

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2001

activities related to the administration of this chapter. Notwithstanding section 1310-B, subsection 2, the department may provide the interstate clearinghouse with product information submitted to the department under section 1661-A and the department and the interstate clearinghouse may compile or publish analyses or summaries of such information provided the analyses or summaries do not identify any manufacturer or reveal any confidential information.

Sec. 7. Resolve 1997, c. 41, §2 is repealed.

Sec. 8. Board to amend its rules. The Board of Environmental Protection shall amend its hazardous waste management rules to include mercury thermometers in the definition of "universal waste." Prior to those changes being incorporated into the board's rules, the Department of Environmental Protection may develop policies or guidelines as appropriate to facilitate the collection and retirement of the mercury in waste mercury thermometers consistent with applicable laws. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 374

S.P. 441 - L.D. 1495

An Act to Establish the Maine Military Authority

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

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

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

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

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

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

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

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

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

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

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

40. State employee. "State employee" means any regular classified or unclassified officer or employee in a department, any employee of the Maine Technical College System, except those who make the election provided under Title 20-A, section 12722, any employee of the Maine Military Authority, any employee of the Northern New England Passenger Rail Authority and any employee transferred from the Division of Higher Education Services to the Finance Authority of Maine who elects to be treated as a state employee, but does not include:

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

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

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

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

4. State. "State" means the State of Maine or any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State, including the Maine Turnpike

Authority, the Maine Port Authority, the Northern New England Passenger Rail Authority, the Maine Technical College System, the Maine Veterans' Homes, the Maine State Retirement System, the Maine Military Authority and all such other state entities.

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

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

- (1) Any municipality or any subdivision of a municipality;
- (2) Any school, water, sewer, fire or other district;
- (3) The Maine Turnpike Authority;
- (4) Any board of directors functioning as a regional intermediate education unit pursuant to Title 20-A, section 7730;
- (5) Any county or subdivision of a county;
- (6) The Maine State Retirement System; or
- (7) The Governor Baxter School for the Deaf; or
- (8) The Maine Military Authority; or

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

§157. Maine Military Authority Enterprise Fund

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

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

SUBCHAPTER IX

MAINE MILITARY AUTHORITY

§391. Maine Military Authority established

The Maine Military Authority is established as a body corporate and politic and a public instrumentality of the State, and the exercise of the powers conferred by this chapter is deemed and held to be the performance of essential governmental functions. The

authority consists of the Maine Readiness Sustainment Maintenance Center and shall report to the Adjutant General. The authority exists for the purpose of, but is not limited to, operating the existing Maine Readiness Sustainment Maintenance Center, which maintains, rebuilds, repairs, stores and manufactures equipment for the United States Department of Defense, National Guard Bureau, and maintaining, rebuilding, repairing, storing and manufacturing equipment for the State, for the United States Department of the Army, Department of the Air Force, Department of the Navy and Department of the Treasury and for foreign governments in conjunction with the foreign military sales program of the United States Department of Defense.

§392. Definitions

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

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

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

§393. Maine Military Authority operation

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

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

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

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

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

5. Acquire property. Acquire for use by the authority real 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;

6. Dispose of property. Notwithstanding any other provision of 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 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; and

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

§394. Employees

1. Executive director; other 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 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.

§395. Books and records

The Adjutant General shall ensure the accurate and timely maintenance of books, records, accounts and other evidences of the financial transactions of all the authority's activities. Books and records must be open to inspection and audit by the Maine National

Guard, the State Auditor and the Federal Government audit in conjunction with federal contracts, agreements, grants or cooperative agreements but are otherwise confidential and not subject to Title 1, chapter 13, subchapter I. The State Auditor shall periodically conduct an audit of the financial records of the authority and report the results of the audit to the Adjutant General, the Governor and the Legislature. The Adjutant General may maintain the required books, records, accounts and other evidences of the financial transactions of all of the authority's activities or enter into service agreements or contracts with departments and agencies of State Government for that purpose.

