than 14 consecutive days; forfei-
28 ture of not more than 1/2 of one month's
29 base pay entitlement per month for 2 months;
30 a fine in an amount not greater than that
31 which could be forfeited; reduction to the
32 lowest or any intermediate pay grade, if the
33 grade from which demoted is within the pro-
34 motion authority of the officer imposing the
35 reduction or any officer subordinate to the
36 one who imposes the reduction, but an
37 enlisted member in a pay grade above E-4 may
38 not be reduced more than 2 pay grades; extra
39 duties, including fatigue or other duties,

1 for not more than 14 consecutive days; re-
2 strictions to certain specified limits, with
3 or without suspension from duty, for not
4 more than 14 consecutive days; or detention
5 of not more than 1/2 of one month's base pay
6 entitlement per month for 3 2 months.

7 Sec. 25. 37-B MRSA §415, sub-§§9 and 10 are
8 enacted to read:

9 9. Enforcement. A fine imposed pursuant to this
10 section may be enforced as a money judgment in accor-
11 dance with Title 14, chapter 502.

12 10. Nonjudicial punishment panel. In the event
13 that a member of the state military forces demands
14 that nonjudicial punishment proceedings against or
15 with respect to him be disposed of by a hearing
16 before a nonjudicial punishment panel in lieu of his
17 commanding officer, this subsection shall apply.

18 A. Election for hearing and disposition by the
19 panel shall be made by the individual promptly
20 following receipt of a communication from the
21 commanding officer specifying the nature of the
22 alleged wrongdoing; his intent to dispose of the
23 matter, if further action after investigation is
24 warranted, by nonjudicial punishment; his advice
25 to the individual of his right to counsel; and
26 other nonjudicial punishment procedural rights as
27 set forth by regulation. The individual shall be
28 provided opportunity to consult with a judge
29 advocate prior to making his election.

30 B. The panel shall consist of 3 members,
31 appointed by the commander's next higher author-
32 ity, with the same qualifications as provided
33 with respect to membership on a courts-martial.
34 The senior member shall be the chairman. The
35 most junior member shall be the recorder and
36 shall record summaries of the proceedings.

37 C. The panel acting by majority vote has the
38 same authority and responsibility in conducting
39 the proceeding and disposing of the matter,
40 including imposing nonjudicial punishment, as has
41 a field grade officer pursuant to this section.

1 The panel shall forward its recommendation for
2 disposition and imposition of punishment if any,
3 to the appointing authority. The appointing
4 authority shall approve the recommended punish-
5 ment or any part or amount as he sees fit and may
6 suspend, mitigate or remit as he deems appropri-
7 ate. The appointing authority may not approve
8 any punishment in excess of that approved by the
9 panel.

10 D. Procedural requirements for a nonjudicial
11 punishment hearing, and disposition thereof, by
12 the panel under this subsection, shall in all
13 respects be the same as would otherwise be appli-
14 cable for disposition by the commanding officer,
15 including, without limitations, the individual's
16 right to counsel, to submit matters in exten-
17 uation, mitigation or defense and to call and
18 examine witnesses, to the extent witnesses are
19 reasonably available.

20 E. Appeals from the decision of the appointing
21 authority, if adverse to the individual, may be
22 taken directly to the next higher authority which
23 shall have the same authority to act upon appeal
24 as set forth in this section with respect to non-
25 judicial punishment appeals generally.

26 Sec. 26. 37-B MRSA §418, as enacted by PL 1983
27 c. 431, §3, is amended to read:

28 §418. Jurisdiction

29 The jurisdiction of a court-martial is limited to
30 trial of persons subject to this Code who are accused
31 of military offenses described in this Code. Persons
32 subject to this Code who are accused of offenses cog-
33 nizable by the civil courts of this State or any
34 other state where the military forces are present
35 may, upon accusation of a civil offense, be surren-
36 dered promptly to civil authorities for disposition
37 if the mission of the military force will not be com-
38 promised. If the person subject to this Code is ac-
39 cused of both a military offense under this Code and
40 a civil offense by the civil authorities, he shall be
41 released to the civil authorities if the crime for
42 which he is accused by the civil authorities carries

1 a penalty greater than the maximum penalty for the
2 military offense provided by this Code, provided that
3 the disposition of the civil offense shall not limit
4 or effect the applicability of this Code to the mili-
5 tary offense for which the person is accused.

