

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1752

H.P. 1288

House of Representatives, March 27, 2001

**An Act to Update the Department of Defense, Veterans and Emergency  
Management Laws.**

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Submitted by the Department of Defense, Veterans and Emergency Management pursuant  
to Joint Rule 204.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative TUTTLE of Sanford.  
Cosponsored by Senator DOUGLASS of Androscoggin and  
Representative CLARK of Millinocket.

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

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4       **Sec. 1. 5 MRSA §7051, sub-§4, ¶A**, as amended by PL 1989, c. 443, §11, is repealed.

6       **Sec. 2. 5 MRSA §7051, sub-§4, ¶¶B and C**, as enacted by PL 1985, c. 785, Pt. B, §38, are repealed.

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10       **Sec. 3. 5 MRSA §7051, sub-§4, ¶D**, as amended by PL 1989, c. 443, §11, is repealed.

12       **Sec. 4. 5 MRSA §17655, sub-§2**, as amended by PL 1987, c. 402, Pt. A, §§70 and 71, is further amended to read:

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16       **2. Other military benefits.** Any employee who satisfies the criteria of subsection 1, paragraph B, is entitled to all the benefits of Title 26, section 7051, subsection 4 811.

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20       **Sec. 5. 5 MRSA §18258, sub-§2**, as amended by PL 1987, c. 402, Pt. A, §§72 and 73, is further amended to read:

22       **2. Other military benefits.** Any employee who satisfies the criteria of subsection 1, paragraph B, is entitled to all the benefits of Title 26, section 7051, subsection 4 811.

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26       **Sec. 6. 14 MRSA §8111, sub-§1, ¶D**, as repealed and replaced by PL 1987, c. 740, §8, is amended to read:

28       D. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement; or

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32       **Sec. 7. 14 MRSA §8111, sub-§1, ¶E**, as enacted by PL 1987, c. 740, §8, is amended to read:

34       E. Any intentional act or omission within the course and scope of employment; provided that such immunity ~~shall~~ does not exist in any case in which an employee's actions are found to have been in bad faith; or

40       **Sec. 8. 14 MRSA §8111, sub-§1, ¶F** is enacted to read:

42       F. Any act by a member of the Maine National Guard within the course and scope of employment; except that immunity does not exist when an employee's actions are in bad faith or in violation of military orders while the employee is performing active state service pursuant to Title 37-B.

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48       **Sec. 9. 20-A MRSA §13603, first ¶**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

2 Teachers who are members of the National Guard or other  
3 ~~authorized state military or naval forces, and those teachers who~~  
4 ~~are members of the Army, Air Force, Marines, Coast Guard or Naval~~  
5 ~~Reserve may~~ the Reserve Components of the United States Armed  
6 Forces are entitled to take a military leave of absence from  
7 their respective duties, without net loss of income--during  
8 periods of annual training pay or time when engaged in military  
9 training not to exceed 17 calendar days in any calendar year as  
10 specified under the National Defense Act or Armed Forces Reserve  
11 Act--of--1952, provided that the teachers have made every a  
12 reasonable effort to perform their annual military training  
13 during the period when school is not in session.

14 **Sec. 10. 26 MRSA §811**, as amended by PL 1987, c. 769, Pt. A,  
15 §105, is further amended to read:

16 **§811. Preservation of status**

17 **1. Intent.** ~~The intent of this section is to ensure that~~  
18 ~~members of the state military forces, including the Maine Army~~  
19 ~~and Air National Guards, and the Reserves of the United States~~  
20 ~~Armed Forces will not suffer harm as the result of their military~~  
21 ~~obligations and that an employee returning from military leave~~  
22 ~~from his civilian job shall be treated no differently than any~~  
23 ~~other employee with an approved leave of absence~~ subchapter is to  
24 minimize the disruption to the lives of persons performing  
25 service in the National Guard or the Reserve Components of the  
26 United States Armed Forces as well as to their employers, their  
27 fellow employees and their communities by providing for the  
28 prompt reemployment of these persons upon their satisfactory  
29 completion of military service and to prohibit discrimination  
30 against these persons because of their military service.

31 **2. Military leave of absence.** ~~Any member of the military~~  
32 ~~forces, including the Maine Army and Maine Air National Guards~~  
33 ~~and Guard or the Reserves Reserve Components of the United States~~  
34 ~~Armed Forces, who, in response to federal or state orders, takes~~  
35 is entitled to a military leave of absence from a position other  
36 than a temporary position in the employ of with any civilian  
37 public or private employer, in response to state or federal  
38 military orders. The military member shall:

39 **A.** Give prior reasonable notice, if reasonable under the  
40 military circumstances, to his--civilian the member's  
41 employer of his the anticipated absence for military duty;  
42 and

43 **B.** If the employer so requests, obtain a confirmation from  
44 the Adjutant General,--Camp Keyes,--Augusta, or applicable

2 reserve component headquarters, of the anticipated military  
3 duty and satisfactory completion of his the member's  
4 military duties upon--return--to--civilian--employment--or  
5 immediately--thereafter.

6 **3. Reinstatement.** Any employee person who is in compliance  
7 with subsection 2 and is still qualified to perform the duties of  
8 such position, must be reinstated ~~without loss of~~ at the same  
9 pay, seniority, benefits, and status, and receive any other  
10 incidences of advantages of employment as if he the person had  
11 remained continuously employed. The period of absence ~~shall~~ must  
12 be construed as an absence with leave, and within the discretion  
13 of the employer, the leave may be with ~~or without~~ pay.

14 **4. Disability.** A person who is in compliance with  
15 subsection 2 but who has a disability incurred in or aggravated  
16 during the military service for which that person was absent and  
17 who, after reasonable efforts by the employer to accommodate the  
18 disability, is not qualified due to that disability to be  
19 employed in the position of employment in which the member would  
20 have been employed if the member had remained continuously  
21 employed must be reinstated without loss of seniority, benefits,  
22 status and any other incidences of advantages of employment:

23 A. To any other position that is equivalent in pay,  
24 seniority, benefits, status and any other incidences of  
25 advantages of employment, the duties of which the person is  
26 qualified to perform or would become qualified to perform  
27 with reasonable efforts by the employer; or

28 B. To a position that is the nearest approximation to a  
29 position referred to in paragraph A in terms of pay,  
30 seniority, benefits, status and any other incidences or  
31 advantages of employment consistent with circumstances of  
32 the person's case.

33 **5. Employer defined.** As used in this section, "employer"  
34 means any person, institution, organization or other entity that  
35 pays salary or wages for work performed or that has control over  
36 employment opportunities, including a person, institution,  
37 organization or other entity to whom the employer has delegated  
38 the performance of employment-related responsibilities; the  
39 Federal Government; the State and any subdivision or agency of  
40 the State; and any successor in interest to a person,  
41 institution, organization, or other entity referred to in this  
42 subsection.

43 **Sec. 11. 26 MRSA §§812 and 813** are repealed and the following  
44 enacted in their place:  
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**§812. Right to benefits retained**

1. **Benefits accrual.** Absence for military training as described in section 811 does not affect the employee's right to receive normal vacation, sick leave, bonus, advancement and other advantages of employment normally to be anticipated in the employee's particular position.

2. **Extension of insurance benefits.** Insurance benefits must be extended according to this subsection.

A. A public or private employer shall continue, at no additional cost to the member, the existing health, dental and life insurance benefits for at least the first 30 days of the military duty for any member of the National Guard or the Reserve Components of the United States Armed Forces if the member takes a military leave of absence from a position with that employer, other than a temporary position, in response to state or federal military orders.

B. After the expiration of the first 30 days of military leave, the member of the National Guard or the Reserves of the United States Armed Forces has the option of continuing the health, dental and life insurance benefits in effect at the member's own expense by paying the insurance premium at the same rates as paid by the employer.

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**§813. Remedies**

1. **Action authorized.** If any employer fails to comply with any of the provisions of sections 811 and 812, the Attorney General, Judge Advocates of the Maine National Guard or employee may bring a civil action for damages for such noncompliance or apply to the courts for such equitable relief as may be just and proper under the circumstances.

2. **Award of fees; costs.** In any civil action under section 811 or 812, the court in its discretion may award reasonable attorney's fees and costs.

**Sec. 12. 37-B MRSA §1, first ¶,** as enacted by PL 1983, c. 460, §3 and amended by PL 1997, c. 455, §31, is further amended to read:

The Department of Defense, Veterans and Emergency Management, as previously established and referred to in this Title as the "department," shall coordinate and improve the discharge of the State Government's responsibility for military affairs, veterans' services and civil emergency preparedness management matters.

2           **Sec. 13. 37-B MRSA §3, sub-§1, ¶D**, as amended by PL 1999, c.  
4           565, §1, is further amended by adding a subparagraph (15) to read:

6                   (15) The Adjutant General may receive personal  
8                   property from the United States Department of Defense  
10                   that the Secretary of Defense has determined is  
12                   suitable for use by agencies in law enforcement  
14                   activities, including counter-drug activities, and in  
                    excess of the needs of the Department of Defense  
                    pursuant to 10 United States Code, Section 2576a, and  
                    transfer ownership of that personal property to state,  
                    county and municipal law enforcement agencies  
                    notwithstanding any other provision of law.

16           **Sec. 14. 37-B MRSA §102, sub-§1, ¶B**, as enacted by PL 1983, c.  
18           460, §3, is amended to read:

20                   B. The militia, the naval militia and the Maine State Guard  
22                   when and if organized by direction of the Governor pursuant  
                    to the authority set forth in subchapter 7 IV.

24           **Sec. 15. 37-B MRSA §104**, as enacted by PL 1983, c. 460, §3,  
is amended to read:

26           **§104. Governor's military staff**

28                   The military staff of the Governor as Commander in Chief  
30                   ~~shall-consist~~ consists of:

32                   1. **Adjutant General.** The Adjutant General, who ~~shall-be-ex-~~  
                    ~~officie~~ is chief of staff, ~~---a---quartermaster---general---and---a~~  
34                   ~~paymaster-general;~~

36                   2. **Senior staff officers.** The senior officer on duty with  
each of the staff sections organized under section 105; and

38                   3. **Other staff officers.** Other staff officers as appointed  
40                   from time to time ~~in-accordance-with-section-110~~.

42           **Sec. 16. 37-B MRSA §110**, as enacted by PL 1983, c. 460, §3,  
is repealed.

44           **Sec. 17. 37-B MRSA §110-A** is enacted to read:

46           **§110-A. Honorary military staff**

48                   The honorary military staff may consist of not more than 11  
aides-de-camp commissioned by the Governor to serve during the

2 Governor's term. Honorably discharged officers or enlisted  
4 personnel who served in the Army, Air Force, Navy, Coast Guard or  
6 Marine Corps during any war and who are not members of the state  
8 military forces may be appointed as aides-de-camp with the rank  
10 of colonel. One may be a naval aide with the rank of captain and  
12 one may be an Air Force aide with the rank of colonel.  
14 Aides-de-camp may be detailed from the commissioned officers of  
16 the state military forces, but officers so detailed may not be  
18 relieved from their regular duties, except when on duty with the  
20 Commander in Chief.

