

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1951

H.P. 1451

House of Representatives, March 31, 2004

**An Act To Clarify the Administrative and Financial Relationship
between the Maine Military Authority and the State of Maine**

(EMERGENCY)

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative CLARK of Millinocket. (GOVERNOR'S BILL)
Cosponsored by Senator GAGNON of Kennebec.

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

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6 **Whereas,** the 90-day period may not terminate until after the
beginning of the next fiscal year; and

8 **Whereas,** it is necessary to clarify the status of the Maine
Military Authority to ensure that it is eligible to compete for
contracts offered by the Federal Government immediately; and

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

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

20 **Sec. 1. 5 MRSA §931, sub-§1, ¶L-3,** as amended by PL 2001, c.
374, §2, is further amended to read:

22 L-3. The Executive Analyst of the Board of Environmental
24 Protection; and

26 **Sec. 2. 5 MRSA §931, sub-§1, ¶L-4,** as enacted by PL 2001, c.
374, §3, is repealed.

28 **Sec. 3. 26 MRSA §962, sub-§7, ¶A,** as amended by PL 2001, c.
30 374, §6, is further amended to read:

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

34 (1) Any municipality or any subdivision of a
36 municipality;

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

40 (3) The Maine Turnpike Authority;

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

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

48 (6) The Maine State Retirement System; or

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

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~~(8)--The-Maine-Military-Authority,--or~~

Sec. 4. 37-B MRSA §105, first ¶, as repealed and replaced by PL 1993, c. 680, Pt. A, §32, is amended to read:

The Governor may create, organize, abolish or reorganize staff sections that the Governor determines necessary to provide for the National Guard and other state military forces, and the Maine Military Authority and appoint staff officers necessary to provide for the operation of the staff sections. Officers of ~~these~~ those sections shall perform the duties required of them by law and those other duties not inconsistent with the laws of the State that correspond to the duties performed by officers in corresponding staff sections in the federal military establishment.

Sec. 5. 37-B MRSA §157, as enacted by PL 2001, c. 374, §7, is repealed and the following enacted in its place:

§157. Maine Military Authority Enterprise Fund

1. Maine Military Authority Enterprise Fund; established.

The Maine Military Authority Enterprise Fund is established to fund activities of the Maine Military Authority, established in section 391, including, but not limited to, the following:

A. Operating the Maine Readiness Sustainment Maintenance Center; and

B. Maintaining, rebuilding, repairing, storing and manufacturing equipment for the following:

(1) The State and its political subdivisions;

(2) The United States Department of the Army, Department of the Air Force, Department of the Navy and Department of Homeland Security; and

(3) Foreign governments working in conjunction with the foreign military sales program of the United States Department of Defense.

2. Maine Military Authority Enterprise Fund account. The Military Bureau shall establish, through the Department of Administrative and Financial Services, Bureau of Accounts and Control, the Maine Military Authority Enterprise Fund account. The funds deposited in the account include, but are not limited to, the following:

2 A. Appropriations made to the account;

4 B. Funds transferred to the account from within the
department;

6 C. Funds received for the purposes stated in subsection 1,
paragraph B;

8 D. Earnings from the fund from the Treasurer of State's
10 cash pool; and

12 E. In accordance with applicable law, proceeds from the
14 sale of vehicles and equipment under the administrative
16 control of the Maine Military Authority by the state surplus
property program in the Department of Administrative and
Financial Services, Bureau of General Services.

18 3. Receive revenue; expend proceeds. The Adjutant General
20 may receive operating revenues of the Maine Military Authority
and expend those proceeds in accordance with section 399.

22 **Sec. 6. 37-B MRSA §391**, as amended by PL 2003, c. 342, §4, is
24 repealed and the following enacted in its place:

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

28 The Maine Military Authority is established within the
Executive Department.

30 **Sec. 7. 37-B MRSA §392, sub-§2**, as enacted by PL 2001, c. 374,
32 §8, is repealed.