6 Sec. 27. 37-B MRSA §422, sub-§2, ¶A, as enacted
7 by PL 1983 c. 431, §3, is amended to read:

8 A. Shall be a judge advocate of the military
9 forces, who is:

10 (1) A graduate of an accredited law school;
11 and

12 (2) A member of:

13 (a) The bar of this State;

14 (b) The bar of a federal court; or

15 (c) The bar of the highest court of
16 another state; and

17 Sec. 28. 37-B MRSA §423, as enacted by PL 1983
18 c. 431, §3, is amended to read:

19 §423. Court reporters

20 Under rules prescribed by the Governor, the The
21 convening authority of a court-martial, shall detail
22 or employ qualified court reporters, who shall record
23 the proceedings of and testimony taken before that
24 court. If a court reporter is not available, the
25 Governor or Adjutant General may authorize the use of
26 audio tape or other electronic transcription equip-
27 ment to record proceedings. Under like rules the The
28 convening authority of a court-martial, may detail or
29 employ interpreters who shall interpret for the
30 court. The Governor shall adopt rules to implement
31 this section.

32 Sec. 29. 37-B MRSA §427, sub-§2, as enacted by
33 PL 1983 c. 431, §3, is amended to read:

34 2. Subpoena. A military judge, notary public or
35 clerk of any District Court or Superior Court may

1 issue subpoenas for witnesses and subpoenas duces
2 tecum to compel the production of books, papers and
3 photographs relating to any questions in dispute
4 before the court-martial or to any matters involved
5 in a trial by court-martial.

6 Sec. 30. 37-B MRSA §436, as enacted by PL 1983
7 c. 431, §3, is amended to read:

8 §436. New trial

9 At any time after approval by the convening
10 authority of a court-martial sentence, the accused
11 may petition the state judge advocate for a new trial
12 on the grounds of newly discovered evidence or fraud
13 on the court. ~~The state judge advocate shall refer~~
14 ~~the petition to the court-martial which last heard~~
15 ~~the case.~~ The state judge advocate shall review the
16 petition, the record and such other evidence as he
17 deems appropriate and report to the convening author-
18 ity his recommendation to grant or deny a new trial.
19 The court-martial shall review the petition and the
20 record and report to the convening authority its
21 recommendation for granting or denying a new trial.
22 If a new trial is recommended, the convening author-
23 ity shall order a rehearing as provided in section
24 432, subsection 3. Upon filing of the petition for a
25 new trial, any proceedings pending upon appeal or
26 review of sentence shall be dismissed.

27 Sec. 31. 37-B MRSA §507-A is enacted to read:

28 §507-A. Custodian to provide copies

29 When a copy of any public record is required by
30 the United States Veterans' Administration to be used
31 in determining the eligibility of any person to par-
32 ticipate in benefits made available by the United
33 States Veterans' Administration, the official custo-
34 dian of that public record shall, without charge,
35 provide the applicant for these benefits, or any
36 person acting on his behalf or the authorized repre-
37 sentative of the United States Veterans' Administra-
38 tion, with a certified copy of that record.

39 Sec. 32. 37-B MRSA §607, as enacted by PL 1983
40 c. 431, §3, is amended to read;

1 §607. Admission

2 Veterans desiring admission to the home shall
3 apply on forms prescribed by the administrator.
4 Admission shall be granted by the administrator only
5 to veterans who were residents of Maine at the time
6 of their entry into the United States Armed Forces or
7 who are residents of Maine at the time of applica-
8 tion, and to the spouses, widows or widowers of eli-
9 gible veterans, provided that suitable facilities are
10 available. Admission shall be granted when provi-
11 sions of the rules are met, when there is a vacancy
12 and in order of application, unless otherwise provi-
13 ded in the rules.

