

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1054

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H.P. 747

House of Representatives, March 19, 2013

**An Act To Prohibit Enforcement by a Federal or State Official or  
Others of the National Defense Authorization Act For Fiscal Year  
2012**

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative LIBBY of Waterboro.  
Cosponsored by Representatives: CHIPMAN of Portland, GOODE of Bangor, HARVELL of Farmington, McCLELLAN of Raymond, RUSSELL of Portland, SANDERSON of Chelsea, SHAW of Standish, SIROCKI of Scarborough.

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

2 **Sec. 1. 37-B MRSA c. 27** is enacted to read:

3 **CHAPTER 27**

4 **PROHIBITION AGAINST ENFORCEMENT OF THE NATIONAL DEFENSE**  
5 **AUTHORIZATION ACT**

6 **§1171. Findings**

7 The Legislature finds that:

8 **1. Tenth Amendment.** The United States Constitution, Amendment X declares that  
9 the powers not delegated to the Federal Government by the United States Constitution,  
10 nor prohibited by it to the states, are reserved to the states respectively, or to the people;

11 **2. Supremacy clause.** The United States Constitution, Article VI, Paragraph 2  
12 declares that the laws of the United States are the supreme law of the land if they are  
13 made in pursuance of the powers delegated to the Federal Government in the United  
14 States Constitution;

15 **3. Habeas corpus.** The United States Constitution, Article 1, Section 9, Paragraph 2  
16 declares that the writ of habeas corpus shall not be suspended except in cases of rebellion  
17 or invasion when public safety may require suspension;

18 **4. Right to trial.** The United States Constitution, Amendment VI declares that in  
19 criminal prosecutions the accused has the right to a speedy trial by an impartial jury in the  
20 state or district where the crime was committed, to be informed of the nature and cause of  
21 the accusation, to be confronted with the witnesses and to have assistance of counsel;

22 **5. Due process of law.** The United States Constitution, Amendments V and XIV  
23 declare that the people may not be deprived of life, liberty or property without due  
24 process of law;

25 **6. National Defense Authorization Act unconstitutional.** The National Defense  
26 Authorization Act For Fiscal Year 2012, Public Law 112-81, authorizing the President of  
27 the United States to arrest and detain noncitizens indefinitely without trial, to determine  
28 whether or not a trial and what type of trial, including under the law of war, will be held  
29 for an arrestee and to transfer an arrestee to a foreign jurisdiction, violates the true  
30 meaning and intent of the United States Constitution as specified in subsections 3 to 5;  
31 and

32 **7. Duty of Legislature.** It is the duty of the Legislature to enact all measures that  
33 may be necessary to prevent the enforcement of any law or provision that violates the  
34 constitutional rights of a person within the boundaries of the State.

1 **§1172. Prohibition and reporting**

2 **1. National Defense Authorization Act activities prohibited.** An activity  
3 authorized by the National Defense Authorization Act For Fiscal Year 2012, Public Law  
4 112-81, listed in section 1171, subsection 6, is prohibited within the boundaries of the  
5 State.

6 **2. State may not support.** The State may not provide material support to or  
7 participate in the implementation of the National Defense Authorization Act For Fiscal  
8 Year 2012, Public Law 112-81.

9 **3. Department of Public Safety to report.** The Department of Public Safety shall  
10 report to the Governor and Legislature any attempt by an agency or agent of the Federal  
11 Government to implement the National Defense Authorization Act For Fiscal Year 2012,  
12 Public Law 112-81 through the operation of any state department or agency.

13 **4. Violation by federal official.** An official, agent or employee of the Federal  
14 Government or an employee of a corporation providing services to the Federal  
15 Government who enforces or attempts to enforce the National Defense Authorization Act  
16 For Fiscal Year 2012, Public Law 112-81 or any order, law, statute, rule or regulation of  
17 the Federal Government made in connection with the Act is guilty of a Class E crime.

18 **5. Violation by state official.** An official, agent or employee of the State or an  
19 employee of a corporation providing services to State Government who enforces or  
20 attempts to enforce the National Defense Authorization Act For Fiscal Year 2012, Public  
21 Law 112-81 or any order, law, statute, rule or regulation of the Federal Government made  
22 in connection with the Act is guilty of a Class D crime.

23 **SUMMARY**

24 This bill expresses the findings of the Legislature that the National Defense  
25 Authorization Act For Fiscal Year 2012, authorizing the President of the United States to  
26 arrest, detain without charge, detain indefinitely, try under the laws of war or transfer to a  
27 foreign jurisdiction a noncitizen, violates the Constitution of the United States. This bill:

28 1. Prohibits within the State the activities authorized by the Act that the Legislature  
29 finds unconstitutional;

30 2. Prohibits the State from providing material support to or participating in the  
31 implementation of provisions of the Act that the Legislature finds unconstitutional;

32 3. Requires the Department of Public Safety to report to the Governor and  
33 Legislature any attempt by an agency or agent of the Federal Government to implement  
34 the Act through the operation of any state department or agency;

35 4. Makes a federal official or employee of a corporation doing business with the  
36 Federal Government who enforces or attempts to enforce the unconstitutional provisions  
37 of the Act guilty of a Class E crime; and

1           5. Makes a state official or employee of a corporation doing business with the State  
2 who enforces or attempts to enforce the unconstitutional provisions of the Act guilty of a  
3 Class D crime.