34 **Sec. 8. 37-B MRSA §393, sub-§§3 to 7**, as enacted by PL 2001, c.
36 374, §8, are amended to read:

38 **3. Accept financial assistance.** Accept, through the normal
40 budgetary process, financial assistance and in-kind assistance,
42 advances, loans, grants, gifts, contributions and other forms of
financial assistance from the Federal Government and the State
Government or its agencies, ~~municipality~~ from municipalities or
other public ~~body~~ bodies or from other sources, public or private;

44 **4. Provide money for upkeep.** Provide from operating
46 revenues money for the maintenance, construction or
reconstruction of capital repair and replacement items as
necessary and approved by the Legislature;

48 **5. Acquire property.** Acquire for use by the authority real
50 or personal property or any interest in real or personal
property, including rights or easements, on either a temporary or

permanent basis, by gift, purchase, transfer, lease or otherwise,
subject to the approval of the Legislature;

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

7. Procure insurance. Procure insurance through the Risk Management Division against any loss in connection with property of the authority and other assets in amounts and from insurers that the Adjutant ~~General considers desirable through the auspices of the Risk Management Division~~ Director of Risk Management determines necessary or desirable to protect the State from risks or losses; and

Sec. 9. 37-B MRSA §394, as enacted by PL 2001, c. 374, §8, is amended to read:

§394. Employees

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

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

3. Legal services. The Office of the Attorney General shall provide legal services for the authority, or, ~~at the discretion of the Adjutant General, the Adjutant General may use the services of those judge advocates of the Maine National Guard either on state active service or otherwise compensated by the authority~~ with the permission of the Adjutant General, retain outside counsel.

4. Establish positions. By financial order, the Adjutant General may establish positions necessary to support the operations of the Maine Readiness Sustainment Center in Limestone or to maintain, repair, store and manufacture equipment under section 157. In order for a position that is established by financial order to become permanent, it must be presented to the

2 next session of the Legislature through the normal budgetary
3 process.

4 5. Employee administration. Notwithstanding the provisions
5 of Title 26, section 979-A, subsection 5, the Governor shall
6 direct the authority to develop and execute employee relations
7 policies, conduct negotiations with certified and recognized
8 bargaining agents for its employees and administer and interpret
9 the collective bargaining agreements applying to the employees of
10 the authority consistent with the overall objectives of the
11 Governor. The Department of Administrative and Financial
12 Services, Bureau of Employee Relations shall assist and advise
13 the Governor and the authority, in order to ensure compliance
14 with state and federal labor and employment laws consistent with
15 the overall objectives of the Governor. Employees of the
16 authority are essential employees for the purpose of shutdown or
17 furlough days imposed on employees of the State.

18 **Sec. 10. 37-B MRSA §395**, as enacted by PL 2001, c. 374, §8,
19 is amended to read:

22 **§395. Books and records**

23 The Adjutant General shall ensure the accurate and timely
24 maintenance of books, records, accounts and other evidences of
25 the financial transactions of all the authority's activities in
26 accordance with accounting standards established by a
27 governmental accounting standards board and the State
28 Controller. Books and records must be open to inspection and
29 audit by the Maine National Guard, the State Auditor and the
30 Federal Government audit in conjunction with federal contracts,
31 agreements, grants or cooperative agreements but are otherwise
32 confidential and not subject to Title 1, chapter 13, subchapter 1
33 1. The State Auditor shall periodically conduct an audit of the
34 financial records of the authority and report the results of the
35 audit to the Adjutant General, the State Controller, the Governor
36 and the Legislature. The Adjutant General may maintain the
37 required books, records, accounts and other evidences of the
38 financial transactions of all of the authority's activities or
39 enter into service agreements or contracts with departments and
40 agencies of State Government for that purpose.

41 **Sec. 11. 37-B MRSA §396**, as enacted by PL 2001, c. 374, §8,
42 is amended to read:

43 **§396. Budget**

44 The Adjutant General shall establish a budget for the
45 authority and shall present that budget to the Governor and the
46 Legislature. ~~Budget-development-and-presentation-to-the-Governor~~

2 ~~and the Legislature must be in the form used by a body corporate~~
3 ~~and politic and an instrumentality of the State.~~

4 **Sec. 12. 37-B MRSA §398**, as enacted by PL 2001, c. 374, §8,
5 is repealed.

6 **Sec. 13. 37-B MRSA §399**, as enacted by PL 2001, c. 374, §8,
7 is amended to read:

10 **§399. Revenue**

12 Revenue generated by the authority must first be used to
13 support the operation of the authority, including segregation of
14 money for future capital repairs. ~~All other unexpended balances~~
15 may At the close of the fiscal year, unreserved retained earnings
16 as identified by the State Controller may be transferred at any
17 time prior to the closing of the books to ~~any other non-General~~
18 Fund-state account of an account established within the Military
19 Bureau, ~~including, but not limited to,~~ to be used for capital
20 repair repairs and maintenance of state armories and Maine
21 National Guard tuition assistance.

