

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2002 to April 25, 2002**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 25, 2002**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2002**

containers of greater than 50 milliliters that are sold in the State.

3. The State Planning Office shall absorb costs to provide staffing for the committee and other costs of the study, except legislative per diem and legislative expenses.

4. Committee members who are Legislators are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses for their attendance at authorized meetings of the committee.

5. The cochairs of the committee, with assistance from the committee staff, shall administer that portion of the committee's budget related to legislative per diem and legislative expenses. Within 10 days after its first meeting, the committee shall present a work plan and proposed budget to the Legislative Council for its approval. The committee may not incur expenses that would result in the committee's exceeding its approved budget.

6. The committee shall submit a report that includes its findings and recommendations including suggested legislation to the joint standing committee of the Legislature having jurisdiction over business and economic development matters and the Legislative Council by November 6, 2002. Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over business and economic development matters may report out a bill to the First Regular Session of the 121st Legislature to implement the committee's recommendations. If the committee requires a limited extension of time to conclude its study and to make its report, it may apply to the Legislative Council, which may grant the extension.

**Sec. 14. Rulemaking.** Rules adopted for the initial implementation of this Act, with the exception of that part that enacts Title 32, section 1871-A, are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and are subject to review by the joint standing committee of the Legislature having jurisdiction over business and economic development matters. Following adoption of rules for the initial implementation of this Act, unless otherwise specified in the law, rules adopted to implement this Act are routine technical rules.

**Sec. 15. Appropriations and allocations.** The following appropriations and allocations are made.

**AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF**

**Beverage Container Enforcement Fund**

Initiative: Allocates funds for 2 additional Consumer Protection Inspector positions, one additional Management Analyst position, one additional 1/2-time Compliance Officer position, one additional 1/2-time Clerk Typist III position and start-up, rulemaking and operational costs necessary to administer a licensing program for bottle redemption centers.

<b>Other Special Revenue Funds</b>	<b>2001-02</b>	<b>2002-03</b>
Positions - Legislative Count	(0.000)	(4.000)
Personal Services	\$0	\$56,994
All Other	0	28,249
	\$0	\$85,243

**AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF DEPARTMENT TOTALS**

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2001-02</b>	<b>2002-03</b>
	<b>\$0</b>	<b>\$85,243</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$85,243</b>

See title page for effective date.

**CHAPTER 662**

**H.P. 1288 - L.D. 1752**

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

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

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

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

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

**Sec. 4. 5 MRSA §12004-G, sub-§13-E** is enacted to read:

<b><u>13-E.</u></b>	<b><u>River Flow</u></b>	<b><u>Expenses</u></b>	<b><u>37-B</u></b>
<b><u>Environment/</u></b>	<b><u>Advisory</u></b>	<b><u>Only</u></b>	<b><u>MRSA</u></b>
<b><u>Natural</u></b>	<b><u>Commission</u></b>		<b><u>§1131</u></b>
<b><u>Resources</u></b>			

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

**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.

**Sec. 6. 5 MRSA §18258, sub-§2,** as amended by PL 1987, c. 402, Pt. A, §§72 and 73, is further amended to read:

**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.

**Sec. 7. 14 MRSA §8111, sub-§1, ¶D,** as repealed and replaced by PL 1987, c. 740, §8, is amended to read:

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

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

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~~

**Sec. 9. 14 MRSA §8111, sub-§1, ¶F** is enacted to read:

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.

**Sec. 10. 20-A MRSA §13603, first ¶,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

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

**Sec. 11. 26 MRSA §811,** as amended by PL 1987, c. 769, Pt. A, §105, is further amended to read:

### **§811. Preservation of status**

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

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

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

B. If the employer so requests, obtain a confirmation from the Adjutant General, ~~Camp Keyes, Augusta,~~ or applicable reserve component headquarters; of the anticipated military duty and satisfactory completion of his the member's military duties upon return to civilian employment or immediately thereafter.

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

**4. Disability.** A person who is in compliance with subsection 2 but who has a disability incurred in or aggravated during the military service for which that person was absent and who, after reasonable

efforts by the employer to accommodate the disability, is not qualified due to that disability to be employed in the position of employment in which the member would have been employed if the member had remained continuously employed must be reinstated without loss of seniority, benefits, status and any other incidences of advantages of employment:

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

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

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

**Sec. 12. 26 MRSA §§812 and 813** are repealed and the following enacted in their place:

**§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 Reserves 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.

**§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. 13. 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.

**Sec. 14. 37-B MRSA §3, sub-§1, ¶D**, as amended by PL 1999, c. 565, §1, is further amended by adding a subparagraph (15) to read:

(15) The Adjutant General may receive personal property from the United States Department of Defense that the Secretary of Defense has determined is suitable for use by agencies in law enforcement 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.