22 **Sec. 18. 37-B MRSA §112, first ¶**, as enacted by PL 1985, c. 16,  
24 is amended to read:

26 The Adjutant General shall organize a staff to be called a  
28 State Area Command, STARC. It shall command, control and  
30 supervise Army National Guard units employed in support of civil  
32 authorities in the protection of life, property and preservation  
of peace, order and public safety under competent orders of state  
authorities. In the event of mobilization of some or all Army  
National Guard units by the President of the United States, it  
shall assist the State in organizing and training a militia, if  
required, perform command and control functions in support of  
civil authorities, as directed, and prepare to reconstitute the  
Army National Guard and Air National Guard when units are  
relieved from federal service. It shall must be commanded by a  
federally recognized officer who may be the Adjutant General or  
Deputy--Adjutant--General an Assistant Adjutant General. The  
~~commander--shall--be--assisted--by--a--Deputy--State--Area--Command~~  
~~Commander,--who--shall--be--qualified--in--accordance--with--section--107~~  
~~and--not--hold--a--grade--above--Brigadier--General,--and--who--shall--not~~  
~~be--the--Deputy--Adjutant--General.~~

34 **Sec. 19. 37-B MRSA §146, sub-§3**, as enacted by PL 1983, c.  
36 460, §3, is amended to read:

38 **3. Indebtedness contracted without authorization.** No  
40 officer or enlisted man member may contract or authorize the  
42 contracting of any indebtedness on behalf of the State, unless  
44 expressly authorized to do so. ~~Any--person--in--the--military~~  
~~service--who--violates--this--subsection--shall--be--dishonorably~~  
~~discharged--and--suffer--such--other--punishment--as--a--court-martial~~  
~~may--direct.~~

46 **Sec. 20. 37-B MRSA §147**, as amended by PL 1995, c. 196, Pt.  
A, §1, is further amended to read:

48 **§147. Retired officers and retired list**



2 Officers ~~shall be~~ are retired from the state military forces  
and placed on the retired list as follows.

4 **1. Discharge.** Any officer who accepts an appointment in  
the Army, Air Force, Navy ~~or~~, Marine Corps or Coast Guard of the  
6 United States, or who resigns from service, ~~shall~~ must receive an  
honorable discharge, ~~provided that~~ only if:

8 A. ~~He~~ That person is not under arrest or returned to a  
10 military court for any deficiency or delinquency;

12 B. ~~He~~ That person is not indebted to the State in any  
manner; and

14 C. ~~His~~ The accounts of that person for money and public  
16 property are correct.

18 **2. Rights.** Any person who has served as a commissioned  
officer in the state military forces for at least 9 years may,  
20 upon personal request, be placed upon the retired list. When  
placed upon the retired list, an officer ~~shall~~ must be given the  
22 highest rank that person held ~~by--him~~ and federally recognized  
during ~~his~~ the person's term of service. If, at the time of ~~his~~  
24 the person's retirement, ~~he~~ that person has served as a  
commissioned officer in the state military forces or federal  
26 military service for 15 years or more, ~~he~~ the person may be  
retired with a rank one grade higher than the highest rank ~~that~~  
28 person held ~~by--him~~ during ~~his~~ the person's service. Retired  
officers are entitled to wear the uniform of the rank with which  
30 they were retired. No commissioned officer in the state military  
forces may be removed from office without ~~his~~ the person's  
32 consent, except by sentence of a court-martial or by a board of  
officers in a manner prescribed by law.

34 **3. Active state service.** Whenever the occasion requires,  
36 the Governor, the Adjutant General or Deputy Adjutant General,  
with the individual's consent, may order to active state service  
38 any retired officer, warrant officer or enlisted person, with or  
without pay and allowances of that person's grade while  
40 performing the service.

42 **Sec. 21. 37-B MRSA §155**, as enacted by PL 1997, c. 455, §15,  
is amended to read:

44 **§155. Reimbursement fund**

46 The Maine National Guard may provide services in accordance  
48 with section 181-A, subsections 4 and 5 and section 183 for  
federal, state, county, regional and municipal governments and  
50 agencies and nongovernmental entities and may charge for those

2 services. The fees collected must first be allocated for funding  
the cost of providing those services and any remaining fees may  
3 only be expended within the Military Bureau.

4  
6 **Sec. 22. 37-B MRSA §185, sub-§§2 and 3**, as enacted by PL 1983,  
c. 460, §3, are amended to read:

8 **2. Exemption from arrest.** Persons belonging to the state  
military forces are exempt from arrest as follows.

10 A. Every person belonging to the state military forces  
12 ~~shall~~, in all cases except a crime punishable by a maximum  
term of imprisonment equal to or exceeding one year or  
14 breach of the peace, be is privileged from arrest while  
going to, attending or returning from ~~required~~ active state  
16 service or federal military duty.

18 B. On the day of any active state service or federal  
military ~~training,--inspection,--review--or--election~~ duty, no  
20 officer or ~~soldier--required--by--law--to--attend--the--same~~  
enlisted member may be arrested in a civil action or mesne  
22 process, or on a warrant for taxes; nor may he that person  
be arrested on the day of annual Thanksgiving; Patriots'  
24 Day, ~~the 3rd Monday in April~~; Memorial Day, ~~the last Monday~~  
in May; July 4th; Labor Day, ~~the first Monday in September~~;  
26 Veterans' Day, November 11th; or Christmas.

28 **3. Exemption from jury duty.** Every member of the state  
military forces, while going to, attending or returning from  
30 ~~required~~ active state service or federal military duty, is exempt  
from jury duty. Production of a certificate from the claimant's  
32 commanding officer that he the person qualifies for the exemption  
is prima facie proof that he the person is entitled to the  
34 exemption.

36 **Sec. 23. 37-B MRSA §185, sub-§4**, as amended by PL 1995, c.  
600, §6, is further amended to read:

38 **4. Rights of a law enforcement officer.** A commissioned  
40 officer ~~member~~ of the state military forces when called to active  
duty state service under section 181-A, subsection 1, in addition  
42 to such other rights conferred by this chapter and otherwise by  
law, has the rights, authority and immunities of a law  
44 enforcement officer.

46 **Sec. 24. 37-B MRSA §186, sub-§1**, as amended by PL 1995, c.  
196, Pt. B, §3, is further amended to read:

48 **1. Compensation as state employee.** A member of the state  
50 military forces receives compensation as a state employee

2 according to the provisions of ~~former Title 39~~, Title 39-A and  
3 this section.

4 A. Duty status is as follows.

6 (1) The types of duty that are covered are:

8 (a) Active state service pursuant to ~~this Title,~~  
9 as defined by section 101-A, whether performed  
10 with or without compensation.

12 ~~(b) Inactive duty training, with or without pay,~~  
13 ~~under the United States Code, Title 32, Section~~  
14 ~~502;~~

16 ~~(c) Annual training under the United States Code,~~  
17 ~~Title 32, Sections 502 and 503;~~

18 ~~(d) Full-time training duty for 30 days or less~~  
19 ~~under the United States Code, Title 32, Section~~  
20 ~~502; and~~

22 ~~(e) Other training duties or schools under the~~  
23 ~~United States Code, Title 32, with status of less~~  
24 ~~than 30 days' duration.~~

26 (2) The types of duty that are not covered are:

28 ~~(a) Annual training or any other types of duty~~  
29 ~~under the United States Code, Title 10, including~~  
30 ~~Section 672, Subsections (b) and (d);~~

32 ~~(b) Initial active duty for training, such as~~  
33 ~~initial active duty service schools;~~

36 ~~(c) Full-time training duty for over 30 days~~  
37 ~~under the United States Code, Title 32, Section~~  
38 ~~502, Subsection (f); and~~

40 (d) Federal technician civilian duty under the  
41 United States Code, Title 32, Section 709; and

42 (e) Military duty performed pursuant to the  
43 United States Code, Title 10.

46 B. Types of injuries cognizable are as follows:

48 (1) The injury, disability or disease must have been  
49 received, incurred or contracted ~~as a result of~~  
50 qualified duty while in active state service;

2 (2) Service members must be under the control and  
supervision of the military. Incidents occurring  
4 during periods of leave or pass are not compensable; and

6 (3) An injury, disability or disease received not  
incident to duty or contracted with willful negligence  
8 or misconduct is not compensable.

10 C. Preconditions for benefits under ~~former Title 39 or~~  
Title 39-A are as follows:

12 (1) Federal income maintenance benefits must be  
14 applied for and, if they exceed comparable ~~former Title~~  
~~39 or~~ Title 39-A benefits, must be exhausted by the  
16 member before receiving weekly compensation benefits  
under ~~former Title 39 or~~ Title 39-A. Medical care at  
18 military or Veterans' Administration facilities,  
civilian care paid for by the military forces and other  
20 benefits furnished by the military force or the  
Veterans' Administration, including military ~~schools~~  
22 programs offered to retrain or occupationally  
rehabilitate the service member, must be used by ~~the~~  
24 ~~service member~~ before entitlement to ~~medical care~~  
benefits under ~~former Title 39 or~~ Title 39-A. Military  
26 ~~schools~~ programs are fully creditable under ~~former~~  
~~Title 39 or~~ Title 39-A in an approved plan of  
28 rehabilitation; and

30 (2) ~~Former Title 39 or~~ Title 39-A benefits are based  
on inability to perform the service member's usual  
32 ~~civilian~~ occupation.

34 D. For the purpose of calculation of compensation, average  
weekly wage must be computed solely on the earning capacity  
36 of the injured member in the ~~civilian~~ occupation in which  
that member is regularly engaged. In case of death,  
38 dependents are entitled to compensation as provided in  
~~former Title 39 or~~ Title 39-A and any amendments to that  
40 Title.

42 E. ~~If the member remains in a federal pay status or~~  
~~continues to receive pay in accordance with section 143, the~~  
44 ~~member's medical care must be through the military or~~  
~~Veterans' Administration unless the member is referred to~~  
46 ~~civilian care.~~ If the member is eligible for military or  
Veterans' Administration care and knowingly declines or  
48 through the member's actions forfeits rights to ~~the benefits~~  
~~of section 143 or to~~ federal care benefits, ~~this declination~~  
50 ~~or conduct serves to waive the member's rights~~ the member is

2 not entitled to seek compensation for civilian care under  
3 ~~former-Title-39-or~~ Title 39-A.

4 F. ~~For the purpose of former-Title-39, section-62, all~~ All  
5 federal benefits received by the member as a result of an  
6 injury, disability or disease are considered to be derived  
7 from the employer and constitute a setoff to compensation  
8 awarded as a result of this section. A dollar-for-dollar  
9 setoff is authorized for all ~~federal~~ benefits to include  
10 ~~continuation--of--pay--under--section--143,~~ continuation of  
11 federal pay and allowances, incapacitation pay, severance  
12 pay, disability retirement pay, Veterans' Administration  
13 disability payments and military and Veterans'  
14 Administration death benefits, and.

16 G. Reporting ~~under the early pay provisions of former-Title~~  
17 ~~39-or pursuant to~~ Title 39-A, ~~section-205-de~~ does not have  
18 to be initiated until a final decision is reached on the  
19 injured service member's entitlement to federal benefits or  
20 while military or veterans' disability benefits are received  
21 in lieu of compensation under ~~former-Title-39-or~~ Title 39-A,  
22 whichever ceases first. Veterans' disability benefits  
23 provided in this subsection include state military duty pay  
24 received under section 143, federal continuation pay or  
25 incapacitation pay in lieu of benefits under ~~former-Title-39~~  
26 ~~or~~ Title 39-A. The time provisions of ~~former-Title-39-or~~  
27 Title 39-A are effective commence upon notification to the  
28 service member that federal benefits are not authorized, or  
29 the gross monetary federal benefits are determined to be  
30 less than the entitlements under ~~former-Title-39-or~~ Title  
31 39-A without taking into account the setoff prescribed in  
32 paragraph E.

34 **Sec. 25. 37-B MRSA §221, sub-§4,** as enacted by PL 1983, c.  
35 460, §3, is repealed.

36 **Sec. 26. 37-B MRSA §224, sub-§4,** as enacted by PL 1983, c.  
37 460, §3, is amended to read:

38 **4. Pay and allowances.** The pay and allowances of members  
39 of the Maine State Guard when called to active state ~~duty shall~~  
40 be service are the same as provided in section 143. When the  
41 Maine State Guard is organized for inspection and drill purposes  
42 only, ~~that activity shall not be deemed active state duty and no~~  
43 pay may be allowed is authorized.