14 Sec. 33. 37-B MRSA §742, sub-§1, as enacted by
15 PL 1983 c. 431, §3, is repealed and the following
16 enacted in its place:

17 1. Disaster proclamation. Disaster procla-
18 mations shall be issued as follows.

19 A. Whenever a disaster or civil emergency exists
20 or appears imminent, the Governor shall, by
21 proclamation, declare a state of emergency in the
22 State or any section of the State. If the Gover-
23 nor is temporarily absent from the State or is
24 otherwise unavailable, the next person in the
25 State who would act as Governor if the office of
26 the Governor were vacant may, by proclamation,
27 declare the fact that a civil emergency exists in
28 any or all areas of the State. A copy of the
29 proclamation shall be filed with the Secretary of
30 State.

31 B. Subject at all times to the further direction
32 and order of the Governor, an executive procla-
33 mation of emergency shall activate the emergency
34 preparedness plans applicable to the affected
35 areas and shall be the authority for the deploy-
36 ment and use of any forces or resources to which
37 the plan or plans apply.

38 C. After the filing of the emergency procla-
39 mation and in addition to any other powers con-
40 ferred by law, the Governor may:

- 1 (1) Suspend the enforcement of any statute
2 prescribing the procedures for conduct of
3 state business, or the orders or rules of
4 any state agency, if strict compliance with
5 the provisions of the statute, order or rule
6 would in any way prevent, hinder or delay
7 necessary action in coping with the emer-
8 gency;
- 9 (2) Utilize all available resources of the
10 State Government and of each political sub-
11 division of the State as reasonably neces-
12 sary to cope with the disaster emergency;
- 13 (3) Transfer the direction, personnel or
14 functions of state departments and agencies,
15 or units thereof, for the purposes of per-
16 forming or facilitating emergency services;
- 17 (4) Authorize the obtaining and acquisition
18 of property, supplies and materials pursuant
19 to section 821;.
- 20 (5) Enlist the aid of any person to assist
21 in the effort to control, put out or end the
22 emergency or aid in the caring for the
23 safety of persons;
- 24 (6) Direct and compel the evacuation of all
25 or part of the population from any stricken
26 or threatened area within the State, if he
27 deems this action necessary for the preser-
28 vation of life or other disaster mitigation,
29 response or recovery;
- 30 (7) Prescribe routes, modes of transporta-
31 tion and destinations in connection with
32 evacuations;
- 33 (8) Control ingress and egress to and from
34 a disaster area, the movement of persons
35 within the area and the occupancy of prem-
36 ises therein;
- 37 (9) Suspend or limit the sale, dispensing
38 or transportation of alcoholic beverages,
39 firearms, explosives and combustibles; and

1 Section 2 authorizes the Adjutant General to ad-
2 minister federal funds and property in the same man-
3 ner as the Commissioner of Transportation administers
4 federal funds available for highway construction and
5 maintenance.

6 Section 3 allows the Governor to appoint an Adju-
7 tant General who meets all of the criteria for pro-
8 motion to Major General except for the period of time
9 that he has carried field grade rank. It provides
10 reasonable flexibility in the appointment process.

11 Section 4 provides minimum pay to members of the
12 state military forces called to active duty. Members
13 on active duty serve on the basis of 24 hours a day.
14 Military pay is based upon the facilities available
15 at a military post such as room and board. The mili-
16 tary pay of the lower ranks of persons without
17 longevity is substantially less than the state mini-
18 mum age. As a consequence, any extended state active
19 duty for civil disturbance or disaster would work a
20 serious hardship on some individuals of the state
21 military forces. The purposes of this section is to
22 provide a minimum pay for each 24-hour period that is
23 based upon the minimum wage for 12 hours.

