

MAINE STATE LEGISLATURE

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M
R.O.S.

L.D. 1495

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DATE: *May 23, 2001*

(Filing No. S-246)

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LEGAL AND VETERANS AFFAIRS

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**STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION**

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COMMITTEE AMENDMENT "*A*" to S.P. 441, L.D. 1495, Bill, "An
Act to Establish the Maine Military Authority"

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24
Amend the bill by striking out everything after the title
and before the summary and inserting in its place the following:

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

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32
Whereas, the Military Bureau's Maine Readiness Sustainment
Maintenance Center, now located at the former Loring Air Force
Base, has grown to over 150 employees and needs to continuously
expand to keep pace with increased workload demands; and

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Whereas, the Military Bureau's Maine Readiness Sustainment
Maintenance Center has been unable to sign contracts with other
governmental entities because of the present organizational
structure of the center; and

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Whereas, if this legislation is enacted, the center will be
permitted to enter into contracts with various governmental
entities, greatly expanding the workforce and new production
lines, all of which produce benefits to the Maine National Guard,
Aroostook County and the State; and

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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
necessary for the preservation of the public peace, health and
safety; now, therefore,

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

2 **Sec. 1. 5 MRSA §285, sub-§1, ¶A-1** is enacted to read:

4 A-1. Any employee of the Maine Military Authority;

6 **Sec. 2. 5 MRSA §931, sub-§1, ¶L-3**, as enacted by PL 1999, c.
8 784, §3, is amended to read:

10 L-3. The Executive Analyst of the Board of Environmental
12 Protection; and

14 **Sec. 3. 5 MRSA §931, sub-§1, ¶L-4** is enacted to read:

16 L-4. All employees of the Maine Military Authority; and

18 **Sec. 4. 5 MRSA §17001, sub-§40**, as amended by PL 1999, c. 152,
Pt. E, §3, is further amended to read:

20 **40. State employee.** "State employee" means any regular
22 classified or unclassified officer or employee in a department,
any employee of the Maine Technical College System, except those
24 any employee of the Maine Military Authority, any employee of the
Northern New England Passenger Rail Authority and any employee
26 transferred from the Division of Higher Education Services to the
Finance Authority of Maine who elects to be treated as a state
28 employee, but does not include:

30 A. A judge, as defined in Title 4, section 1201 or 1301,
32 who is now or later may be entitled to retirement benefits
under Title 4, chapter 27 or 29;

34 B. A member of the State Police who is now entitled to
retirement benefits under Title 25, chapter 195; or

36 C. A Legislator who is now or later may be entitled to
38 retirement benefits under Title 3, chapter 29.

40 **Sec. 5. 14 MRSA §8102, sub-§4**, as amended by PL 1995, c. 543,
§1, is further amended to read:

42 **4. State.** "State" means the State of Maine or any office,
44 department, agency, authority, commission, board, institution,
hospital or other instrumentality of the State, including the
46 Maine Turnpike Authority, the Maine Port Authority, the Northern
New England Passenger Rail Authority, the Maine Technical College
48 System, the Maine Veterans' Homes, the Maine State Retirement
System, the Maine Military Authority and all such other state
50 entities.

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2 **Sec. 6. 26 MRSA §962, sub-§7, ¶A**, as amended by PL 1999, c.
3 775, §13, is further amended to read:

4 A. Any officer, board, commission, council, committee or
5 other persons or body acting on behalf of:

6 (1) Any municipality or any subdivision of a
7 municipality;

8 (2) Any school, water, sewer, fire or other district;

9 (3) The Maine Turnpike Authority;

10 (4) Any board of directors functioning as a regional
11 intermediate education unit pursuant to Title 20-A,
12 section 7730;

13 (5) Any county or subdivision of a county;

14 (6) The Maine State Retirement System; or

15 (7) The Governor Baxter School for the Deaf; or

16 (8) The Maine Military Authority; or

17 **Sec. 7. 37-B MRSA §157** is enacted to read:

18 **§157. Maine Military Authority Enterprise Fund**

19 The Maine Military Authority Enterprise Fund is established
20 in order that the Adjutant General may receive operating revenues
21 of the Maine Military Authority, established in section 391,
22 expend those proceeds in accordance with section 399, segregate
23 money for future capital repairs and transfer money to Military
24 Bureau accounts. The Treasurer of State shall credit all interest
25 on fund balances to the Maine Military Authority Enterprise Fund.