44 **Sec. 27. 37-B MRSA §264, sub-§3, ¶¶F and G,** as enacted by PL  
45 1997, c. 783, §1, are amended to read:

46 F. The Millinocket Armory; and

2 G. A 6 1/2-acre parcel of land located on the northeasterly  
4 side of U.S. Route One across from the Belfast Armory and  
part of the parcel of land described in the Waldo County  
Registry of Deeds, Book 411, Page 446-1

6 **Sec. 28. 37-B MRSA §264, sub-§3, ¶¶H and I** are enacted to read:

8 H. The Caribou Armory located at 55 Bennett Drive, Caribou,  
10 but not including the organizational maintenance shop, known  
as OMS5, nor the metal storage building; and

12 I. The Fort Fairfield Armory located at 25 Columbia Street,  
14 Fort Fairfield.

16 **Sec. 29. 37-B MRSA §265**, as enacted by PL 1983, c. 460, §3,  
is repealed.

18 **Sec. 30. 37-B MRSA §301, sub-§1**, as repealed and replaced by  
20 PL 1983, c. 594, §13, is repealed.

22 **Sec. 31. 37-B MRSA §301, sub-§2**, as amended by PL 1983, c.  
594, §14, is further amended to read:

24 **2. Gifts to the State.** The Governor or the Adjutant  
26 General, or both, may accept, in the name of the State, donations  
of real estate and personal property to be used for military  
28 purposes by the state military forces upon such conditions as the  
donor may prescribe. The Governor may prescribe further rules  
30 pertaining to donated property.

32 **Sec. 32. 37-B MRSA §302, sub-§1**, as enacted by PL 1983, c.  
460, §3, is amended to read:

34 **1. By the State.** Whenever the Military Fund is sufficient,  
36 the Adjutant General may, with the approval of the Governor,  
erect armories and other necessary buildings ~~upon land donated to~~  
38 ~~the State for that purpose.~~

40 **Sec. 33. 37-B MRSA §302, sub-§2**, as enacted by PL 1983, c.  
460, §3, is repealed.

42 **Sec. 34. 37-B MRSA §342, sub-§2**, as enacted by PL 1983, c.  
44 460, §3, is amended to read:

46 **2. Other military organizations prohibited.** No group of  
persons, other than federal or state military forces, may join  
48 together as a military organization or parade in public with  
firearms. ~~No city or town shall raise or appropriate money~~

2 toward supporting such an organization. Associations wholly  
3 composed of honorably discharged servicemen of the United States  
4 and the order known as the Sons of Veterans Associations of  
5 historical military reenactors may parade in public with firearms  
6 with written authorization of the city or town officials in the  
7 municipality in which they wish to parade. Students in  
8 educational institutions where military science is taught, as a  
9 prescribed part of the course of ~~instructions~~ instruction, may,  
10 with the consent of the Governor, drill and parade with firearms  
11 in public under the supervision of their military instructors.

12 Any person violating this subsection is guilty of a Class E crime.

14 **Sec. 35. 37-B MRSA §342, sub-§5**, as repealed and replaced by  
15 PL 1987, c. 263, §1, is amended to read:

16 **5. Employment; leave of absence.** It is unlawful for any  
17 public or private employer to penalize any member of the state  
18 ~~military forces, including the Maine Army and Air~~ National Guard  
19 ~~or the Reserves of the United States Armed Forces~~, with regard to  
20 compensation, hiring, tenure, terms, conditions, or privileges of  
21 employment or to deny any other incident or advantage of  
22 employment due to the employee's membership or participation in  
23 the ~~state military forces~~ National Guard or the Reserves of the  
24 United States Armed Forces.

26 A. Any person, including an employer described in this  
27 subsection, who willfully deprives a member of the state  
28 ~~military forces, including the Maine Army and Air~~ National  
29 ~~Guard or the Reserves of the United States Armed Forces~~, of  
30 his the member's employment, prevents his the member's  
31 employment, interferes with his the member's employment  
32 rights as described in this subsection, or otherwise  
33 obstructs him the member or his the member's employer with  
34 respect to his the member's occupation or business because  
35 of his the member's membership in the ~~state military forces~~  
36 National Guard or the Reserves of the United States Armed  
37 Forces, or who dissuades any person from enlisting in, the  
38 ~~state military forces~~ National Guard or the Reserves of the  
39 United States Armed Forces by threat of injury to his the  
40 member's occupation or business, is guilty of a Class E  
41 crime.

44 B. All officials and employees of the State who are members  
45 of the ~~state military forces, or reserves~~ National Guard or  
46 the Reserves of the United States Armed Forces, ~~shall~~ must  
47 have a leave of absence not to exceed 17 work days each  
48 calendar year from their respective duties, without loss of  
49 pay or time, when engaged in all-~~annual~~ military training  
50 ~~duty days authorized by the Governor or under federal laws~~

2 ~~and-regulations~~ and without loss of time or leave ~~en for~~ all  
3 ~~inactive-duty,--full-time~~ other military training duty--and  
4 ~~active-duty-training-days,~~ during which the members are so  
engaged.

6 **Sec. 36. 37-B MRSA §342, sub-§§6 and 7,** as enacted by PL 1983,  
c. 460, §3, are amended to read:

8  
9 **6. Discrimination against members of the National Guard or**  
10 **Reserves of the United States Armed Forces.** Anyone who  
11 discriminates against ~~state--military~~ personnel of the National  
12 Guard or the Reserves of the United States Armed Forces shall  
13 must be punished as follows.

14  
15 A. No association or corporation organized to promote the  
16 trade, occupation or business of its members may by a rule  
17 or act discriminate against any member of the ~~state-military~~  
18 ~~forces~~ National Guard or the Reserves of the United States  
19 Armed Forces with respect to ~~his~~ the member's eligibility  
20 for membership in the association or corporation, nor ~~his~~  
21 the member's right to retain ~~his~~ the member's membership.  
22 Whoever aids in enforcing a rule or action against a member  
23 of the ~~state-military--forces~~ National Guard or the Reserves  
24 of the United States Armed Forces, with intent to  
25 discriminate against ~~him~~ the member, is guilty of a Class E  
26 crime.

27  
28 B. Whoever without good cause discriminates against any  
29 uniformed member of the ~~state-military--forces~~ National Guard  
30 or the Reserves of the United States Armed Forces with  
31 respect to the enjoyment of any public place of amusement,  
32 the use of any public conveyance, access to public lodging  
33 or the receipt of other services generally available to the  
34 public is guilty of a Class E crime.

35  
36 **7. Interference with members in performance of duties.**  
37 Whoever intentionally molests, abuses or interferes with any  
38 member of the ~~state--military--forces~~ National Guard or the  
39 Reserves of the United States Armed Forces in the performance of  
40 ~~his~~ the member's duty is guilty of a Class E crime.

41  
42 **Sec. 37. 37-B MRSA §342, sub-§8,** as enacted by PL 1983, c.  
43 460, §3, is repealed.

44  
45 **Sec. 38. 37-B MRSA §381, first ¶,** as enacted by PL 1983, c.  
46 460, §3, is amended to read:

47  
48 Except as provided in this section, no component of the  
49 state military forces, except the National Guard when called to  
50 federal service, may leave the State and no military organization



2 of another state, unless acting under authority of the United  
States, may enter the State, except by permission of the Governor  
or the Adjutant General.

4  
6 **Sec. 39. 37-B MRSA §§387 to 390** are enacted to read:

8 **§387. Stay of forcible entry and detainer during military service**

10 **1. General rule.** Whenever any member of the National Guard  
or the Reserves of the United States Armed Forces is ordered to  
12 military duty in response to federal or state orders, a forcible  
entry and detainer action may not be made of the premises  
14 occupied chiefly for dwelling purposes by the military member or  
any military family member or other dependents, except upon leave  
of court granted upon application for such an action.

16 **2. Stay of proceedings.** In an action brought pursuant to  
18 subsection 1, the court may on its own motion or upon the motion  
of the military member or military family member, stay the  
20 proceedings if in the opinion of the court the ability of the  
military member or military family member to pay the rent is  
22 materially affected by reason of the military service. The court  
may make such other order as may be just under the circumstances,  
24 including an order postponing full payment of the rent.

26 **3. Impact on landlords.** When a stay or other order is made  
pursuant to this section by the court, the owner of the premises  
28 is entitled upon application to such relief as the court  
determines just and equitable under the circumstances, including  
30 an order of the military member or military family member to pay  
the arrearage in rent upon the release from military service to  
32 the extent and for such a period as may appear to the court just.

34 **§388. Educational leave of absence**

36 Whenever any member of the National Guard or the Reserves of  
the United States Armed Forces is ordered to military duty in  
38 response to federal or state orders, the educational institution  
in which the member is enrolled shall grant the member a military  
40 leave of absence from the educational institution. Upon release  
from military duty, a person on military leave of absence from an  
42 educational institution is entitled to be restored to the  
educational status that person had attained prior to being  
44 ordered to military duty without loss of academic credits earned,  
scholarships or grants awarded to tuition, room and board and  
46 other fees paid prior to the commencement of military duty. The  
educational institution shall proportionately refund tuition,  
48 room and board and other fees paid or credit them to the next  
semester or term after the termination of the educational  
50 military leave of absence, at the option of the member.

2       **§389. Stay of proceeding for military members**

4           A member of the National Guard or the Reserves of the United  
6       States Armed Forces may at any stage of any action or proceeding  
8       in any court or administrative hearing in which the member is  
10       involved, either as plaintiff, defendant or attorney, during the  
12       period of any military service or within 60 days thereafter, in  
14       the discretion of the court or administrative hearing officer, by  
16       the member's own motion or motion of the court or administrative  
18       hearing officer, be stayed unless, in the opinion of the court or  
20       the administrative hearing officer, the ability of the plaintiff  
22       to prosecute the action, the defendant to conduct the defendant's  
24       defense or the attorney to represent either party is not  
26       materially affected by reason of the member's military service.

18       **§390. Deferred motor vehicle insurance coverage**

20           1. Applicability. This section applies whenever any member  
22       of the National Guard or the Reserves of the United States Armed  
24       Forces is ordered to military duty in response to federal or  
26       state orders for 30 or more consecutive days.

28           2. Deferral of coverage. A member of the military forces  
30       as described in subsection 1 may defer without cost or penalty  
32       motor vehicle insurance coverage during the period of military  
34       duty on one or more vehicles owned by the member, either  
36       individually or jointly with another person, as long as the  
38       member certifies to the insurer that the vehicle will not be  
40       operated during the member's absence on military duty and, if a  
42       motor vehicle serves as collateral for a loan, the member must  
44       continue to insure it against the risks of property damage and  
46       theft as required by the lender.

48           3. Refund or crediting of prepaid premiums. The insurer  
50       shall, at the election of the member, refund premiums paid for  
52       coverage during the period of deferral or credit those premiums  
54       to coverage in effect after the end of the deferral period.

56           4. Reinstatement of deferred coverage. Upon the member's  
58       release or discharge from military duty, the insurer shall, upon  
60       notice, reinstate the member's coverage at the rates in effect on  
62       the date of reinstatement.

64           Sec. 40. 37-B MRSA §402, sub-§4, as enacted by PL 1983, c.  
66       460, §3, is amended to read:

68           4. Commanding officer. "Commanding officer" means any  
70       commissioned officer vested with the authority for the direction,  
72       coordination and control of a military unit.

2           **Sec. 41. 37-B MRSA §403, sub-§1**, as repealed and replaced by  
PL 1987, c. 263, §2, is amended to read:

4  
6           **1. Active member.** All members of the state military forces  
7 ~~who are not in federal active service under the United States~~  
8 ~~Code, Title 10,~~ are subject to the Maine Code of Military Justice  
9 at all times except when in federal service pursuant to United  
10 States Code, Title 10.

12           A. This code applies to members of the state military  
13 forces serving out-of-state and while going to and returning  
14 from service out-of-state to the same extent as a person  
serving within the State.

16           B. Offenses committed outside the State may be tried and  
17 punished either inside or outside the State subject to  
18 section 418.

20           **Sec. 42. 37-B MRSA §405**, as amended by PL 1983, c. 594, §20,  
is further amended to read:

22           **§405. Judge advocates**

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

30           **Sec. 43. 37-B MRSA §407, sub-§2**, as enacted by PL 1983, c.  
31 460, §3, is amended to read:

34           **2. Order.** A person subject to this Code who is charged  
35 with an offense under this Code shall may be ordered into arrest  
36 or confinement, as circumstances require.