**Sec. 15. 37-B MRSA §102, sub-§1, ¶B**, as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 16. 37-B MRSA §104**, as enacted by PL 1983, c. 460, §3, is amended to read:

**§104. Governor's military staff**

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

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

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

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

**Sec. 17. 37-B MRSA §110**, as enacted by PL 1983, c. 460, §3, is repealed.

**Sec. 18. 37-B MRSA §110-A** is enacted to read:

**§110-A. Honorary military staff**

The honorary military staff may consist of not more than 11 aides-de-camp commissioned by the Governor to serve during the Governor's term. Honorably discharged officers or enlisted personnel who served in the Army, Air Force, Navy, Coast Guard or Marine Corps during any war and who are not members of the state military forces may be appointed as aides-de-camp with the rank of colonel. One may be a naval aide with the rank of captain and one may be an Air Force aide with the rank of colonel. Aides-de-camp may be detailed from the commissioned officers of the state military forces, but officers so detailed may not be relieved from their regular duties, except when on duty with the Commander in Chief.

**Sec. 19. 37-B MRSA §112, first ¶**, as enacted by PL 1985, c. 16, is amended to read:

The Adjutant General shall organize a staff to be called a State Area Command, STARC. It shall command, control and supervise Army National Guard units employed in support of civil 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.~~

**Sec. 20. 37-B MRSA §146, sub-§3**, as enacted by PL 1983, c. 460, §3, is amended to read:

**3. Indebtedness contracted without authorization.** No officer or enlisted ~~man~~ member may contract or authorize the contracting of any indebtedness on behalf of the State, unless 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.~~

**Sec. 21. 37-B MRSA §147**, as amended by PL 1995, c. 196, Pt. A, §1, is further amended to read:

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

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

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

- A. ~~He~~ That person is not under arrest or returned to a military court for any deficiency or delinquency;
- B. ~~He~~ That person is not indebted to the State in any manner; and
- C. ~~His~~ The accounts of that person for money and public property are correct.

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

person's consent, except by sentence of a court-martial or by a board of officers in a manner prescribed by law.

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

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

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

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

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

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

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

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

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

**1. Compensation as state employee.** A member of the state military forces receives compensation as a state employee according to the provisions of ~~former Title 39, Title 39-A and this section.~~

A. Duty status is as follows.

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

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

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

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

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

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

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

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

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

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

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

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

B. Types of injuries cognizable are as follows:

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

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

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

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

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

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

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

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

~~waive the member's rights the member is not entitled to seek compensation for civilian care under former Title 39 or~~ Title 39-A.

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

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

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

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

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

**Sec. 27. 37-B MRSA §264, sub-§3, ¶G**, as amended by PL 2001, c. 353, §2, is further amended to read:

G. A 6 1/2-acre parcel of land located on the northeasterly 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; ~~and~~

**Sec. 28. 37-B MRSA §264, sub-§3, ¶H,** as enacted by PL 2001, c. 353, §3, is amended to read:

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

**Sec. 29. 37-B MRSA §264, sub-§3, ¶I** is enacted to read:

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

**Sec. 30. 37-B MRSA §265,** as enacted by PL 1983, c. 460, §3, is repealed.

**Sec. 31. 37-B MRSA §301, sub-§1,** as repealed and replaced by PL 1983, c. 594, §13, is repealed.

**Sec. 32. 37-B MRSA §301, sub-§2,** as amended by PL 1983, c. 594, §14, is further amended to read:

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

**Sec. 33. 37-B MRSA §302, sub-§1,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 34. 37-B MRSA §302, sub-§2,** as enacted by PL 1983, c. 460, §3, is repealed.

**Sec. 35. 37-B MRSA §342, sub-§2,** as enacted by PL 1983, c. 460, §3, is amended to read:

**2. Other military organizations prohibited.** No group of persons, other than federal or state military forces, may join together as a military organization or parade in public with firearms. ~~No city or town shall raise or appropriate money toward supporting such an organization. Associations wholly composed of honorably discharged servicemen of the United States and the order known as the Sons of Veterans Associations of historical military reenactors may parade in public with firearms with written authorization of the city or town officials in the~~

municipality in which they wish to parade. Students in educational institutions where military science is taught, as a prescribed part of the course of ~~instructions instruction,~~ may, ~~with the consent of the Governor,~~ drill and parade with firearms in public under the supervision of their military instructors.