24 Section 5 authorizes the Governor to hire civil-
25 ian employees for military purposes. Present law
26 only authorizes the employment of cooks in the event
27 National Guard units are called to active state duty.
28 Because such units might not be activated in their
29 normal military configuration, they may not have
30 essential services available to them through the
31 military structure. Therefore, it may be necessary
32 for the Governor to employ civilian personnel such as
33 cooks, mechanics, drivers and others to supplement
34 the state military forces. At such time, those indi-
35 viduals would be subject to the regulations of the
36 military.

37 Section 6 authorizes the Military Bureau to main-
38 tain and charge a fee for a lodging facility for
39 military personnel. The Military Bureau now operates
40 a lodging facility at the Bangor International Air-
41 port for National Guard and other military personnel.
42 It is used to house National Guardsman who are being
43 given physical examinations and who must stay over-

1 night because of the distances involved. It is
2 appropriate to charge a small fee to cover the
3 expenses of cleaning, maid service, laundry and other
4 upkeep. Most of the individuals paying such a fee
5 are reimbursed by federal military pay procedures.
6 This section authorizes the use of a specialized fund
7 for that purpose. Since there is no authority to use
8 those funds other than their limited purpose, to the
9 extent that the balance is in excess of the needs,
10 the nightly charge may be reduced accordingly.

11 Section 7 gives the Governor rule-making powers
12 in the event of a state emergency caused by civil
13 disturbance. It also authorizes the Governor to
14 bring an action in Superior Court for injunctive
15 relief against individuals causing such civil dis-
16 turbance. It also specifically authorizes any person
17 aggrieved by such injunctive relief to bring a motion
18 to vacate the order.

19 Section 8 recognizes state military forces per-
20 sonnel on active duty as state employees. Personnel
21 and equipment of the Maine National Guard are used in
22 human health emergencies on a day to day basis.
23 Primarily this involves the use of helicopters with
24 pilots and medical personnel. While the law protects
25 those personnel from suit by the patient, it is
26 unclear as to their liability with respect to opera-
27 tion of the aircraft. This section would make it
28 clear that those National Guardsmen come under the
29 protection of the Maine Tort Claims Act.

30 Section 9 removes unnecessary language.

31 Section 10 recognizes state military forces per-
32 sonnel as law enforcement officers. In the event of
33 activation to state duty for purposes of civil dis-
34 turbance or disaster, use of National Guardsmen in
35 support of law enforcement agencies is a primary ac-
36 tivity. Experience in other parts of the country has
37 shown that it is important that the National
38 Guardsmen have the authority to make arrests under
39 certain circumstances. This section would clothe
40 state military forces with rights and limitations of
41 law enforcement officers, if necessary.

1 Section 11 clarifies the rights of members of the
2 state military forces to reemployment upon the com-
3 pletion of active state service in the same manner as
4 National Guardsmen have reemployment rights under
5 federal law.

6 Section 12 updates the language to make it con-
7 sistent with the classification of crimes under the
8 Maine Criminal Code.

9 Section 13 removes the old language placing the
10 responsibility for the construction of armories on
11 the local municipal officers. Armories are now con-
12 structed under an agreement between the federal,
13 state and local officials with appropriate contribu-
14 tions by each. This section also specifically pro-
15 vides for joint utilization between military units or
16 between the military and the private sector. Fur-
17 ther, the language protects the armory custodians to
18 assure that they retain all their rights as a state
19 employee when they are working for private sector
20 renters of an armory.

21 Sections 14 and 15 removes unnecessary language.

22 Section 16 brings the law in conformity with the
23 classification of crimes under the Maine Criminal
24 Code.

25 Section 17 clarifies the rights of state employ-
26 ees with respect to pay and leave as a result of a
27 military leave of absence.