38           A. An enlisted person may be ordered into arrest or  
39 confinement by any officer by an order, oral or written,  
40 delivered in person or through other persons subject to this  
41 Code. A commanding officer may authorize warrant officers  
42 or noncommissioned officers to order enlisted persons of ~~his~~  
43 the commanding officer's command or subject to ~~his~~ the  
44 commanding officer's authority into arrest or confinement.

46           B. An officer or warrant officer may be ordered into arrest  
47 or confinement only by a commanding officer to whose  
48 authority he the officer or warrant officer is subject. The  
order may be oral or written and delivered in person or by

2 another officer. The authority to order officers or warrant  
officers into arrest or confinement may not be delegated.

4 **Sec. 44. 37-B MRSA §411, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

6 All officers, ~~warrant-officers~~ and noncommissioned officers  
8 may quell all quarrels, frays and disorders among persons subject  
to this Code and apprehend persons subject to this Code who take  
10 part in those disorders.

12 **Sec. 45. 37-B MRSA §414, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

14 Insofar as it is not inconsistent with this Code, the United  
16 States Manual for Courts-Martial, as established by executive  
order of the President of the United States and as revised from  
18 time to time, shall--apply applies to the--military--forces  
proceedings pursuant to this chapter.

20 **Sec. 46. 37-B MRSA §415**, as amended by PL 1983, c. 594, §§22  
22 to 25, is repealed.

24 **Sec. 47. 37-B MRSA §415-A** is enacted to read:

26 **§415-A. Nonjudicial punishment**

28 **1. Disciplinary punishment.** A commander may, in addition  
29 to or in lieu of admonition, reprimand or extra training, impose  
30 disciplinary punishments for minor offenses without the  
intervention of a court-martial as follows.

32 A. A company grade officer commander or warrant officer  
34 commander may impose one or more of the following  
punishments:

36 (1) Forfeiture of up to one day's pay;

38 (2) Up to 4 hours of extra duties; or

40 (3) Prohibition of promotion of up to one year.

42 B. A field grade officer commander may impose one or more  
44 of the following punishments:

46 (1) Forfeiture of up to 3 days' pay;

48 (2) Up to 8 hours of extra duties; or

50 (3) Prohibition of promotion of up to one year.

2           C. A general officer commander may impose one or more of  
3           the following punishments:

4                     (1) Forfeiture of up to 5 days' pay;

6                     (2) Up to 16 hours of extra duties;

8                     (3) Prohibition of promotion of up to one year; or

10                    (4) Reduction of one grade for enlisted members.

12           D. Only a general officer commander may impose punishments  
14           upon officers.

16           E. An individual being considered for nonjudicial  
18           punishment has the right to consult counsel prior to  
19           receiving disciplinary punishment under this section.

20           2. Suspend; reduce. The commander who imposes disciplinary  
22           punishment, or successor in command, may at any time suspend or  
23           reduce, or both, disciplinary punishment imposed.

24           3. Appeal. A person punished under this section may  
26           appeal, through the proper channels, to the next higher  
27           commander. The appeal must be promptly forwarded and decided, in  
28           the meantime all disciplinary punishment is stayed. The  
29           commander to whom the appeal is referred may suspend or reduce,  
30           or both, the disciplinary punishment. Before ruling, the  
31           commander who is to act on the appeal may refer the case to a  
32           judge advocate for consideration. The commander to whom the  
33           appeal is referred shall submit the case to a judge advocate for  
34           review when the appeal is from a reduction in grade or forfeiture  
35           of 3 or more days of pay.

36           4. Increase. Once nonjudicial punishment has been imposed,  
38           it may not be increased upon appeal or otherwise for the same  
39           offense.

40           5. Right to counsel. A person that has disciplinary  
42           punishment imposed under this section has the right to assistance  
43           of military counsel in filing an appeal. There is no right to  
44           appeal the imposition of disciplinary punishment under this  
45           section to the civilian courts.

46           6. Serious crime. The imposition and enforcement of  
48           disciplinary punishment under this section for any act or  
49           omission is not a bar to trial by court-martial or to a trial in  
50           the civilian courts of this State, another state or the United  
51           States for a serious crime or offense growing out of the same act

2 or omission that is not properly punishable under this section.  
4 The fact that a disciplinary punishment has been enforced may be  
6 shown by the accused at trial and must be considered in  
8 determining the measure of punishment to be adjudged in the event  
10 of a finding of guilty.

12 7. Records. The Governor may by rule prescribe the form of  
14 records to be kept of proceedings under this section and may  
16 prescribe that the records must be in writing.

18 8. Enforcement. A fine imposed pursuant to this section  
20 may be enforced as a money judgment in accordance with Title 14,  
22 chapter 502.

24 9. Pay. For the purposes of this section, a "day's pay"  
26 means that pay a member is entitled to for one unit training  
28 assembly, also known as one drill period.

30 **Sec. 48. 37-B MRSA §417, sub-§8,** as enacted by PL 1983, c.  
32 460, §3, is amended to read:

34 **8. Reduction to the lowest rank.** Reduction of  
36 noncommissioned officers to the ranks lowest enlisted rank.

38 **Sec. 49. 37-B MRSA §418, first ¶,** as amended by PL 1983, c.  
40 594, §26, is further amended to read:

42 The jurisdiction of a court-martial is limited to trial of  
44 persons subject to this Code who are accused of military offenses  
46 described in this Code. Persons subject to this Code who are  
48 accused of offenses cognizable by the civil courts of this State  
or any other state where the military forces are present may,  
upon accusation of a civil offense, be surrendered promptly to  
civil authorities for disposition if the mission of the military  
force will not be compromised. If the person subject to this  
Code is accused of both a military offense under this Code and a  
civil criminal offense by the civil authorities, ~~he shall be~~  
~~released to the civil authorities if the crime for which he is~~  
~~accused by the civil authorities carries a penalty greater than~~  
~~the maximum penalty for the military offense provided by this~~  
~~Code, provided that the disposition of the civil offense shall~~  
~~not limit or effect the applicability of this Code to the~~  
~~military offense for which the person is accused~~ that member may  
be prosecuted by either or both authorities and if found guilty,  
appropriately punished by either or both authorities.

46 **Sec. 50. 37-B MRSA §420, sub-§3,** as enacted by PL 1983, c.  
48 460, §3, is amended to read:

2           3. **Enlisted member.** An enlisted member, ~~who is not a~~  
3 ~~member of the same unit as the accused,~~ is eligible to serve on a  
4 court-martial for the trial of an enlisted member of an armed  
5 force who may lawfully be brought before the court for trial, ~~but~~  
6 ~~he shall serve as a member of a court only if the accused~~  
7 ~~personally has requested in writing that enlisted members serve~~  
8 ~~on it. That request shall occur before the conclusion of a~~  
9 ~~session called by the military judge prior to trial or, in the~~  
10 ~~absence of such a session, before the court is assembled for the~~  
11 ~~trial of the accused. After the request, the An enlisted accused~~  
12 ~~may not be tried by a court-martial which that does not include~~  
13 ~~in its membership enlisted members in a number comprising at~~  
14 ~~least least 1/3 of the total membership of the court, unless~~  
15 ~~eligible enlisted members cannot be obtained on account of~~  
16 ~~physical conditions or military exigencies. If enlisted members~~  
17 ~~cannot be obtained, the court may be assembled and the trial held~~  
18 ~~without them, but the assembling authority shall make a detailed~~  
19 ~~written statement, in the record, stating why they could not be~~  
20 ~~obtained.~~

21 In this subsection, ~~the word "unit" means any regularly organized~~  
22 ~~body as defined by the Governor, but in no case may it be a body~~  
23 ~~larger than a company, squadron or corresponding body.~~

24           **Sec. 51. 37-B MRSA §425, first ¶,** as enacted by PL 1983, c.  
25 460, §3, is amended to read:

26           Except as provided otherwise by this Code, the pretrial and  
27 trial procedures before a court-martial shall must be in  
28 accordance with the procedures set forth in the United States  
29 Uniform Code of Military Justice, Title 10, United States Code,  
30 Chapter 47, for a special court-martial and the United States  
31 Manual for Courts-Martial as each is revised from time to time.

32           **Sec. 52. 37-B MRSA §428, sub-§1,** as enacted by PL 1983, c.  
33 460, §3, is amended to read:

34           1. **Imprisonment.** Under instructions issued by the  
35 Governor, a sentence of imprisonment adjudged by a court-martial  
36 ~~or other military tribunal,~~ whether or not the sentence includes  
37 discharge or dismissal and whether or not the discharge or  
38 dismissal has been executed, may be carried into execution by  
39 imprisonment in any place designated as provided in section 408.  
40 Persons confined in a correctional center not under the control  
41 of one of the military forces are subject to the same discipline  
42 and treatment as persons committed by the courts of the State.

43 Any period of imprisonment included in a sentence of a  
44 court-martial begins to run from the date the sentence is  
45 adjudged by the court-martial, but periods during which the

2 sentence to imprisonment is suspended or deferred, ~~shall~~ must be  
excluded in computing the service of the term of imprisonment.

4 **Sec. 53. 37-B MRSA §433**, as enacted by PL 1983, c. 460, §3,  
is amended to read:

6 **§433. Appeal**

8  
10 Upon petition of the accused, the Supreme Judicial Court  
shall review the record of any ease court-martial approved by the  
convening authority.

12  
14 The accused shall file the petition for review within 30  
days of the time he the accused is notified of the approval of  
his the case by the convening authority.

16  
18 On the same date that he the accused files his the petition  
for review in the Supreme Judicial Court, the accused shall file  
a notice of his the accused's intention to appeal with the  
convening authority. Within 30 days, the convening authority  
shall forward the complete transcript of the case to the Supreme  
22 Judicial Court.

24 **Sec. 54. 37-B MRSA §444, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

26  
28 Any person subject to this Code who behaves with disrespect  
toward his a superior eommissioned officer shall must be punished  
as a court-martial may direct.

30  
32 **Sec. 55. 37-B MRSA §445, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

34  
36 Any person subject to this Code who strikes his a superior  
eommissioned officer or draws or lifts up any weapon or offers  
any violence against him a superior officer while that officer is  
in the execution of his that office or willfully disobeys a  
38 lawful command of his the superior eommissioned officer shall  
must be punished as a court-martial may direct.

40  
42 **Sec. 56. 37-B MRSA §446, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

44  
46 Any warrant--officer--or--enlisted member who strikes or  
assaults a warrant an officer or noncommissioned officer while  
that officer or noncommissioned officer is in the execution of  
his that office, willfully disobeys the lawful order of a warrant  
48 an officer or noncommissioned officer, or treats with contempt or  
is disrespectful in language or deportment toward a warrant an  
50 officer or noncommissioned officer while that officer or



2 noncommissioned officer is in the execution of his that office  
shall must be punished as a court-martial may direct.

4 **Sec. 57. 37-B MRSA §450, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

6 Any person subject to this Code who is found under the  
8 influence of alcoholic liquor or any drug while on duty shall or  
reporting for duty must be punished as a court-martial may direct.

10 **Sec. 58. 37-B MRSA §§455 to 459** are enacted to read:

12 **§455. Cruelty and maltreatment**

14 Any person subject to this Code who is guilty of cruelty  
16 toward, or oppression or maltreatment of, any person subject to  
that person's orders must be punished as a court-martial may  
18 direct.

20 **§456. Military property of United States or State;**  
**sale, loss, damage, destruction or wrongful**  
22 **disposition**

24 Any person subject to this Code must be punished as a  
court-martial may direct if that person, without proper  
26 authority, does any of the following with any military property  
of the United States or the State:

28 **1. Sells.** Sells or otherwise disposes of that military  
30 property;

32 **2. Damages or loses.** Willfully or through neglect damages,  
destroys or loses that military property; or

34 **3. Suffers to be lost; sold.** Willfully or through neglect  
36 suffers that military property to be lost, damaged, destroyed,  
sold or wrongfully disposed of.