26 **Sec. 8. 37-B MRSA c. 3, sub-c. IX** is enacted to read:

27 **SUBCHAPTER IX**

28 **MAINE MILITARY AUTHORITY**

29 **§391. Maine Military Authority established**

30 The Maine Military Authority is established as a body
31 corporate and politic and a public instrumentality of the State,
32 and the exercise of the powers conferred by this chapter is
33 deemed and held to be the performance of essential governmental
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2 functions. The authority consists of the Maine Readiness
3 Sustainment Maintenance Center and shall report to the Adjutant
4 General. The authority exists for the purpose of, but is not
5 limited to, operating the existing Maine Readiness Sustainment
6 Maintenance Center, which maintains, rebuilds, repairs, stores
7 and manufactures equipment for the United States Department of
8 Defense, National Guard Bureau, and maintaining, rebuilding,
9 repairing, storing and manufacturing equipment for the State, for
10 the United States Department of the Army, Department of the Air
11 Force, Department of the Navy and Department of the Treasury and
12 for foreign governments in conjunction with the foreign military
13 sales program of the United States Department of Defense.

14 **§392. Definitions**

15 As used in this subchapter, unless the context otherwise
16 indicates, the following terms have the following meanings.

17 1. Authority. "Authority" means the Maine Military Authority.

18
19 2. Operating revenues. "Operating revenues" means funds
20 paid or otherwise made available to the authority through
21 cooperative agreements, grants, contracts, memoranda of agreement
22 and agreements from the State, from the United States Department
23 of Defense, National Guard Bureau, from the United States
24 Department of the Army, Department of the Air Force, Department
25 of the Navy and Department of the Treasury and from foreign
26 governments in conjunction with the foreign military sales
27 program of the United States Department of Defense and all other
28 miscellaneous revenue and interest generated by the authority.

29 **§393. Maine Military Authority operation**

30
31 The Adjutant General operates the authority under the
32 direction of the Governor and may:

33 1. Execute agreements. Execute cooperative agreements
34 between the Maine National Guard and the Federal Government or
35 its instrumentalities or agencies;

36
37 2. Contract with various entities. Contract with the
38 Federal Government or its instrumentalities or agencies, the
39 State or its agencies, instrumentalities or municipalities,
40 foreign governments, public bodies, private corporations,
41 partnerships, associations and individuals;

42
43 3. Accept financial assistance. Accept financial
44 assistance and in-kind assistance, advances, loans, grants,
45 gifts, contributions and other forms of financial assistance from
46 the Federal Government and the State Government or its agencies,
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2 a municipality or other public body or from other sources, public
or private;

4 4. Provide money for upkeep. Provide from operating
6 revenues money for the maintenance, construction or
reconstruction of capital repair and replacement items as
8 necessary;

10 5. Acquire property. Acquire for use by the authority real
12 or personal property or any interest in real or personal
property, including rights or easements, on either a temporary or
permanent basis, by gift, purchase, transfer, lease or otherwise;

14 6. Dispose of property. Notwithstanding any other
16 provision of law, hold, sell, lease, rent or otherwise dispose of
any real or personal property, or any interest in real or
18 personal property, and release or relinquish any right, title,
claim, lien, interest, easement or demand however acquired, and
20 these proceeds become and remain operating revenues except that
the Adjutant General may not sell any interest in real property
22 without following the provisions of section 264;

24 7. Procure insurance. Procure insurance against any loss
26 in connection with property of the authority and other assets in
amounts and from insurers that the Adjutant General considers
desirable through the auspices of the Risk Management Division;
28 and

30 8. Take all other lawful action. Take all other lawful
32 action necessary and incidental to the powers in this subchapter.

32 **§394. Employees**

34 1. Executive director; other employees. The Adjutant
36 General may employ an executive director, a general manager,
technical experts and other agents and employees, permanent or
38 temporary, for the authority. Employees of the authority are not
subject to the Civil Service Law.

40 2. Service at pleasure of Adjutant General. The executive
42 director and general manager serve at the pleasure of the
Adjutant General.