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

**Sec. 36. 37-B MRSA §342, sub-§5,** as repealed and replaced by PL 1987, c. 263, §1, is amended to read:

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

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

B. All officials and employees of the State who are members of the ~~state military forces, or reserves National Guard or the Reserves of the United States Armed Forces,~~ ~~shall must~~ have a leave of absence ~~not to exceed 17 work days each calendar year~~ from their respective duties, without loss of pay or time, when engaged in ~~all annual military training duty days authorized by the Governor or under federal laws and regulations and without loss of time or leave on for~~ inactive duty, ~~full time other military training duty and active duty training days,~~ during which the members are so engaged.

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

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

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

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

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

**Sec. 38. 37-B MRSA §342, sub-§8,** as enacted by PL 1983, c. 460, §3, is repealed.

**Sec. 39. 37-B MRSA §381, first ¶,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 40. 37-B MRSA §§387 to 390** are enacted to read:

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

**1. General rule.** Whenever any member of the National Guard or the Reserves of the United States Armed Forces is ordered to military duty in response to federal or state orders, a forcible entry and detainer action may not be made of the premises 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.

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

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

**§388. Educational leave of absence**

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

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

A member of the National Guard or the Reserves of the United States Armed Forces may at any stage of any action or proceeding in any court or administrative hearing in which the member is involved, either as

plaintiff, defendant or attorney, during the period of any military service or within 60 days thereafter, in the discretion of the court or administrative hearing officer, by the member's own motion or motion of the court or administrative hearing officer, be stayed unless, in the opinion of the court or the administrative hearing officer, the ability of the plaintiff to prosecute the action, the defendant to conduct the defendant's defense or the attorney to represent either party is not materially affected by reason of the member's military service.

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

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

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

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

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

**Sec. 41. 37-B MRSA §402, sub-§4,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 42. 37-B MRSA §403, sub-§1,** as repealed and replaced by PL 1987, c. 263, §2, is amended to read:

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

when in federal service pursuant to United States Code, Title 10.

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

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

**Sec. 43. 37-B MRSA §405,** as amended by PL 1983, c. 594, §20, is further amended to read:

### **§405. Judge advocates**

The Adjutant General shall appoint ~~a judge advocate~~ advocates for the Army National Guard and ~~a judge advocate~~ advocates for the Air National Guard. The Adjutant General shall appoint as state judge advocate one of the judge advocates from the National Guard.

**Sec. 44. 37-B MRSA §407, sub-§2,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

A. An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this Code. A commanding officer may authorize warrant officers or non-commissioned officers to order enlisted persons of ~~his~~ the commanding officer's command or subject to ~~his~~ the commanding officer's authority into arrest or confinement.

B. An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority ~~he~~ the officer or warrant officer is subject. The order may be oral or written and delivered in person or by another officer. The authority to order officers or warrant officers into arrest or confinement may not be delegated.

**Sec. 45. 37-B MRSA §411, first ¶,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 46. 37-B MRSA §414, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 47. 37-B MRSA §415**, as amended by PL 1983, c. 594, §§22 to 25, is repealed.

**Sec. 48. 37-B MRSA §415-A** is enacted to read:

**§415-A. Nonjudicial punishment**

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

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

- (1) Forfeiture of up to one day's pay;
- (2) Up to 4 hours of extra duties; or
- (3) Prohibition of promotion of up to one year.

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

- (1) Forfeiture of up to 3 days' pay;
- (2) Up to 8 hours of extra duties; or
- (3) Prohibition of promotion of up to one year.

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

- (1) Forfeiture of up to 5 days' pay;
- (2) Up to 16 hours of extra duties;
- (3) Prohibition of promotion of up to one year; or
- (4) Reduction of one grade for enlisted members.

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

E. An individual being considered for nonjudicial punishment has the right to consult counsel

prior to receiving disciplinary punishment under this section.