38 **§457. Wrongful possession of controlled substance**

40 **1. Definitions.** As used in this section, unless the  
42 context otherwise indicates, the following terms have the  
following meanings.

44 **A. "Controlled substance" means:**

46 (1) Opium, heroin, cocaine, amphetamine, lysergic acid  
48 diethylamide, methamphetamine, phencyclidine,  
barbituric acid, marijuana and any compound or  
50 derivative of any such substance;

2           (2) Any substance not specified in subparagraph (1)  
4           that is listed on a schedule of controlled substances  
6           prescribed by the President of the United States for  
            the purposes of the Uniform Code of Military Justice;  
            and

8           (3) Any other substance not specified in subparagraph  
10          (1) or contained on a list prescribed by the President  
12          of the United States under subparagraph (2) that is  
            listed in schedules I to V of section 202 of the  
            Controlled Substances Act, 21 United States Code,  
14          Section 812.

16          2. Prohibition. Any person subject to this Code who  
18          wrongfully uses, possesses, manufactures, distributes, imports  
20          into the customs territory of the United States, exports from the  
            United States, or introduces into an installation, vessel,  
            vehicle or aircraft used by or under the control of the state  
            military forces a controlled substance described in subsection 1,  
22          must be punished as a court-martial may direct.

24          §458. Larceny and wrongful appropriation

26          1. Prohibitions. Any person subject to this Code who  
28          wrongfully takes, obtains or withholds, by any means, from the  
            possession of the owner or of any other person any money,  
            personal property or article of value of any kind:

30            A. With intent permanently to deprive or defraud another  
32            person of the use and benefit of property or to appropriate  
34            it to the person's own use or the use of any person other  
              than the owner, steals that property and is guilty of  
              larceny; or

36            B. With intent temporarily to deprive or defraud another  
38            person of the use and benefit of property or to appropriate  
40            it to the person's own use or the use of any person other  
              than the owner, is guilty of wrongful appropriation.

42          2. Punishment. Any person found guilty of larceny or  
44          wrongful appropriation must be punished as a court-martial may  
            direct.

46          §459. Assault

48          1. Prohibition; assault. Any person subject to this Code  
50          who attempts or offers with unlawful force or violence to do  
            bodily harm to another person, whether or not the attempt or  
            offer is consummated, is guilty of assault.

2           **2. Prohibition; aggravated assault.** Any person subject to  
3 this Code is guilty of aggravated assault if that person:

4           A. Commits an assault with a dangerous weapon or other  
5 means or force likely to produce death or grievous bodily  
6 harm; or

7           B. Commits an assault and intentionally inflicts grievous  
8 bodily harm with or without a weapon.

9           **3. Punishment.** Any person found guilty of assault or  
10 aggravated assault must be punished as a court-martial may direct.

11           **Sec. 59. 37-B MRSA §501**, as amended by PL 1997, c. 455, §17,  
12 is further amended by adding at the end a new paragraph to read:

13           The bureau acts as the primary public advocate for veterans  
14 before the United States Department of Veterans Affairs.

15           **Sec. 60. 37-B MRSA §503**, as amended by PL 1997, c. 643, Pt.  
16 Q, §7, is further amended to read:

17           **§503. Powers and duties**

18           The director has the following powers and duties.

19           1. **Employment of personnel.** The director may employ,  
20 subject to approval of the appointing authority and the Civil  
21 Service Law, the personnel necessary to administer this chapter.  
22 ~~All full-time permanent employees, except clerical employees and~~  
23 ~~laborers, The director may employ a director of the cemetery~~  
24 ~~system, a veteran claims specialist and veteran advocates. The~~  
25 ~~director and other employees referred to in this subsection~~ must  
26 be veterans as defined by 38 United States Code, Section 101 (2)  
27 who were separated with an honorable discharge.

28           2. **Expenditures.** The director may make expenditures  
29 approved by the commissioner necessary to carry out this chapter.

30           3. **Agent.** The director shall act, upon request, as the  
31 agent of any Maine resident who has a legitimate claim against  
32 the United States for any ~~compensation, pension, insurance, loan~~  
33 ~~or other~~ benefit accruing as a result of any federal or state  
34 military service and, in cooperation with all public and private  
35 agencies, shall prosecute the claim without charge.

36           4. ~~Record.~~ ~~The director shall maintain a permanent record~~  
37 ~~of all Maine residents who served in the armed services after~~  
38 ~~December 7, 1941.~~

2           ~~6. -- Other duties. -- The director shall perform other duties~~  
3           ~~required by this chapter.~~

4           **Sec. 61. 37-B MRSA §503-A, first ¶**, as enacted by PL 1991, c.  
5           626, §10 and amended by PL 1997, c. 455, §32, is further amended  
6           to read:

7           The Commissioner of Defense, Veterans and Emergency  
8           Management may, in accordance with Title 5, chapter 375,  
9           subchapter II, adopt reasonable rules necessary to carry out this  
10          chapter, provided that regulations pertaining to the management  
11          of the Maine Veterans' Memorial Cemetery System are not rules  
12          within the meaning of Title 5, section 8002, subsection 9.

13          **Sec. 62. 37-B MRSA §504, sub-§§1 and 2**, as amended by PL 1999,  
14          c. 401, Pt. II, §1, are further amended to read:

15           **1. Land acquisition.** The director may acquire by eminent  
16          domain in accordance with Title 35-A, chapter 65 and with  
17          approval of the Governor, or by purchase, gift or otherwise, real  
18          estate in fee simple, or any interest therein, for use as ~~a~~ by  
19          the Maine Veterans' Memorial Cemetery System. ~~The land for at~~  
20          ~~least one cemetery must be located near the center of population~~  
21          ~~of the State.~~

22           **2. Superintendent.** The director, with approval of the  
23          appointing authority, shall appoint a competent and trustworthy  
24          ~~cemetery superintendent~~ director of the cemetery system and shall  
25          arrange for personnel, material and equipment necessary for  
26          adequate maintenance of the cemeteries. ~~The superintendent must~~  
27          ~~be an honorably discharged war veteran or a war veteran currently~~  
28          ~~a member of the armed services in nonactive or reserve status.~~

29          **Sec. 63. 37-B MRSA §504, sub-§3, ¶C**, as amended by PL 1991, c.  
30          626, §12, is further amended to read:

31           C. All grave markers must be flat-type granite, as  
32          furnished by the United States Department of the Army,  
33          Memorial Division, or flat-type granite facsimiles of a  
34          marker. All boxes used for burial must be protected with  
35          permanent vaults ~~or grave liners.~~ Stones and vaults may are  
36          not be provided at state expense.

37          **Sec. 64. 37-B MRSA §505, sub-§2**, as amended by PL 1997, c.  
38          455, §26, is further amended to read:

39           **2. Educational benefits.** Educational benefits ~~shall be~~ are  
40          granted as follows.

2 A. As used in this subsection, unless the context otherwise  
indicates, the following terms have the following meanings.

4 (1) "Child" means a child whose mother or father is or  
was a veteran and the child:

6 (a) Is at least 16 years of age;

8 (b) Has graduated from high school; and

10 (c) ~~Is not over 21 years of age at the time of~~  
12 ~~first entering a vocational school or~~  
14 ~~post-secondary educational institution or, if over~~  
16 ~~21 years of age upon that entry, is not over 25~~  
18 ~~years of age and had been unable to enter before~~  
20 ~~the age of 21 years~~ Enrolled in a degree program  
22 prior to turning 22 years of age and is not over  
24 25 years of age at the time of application for a  
benefit under this subsection. If the child is  
unable to enroll in a degree program prior to  
turning 22 years of age due to service in the  
United States Armed Forces, then the child may  
apply to begin this benefit until reaching 26  
years of age. Other requirements must be met as  
described in paragraph C.

26 "Child" also means a stepchild who is a member of a  
28 veteran's household either at the time of application  
30 or, in the event of the veteran's death, at the time of  
death, and who continues as a member of the household  
after the death of the veteran.

32 (2) "Spouse" means the person currently legally  
34 married to a living veteran or the widow or widower of  
36 a deceased veteran, not previously divorced from that  
veteran.

38 (3) "Veteran" means any person who served in the  
40 military or naval forces of the United States and  
entered the service from this State or resided in this  
42 State for 5 years immediately preceding application for  
aid and who:

44 (a) Is living and is determined to have a total  
46 permanent disability resulting from a  
service-connected disability as a result of  
48 service;

(b) Was killed in action;

2 (c) Died from a service-connected disability as a  
result of service;

4 (d) At the time of death was totally and  
6 permanently disabled due to service-connected  
disability, but whose death was not related to the  
8 service-connected disability; or

10 (e) Is a member of the Armed Forces on active  
12 duty who has been listed for more than 90 days as  
missing in action, captured or forcibly detained  
or interned in the line of duty by a foreign  
14 government or power.

16 ~~B.--The bureau shall pay to a spouse or child of a veteran a  
maximum of \$300 per year toward the cost of higher education  
during a period not exceeding 8 semesters of attendance or 6  
18 consecutive academic years from the date of first entrance.  
The director may waive the limitation of 6 consecutive  
20 academic years when the recipient's education has been  
interrupted by severe medical disability or illness making  
22 continued attendance impossible. These educational benefits  
must be used for the purpose of providing tuition,  
24 matriculation fees, board, room rent, books and supplies.  
Assistance under this subsection may not be paid to any  
26 eligible person receiving benefits under paragraph C.~~

28 ~~G.--Spouses and children of veterans who are attending  
state-supported post-secondary vocational schools or  
30 institutions of collegiate grade shall be admitted free of  
tuition.~~

32 ~~D.--Appropriations for the administration of this subsection  
must be determined from the recommendation of the director,  
34 who shall furnish estimates of the costs of carrying out  
this subsection in the same manner as for other  
36 appropriations allocated to the bureau. Appropriations made  
for these purposes will be to a specific account.~~

40 E. Spouses of veterans who are attending state-supported  
postsecondary vocational schools or institutions of  
42 collegiate grade must be admitted free of tuition including  
mandatory fees and lab fees for associate's, bachelor's and  
44 master's degree programs. Room and board may not be waived.

46 F. A child of a veteran who is attending state-supported  
postsecondary vocational schools or institutions of  
48 collegiate grade must be admitted free of tuition including  
mandatory fees and lab fees for associate's and bachelor's  
50 programs. Room and board may not be waived. A child of a

2 veteran has 6 academic years from the date of first entrance  
3 to complete 8 semesters. The director may waive the limit  
4 of 6 consecutive academic years when the recipient's  
5 education has been interrupted by severe medical disability  
6 or illness making continued attendance impossible.

7 G. The director shall estimate the number of students  
8 anticipated that will use this program and provide the  
9 estimate to state institutions upon request.

10 **Sec. 65. 37-B MRSA §505, sub-§4,** as amended by PL 1997, c.  
11 455, §27, is repealed.

12 **Sec. 66. 37-B MRSA §506, sub-§4,** as amended by PL 1991, c.  
13 626, §19, is further amended to read:

14 **4. Agencies engaged in health and welfare work.** To any  
15 public or private agency engaged in health, welfare,  
16 rehabilitation or child placement work, from whom a veteran or  
17 that veteran's dependents have requested services, when, in the  
18 supervisor's veteran advocate's judgment, disclosure is essential  
19 to the proper evaluation of the request.

20 **Sec. 67. 37-B MRSA §507, sub-§§3 and 4,** as enacted by PL 1983,  
21 c. 460, §3, are amended to read:

22 **3. Reemployment and readjustment.** Furnishing information  
23 and assistance respecting reemployment and other matters  
24 concerning the readjustment of veterans to civilian life; and

25 **4. Federal requirements.** Meeting such federal requirements  
26 regarding the administration of federal funds as may be  
27 conditions precedent to the receipt of these funds; and

28 **Sec. 68. 37-B MRSA §507, sub-§5** is enacted to read:

29 **5. Cemetery construction and maintenance.** The state  
30 cemetery grants program.

