

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

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No. 1744

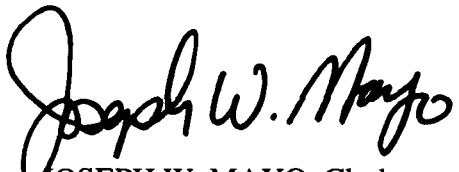
H.P. 1269

House of Representatives, January 30, 1996

An Act to Revise the State Active Service Laws.

(EMERGENCY)

Submitted by the Department of Defense and Veterans' Services pursuant to Joint Rule 24.
Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative NADEAU of Saco. (GOVERNOR'S BILL)
Cosponsored by Representatives: AHEARNE of Madawaska, AULT of Wayne, DRISCOLL
of Calais, O'NEAL of Limestone, TRUE of Fryeburg, Senators: MICHAUD of Penobscot,
STEVENS of Androscoggin.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** the 90-day period may prevent the activation of
Maine National Guard members in support of the 1996 Olympics; and

8 **Whereas,** no cost will be incurred by the State from these
changes; and

10
12 **Whereas,** this change will allow the State to take advantage
of the assets of the Maine National Guard for immediate economic
benefit; and

14
16 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
18 necessary for the preservation of the public peace, health and
safety; now, therefore,

20
22 **Be it enacted by the People of the State of Maine as follows:**

24 **Sec. 1. 37-B MRSA §181,** as amended by PL 1989, c. 850, §4, is
repealed.

26 **Sec. 2. 37-B MRSA §181-A** is enacted to read:

28 **§181-A. Authority to activate**

30 **1. By order of the Governor.** The Governor may order
32 members of the state military forces to active state service in
the case of, or imminent danger of, insurrection, invasion,
34 tumult, riot, conspiracy to commit a felony or threat of violence
to persons or property or upon the reasonable apprehension
36 thereof; or for the safety of the inhabitants of this State; or,
in the case of actual or imminent public disaster, or to the aid
of any civil authority.

38 **2. Drug enforcement duties.** The Governor may order Maine
40 National Guard members to active state service to support federal
drug enforcement operations under the National Defense
42 Authorization Act of 1989.

44 **3. Military duty by consent.** With the members' consent,
46 the Governor, the Adjutant General or the Deputy Adjutant General
may order members of the Maine National Guard to perform active
48 state service of any nature.

50 **Sec. 3. 37-B MRSA §182,** as amended by PL 1983, c. 594, §7, is
further amended to read:

2 **§182. Proclamation of state of insurrection**

4 Whenever any portion of the state military forces is
6 activated in aid of civilian authority and if, in the Governor's
8 judgment, the maintenance of law and order will thereby be
10 promoted, ~~he may~~ the Governor, by proclamation, may declare the
12 county or municipality receiving the assistance, or any specified
14 portion or combination ~~thereof~~, to be in a state of insurrection.

16 In the event of a proclamation of insurrection, and without
18 limiting any other powers of the Governor, whether inherent or
20 conferred by other existing laws, the Governor may issue rules
22 under the emergency rule-making provisions of the Maine
24 Administrative Procedure Act, Title 5, section 8054, ~~which that~~
26 are reasonable under the circumstances to avert additional
28 damage, destruction, injury or loss of life, including, but not
30 limited to, emergency rules for curfews, the deployment of
32 emergency medical supplies and facilities, evacuations, the
34 closing of liquor, arms, ammunition, explosives or other stores
36 and facilities, access roads, temporary detours and other things,
38 whether of a same or a different nature.

40 In the event of the call up of military forces, pursuant to
42 section ~~181~~ 181-A, subsection 1, and without limiting any powers
44 expressly and inherently possessed by or otherwise vested in the
46 Governor as Commander in Chief, the Governor or Adjutant General,
48 as ~~his~~ the Governor's designee, may petition any Superior Court
50 for ex parte temporary restraining orders to restrain unlawful
interference with efforts to maintain peace or preserve life and
property. The court may grant appropriate temporary relief. Upon
issuance of the order, the Governor shall cause prompt notice of
the order and its effect to be broadcast, posted, announced or
otherwise publicized so as to reach the persons effected. Any
person aggrieved by the order is entitled at any time it is in
effect to bring a motion for vacating the order. The motion
~~shall~~ must lie in the court from which the order was issued and
the moving parties shall serve notice of the motion upon the
Governor concurrent with it being filed, but, until vacated, the
order ~~shall remain~~ remains effective according to its terms.

42 **Sec. 4. 37-B MRSA §183**, as amended by PL 1987, c. 334, is
44 further amended to read:

46 **§183. Human health emergencies**

48 Personnel and equipment of the ~~state-military-force~~ Maine
50 National Guard may be employed in the case of human health
emergencies.