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

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

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

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

**6. Serious crime.** The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or to a trial in the civilian courts of this State, another state or the United States for a serious crime or offense growing out of the same act or omission that is not properly punishable under this section. The fact that a disciplinary punishment has been enforced may be shown by the accused at trial and must be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

**7. Records.** The Governor may prescribe the form of records to be kept of proceedings under this section and may prescribe that the records must be in writing.

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

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

**Sec. 49. 37-B MRSA §417, sub-§8**, as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 50. 37-B MRSA §418, first ¶,** as amended by PL 1983, c. 594, §26, is further amended to read:

The jurisdiction of a court-martial is limited to trial of persons subject to this Code who are accused of military offenses described in this Code. Persons subject to this Code who are 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.~~

**Sec. 51. 37-B MRSA §420, sub-§3,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

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

**Sec. 52. 37-B MRSA §425, first ¶,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 53. 37-B MRSA §428, sub-§1,** as enacted by PL 1983, c. 460, §3, is amended to read:

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

Any period of imprisonment included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to imprisonment is suspended or deferred, ~~shall~~ must be excluded in computing the service of the term of imprisonment.

**Sec. 54. 37-B MRSA §433,** as enacted by PL 1983, c. 460, §3, is amended to read:

### **§433. Appeal**

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

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.

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 Judicial Court.

**Sec. 55. 37-B MRSA §444, first ¶,** as enacted by PL 1983, c. 460, §3, is amended to read:

Any person subject to this Code who behaves with disrespect toward ~~his~~ a superior ~~commissioned~~

officer ~~shall~~ must be punished as a court-martial may direct.

**Sec. 56. 37-B MRSA §445, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

Any person subject to this Code who strikes ~~his~~ a superior ~~commissioned~~ 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 lawful command of ~~his~~ the superior ~~commissioned~~ officer ~~shall~~ must be punished as a court-martial may direct.

**Sec. 57. 37-B MRSA §446, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

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 an~~ officer or noncommissioned officer, or treats with contempt or is disrespectful in language or deportment toward a ~~warrant an~~ officer or noncommissioned officer while that officer or noncommissioned officer is in the execution of ~~his~~ that office ~~shall~~ must be punished as a court-martial may direct.

**Sec. 58. 37-B MRSA §450, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 59. 37-B MRSA §§455 to 459** are enacted to read:

**§455. Cruelty and maltreatment**

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

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

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

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

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

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

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

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

A. "Controlled substance" means:

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

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

(3) Any other substance not specified in subparagraph (1) or contained on a list prescribed by the President 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, Section 812.

**2. Prohibition.** Any person subject to this Code who wrongfully uses, possesses, manufactures, distributes, imports 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, must be punished as a court-martial may direct.

**§458. Larceny and wrongful appropriation**

**1. Prohibitions.** Any person subject to this Code who 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:

A. With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate 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

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

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

#### §459. Assault

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

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

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

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

**Sec. 60. 37-B MRSA §501**, as amended by PL 1997, c. 455, §17, is further amended by adding at the end a new paragraph to read:

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

**Sec. 61. 37-B MRSA §503**, as amended by PL 1997, c. 643, Pt. Q, §7, is further amended to read:

#### **§503. Powers and duties**

The director has the following powers and duties.

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

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

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

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

~~**6. Other duties.** The director shall perform other duties required by this chapter.~~

**Sec. 62. 37-B MRSA §503-A, first ¶**, as enacted by PL 1991, c. 626, §10 and amended by PL 1997, c. 455, §32, is further amended to read:

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

**Sec. 63. 37-B MRSA §504, sub-§§1 and 2**, as amended by PL 1999, c. 401, Pt. II, §1, are further amended to read:

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

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

**Sec. 64. 37-B MRSA §504, sub-§3, ¶C**, as amended by PL 1991, c. 626, §12, is further amended to read:

C. All grave markers must be flat-type granite, as furnished by the United States Department of

the Army, Memorial Division, or flat-type granite facsimiles of a marker. All boxes used for burial must be protected with permanent vaults or grave liners. Stones and vaults may are not be provided at state expense.

**Sec. 65. 37-B MRSA §504, sub-§4, ¶A-1**, as repealed and replaced by PL 1999, c. 790, Pt. D, §11, is amended to read:

A-1. As used in this subsection, unless the context indicates otherwise, the following terms have the following meanings.

(1) "Eligible dependent" means the wife, husband, surviving spouse, unmarried minor child, unmarried dependent child enrolled in secondary school or unmarried adult child who became incapable of self-support before reaching 18 years of age on account of mental or physical defects.