31 **Sec. 69. 37-B MRSA §508** is enacted to read:

32 **§508. Veteran advocates**

33 Veteran advocates shall serve, assist and advocate for all  
34 veterans. A veteran advocate must be trained and conversant on  
35 the issues, benefits and definitions affecting all veterans,  
36 including atomic, Vietnam, Desert Storm and female veterans.

37 **Sec. 70. 37-B MRSA §701,** as amended by PL 1987, c. 370, §14,  
38 is further amended to read:

2       **§701. Title; purpose**

4               This chapter may be cited as the "Maine Civil Emergency  
6       Preparedness Management Act." It is the purpose of this chapter  
to:

8               **1. Agency.** Establish the Maine Emergency Management Agency  
10       to lessen the effects of disaster on the lives and property of  
12       the people of the State through leadership, coordination and  
support in the 4 phases of emergency management: mitigation,  
preparedness, response and recovery;

14               **2. Local organizations.** Authorize the creation of local  
16       organizations for civil emergency preparedness management in the  
political subdivisions of the State;

18               **3. Emergency powers.** Confer upon the Governor and the  
20       executive heads of governing bodies of the political subdivisions  
of the State certain emergency powers; and

22               **4. Mutual aid.** Provide for the rendering of mutual aid  
24       among the political subdivisions of the State and with other  
26       states and provinces of Canada for the accomplishment of civil  
emergency preparedness management functions.

28               **Sec. 71. 37-B MRSA §702, first ¶,** as enacted by PL 1983, c.  
460, §3, is amended to read:

30               It is declared to be the policy of the State that all  
32       emergency preparedness management functions be coordinated to the  
34       maximum extent with the comparable functions of the Federal  
Government, including its various departments and agencies, of  
36       other states and localities, and of private agencies so that the  
most effective preparation and use may be made of the nation's  
38       ~~manpower~~ workforce, resources and facilities for dealing with any  
disaster ~~which~~ that may occur.

40               **Sec. 72. 37-B MRSA §703,** as amended by PL 1997, c. 580, §1,  
is further amended to read:

42       **§703. Definitions**

44               As used in this chapter, unless the context otherwise  
46       indicates, the following terms have the following meanings.

48               ~~1. ---Civil---emergency---preparedness,---"Civil---emergency~~  
~~preparedness"---means---the---preparation---for---and---the---carrying---out---of~~  
~~all---emergency---functions,---other---than---functions---for---which---military~~  
50       ~~forces---are---primarily---responsible,---to---minimize---and---repair---injury~~



2 and damage resulting from disasters or catastrophes caused by  
3 enemy attacks, sabotage, riots or other hostile action, or by  
4 fire, flood, earthquake or other natural or human-made causes.  
5 These functions include, without limitation, fire fighting,  
6 police, medical and health, emergency welfare, rescue,  
7 engineering, air raid warning and communications services,  
8 radiological, chemical and other special weapons defense,  
9 evacuation of persons from stricken areas, recovery,  
10 identification and disposition of human remains, economic  
11 stabilization, allocation of critical materials in short supply,  
12 emergency transportation, existing or properly assigned functions  
13 of plant protection, other activities related to civilian  
14 protection, and other activities necessary to the preparation for  
the carrying out of these functions.

16 **2. Disaster.** "Disaster" means the occurrence or imminent  
17 threat of widespread or severe damage, injury or loss of life or  
18 property resulting from any natural or man-made cause, including,  
19 but not limited to, fire, flood, earthquake, wind, storm, wave  
20 action, oil spill or other water contamination requiring  
21 emergency action to avert danger or damage, epidemic, air  
22 contamination, blight, drought, critical material shortage,  
23 infestation, explosion, riot or hostile military or paramilitary  
24 action.

26 **2-A. Emergency management.** "Emergency management" means  
27 the coordination of an organized effort to mitigate against,  
28 prepare for, respond to and recover from a disaster.

30 **3. Local organization for emergency management.** "Local  
31 organization for civil emergency preparedness management" means  
32 an organization created in accordance with this chapter by state,  
33 county or local authority to perform local civil emergency  
34 preparedness management functions.

36 **3-A. Mitigation.** "Mitigation" means those activities that  
37 actually eliminate or reduce the chance of occurrence or the  
38 effects of a disaster.

40 **4. Political subdivision.** "Political subdivision" means  
41 counties, cities, towns, villages, townships, districts,  
42 authorities and other public corporations and entities organized  
43 and existing under charter or general law.

44 **5. Preparedness.** "Preparedness" means planning how to  
45 respond in case an emergency or disaster occurs and working to  
46 increase resources available to respond effectively.

48 **6. Recovery.** "Recovery" means activities that, in the  
49 short term, return vital life support systems to minimum  
50 levels.

operating standards and, in the long term, redevelop a disaster area to preexisting conditions or to conditions that are less disaster prone and activities that assist families and businesses to return to a normal or improved state of being.

**7. Response.** "Response" means those activities designed to provide emergency assistance to victims of a disaster and reduce the likelihood of secondary damage.

**Sec. 73. 37-B MRSA §704, 2nd ¶,** as amended by PL 1985, c. 785, Pt. B, §175, is further amended to read:

The director may employ technical, clerical, stenographic, administrative and operative assistants and other personnel, subject to the Civil Service Law, and make expenditures, with approval of the ~~Adjutant-General~~ commissioner, which ~~that~~ are necessary to carry out the purposes of this chapter.

**Sec. 74. 37-B MRSA §704, 3rd ¶,** as amended by PL 1991 c. 376, §65, is further amended to read:

The director, subject to the direction and control of the ~~Adjutant-General~~ commissioner, shall ~~be~~ is the executive head of the agency and shall ~~be~~ is responsible for carrying out the program for ~~civil~~ emergency preparedness management. The director shall coordinate the activities of all organizations for ~~civil~~ emergency preparedness management within the State; shall maintain liaison with and cooperate with ~~civil~~ emergency preparedness management and public safety agencies and organizations of other states, the Federal Government and foreign countries, and the political subdivisions thereof; prior to the annual meeting required in section 782, subsection 4, shall provide to each of the local ~~civil~~ emergency preparedness management organizations of the State an annual assessment of each organization's degree of ~~civil~~ emergency preparedness management capability and any other information pertinent to ensuring the public's welfare and safety within the local organization's jurisdiction; and shall have additional authority, duties and responsibilities as may be prescribed by the ~~Adjutant General~~ commissioner.

**Sec. 75. 37-B MRSA c. 13, sub-c. II** is amended by repealing the subchapter headnote and enacting the following in its place:

## SUBCHAPTER II

### STATE EMERGENCY MANAGEMENT PROVISIONS

**Sec. 76. 37-B MRSA §741,** as enacted by PL 1983, c. 460, §3, is amended to read:

2       **§741. Governor's powers**

4           **1. Control during emergencies.** In the event of disaster  
6 beyond local control, the Governor may assume direct operational  
control over all or any part of the civil emergency preparedness  
management and public safety functions with within the State.

8  
10           **2. Cooperation.** In performing his the duties required by  
this chapter, the Governor shall, directly or through the  
12 Adjutant-General commissioner, cooperate with all departments and  
agencies of the Federal Government, with the offices and agencies  
14 of other states and foreign countries and the political  
subdivisions thereof, and with private agencies in all matters  
16 pertaining to the civil emergency preparedness management  
capability of the State and of the Nation.

18           **3. Authority.** In performing his the duties required by  
this chapter, the Governor may:

20           A. Make, amend and rescind the necessary orders and rules  
22 to carry out this chapter within the limits of the authority  
conferred upon him the Governor and not inconsistent with  
24 the rules, regulations and directives of the President of  
the United States or of any federal department or agency  
26 having specifically authorized civil emergency preparedness  
management functions;

28           B. Prepare a comprehensive plan and program for the civil  
30 emergency preparedness management functions of this State.  
That plan and program shall must be integrated into and  
32 coordinated with the civil emergency preparedness management  
plans of federal agencies and with the plans of other states  
34 and foreign countries, and their political subdivisions, to  
the fullest possible extent;

36           C. Coordinate the preparation of plans and programs for  
38 civil emergency preparedness management functions by the  
political subdivisions of the State. These plans shall must  
40 be integrated into and coordinated with the civil emergency  
preparedness management plan and program of the State to the  
42 fullest possible extent;

44           D. In accordance with the plan and program for the civil  
46 emergency preparedness management functions of the State,  
and consistent with the civil emergency preparedness  
48 management plans, programs and directives of the Federal  
Government, procure supplies and equipment, institute  
50 training programs and public information programs and take  
all other preparatory steps, including the partial or full

2 mobilization of civil emergency preparedness management  
3 organizations in advance of actual disaster or catastrophe,  
4 insure the furnishing of adequately trained and equipped  
5 forces of civil emergency preparedness management personnel  
6 in time of need;

7  
8 E. Conduct studies and surveys and take inventories of the  
9 industries, resources and facilities of the State necessary  
10 to ascertain the state's civil emergency preparedness  
11 management capabilities, and plan for their most efficient  
12 emergency use, including emergency economic controls to  
13 insure adequate production and equitable distribution of  
14 essential commodities;

15  
16 F. Whenever a shortage of critical material supplies  
17 appears imminent in the State, establish emergency reserves  
18 of those products necessary to ensure the health, welfare  
19 and safety of the people of the State. To establish those  
20 reserves, the Governor may purchase quantities of those  
21 materials for resale on a cost plus expenses basis for  
22 priority end users within the State;

23  
24 G. On behalf of the State, enter into mutual aid  
25 arrangements with other states and foreign countries, and  
26 their political subdivisions, and coordinate mutual aid  
27 plans between political subdivisions of the State. If an  
28 arrangement is entered into with a jurisdiction that has  
29 enacted the Interstate Civil Defense and Disaster Compact,  
30 chapter 15, the Emergency Management Assistance Compact,  
31 chapter 16, or the International Emergency Management  
32 Assistance Compact, chapter 16-A, any resulting agreement or  
33 agreements may be considered supplemental agreements  
34 pursuant to ~~Article VI of that compact~~ those compacts. If  
35 the other jurisdiction or jurisdictions with which the  
36 Governor proposes to cooperate have not enacted that  
37 compact, ~~he~~ the Governor may negotiate special agreements  
38 with the jurisdiction or jurisdictions. Any agreement, if  
39 sufficient authority for ~~the~~ its making ~~thereof~~  
40 otherwise exist, becomes effective only after approval by  
41 the Legislature; and

42  
43 H. Delegate any authority vested in ~~him~~ the Governor under  
44 this chapter and provide for the subdelegation of that  
45 authority.

46 **Sec. 77. 37-B MRSA §742, sub-§1,** as amended by PL 1987, c.  
47 810, §6, is further amended to read:

48  
49 **1. Emergency proclamation. ~~Disaster~~ Emergency**  
50 **proclamations shall must be issued as follows.**

2 A. Whenever a disaster or civil emergency exists or appears  
4 imminent, the Governor shall, by oral proclamation, declare  
6 a state of emergency in the State or any section of the  
8 State. If the Governor is temporarily absent from the State  
10 or is otherwise unavailable, the next person in the State  
12 who would act as Governor if the office of the Governor were  
14 vacant may, by oral proclamation, declare the fact that a  
civil emergency exists or appears sufficiently imminent to  
activate emergency ~~preparedness~~ plans in any or all areas of  
the State. A written copy of the proclamation shall must be  
filed with the Secretary of State within 24 hours of the  
oral proclamation.

16 B. Subject at all times to the further direction and order  
18 of the Governor, an executive proclamation of emergency  
shall--~~activate~~ activates the emergency ~~preparedness~~ plans  
applicable to the affected areas and shall--~~be~~ is the  
20 authority for the deployment and use of any forces or  
resources to which the plan or plans apply.