§396. Budget

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

§397. Report

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

§398. Property exempt from execution

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

§399. Revenue

Revenue generated by the authority must first be used to support the operation of the authority, including segregation of money for future capital repairs. All other unexpended balances may be transferred at any time prior to the closing of the books to any other non-General Fund state account of the Military Bureau, including, but not limited to, capital repair and maintenance of state armories and Maine National Guard tuition assistance.

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

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

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

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

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

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

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

B. The rights and benefits of employees at the Maine Military Authority are determined by statute and by the status quo existing at the Loring Rebuild Facility. The rights and benefits under statutes, rules and applicable executive branch collective bargaining agreements in effect on the effective date of this Act, or any applicable successor agreement executed between the executive branch and the collective bargaining agent, are evidence of the status quo that must be maintained for all personnel at the Maine Military Authority until changed in accordance with applicable labor law principles. The rights and benefits of personnel hired after the effective date of this Act whose positions are included within a bargaining unit are the same as those transferred employees once the newly hired per-

sonnel are eligible employees under applicable law or the applicable collective bargaining agreement, except that those employees do not have seniority rights applicable to executive branch bargaining units.

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

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

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

7. Transition complete. The Maine Military Authority shall take the steps necessary to complete the transition and to function as a body corporate and politic and an instrumentality of the State by July 1, 2002. The Adjutant General, through the Department of Administrative and Financial Services, Bureau of the Budget, shall submit to the Second Regular Session of the 120th Legislature adjustments to appropriations and allocations for fiscal year 2002-03 to accomplish the budgetary transition.

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

order upon the recommendation of the State Budget Officer and approval of the Governor.

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

Effective June 8, 2001.

CHAPTER 375

H.P. 977 - L.D. 1301

An Act to Implement Changes in Cost-sharing Agreements in School Districts

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 20-A MRSA §1301, sub-§1, as amended by PL 1993, c. 696, §1, is further amended to read:

1. Methods of sharing costs. The costs of operating a school administrative district ~~shall~~ must be shared among all municipalities within the district in one of the following ways.

A. Under a property valuation method, municipalities in a district shall share costs in the same proportion as each municipality's fiscal capacity as defined in section 15603, subsection 11-A is to the district's fiscal capacity.

B. Under an alternate plan approved by the state board and by a vote of the legislative bodies of the school administrative units forming the district and based on:

- (1) The number of resident pupils in each town;
- (2) The fiscal capacity of each member municipality as defined in section 15603, subsection 11-A; ~~or~~
- (3) Any combination of subparagraphs (1) and (2); or

(4) Any other factor or combination of factors that may, but need not, include subparagraphs (1) and (2).

~~C. Notwithstanding paragraphs A and B and for fiscal year 1992-93 only, the state valuation and resident pupil information used to calculate the shared cost for each municipality must be the same as the information used for fiscal year 1991-92.~~

D. Notwithstanding paragraphs A and B, Title 30-A, chapter 208-A or any other provision of law, the state valuation used to calculate the shared cost for each municipality in a district with a municipal incentive development zone must include the increase in equalized just value of all industrial and commercial property located in the zone over the assessed value.

Sec. 2. 20-A MRSA §1301, sub-§3, as amended by PL 1991, c. 379, is further amended to read:

3. Amendment of cost-sharing formulas. The cost-sharing formula may be amended as follows.

A. If requested by a written petition of at least 10% of the number of voters voting in the last gubernatorial election within the district, or if approved by a majority of the full board of directors, the board of directors shall hold ~~a~~ at least one meeting of municipal representatives to reconsider the method of sharing costs. The district shall give at least 15 days' notice to each municipality comprising the district of ~~that~~ any meeting.

B. Each member municipality ~~shall~~ must be represented at the meeting or meetings by 2 representatives chosen at large by its municipal officers, and one member of the district board of directors chosen by the municipality's directors.

B-1. Prior to the first meeting of municipal representatives pursuant to paragraph A, the district shall engage the services of a facilitator selected from the list maintained by the commissioner under subsection 4, paragraph C, subparagraph 1. The facilitator shall:

(1) At the first meeting, review and present data and information pertaining to sharing of costs within the district. Pertinent information may include, but is not limited to, the following:

(a) A description of the district's cost-sharing method, the elements involved in the calculation of each municipality's costs and a graphic depiction of