(2) "Eligible veteran" means any person who:

(a) Served in the active United States Armed Forces and who:

(i) If discharged, received an honorable discharge or a general discharge under honorable conditions, provided that the discharge was not upgraded through a program of general amnesty; ~~and~~

~~(ii) Was a resident of the State at the time of entering military service, death or the death of an eligible dependent;~~

(b) Served in the Maine National Guard and died as a result of injury, disease or illness sustained while serving on active state service as provided in chapter 3, subchapter III; or

(d) Served in the Reserve Components of the United States Armed Forces and was entitled to retired pay under 10 United States Code, chapter 1223 or would have been entitled to retired pay under chapter 1223 except that the person was under 60 years of age.

**Sec. 66. 37-B MRSA §505, sub-§2**, as amended by PL 1997, c. 455, §26, is further amended to read:

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

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

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

(a) Is at least 16 years of age;

(b) Has graduated from high school; and

~~(c) Is not over 21 years of age at the time of first entering a vocational school or post secondary educational institution or, if over 21 years of age upon that entry, is not over 25 years of age and had been unable to enter before the age of 21 years~~ Enrolled in a degree program prior to turning 22 years of age and is not over 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 F.

"Child" also means a stepchild who is a member of a veteran's household either at the time of application 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.

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

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

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

(b) Was killed in action;



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

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

(e) Is a member of the Armed Forces on active 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 government or power.

~~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 consecutive academic years from the date of first entrance. The director may waive the limitation of 6 consecutive academic years when the recipient's education has been interrupted by severe medical disability or illness making continued attendance impossible. These educational benefits must be used for the purpose of providing tuition, matriculation fees, board, room rent, books and supplies. Assistance under this subsection may not be paid to any eligible person receiving benefits under paragraph C.~~

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

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

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

F. A child of a veteran who is attending state-supported postsecondary vocational schools or institutions of collegiate grade must be admitted free of tuition including mandatory fees and lab fees for associate's and bachelor's programs. The tuition waiver provided under this paragraph may be reduced by an amount necessary to ensure that

the value of this waiver, combined with all other grants and benefits received by the student, does not exceed the total cost of education. Room and board may not be waived. A child of a veteran has 6 academic years from the date of first entrance to complete 8 semesters. The director may waive the limit of 6 consecutive academic years when the recipient's education has been interrupted by severe medical disability or illness making continued attendance impossible.

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

**Sec. 67. 37-B MRSA §505, sub-§4**, as amended by PL 1997, c. 455, §27, is repealed.

**Sec. 68. 37-B MRSA §506, sub-§4**, as amended by PL 1991, c. 626, §19, is further amended to read:

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

**Sec. 69. 37-B MRSA §507, sub-§§3 and 4**, as enacted by PL 1983, c. 460, §3, are amended to read:

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

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

**Sec. 70. 37-B MRSA §507, sub-§5** is enacted to read:

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

**Sec. 71. 37-B MRSA §508** is enacted to read:

**§508. Veteran advocates**

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

**Sec. 72. 37-B MRSA §701**, as amended by PL 1987, c. 370, §14, is further amended to read:

**§701. Title; purpose**

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

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

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

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

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

**Sec. 73. 37-B MRSA §702, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 74. 37-B MRSA §703**, as amended by PL 1997, c. 580, §1, is further amended to read:

**§703. Definitions**

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

**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 forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots or other hostile action, or by fire, flood, earthquake or other natural or human-~~

~~made causes. These functions include, without limitation, fire fighting, police, medical and health, emergency welfare, rescue, engineering, air raid warning and communications services; radiological, chemical and other special weapons defense; evacuation of persons from stricken areas; recovery, identification and disposition of human remains; economic stabilization; allocation of critical materials in short supply; emergency transportation; existing or properly assigned functions of plant protection; other activities related to civilian protection; and other activities necessary to the preparation for the carrying out of these functions.~~

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

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

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

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

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

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

**6. Recovery.** "Recovery" means activities that, in the short term, return vital life support systems to minimum 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. 75. 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. 76. 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. 77. 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. 78. 37-B MRSA §741,** as enacted by PL 1983, c. 460, §3, is amended to read:

#### **§741. Governor's powers**

**1. Control during emergencies.** In the event of disaster 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.

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

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

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

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

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

D. In accordance with the plan and program for the civil emergency preparedness management functions of the State, and consistent with the civil emergency preparedness management plans, programs and directives of the Federal Government, procure supplies and equipment, institute training programs and public information programs and take all other preparatory steps, including the partial or full mobilization of civil emergency preparedness management organizations in advance of actual disaster or catastrophe, insure the furnishing of adequately trained and equipped forces of civil emergency preparedness management personnel in time of need;

E. Conduct studies and surveys and take inventories of the industries, resources and facilities of the State necessary to ascertain the ~~state's~~ civil

State's emergency preparedness management capabilities, and plan for their most efficient emergency use, including emergency economic controls to insure adequate production and equitable distribution of essential commodities;

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

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

H. Delegate any authority vested in him the Governor under this chapter and provide for the subdelegation of that authority.

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

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

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

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

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

### SUBCHAPTER III

#### LOCAL EMERGENCY MANAGEMENT PROGRAMS

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

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

##### **1. Municipal or interjurisdictional agencies.**

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

A. Size and density of the affected population;

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

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

**2. County or regional agencies.** The Governor shall designate the counties or regions he deems necessary for the purposes of establishing county or regional civil emergency preparedness agencies. Each county shall maintain a county emergency management agency or create regional emergency management agencies that serve the member counties. Each designated county or regional agency shall be is responsible for coordination of the activities of municipal and interjurisdictional civil emergency preparedness management agencies within the region or county and for civil emergency preparedness management in the unorganized territories within its

jurisdiction. A county or regional ~~civil~~ emergency preparedness management agency shall ~~must~~ receive support from the municipalities within its jurisdiction.

### 3. Structure of county and regional agencies.

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

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

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

### §782. Agency directors

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

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

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

**3. Interjurisdictional and regional agency directors.** The director of an interjurisdictional or regional ~~civil~~ emergency preparedness management agency shall ~~must~~ be appointed in the manner prescribed by the director in accordance with section

781, subsection 3, ~~and shall be approved by the director.~~

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

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

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

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

Each municipal, ~~interjurisdictional,~~ county and regional ~~civil~~ emergency preparedness management agency, as part of the development of a disaster emergency plan for the area subject to its jurisdiction, shall consult with hospitals within its jurisdiction to insure that the disaster plans developed by the municipality or agency and the hospitals are compatible.

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

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

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

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

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

Neither the State nor any of its agencies or political subdivisions, including a voluntary and uncompensated grantor of a permit for the use of the grantor's premises as a ~~civil an~~ emergency ~~preparedness~~ shelter, may, while engaged in any ~~civil~~ emergency ~~preparedness~~ management activities and while complying with or attempting to comply with this chapter or any rule 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, supplies, materials or funds by way of gift, grant or loan, for purposes of ~~civil~~ emergency ~~preparedness~~ management, the State, acting through the Governor, or the political subdivision, acting through its executive officer or governing body, may accept that offer. Upon acceptance, the Governor of the State or the executive officer or governing body of the political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive those services, equipment, supplies, materials or funds on behalf of the State or the political subdivision subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

**Sec. 93. 37-B MRSA §825**, as enacted by PL 1983, c. 460, §3, is amended by adding at the end a new paragraph to read:

Notwithstanding any other provision of law, the Governor may enter into an agreement with the Federal Emergency Management Agency for debris removal financial assistance and agree on behalf of the State to indemnify the Federal Government against

any claim arising from such removal as required by 42 United States Code, Section 5173.

**Sec. 94. 37-B MRSA §826, first ¶**, as amended by PL 1983, c. 816, Pt. B, §18, is further amended to read:

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

**Sec. 95. 37-B MRSA §829, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

It ~~shall be~~ is the duty of every agency for civil emergency preparedness management established pursuant to this chapter and of the officers to execute and enforce orders and rules adopted by the Governor under authority of this chapter. Each civil emergency preparedness management agency ~~shall~~ must have available for inspection at its office all orders and rules made by the Governor or issued under ~~his~~ the Governor's authority.

**Sec. 96. 37-B MRSA §831, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

In carrying out this chapter, the Governor and the executive officers or governing bodies of the political subdivisions of the State shall utilize the services and facilities of existing departments, offices and agencies of the State and all the political subdivisions thereof to the maximum extent practicable. The officers and personnel of all departments, offices and agencies shall cooperate with and extend their services and facilities to the Governor and to the civil emergency preparedness management organizations of the State upon request.