44 3. Legal services. The Office of the Attorney General
46 shall provide legal services for the authority, or, at the
discretion of the Adjutant General, the Adjutant General may use
48 the services of those judge advocates of the Maine National Guard
either on state active service or otherwise compensated by the
50 authority.

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§395. Books and records

2 The Adjutant General shall ensure the accurate and timely
4 maintenance of books, records, accounts and other evidences of
6 the financial transactions of all the authority's activities.
8 Books and records must be open to inspection and audit by the
10 Maine National Guard, the State Auditor and the Federal
12 Government audit in conjunction with federal contracts,
14 agreements, grants or cooperative agreements but are otherwise
16 confidential and not subject to Title 1, chapter 13, subchapter
18 I. The State Auditor shall periodically conduct an audit of the
20 financial records of the authority and report the results of the
22 audit to the Adjutant General, the Governor and the Legislature.
24 The Adjutant General may maintain the required books, records,
26 accounts and other evidences of the financial transactions of all
28 of the authority's activities or enter into service agreements
30 or contracts with departments and agencies of State Government
32 for that purpose.

§396. Budget

22 The Adjutant General shall establish a budget for the
24 authority. Budget development and presentation to the Governor
26 and the Legislature must be in the form used by a body corporate
28 and politic and an instrumentality of the State.

§397. Report

28 The Adjutant General shall report by February 15th of the
30 first regular session of each Legislature to the joint standing
32 committees of the Legislature having jurisdiction over
34 appropriations and financial affairs and defense, veterans and
36 emergency management matters. The report must include
38 information about the operation of the authority, its budget and
40 the distribution of profits generated by the authority.

§398. Property exempt from execution

38 The property, including funds, of the authority is exempt
40 from levy and sale by virtue of an execution. An execution or
42 other judicial process may not be issued against the authority's
44 property, and a judgment against the authority may not be a
46 charge or lien upon its property.

§399. Revenue

46 Revenue generated by the authority must first be used to
48 support the operation of the authority, including segregation of
50 money for future capital repairs. All other unexpended balances
may be transferred at any time prior to the closing of the books

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2 to any other non-General Fund state account of the Military
3 Bureau, including, but not limited to, capital repair and
4 maintenance of state armories and Maine National Guard tuition
5 assistance.

6 **Sec. 9. Transition provisions.** Except as otherwise provided in
7 this Act, all references in the laws of the State to the Loring
8 Rebuild Facility refer to the Maine Military Authority in its
9 capacity as a public instrumentality of the State.

10 **1. Funds transferred.** All assets of the Loring Rebuild
11 Facility must be transferred to the Maine Military Authority in
12 its capacity as a public instrumentality of the State. All funds
13 existing in the Loring Center of Excellence Operations and
14 Maintenance Fund, established in the Maine Revised Statutes,
15 Title 37-B, section 156, must be transferred into the Maine
16 Military Authority Enterprise Fund, established in Title 37-B,
17 section 157. Once the transfer is completed, the Loring Center
18 of Excellence Operations and Maintenance Fund will cease to exist.

19 **2. Procedures.** All procedures in effect on the effective
20 date of this Act pertaining to the Loring Rebuild Facility remain
21 in effect until rescinded or amended by the Maine Military
22 Authority in its capacity as a public instrumentality of the
23 State.

24 **3. Equipment and property transferred.** All equipment and
25 property of the Loring Rebuild Facility must be transferred to
26 the Maine Military Authority in its capacity as a public
27 instrumentality of the State.

28 **4. Contracts and agreements.** All contracts and agreements
29 in effect on the effective date of this Act with the Loring
30 Rebuild Facility remain in effect until rescinded, terminated or
31 modified by the Maine Military Authority.

32 **5. Personnel transferred.** Classified and unclassified
33 employees assigned to the Loring Rebuild Facility must be
34 transferred from executive branch state employment to the Maine
35 Military Authority as the successor employer in its capacity as a
36 public instrumentality of the State. The following provisions
37 also apply.

38 **A. Fringe benefits** from state employment of the transferred
39 personnel, including vacation and sick leave, accrued
40 seniority, health and life insurance and retirement, remain
41 with the transferred personnel.