22 **Sec. 14. Transition.** The following provisions apply to the
23 Maine Military Authority.

24 1. Classified and unclassified employees assigned to the
25 Maine Military Authority must be transferred to the Executive
26 Department.

27 2. All contracts, agreements and compacts to which the
28 Maine Military Authority is a party and that are in effect on the
29 effective date of this Act remain in effect until they expire or
30 are altered by the parties involved in the contracts, agreements
31 or compacts.

32 3. Commencing with the 2006-2007 fiscal biennium, the Maine
33 Military Authority shall submit a line category budget to the
34 Governor to be included in the unified biennial budget for all
35 state agencies that is submitted to the Legislature as a part of
36 the normal budgetary process.

37 4. Notwithstanding the Maine Revised Statutes, Title 5,
38 section 1585 or any other provision of law, the Maine Military
39 Authority may establish a head count of personnel and, upon the
40 recommendation of the State Budget Officer and approval of the
41 Governor, allot expenditures by financial order based on
42 estimated revenue in order to implement the provisions of this
43 Act. Furthermore, all accrued expenditures, assets, liabilities,
44 balances of appropriations, allocations, transfers, revenues or
45 other available funds in accounts or subdivisions of accounts of
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2 the authority remain in those accounts. By January 30, 2005, the
3 Governor shall submit to the Legislature a revised and unified
4 budgetary request by line category detailing the anticipated
5 revenues and expenditures for the fiscal year commencing July 1,
6 2004.

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8 5. The Department of Administrative and Financial Services,
9 Bureau of Human Resources shall review the personnel policies and
10 practices of the Maine Military Authority for consistency with
11 the Civil Service Law. When the bureau has determined that the
12 policies and practices of the authority are in compliance with
13 the Civil Service Law, it shall authorize administration of civil
14 service and classification functions at the authority to the
15 extent the authority's actions are consistent with applicable law
16 and with any existing collective bargaining agreement or practice.

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18 The existing job titles in use at the authority must be
19 established within the state classification file, with
20 distinguishing class codes to be used solely by the authority.
21 New positions must be established through a process and
22 specifications must be written in a format mutually agreed upon
23 between the bureau and the authority in a manner consistent with
24 any existing collective bargaining obligation or practice.

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26 6. Fringe benefits from current Maine Military Authority
27 employment of transferred personnel, including vacation and sick
28 leave, accrued seniority, health and life insurance and
29 retirement, remain with the transferred personnel. The rights
30 and benefits under statutes, rules and applicable collective
31 bargaining agreements in effect on the effective date of this Act
32 must be maintained for all personnel at the authority until
33 changed in accordance with applicable labor law principles. The
34 rights and benefits of personnel hired after the effective date
35 of this Act whose positions are included within a bargaining unit
36 are the same as those transferred employees once the newly hired
37 personnel are eligible employees under applicable law or the
38 applicable collective bargaining agreement. To the extent
39 permitted by law the authority shall bargain collectively with
40 its employees and administer any collective bargaining agreements.

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42 7. All transferred employees who are represented by a
43 bargaining agent on the effective date of this Act continue to be
44 represented by that bargaining agent. Following the effective
45 date of this Act, a petition for decertification or certification
46 of a new bargaining agent may be filed in accordance with the
47 Maine Revised Statutes, Title 26, chapter 9-B and the rules of
48 the Maine Labor Relations Board.

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50 8. The Department of Administrative and Financial Services
shall assist the Maine Military Authority with the orderly

implementation of these provisions.

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

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SUMMARY

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This bill accomplishes the following.

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1. It clarifies the administrative and financial relationship between the Maine Military Authority and the State.

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2. It requires the Maine Military Authority to preserve existing terms and conditions of employment for employees of the Maine Military Authority and the management practices relating to the terms and conditions of their employment to the greatest extent possible, consistent with the Civil Service Law and the state employee laws governing labor relations.

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3. It provides that employees who were hired after the effective date of this bill have the same rights and benefits as transferred employees.

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4. It requires that agreements between the Maine Military Authority and the bargaining agents in effect at the time of the Authority's status change to an executive branch agency must be maintained for bargaining unit personnel until changed in accordance with applicable labor law principles.

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