**Sec. 97. 37-B MRSA §832, first ¶**, as enacted by PL 1983, c. 460, §3, is amended to read:

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

**Sec. 98. 37-B MRSA §850**, as enacted by PL 1989, c. 489, §4, is amended to read:

#### **§850. Search and rescue plan**

The Director of the Maine Emergency Management Agency shall prepare a state search and rescue plan encompassing all activities including land, sea and air searches for persons, boats and airplanes. In

the preparation of this plan, the director shall review such individual agency plans as currently exist, seek the advice and counsel of all currently designated 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 shall cooperate with the agency in preparation of this plan. Responsibility for execution of the plan ~~shall be~~ is with the individual state agencies that have responsibility for the area being searched or for lost or downed aircraft, as appropriate. These agencies shall follow all the provisions of the approved plan.

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

**Sec. 99. 37-B MRSA §1131** is enacted to read:

#### **§1131. Establishment of commission**

**1. Establishment of commission.** The River Flow Advisory Commission, as established by Title 5, section 12004-G, subsection 13-E and referred to in this section as the "commission," shall act as a technical advisory commission to the department and the Governor's office on issues of flow of the State's rivers and streams. The commission shall also facilitate communication of river flow data between dam operators, river basin managers, state agencies, the United States Geological Survey and the National Weather Service during floods and droughts and shall administer the State's hydrologic monitoring program in cooperation with the United States Geological Survey.

**2. Membership.** The commission is composed of these members:

A. The Adjutant General or the Adjutant General's designee;

B. The State Geologist or the State Geologist's designee;

C. The Commissioner of Agriculture, Food and Rural Resources or the commissioner's designee;

D. The Commissioner of Environmental Protection or the commissioner's designee;

E. The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee;

F. The Commissioner of Marine Resources or the commissioner's designee;

G. The Director of the State Planning Office or the director's designee;

H. The Commissioner of Transportation or the commissioner's designee;

I. The District Chief of the United States Geological Survey Water Resources Division Maine District Office;

J. The Meteorologist-in-Charge of the National Weather Service Forecast Office in Gray or the designee of the Meteorologist-in-Charge;

K. Representatives from the major hydroelectric power generators, as determined by the cochairs of the commission; and

L. A representative of the public, appointed by the Governor.

**3. Chair.** The District Chief of the United States Geological Survey Water Resources Division Maine District Office and the Adjutant General or the Adjutant General's designee shall act as cochairs of the commission.

**4. Terms of office.** The term of office of the public member is 5 years. The public member may be removed from office for cause by the Governor. Members from the State Government or Federal Government shall serve a term coincident with their governmental position. The term of a representative from the major hydroelectric power generators is 5 years.

**5. Voting.** A quorum of at least 7 members must be present for voting.

**6. Administrative provision.** The Maine Emergency Management Agency shall administer the affairs and activities of the commission.

**7. Records.** The commission shall keep accurate records of its proceedings and shall file them with the Maine Emergency Management Agency.

**8. Compensation.** Members of the commission are not entitled to receive compensation.

**9. Meetings.** The commission shall meet at least once per calendar year at the call of either of the cochairs to review hydrologic conditions prior to the spring snowmelt and runoff for the purpose of issuing an advisory statement on the potential for major river flooding. Either of the cochairs may call additional meetings as needed.

**10. Powers and duties.** The commission has the power and duty only to:

A. Advise the department and the Governor on issues of flow within the State's rivers and streams;

B. Assist in communication of river flow data between dam operators, river basin managers, state agencies and federal agencies; and

C. Administer the State's cooperative hydrologic monitoring program in cooperation with the United States Geological Survey.

See title page for effective date.

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## CHAPTER 663

H.P. 1283 - L.D. 1746

### **An Act Regarding Workers' Compensation Benefits for Firefighters, Rescue Workers and Safety Workers Who Contract Certain Communicable Diseases**

**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.** 39-A MRSA §328-A is enacted to read:

**§328-A. Communicable disease contracted by emergency rescue or public safety worker**

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

A. "Body fluids" means blood and body fluids containing visible blood and other potentially infectious materials, as defined in a regulation of the Occupational Safety and Health Administration, 29 Code of Federal Regulations, 1910.1030 (2001). For purposes of potential transmission of meningococcal meningitis or tuberculosis, "body fluids" includes respiratory, salivary and sinus fluids, including droplets, sputum and saliva, mucus and other fluids through which infectious