28 Section 18 authorizes the Governor to establish
29 his own award program within the Military Bureau.

30 Section 19 authorizes the Governor to reactivate
31 an individual for purposes of court-martial who was
32 discharged prior to arrest for violation of the Code
33 of Military Justice. This is consistent with federal
34 law in the regular military establishment.

35 Section 20 clarifies the appointment of judge
36 advocates by the Adjutant General.

37 Section 21 allows the Adjutant General to call
38 upon civil officers to assist in delivering to their

1 place of duty any members of the military forces who
2 are absent without leave during time of state active
3 duty.

4 Section 22 provides that an individual may not be
5 punished by his unit commander under the Code of
6 Military Justice if he either demands a court-martial
7 or requests that the matter be considered by a non-
8 judicial punishment panel rather than his unit com-
9 mander. Nonjudicial punishment in the active mili-
10 tary is used by the unit commander when a court-
11 martial is not warranted. When the individual is
12 reassigned from that unit to another, the record of
13 such nonjudicial punishment does not go with him.
14 This gives the individual a fresh start with a new
15 commander. Because there is a lack of mobility from
16 one unit to another by individuals in the state mili-
17 tary forces, an individual may spend a number of
18 years under one commander. To the extent that the
19 nonjudicial punishment procedure is influenced by
20 personality conflicts, the individual might prefer
21 that nonjudicial punishment be imposed by a panel
22 made up of officers from other units.

23 Section 23 authorizes the imposition of a fine in
24 the event an individual does not have further mili-
25 tary pay coming to him and places a limitation on the
26 amount of fine or forfeiture.

27 Section 24 places a limitation on the amount of
28 fine or forfeiture.

29 Section 25 provides for the collection of any
30 fines imposed as a debt in favor of the State of
31 Maine. The section also establishes a nonjudicial
32 punishment panel to impose company commander's pun-
33 ishment in the event an individual wishes to object
34 to the imposition of such punishment by his unit com-
35 mander. The panel would be made up of company grade
36 officers from other units in the same battalion. It
37 avoids the possibility of personality conflicts
38 influencing the unit commander's punishment activi-
39 ties without diminishing his authority.

40 Section 26 makes it clear that in the event an
41 individual violates a military regulation at the same
42 time that he is violating the civil law, he is still

1 liable to military justice procedures for violation
2 of the regulation regardless of the outcome of pro-
3 ceedings in civilian courts.

4 Section 27 removes the requirement that attorneys
5 participating in court-martial activities by a judge
6 advocate of the military forces. There are very few
7 judge advocates authorized in the present state mili-
8 tary forces.

9 Section 28 authorizes the use of electronic tran-
10 scription to record court-martial proceedings. In
11 the event of state active duty requiring the dis-
12 persal of units, there may be instances when court-
13 martials must be conducted without the availability
14 of a court reporter.

15 Section 29 authorizes a military judge to issue
16 subpoenas for witnesses.

17 Section 30 provides for the review by the state
18 judge advocate upon an application for a new trial by
19 court-martial.

20 Section 31 directs the Bureau of Veterans'
21 Affairs to make copies of veterans' records available
22 to the United States Veterans' Administration without
23 charge.

24 Section 32 makes it clear that widows or widowers
25 of eligible veterans may be admitted to the Veterans'
26 Home.

27 Section 33 clarifies the authority of the Gover-
28 nor in the event of a natural disaster.

29 Section 34 places an automatic termination date
30 of any emergency proclamation by the Governor, re-
31 quiring a reexamination of the emergency at least
32 every 30 days. In the event the Legislature deter-
33 mines that the Governor has not made appropriate use
34 of the circumstances, it may terminate the state of
35 emergency.

36 Section 35 establishes the effective date of this
37 bill. This bill is a companion to a recodification
38 of the military laws. Because that recodification is

1 being considered by this Legislature contemporaneous
2 with this bill, these changes to the law must be made
3 based upon a Code effective 90 days after the ad-
4 journment of this Legislature.

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