

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

**Sec. 6. 35-A MRSA §121** is enacted to read:

**§121. Model code**

**1. Development; rules.** The commission shall adopt by rule a model building energy code, including a ventilation code, that is consistent with any other model building codes adopted by the State and with the building energy standards established in Title 10, section 1415-C, subsection 3 and section 1415-D. The commission shall ensure that the model code is not inconsistent with any other applicable state code or standard, including, but not limited to, any fire safety code, plumbing code, oil and solid fuel equipment standard, propane and natural gas equipment standard or boiler and pressure vessel standard.

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**2. Model code.** After the effective date of rules adopted pursuant to subsection 1, a municipality may not adopt a building energy code other than the model building energy code. Nothing in this section requires a municipality to adopt a building energy code. A municipality that has a building energy code in effect prior to the effective date of the rules may continue to keep that code, but if the municipality replaces its energy code it must adopt the model building energy code.

**Sec. 7. Commission investigation.** The Public Utilities Commission shall examine compliance and enforcement alternatives designed to ensure that residential and commercial buildings are constructed in conformance with statutory building energy codes. In particular, the commission shall examine the funding level and resources required for effective enforcement; possible sources of enforcement funding; which public or private entities could be charged with enforcement authority; the sanctions that could be imposed for violations; the effectiveness of different enforcement alternatives; and means by which energy code enforcement can be integrated with the enforcement of other building codes. In conducting its examination, the commission shall examine compliance and enforcement alternatives used in other states.

The commission shall report the results of its examination, together with any proposed legislation, to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by December 31, 2004. The commission's analysis must present the advantages and disadvantages of implementing the examined enforcement alternatives in this State.

**Sec. 8. Authority to report legislation.** The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may

report out legislation to the First Regular Session of the 122nd Legislature concerning building energy codes, including but not limited to legislation concerning the application of the model building energy code adopted by rule by the Public Utilities Commission and the enforcement of state building energy standards.

**Sec. 9. Effective date.** Those sections of this Act that repeal the Maine Revised Statutes, Title 10, section 1415-C, subsections 1, 1-A and 2 take effect 90 days after the adjournment of the First Regular Session of the 122nd Legislature.

See title page for effective date, unless otherwise indicated.

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**CHAPTER 646**

**H.P. 1451 - L.D. 1951**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§157. Maine Military Authority Enterprise Fund**

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

- A. Operating the Maine Readiness Sustainment Maintenance Center; and
- B. Maintaining, rebuilding, repairing, storing and manufacturing equipment for the following:

(1) The State and its political subdivisions;

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

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

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

A. Appropriations made to the account;

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

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

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

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

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

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

**§391. Maine Military Authority established**

The Maine Military Authority is established within the Executive Department.

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

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

**3. Accept financial assistance.** Accept, through the normal budgetary process, financial assistance and in-kind assistance, advances, loans, grants, gifts, contributions and other forms of financial assistance

from the Federal Government and the State Government or its agencies, ~~municipality from municipalities or other public body bodies~~ or from other sources, public or private;

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

**5. Acquire property.** Acquire for use by the authority real or personal property or any interest in real or personal property, including rights or easements, on either a temporary or permanent basis, by gift, purchase, transfer, lease or otherwise, subject to the approval of the Legislature;

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

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

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

#### **§394. Employees**

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

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

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

authority with the permission of the Adjutant General, retain outside counsel.

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

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

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

#### **§395. Books and records**

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

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

**§396. Budget**

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

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

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

**§399. Revenue**

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

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

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

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

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

4. Notwithstanding the Maine Revised Statutes, Title 5, section 1585 or any other provision of law, the Maine Military Authority may establish a head count of personnel and, upon the recommendation of the State Budget Officer and approval of the Governor, allot expenditures by financial order based on estimated revenue in order to implement the provisions of this Act. Furthermore, all accrued expenditures, assets, liabilities, balances of appropriations, allocations, transfers, revenues or other available funds in accounts or subdivisions of accounts of the

authority remain in those accounts. By January 30, 2005, the Governor shall submit to the Legislature a revised and unified budgetary request by line category detailing the anticipated revenues and expenditures for the fiscal year commencing July 1, 2004.

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

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

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

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

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

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

Effective April 14, 2004.

**CHAPTER 647**

**S.P. 643 - L.D. 1711**

**An Act Concerning Advertising of Business Names in Telephone Directories**

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

**Sec. 1. 10 MRSA c. 206-C** is enacted to read:

**CHAPTER 206-C**

**MISREPRESENTATION OF BUSINESS NAMES**

**§1250-L. Locale misrepresentation**

**1. General prohibition.** Except as provided in subsection 2, a business offering consumer goods for sale in this State may not advertise or cause to be listed in a telephone directory a business name that:

A. Is intentionally designed to misrepresent where the business is located or operating; or

B. Falsely identifies the business as being located or operating in the area covered by the telephone directory.

Each day a violation continues constitutes a separate offense until all numbers listed in the directory or advertisement in association with the prohibited business name are disabled so that calls to the numbers do not in any way connect callers to the business.

**2. Exceptions.** Subsection 1 does not apply to:

A. A telephone service provider or the publisher or distributor of a telephone service directory, unless the conduct proscribed by subsection 1 is on behalf of that telephone service provider, publisher or distributor; or

B. Any foreign corporation, the stock of which is traded on a national stock exchange and that has gross annual revenues in excess of \$100,000,000.

**3. Violation.** A person who violates this section commits a civil violation for which a fine of not less than \$500 nor more than \$1,000 may be adjudged.

See title page for effective date.

**CHAPTER 648**

**H.P. 1445 - L.D. 1945**

**An Act To Encourage the Future of Maine's Dairy Industry**

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

**Whereas,** volatility of prices paid to milk producers jeopardizes the viability of the Maine dairy industry; and

**Whereas,** the Maine dairy industry is essential to the State's rural economy and communities and generates business activity and preserves open space; and

**Whereas,** the stabilization of the dairy industry during temporary price drops constitutes a public purpose and an appropriate expenditure of state revenues; and

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

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

**Sec. 1. 7 MRSA §2953, 2nd ¶,** as repealed and replaced by PL 1975, c. 517, §2, is amended to read:

Not less than once every 3 years, the commission shall conduct independent studies of the economics and practices of the milk industry in order to assist the commission in establishing minimum prices. The studies must include the compilation of cost data for farms at 3 different levels of production.

**Sec. 2. 7 MRSA §§3153-B and 3153-C** are enacted to read:

**§3153-B. Dairy stabilization**

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

A. "Annual production" means the total quantity of milk produced in a 12-month period beginning June 1st and ending May 31st of the next calendar year. Total quantity is expressed in hundred-weight.