2 **1. Activation of Maine National Guard.** In the event of
3 illness, injury, missing persons or loss of life, creating an
4 emergency which that requires specialized personnel or equipment
5 of the ~~state--military--forces~~ Maine National Guard to prevent
6 human suffering, increased health risk or loss of life, the
7 Governor, the Adjutant General, the Deputy Adjutant General or
8 his the Governor's designee, may order into active state service
9 ~~of--the--State--or--in--aid--of--any--civil--authority~~ the necessary
10 personnel and equipment of the ~~state--military--forces~~ Maine
11 National Guard. Human health emergencies may include medical
12 evacuation and search and rescue under Title 6, section 303 and
13 Title 12, section 7035, which may include providing emergency
14 helicopter airlift service. Any person ordered into active state
15 service ~~of--the--State~~, for the purposes of this subsection, shall
16 be is considered a state employee for purposes of the Maine Tort
17 Claims Act and his that person's liability ~~shall--be~~ is limited by
18 that Act.

19 **2. Immunity from civil liability.** Any In addition to all
20 existing tort immunities enumerated in the Maine Tort Claims Act
21 any person ordered into active state service ~~of--the--State~~, for
22 the purposes of this section, is immune from civil liability for
23 damages to the same extent as any person who renders assistance
24 pursuant to Title 14, section 164.

25 **3. Accounting.** At least 30 days before the end of each
26 fiscal year, the Adjutant General shall prepare an accounting of
27 all expenses incurred pursuant to this section since any prior
28 accounting and shall present this accounting to the Commissioner
29 of Human Services for payment ~~pursuant--to--Title--22,--section--3185~~.

30 **4. Reimbursement.** ~~In addition to other payments authorized~~
31 ~~by--Title--22,--section--3185,--the--Department--of--Human--Services~~
32 ~~shall,--upon--receipt--of--an--annual--accounting--as--authorized--under~~
33 ~~this--subsection,--transfer--to--the--Department--of--Defense--and~~
34 ~~Veterans'--Services--a--sum,--not--to--exceed--\$10,000,--from--money~~
35 ~~appropriated--pursuant--to--Title--22,--section--3185,--as--reimbursement~~
36 ~~for--costs--of--rendering--emergency--health--service.~~

37 **Sec. 5. 37-B MRSA §184**, as enacted by PL 1983, c. 460, §3, is
38 amended to read:

39 **§184. Notice for duty**

40 Notices for military duty shall must be given as follows.

41 **1. When given.** ~~Notices--for--state--duty--at--encampments,~~
42 ~~maneuvers--and--field--instruction--shall--be--given--at--least--10--days~~
43 ~~prior--to--the--duty,--Notices--for--other--duty--may--be--given--when~~
44

2 ~~prescribed by the officer issuing the order.~~ Members of the
3 state military forces must receive reasonable prior notice of
4 active state service appropriate to the duty to be performed.

5 **2. How given.** Notices ~~shall~~ may be given orally or by
6 ~~written notice delivered personally, sent by mail or left at the~~
7 ~~last and usual place of abode~~ in writing. Orders conspicuously
8 posted during a regular meeting of the unit, not less than 4 days
9 prior to the date fixed in the order, ~~shall be~~ are sufficient.

10 **3. Dates fixed by law.** Where When drill dates have been
11 fixed by law, orders or regulations, no further notice is
12 required.

13 **Sec. 6. 37-B MRSA §185, sub-§4,** as enacted by PL 1983, c. 594,
14 §10, is amended to read:

15 **4. Rights of a law enforcement officer.** A commissioned
16 officer member of the state military forces when called to active
17 duty under section ~~181~~ 181-A, subsection 1, in addition to such
18 other rights conferred by this chapter and otherwise by law,
19 ~~shall have~~ has the rights, authority and immunities of a law
20 enforcement officer.

21 **Emergency clause.** In view of the emergency cited in the
22 preamble, this Act takes effect when approved.

23 STATEMENT OF FACT

24 **30** This bill replaces outdated legislation describing the
25 authority to activate members of the state military forces.

26 Current law states that nonemergency state active service is
27 not authorized by law.

28 This bill authorizes the Governor, the Adjutant General and
29 the Deputy Adjutant General to order members of the Maine
30 National Guard to active state service if the member consents.
31 This law would be used in instances where no emergency exists,
32 but that use of the Maine National Guard is appropriate. Members
33 could not be forced to this type of service, only those members
34 consenting to such an arrangement could be called to active state
35 service.

36 This bill removes the authority of the local sheriffs and
37 Justices to call the Maine National Guard into state service.

38 This bill specifically adds "helicopter airlift services"
39 into the authorized duties under state active service. It
40

2 removes the reference in the Maine Revised Statutes, Title 37-B,
section 183, subsection 4 to the source of funding for the
4 Commissioner of Human Services to reimburse the Maine National
Guard for rendering emergency assistance, pursuant to section
183. It does not appropriate such money.

6

8 The bill changes the notice requirements for state service.
The standard becomes reasonable prior notice of active state
service appropriate to the duty to be performed.

10

12 The bill clarifies that law enforcement authority of a
commissioned officer is specified to only apply under the Maine
Revised Statutes, Title 37-B, section 181-A, subsection 1, not
14 for drug enforcement duties nor service by consent.