22 C. After the filing of the emergency proclamation and in  
24 addition to any other powers conferred by law, the Governor  
may:

26 (1) Suspend the enforcement of any statute prescribing  
28 the procedures for conduct of state business, or the  
orders or rules of any state agency, if strict  
30 compliance with the provisions of the statute, order or  
rule would in any way prevent, hinder or delay  
32 necessary action in coping with the emergency;

34 (2) Utilize all available resources of the State  
Government and of each political subdivision of the  
36 State as reasonably necessary to cope with the disaster  
emergency;

38 (3) Transfer the direction, personnel or functions of  
40 state departments and agencies, or units thereof, for  
the purposes of performing or facilitating emergency  
42 services;

44 (4) Authorize the obtaining and acquisition of  
property, supplies and materials pursuant to section  
46 821;

48 (5) Enlist the aid of any person to assist in the  
effort to control, put out or end the emergency or aid  
50 in the caring for the safety of persons;

2 (6) Direct and compel the evacuation of all or part of  
the population from any stricken or threatened area  
4 within the State, if he ~~deems~~ the Governor determines  
that this action necessary for the preservation of life  
or other disaster mitigation, response or recovery;

6 (7) Prescribe routes, modes of transportation and  
8 destinations in connection with evacuations;

10 (8) Control ingress and egress to and from a disaster  
area, the movement of persons within the area and the  
12 occupancy of premises therein;

14 (9) Suspend or limit the sale, dispensing or  
transportation of alcoholic beverages, firearms,  
16 explosives and combustibles;

18 (10) Make provision for the availability and use of  
temporary emergency housing;

20 (11) Order the termination, temporary or permanent, of  
any process, operation, machine or device which may be  
22 causing or is understood to be the cause of the state  
of emergency for which this proclamation was made; and

24 (12) Take whatever action is necessary to abate, clean  
up or mitigate whatever danger may exist within the  
26 affected area.  
28

30 **Sec. 78. 37-B MRSA §742, sub-§2**, as enacted by PL 1983, c.  
460, §3, is amended to read:

32 **2. Energy emergency proclamation.** Energy emergency  
34 proclamations shall must be issued as follows.

36 A. When an actual or impending acute shortage in energy  
resources threatens the health, safety or welfare of the  
38 citizens of the State, the Governor shall, by oral  
proclamation, declare that fact and that an energy emergency  
40 exists in the State or in any section of the State. A  
written copy of the proclamation shall must be filed with  
42 the Secretary of State within 24 hours of the oral  
proclamation.

44 B. Upon the issuance of an energy emergency proclamation  
and after consulting with the ~~Director of Energy Resources~~  
46 State Planning Office, the Governor may exercise all the  
powers granted in this chapter, except as specifically  
48 limited by paragraph C. The powers of the Governor shall  
50 include, without limitation, the authority to:

- 2 (1) Establish and implement programs, controls,  
standards, priorities and quotas for the allocation,  
4 conservation and consumption of energy resources;
- 6 (2) Regulate the hours and days during which  
nonresidential buildings may be open and the  
8 temperatures at which they may be maintained;
- 10 (3) Regulate the use of gasoline and diesel-powered  
land vehicles, watercraft and aircraft;
- 12 (4) After consulting, when appropriate, with the New  
14 England governors and upon the recommendations of the  
Maine Public Utilities Commission, regulate the  
16 generation, distribution and consumption of  
electricity;
- 18 (5) Establish temporary state and local boards and  
20 agencies;
- 22 (6) Establish and implement programs and agreements  
for the purposes of coordinating the emergency energy  
24 response of the State with those of the Federal  
Government and of other states and localities;
- 26 (7) Temporarily suspend truck weight and size  
28 regulations, but not in conflict with federal  
regulations; and
- 30 (8) Regulate the storage, distribution and consumption  
32 of home heating oil.

34 C. In dealing with a declared energy emergency, the  
following powers granted by this chapter may not be invoked:

- 36 (1) The eminent domain powers granted in section 821;  
38 and
- 40 (2) The enforcement powers granted in sections 786 and  
829, unless the Governor specifically invokes these  
42 powers by an order issued pursuant to an energy  
emergency proclamation and approved by a majority of  
44 the membership of the Legislative Council. That order  
shall must specify those emergency orders or rules  
46 which ~~shall be~~ that are enforceable pursuant to this  
paragraph and shall must further specify the  
48 enforcement activities ~~civil~~ emergency ~~preparedness~~  
management organizations are to pursue. No enforcement  
50 action may be taken pursuant to this paragraph without

2 publication of the order authorizing the action in a  
3 manner reasonably calculated to give affected persons  
4 adequate notice of the order or rule to be enforced,  
5 which may include the Internet, and the sanctions to be  
6 applied.

7 D. During a declared energy emergency, the following  
8 provisions relating to environmental rules apply.

10 (1) Except as provided in subparagraph (2), nothing  
11 contained in this subsection may be construed to  
12 authorize the Governor to suspend or to modify orders,  
13 rules, standards or classifications issued or enforced  
14 by the Department of Environmental Protection or the  
15 Maine Land Use Regulation Commission.

16 (2) When an energy emergency proclamation is in  
17 effect, the Governor may call the Board of  
18 Environmental Protection into extraordinary session to  
19 consider temporary waivers or suspensions of rules and  
20 standards related to air and water quality necessary to  
21 relieve then existing energy shortages. At an  
22 extraordinary session, the board is empowered,  
23 notwithstanding any other provision of law, to approve  
24 suspensions or waivers ~~which~~ that it determines are  
25 necessary to relieve or avoid an energy shortage and  
26 will not result in environmental degradation of a  
27 permanent or enduring nature. In no event may any  
28 suspension or modification be granted ~~which~~ that will  
29 result in a circumvention of Title 38, sections 481 to  
30 488, 541 and 557. The waiver or suspension ~~shall~~ may  
31 not remain in effect longer than 60 days or after the  
32 date on which the board renders a further order issued  
33 pursuant to the regular procedures specified in Title  
34 38, whichever ~~shall~~ first ~~occur~~ occurs.

36 E. The Superior Court of the county in which a person fails  
37 to obey an order or rule promulgated in accordance with this  
38 subsection ~~shall--have~~ has jurisdiction to issue a  
39 restraining order or injunction to enforce the order or  
40 rule. That proceeding ~~shall~~ must be held in accordance with  
41 the Maine Rules of Civil Procedure, Rule 65.

44 F. In the event that an order or rule issued by the  
45 Governor, pursuant to the powers granted in paragraph B, are  
46 to be in effect for longer than 90 days, the Governor shall,  
47 before the 80th day following the issuance of the order or  
48 rule, convene the Legislature.



2           **Sec. 79. 37-B MRSA §744, sub-§1, ¶C**, as enacted by PL 1983, c.  
460, §3, is amended to read:

4           C. Notwithstanding any other provision of law or  
6 regulation, make financial grants to meet necessary expenses  
or serious needs of individuals or families caused by the  
8 disaster ~~which that~~ cannot otherwise adequately be met. A  
grant to an individual or family shall ~~may~~ not exceed \$5,000  
10 in the aggregate for any single major disaster declared by  
the President ~~the amount established by the Federal~~  
12 ~~Government for the limit on grants to individuals under the~~  
~~individual and family grant program.~~

14           **Sec. 80. 37-B MRSA §744, sub-§5**, as enacted by PL 1983, c.  
460, §3, is amended to read:

16           **5. Terms.** As used in this section, "major disaster,"  
18 "emergency" and "temporary housing" have the same meaning as in  
the ~~United--States Robert T. Stafford Disaster Relief and~~  
20 ~~Emergency Assistance Act of-1974, Public Law 93-288, as amended.~~

22           **Sec. 81. 37-B MRSA c. 13, sub-c. III** is amended by repealing the  
subchapter headnote and enacting the following in its place:

### 24   SUBCHAPTER III

#### 26   LOCAL EMERGENCY MANAGEMENT PROGRAMS

28           **Sec. 82. 37-B MRSA §781**, as amended by PL 1987, c. 370, §16,  
30 is further amended to read:

32           **§781. Municipal, county and regional agencies**

34           **1. Municipal or interjurisdictional agencies.** Each  
municipality of the State shall ~~must~~ be served by a municipal or  
36 interjurisdictional agency responsible for ~~disaster-preparedness~~  
~~and-coordination-of-disaster-response~~ emergency management. The  
38 ~~Governor,--after--public--hearing,--shall--determine--these~~  
~~municipalities-which-shall-establish-civil-emergency-preparedness~~  
40 ~~agencies-of-their-own-and-those-which-shall-participate-in-and~~  
~~provide--support--for--interjurisdictional--civil--emergency~~  
42 ~~preparedness-agencies.--Those-determinations-shall-be-based-on-a~~  
~~finding--that--efficient--and--effective--disaster--prevention,~~  
44 ~~preparedness,-response-and-recovery-will-be-promoted-by-formation~~  
~~of-an-interjurisdictional-agency--The-following-factors-shall-be~~  
46 ~~considered:~~

48           A. ~~Size-and-density-of-the-affected-population;~~

2 B. ~~Financial ability of the separate municipalities to~~  
maintain independent disaster assistance agencies; and

4 C. ~~Vulnerability of the area to disaster, as evidenced by~~  
past ~~disasters, topographical features, drainage~~  
6 characteristics, ~~disaster potential and existence of~~  
disaster-prone facilities and operations.

8  
2. **County or regional agencies.** The ~~Governor~~ shall  
10 designate ~~the counties or regions he deems necessary for the~~  
purposes ~~of establishing county or regional civil emergency~~  
12 preparedness agencies. Each county shall maintain a county  
emergency management agency or create regional emergency  
14 management agencies that serve the member counties. Each  
designated county or regional agency shall ~~be~~ is responsible for  
16 coordination of the activities of municipal and  
interjurisdictional civil emergency preparedness management  
18 agencies within the region or county and for civil emergency  
preparedness management in the unorganized territories within its  
20 jurisdiction. A county or regional civil emergency preparedness  
management agency shall must receive support from the  
22 municipalities within its jurisdiction.

24 3. **Structure of county and regional agencies.** The  
director, ~~with the approval of the Governor,~~ shall determine  
26 advise upon the organizational structure of interjurisdictional  
county and regional civil emergency preparedness management  
28 agencies, including the manner in which the directors of those  
agencies shall ~~be~~ are appointed by governing bodies of the  
30 municipalities jurisdictions involved.

32 4. **List of agencies.** The agency shall publish and maintain  
a current list of municipal, interjurisdictional, county and  
34 regional civil emergency preparedness management agencies  
established pursuant to this section.

36 **Sec. 83. 37-B MRSA §782,** as amended by PL 1991, c. 376, §66,  
38 is further amended to read:

40 **§782. Agency directors**

42 A director must be appointed for each ~~local~~ civil  
preparedness municipal and county or regional emergency  
44 management agency. A director of a ~~civil~~ an emergency  
preparedness management agency may not be at the same time an  
46 executive officer or member of the executive body of a  
municipality or interjurisdictional or county or regional agency  
48 of the State or a county commissioner. Notwithstanding this  
section or any other law, a town manager or administrative  
50 assistant may also be appointed to serve as the director of a

2 ~~civil~~ an emergency preparedness management agency ~~or-as-a-liaison~~  
3 ~~officer~~. A director may be removed by the appointing authority  
4 for cause.

5  
6 **1. Municipal emergency management director.** The municipal  
7 officers shall appoint the director of the municipality's ~~civil~~  
8 emergency preparedness management agency. In each municipality  
9 that is ~~has not required-to-establish~~ established an agency of  
10 its own, the municipal officers shall designate a ~~liaison-officer~~  
11 ~~to--the--appropriate--interjurisdictional--agency~~ an emergency  
12 management director to facilitate cooperation in the work of  
13 disaster ~~prevention~~ mitigation, preparedness, response and  
14 recovery. The emergency management director shall serve as  
liaison to the appropriate county or regional agency.

15  
16 **2. County agency director.** The county commissioners shall  
17 appoint the director of that county's ~~civil~~ emergency  
18 preparedness management agency.