42 **B. The rights and benefits** of employees at the Maine
43 Military Authority are determined by statute and by the

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COMMITTEE AMENDMENT "A" to S.P. 441, L.D. 1495

2 status quo existing at the Loring Rebuild Facility. The
rights and benefits under statutes, rules and applicable
4 executive branch collective bargaining agreements in effect
on the effective date of this Act, or any applicable
6 successor agreement executed between the executive branch
and the collective bargaining agent, are evidence of the
8 status quo that must be maintained for all personnel at the
Maine Military Authority until changed in accordance with
applicable labor law principles. The rights and benefits of
10 personnel hired after the effective date of this Act whose
positions are included within a bargaining unit are the same
12 as those transferred employees once the newly hired
personnel are eligible employees under applicable law or the
14 applicable collective bargaining agreement, except that
those employees do not have seniority rights applicable to
16 executive branch bargaining units.

18 C. All personnel transferred to the Maine Military
Authority retain all applicable seniority rights and
20 privileges and all other rights and privileges with regard
to employment in state service for a period of 2 years from
22 the effective date of this Act. During this 2-year period,
the recall provisions of these applicable laws, rules and
24 collective bargaining agreements continue to apply for all
transferred personnel with layoff status to the filling of
26 any vacancy in the Maine Military Authority. Transferred
personnel who refuse recall to the Maine Military Authority
28 retain full recall rights to all other agencies of State
Government.

30 D. The Department of Administrative and Financial Services
32 shall assist the Maine Military Authority with the orderly
implementation of these provisions.

34
6. Transferred employees. All transferred employees who
36 are represented by a bargaining agent on the effective date of
this Act continue to be represented by that bargaining agent.
38 Following the effective date of this Act, a petition for
decertification or certification of a new bargaining agent for
40 any newly created bargaining unit may be filed in accordance with
Title 26, chapter 9-B and the rules of the Maine Labor Relations
42 Board.

44 **7. Transition complete.** The Maine Military Authority shall
take the steps necessary to complete the transition and to
46 function as a body corporate and politic and an instrumentality
of the State by July 1, 2002. The Adjutant General, through the
48 Department of Administrative and Financial Services, Bureau of
the Budget, shall submit to the Second Regular Session of the

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COMMITTEE AMENDMENT "A" to S.P. 441, L.D. 1495

120th Legislature adjustments to appropriations and allocations for fiscal year 2002-03 to accomplish the budgetary transition.

8. Transitional budget. Notwithstanding Title 5, section 1585 or any other provision of law, the Maine Military Authority, as the successor to the Loring Rebuild Facility, is authorized to transfer available balances of appropriations and allocations between line categories and accounts in the same fund in fiscal year 2001-02 by financial order upon the recommendation of the State Budget Officer and approval of the Governor. Notwithstanding Title 5, section 1583-A, the Maine Military Authority, as the successor to the Loring Rebuild Facility, may establish permanent positions and exceed legislatively authorized positions in fiscal year 2001-02 by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

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

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The establishment of the Maine Military Authority as a public instrumentality of the State will result in new allocations and revenues for fiscal year 2002-03. The amounts of the adjustments to allocations and revenues will be determined by proposed legislation which will be submitted to the Second Regular Session of the 120th Legislature by the authority. This bill establishes the authority through the eventual transfer of the assets, allocations and personnel of the Loring Rebuild Facility program within the Department of Defense, Veterans and Emergency Management. The bill also authorizes the authority to transfer funds, to transfer existing allocations and to create additional positions through the use of duly approved financial orders during fiscal year 2001-02.

The Bureau of Accounts and Control within the Department of Administrative and Financial Services and the Department of Audit will incur additional expenses to provide required accounting and audit services for the Maine Military Authority. The amounts will be paid by the authority and can not be established at this time.'

COMMITTEE AMENDMENT

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SUMMARY

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This amendment amends a concept draft and establishes the
4 Maine Military Authority to operate and expand the existing Maine
Readiness Sustainment Maintenance Center now located at the
6 former Loring Air Force Base.

8

This amendment provides several transition provisions
applicable to employees of the Maine Military Authority. The
10 amendment provides that employees who are hired after the
effective date of this law have the same rights and benefits as
12 transferred employees, with the exception that transferred
employees retain certain limited residual rights within the
14 executive branch. The amendment provides that employees hired
before and after the establishment of the authority are members
16 of the state employee health plan and the regular state employee
plan of the Maine State Retirement System. The amendment also
18 adds a fiscal note to the bill.