19  
20 **3. Interjurisdictional and regional agency directors.** The  
21 director of an interjurisdictional or regional ~~civil~~ emergency  
22 preparedness management agency shall must be appointed in the  
23 manner prescribed by the director in accordance with section 781,  
24 subsection 3, ~~and shall be approved by the director.~~

25  
26 **4. Annual meeting with Director of the Maine Emergency**  
27 **Management Agency.** The director of each ~~local~~ county or regional  
28 organization for ~~civil~~ emergency preparedness management in the  
29 State and the respective appointing authority shall meet each  
30 year with the Director of the Maine Emergency Management Agency  
31 or the agency's successor, in order to review the performance of  
32 the ~~local--civil~~ county or regional emergency preparedness  
33 management organization in carrying out its federal and state  
34 mandate and to jointly set new goals for the coming year.

35 **Sec. 84. 37-B MRSA §783, first ¶,** as amended by PL 1987, c.  
36 370, §17, is further amended to read:

37  
38 Each municipal, ~~interjurisdictional,~~ county and regional  
39 ~~civil~~ emergency preparedness management agency, ~~in consultation~~  
40 ~~with--the--agency,~~ shall prepare and keep a current disaster  
41 emergency plan for the area subject to its jurisdiction. That  
42 plan shall must include without limitation:

43  
44 **Sec. 85. 37-B MRSA §783, last ¶,** as enacted by PL 1983, c. 460,  
45 §3, is amended to read:

46  
47 Each municipal, ~~interjurisdictional,~~ county and regional  
48 ~~civil~~ emergency preparedness management agency, as part of the  
49 development of a disaster emergency plan for the area subject to  
50

2 its jurisdiction, shall consult with hospitals within its  
jurisdiction to insure that the disaster plans developed by the  
4 municipality or agency and the hospitals are compatible.

6 **Sec. 86. 37-B MRSA §784, first ¶**, as enacted by PL 1983, c.  
460, §3, is amended to read:

8 The director of each local organization for ~~civil~~ emergency  
preparedness management shall, in collaboration with other public  
10 and private agencies within the State, develop or cause to be  
developed mutual aid arrangements for reciprocal ~~civil~~ emergency  
12 preparedness management aid and assistance in case of a disaster  
too great to be dealt with unassisted. These arrangements shall  
14 must be consistent with the state ~~civil~~ emergency preparedness  
management program, and in time of emergency ~~it shall be the duty~~  
16 ~~of each local organization for civil emergency preparedness to~~  
management shall render assistance in accordance with the mutual  
18 aid arrangements. For this purpose, political subdivisions are  
authorized when geographical locations make mutual aid  
20 arrangements desirable to enter into mutual aid arrangements  
subject to the approval of the director.

22 **Sec. 87. 37-B MRSA §785, first ¶**, as amended by PL 1985, c.  
24 785, Pt. B, §176, is further amended to read:

26 Local ~~civil~~ emergency preparedness management agencies  
organized pursuant to this subchapter may accept the services of  
28 the Bureau of Human Resources and adopt board rules for the  
purpose of qualifying for federal funds. The Bureau of Human  
30 Resources may enter into agreements with the ~~civil~~ emergency  
preparedness management agencies for the purpose of furnishing  
32 merit system coverage for ~~civil~~ emergency preparedness management  
employees or employees of other agencies and departments assigned  
34 full time to ~~civil~~ emergency preparedness management duties. The  
Bureau of Human Resources may charge for services rendered. The  
36 fee shall must be consistent with the cost of coverage per state  
employee multiplied by the number of local, interjurisdictional,  
38 county or regional employees covered. Fees received by the board  
shall must be credited to the General Fund.

40 **Sec. 88. 37-B MRSA §822, first ¶**, as corrected by RR 1993, c.  
42 1, §110, is amended to read:

44 Neither the State nor any of its agencies or political  
subdivisions, including a voluntary and uncompensated grantor of  
46 a permit for the use of the grantor's premises as a ~~civil~~ an  
emergency preparedness shelter, may, while engaged in any ~~civil~~  
48 emergency preparedness management activities and while complying  
with or attempting to comply with this chapter or any rule  
50 adopted pursuant to this chapter, be liable for the death of or

injury to any person, or damage to property, as a result of those activities. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, under the Maine Workers' Compensation Act of 1992, under any pension law or under any act of Congress.

**Sec. 89. 37-B MRSA §823, first ¶**, as amended by PL 1995, c. 462, Pt. A, §72, is further amended to read:

All members of the civil emergency preparedness management forces are deemed to be employees of the State while on, or training for, civil emergency preparedness management duty. They have all the rights given to state employees under the ~~former Workers' Compensation Act or the~~ Maine Workers' Compensation Act of 1992. All claims must be filed, prosecuted and determined in accordance with the procedure set forth in the ~~former Workers' Compensation Act or the~~ Maine Workers' Compensation Act of 1992.

**Sec. 90. 37-B MRSA §823, sub-§2**, as amended by PL 1995, c. 462, Pt. A, §72, is further amended to read:

**2. Setoff.** Any sums payable under any act of Congress or other federal program as compensation for death, disability or injury of civil emergency preparedness management workers must be considered with the determination and settlement of any claim brought under this section. When payments received from the Federal Government are less than an injured member would have been entitled to receive under this section, the injured member is entitled to receive all the benefits to which the injured member would have been entitled under this section, less the benefits actually received from the Federal Government.

**Sec. 91. 37-B MRSA §824, sub-§2**, as enacted by PL 1983, c. 460, §3, is amended to read:

**2. For local emergency management expenses.** Each political subdivision may make appropriations for the payment of expenses of its local organization for civil emergency preparedness management in the same manner as for its other ordinary expenses. In making those appropriations, the political subdivision shall specify the amounts and purposes for which the money appropriated may be used by the local organizations.

**Sec. 92. 37-B MRSA §825, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

Whenever the Federal Government or any of its agencies or officers or any person, firm or corporation offers to the State or to any of its political subdivisions services, equipment,

2 supplies, materials or funds by way of gift, grant or loan, for  
3 purposes of ~~eivil~~ emergency ~~ppreparedness~~ management, the State,  
4 acting through the Governor, or the political subdivision, acting  
5 through its executive officer or governing body, may accept that  
6 offer. Upon acceptance, the Governor of the State or the  
7 executive officer or governing body of the political subdivision  
8 may authorize any officer of the State or of the political  
9 subdivision, as the case may be, to receive those services,  
10 equipment, supplies, materials or funds on behalf of the State or  
11 the political subdivision subject to the terms of the offer and  
12 the rules and regulations, if any, of the agency making the offer.

13 **Sec. 93. 37-B MRSA §826, first ¶**, as amended by PL 1983, c.  
14 816, Pt. B, §18, is further amended to read:

15 Subject to the approval of the Governor, the director may  
16 convey equipment, supplies, materials or funds by sale, lease or  
17 grant to any political subdivision of the State for ~~eivil~~  
18 emergency ~~ppreparedness~~ management purposes. The conveyance ~~shall~~  
19 be is subject to the terms of the offer and the applicable state  
20 rules and federal regulations.

21 **Sec. 94. 37-B MRSA §829, first ¶**, as enacted by PL 1983, c.  
22 460, §3, is amended to read:

23 It ~~shall-be~~ is the duty of every agency for ~~eivil~~ emergency  
24 ~~ppreparedness~~ management established pursuant to this chapter and  
25 of the officers to execute and enforce orders and rules adopted  
26 by the Governor under authority of this chapter. Each ~~eivil~~  
27 emergency ~~ppreparedness~~ management agency ~~shall~~ must have  
28 available for inspection at its office all orders and rules made  
29 by the Governor or issued under ~~his~~ the Governor's authority.

30 **Sec. 95. 37-B MRSA §831, first ¶**, as enacted by PL 1983, c.  
31 460, §3, is amended to read:

32 In carrying out this chapter, the Governor and the executive  
33 officers or governing bodies of the political subdivisions of the  
34 State shall utilize the services and facilities of existing  
35 departments, offices and agencies of the State and all the  
36 political subdivisions thereof to the maximum extent  
37 practicable. The officers and personnel of all departments,  
38 offices and agencies shall cooperate with and extend their  
39 services and facilities to the Governor and to the ~~eivil~~  
40 emergency ~~ppreparedness~~ management organizations of the State upon  
41 request.

42 **Sec. 96. 37-B MRSA §832, first ¶**, as enacted by PL 1983, c.  
43 460, §3, is amended to read:

44  
45  
46  
47  
48  
49  
50

2 No civil emergency preparedness management organization  
established under the authority of this chapter may participate  
4 in any form of political activity, nor may it be employed  
directly or indirectly for political purpose.

6 Sec. 97. 37-B MRSA §850, as enacted by PL 1989, c. 489, §4,  
is amended to read:

8  
10 **§850. Search and rescue plan**

12 The Director of the Maine Emergency Management Agency shall  
prepare a state search and rescue plan encompassing all  
14 activities including land, sea and air searches for persons,  
boats and airplanes. In the preparation of this plan, the  
16 director shall review such individual agency plans as currently  
exist, seek the advice and counsel of all currently designated  
18 federal and state search and rescue agencies and obtain their  
approval of the final plan. ~~This plan shall be completed no  
later than June 30, 1990.~~ All other search and rescue agencies  
20 shall cooperate with the agency in preparation of this plan.  
Responsibility for execution of the plan shall be is with the  
22 individual state agencies that have responsibility for the area  
being searched or for lost or downed aircraft, as appropriate.  
24 These agencies shall follow all the provisions of the approved  
plan.

26  
28 This plan shall must be reviewed and updated as necessary.  
The director shall see that the plan and its revisions receive  
30 suitable dissemination on a timely basis. Individual agencies  
shall submit revisions of their search and rescue plans to the  
32 director for comment and incorporation into the agency's  
statewide plan.

34 Sec. 98. 37-B MRSA §1080, sub-§2, ¶¶A, K and L, as enacted by  
PL 1997, c. 236, §2, are amended to read:

36  
38 A. The ~~Commissioner--of--Defense--and--Veterans'--Services~~  
Director of the Maine Emergency Management Agency or the  
~~commissioner's~~ director's designee;

40  
42 K. Representatives from private commerce and industry,  
including but not limited to the major hydroelectric power  
44 generators, as determined by the cochairs of the commission;  
and

46 L. A representative of the public, appointed by the  
Governor; and

48  
50 Sec. 99. 37-B MRSA §1080, sub-§2, ¶M is enacted to read:

2 M. The Commissioner of Human Services or the commissioner's  
3 designee.

4 **Sec. 100. 37-B MRSA §1080, sub-§§3 and 4**, as enacted by PL  
5 1997, c. 236, §2, are amended to read:

6  
7 **3. Cochairs.** The District Chief of the United States  
8 Geological Survey Water Resources Division Maine District Office  
9 and the ~~Commissioner of Defense and Veterans' Services~~ Director  
10 of the Maine Emergency Management Agency or the ~~commissioner's~~  
11 director's designee shall act as cochairs of the commission.

12  
13 **4. Terms of office.** The term of office of the public  
14 member is 5 years. The public member may be removed from office  
15 for cause by the Governor. Members from State Government or  
16 Federal Government shall serve a term coincident with their  
17 governmental position. ~~The term of a representative from the~~  
18 ~~major hydroelectric power generators is 5 years.~~ Members from  
19 private commerce and industry shall serve a term as determined by  
20 the entities they represent.

21 **Sec. 101. 37-B MRSA §1080, sub-§10, ¶A**, as enacted by PL 1997,  
22 c. 236, §2, is amended to read:

23  
24 **A.** Advise the Department of Defense ~~and Veterans' Services,~~  
25 Veterans and Emergency Management and the Governor on issues  
26 of flow within the State's rivers and streams;

27  
28  
29 **SUMMARY**

30  
31 **32** This bill makes technical language changes throughout the  
32 Department of Defense, Veterans and Emergency Management's  
33 legislation, modifies the Maine Code of Military Justice,  
34 authorizes the sale of 2 armories in accordance with established  
35 procedures, fortifies reemployment rights of service members,  
36 redesignates veteran service officers to veteran advocates and  
37 modifies the mechanism by which the Governor declares a state of  
38 emergency.