# LAWS

OF THE

# STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

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

Twin City Printery
Lewiston, Maine
1988

# PUBLIC LAWS

OF THE

# STATE OF MAINE

AS PASSED AT THE

FIRST AND SECOND SPECIAL SESSIONS

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1987

**Sec. 61. Transition.** A complaint justice appointed under the Maine Revised Statutes, Title 4, section 161, prior to the effective date of this Act, may continue to act with all powers of a justice of the peace under this Act until August 1, 1988, at which time that appointment shall terminate.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1988.

Effective July 1, 1988.

# CHAPTER 737

## H.P. 1855 — L.D. 2538

### AN ACT to Recodify the Laws on Municipalities and Counties.

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

## PART A

**Sec. 1. 30 MRSA Pts. 1 to 3,** as amended, are repealed.

**Sec. 2. 30-A MRSA** is enacted to read:

TITLE 30-A

MUNICIPALITIES AND COUNTIES

PART 1

COUNTIES

CHAPTER 1

COUNTY OFFICERS

SUBCHAPTER I

GENERAL PROVISIONS

§1. Definitions

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

1. County legislative delegation. "County legislative delegation" means all state legislators whose legislative districts, in whole or in part, lie within the boundaries of a county.

2. County officers. "County officers" means the commissioners, treasurer, sheriff, register of deeds and register of probate of a county.

3. Voter. "Voter" means a person registered to vote.

§2. Salaries

1. County officers' salaries. Notwithstanding other sections of this chapter, counties that are not required to obtain legislative approval of their budgets under section 253, are not required to obtain legislative approval of the salaries of county officers under this section. The county commissioners, treasurers, sheriffs, judges of probate, registers of probate and registers of deeds in those counties whose budgets require legislative approval under section 253, shall receive annual salaries from the county treasury in weekly, biweekly, monthly, semiannual or annual payments, as follows:

| | |
|---|---|
| A. Androscoggin County: | |
| (1) Commissioners | |
| (a) Chairman | $ 5,550 |
| (b) Members | 4,750 |
| (2) Treasurer | 16,050 |
| (3) Sheriff | 23,557 |
| (4) Judge of Probate | 10,774 |
| (5) Register of probate | 12,000 |
| (6) Register of deeds | 20,800 |
| B. Aroostook County: | |
| (1) Commissioners | $ 0 |
| (2) Treasurer | 6,930 |
| (3) Sheriff | 18,850 |
| (4) Judge of Probate | 9,818 |
| (5) Register of probate | 14,000 |
| (6) Register of deeds | |
| (a) Northern District | 13,730 |
| (b) Southern District | 13,730 |
| C. Franklin County: | |
| (1) Commissioners | |
| (a) Chairman | $ 4,401 |
| (b) Members | 4,174 |
| (2) Treasurer | 4,555 |
| (3) Sheriff | 22,873 |

| | |
|---|---|
| (4) Judge of Probate | 10,500 |
| (5) Register of probate | 15,000 |
| (6) Register of deeds | 16,000 |
| D. Hancock County: | |
| (1) Commissioners | |
| (a) Chairman | $ 6,170 |
| (b) Members | 5,711 |
| (2) Treasurer | 14,277 |
| (3) Sheriff | 24,000 |
| (4) Judge of Probate | 12,633 |
| (5) Register of probate | 13,167 |
| (6) Register of deeds | 14,277 |
| E. Kennebec County: | |
| (1) Commissioners | |
| (a) Chairman | $ 6,150 |
| (b) Members | 5,773 |
| (2) Treasurer | 8,159 |
| (3) Sheriff | 23,626 |
| (4) Judge of Probate | 14,055 |
| (5) Register of probate | 18,020 |
| (6) Register of deeds | 18,020 |
| F. Knox County: | |
| (1) Commissioners | |

| | 1987 | 1988 | 1989 |
|---|---|---|---|
| (a) District 1 | $3,611 | $3,611 | $3,611 |
| (b) District 2 | 3,439 | 3,439 | 3,611 |
| (c) District 3 | 3,439 | 3,439 | 3,611 |
| (d) Chairman differential | 250 | 250 | 250 |
| (2) Treasurer | 6,000 | 6,000 | 6,000 |
| (3) Sheriff | 22,500 | 22,500 | 22,500 |
| (4) Judge of Probate | 11,000 | 11,000 | 11,000 |
| (5) Register of probate | 13,425 | 13,425 | 15,000 |
| (6) Register of deeds | 15,000 | 15,000 | 15,000 |

| | |
|---|---|
| G. Lincoln County: | |
| (1) Commissioners | |
| (a) Chairman | $ 5,292 |
| (b) Members | 4,515 |
| (2) Treasurer | 4,935 |
| (3) Sheriff | 24,532 |
| (4) Judge of Probate | 11,907 |
| (5) Register of probate | 14,430 |
| (6) Register of deeds | 18,428 |
| H. Oxford County: | |
| (1) Commissioners | |
| (a) Chairman | $ 5,152 |
| (b) Members | 4,694 |
| (2) Treasurer | 6,205 |
| (3) Sheriff | 23,148 |
| (4) Judge of Probate | 12,934 |
| (5) Register of probate | 14,820 |
| (6) Register of deeds | |
| (a) Eastern District | 15,236 |
| (b) Western District | 11,700 |
| I. Penobscot County: | |
| (1) Commissioners | |
| (a) Chairman | $ 7,176 |
| (b) Members | 6,864 |
| (2) Treasurer | 2,808 |
| (3) Sheriff | 22,932 |
| (4) Judge of Probate | 18,720 |
| (5) Register of probate | 18,044 |

| | |
|---|---|
| (6) Register of deeds | 18,044 |
| J. Piscataquis County: | |
| (1) Commissioners | |
| (a) Chairman | $ 5,000 |
| (b) Members | 4,200 |
| (2) Treasurer | 5,200 |
| (3) Sheriff | 20,000 |
| (4) Judge of Probate | 11,700 |
| (5) Register of probate | 13,450 |
| (6) Register of deeds | 13,900 |
| K. Sagadahoc County: | |
| (1) Commissioners | |
| (a) Chairman | $ 4,120 |
| (b) Members | 3,605 |
| (2) Treasurer | 7,017 |
| (3) Sheriff | 19,055 |
| (4) Judge of Probate | 12,929 |
| (5) Register of probate | 14,125 |
| (6) Register of deeds | 15,073 |
| L. Somerset County: | |
| (1) Commissioners | |
| (a) Chairman | $ 4,296 |
| (b) Members | 3,681 |
| (2) Treasurer | 8,850 |
| (3) Sheriff | 25,400 |
| (4) Judge of Probate | 14,307 |
| (5) Register of probate | 15,089 |
| (6) Register of deeds | 15,500 |
| M. Washington County: | |
| (1) Commissioners | |
| (a) Chairman | $ 4,872 |
| (b) Members | 4,061 |
| (2) Treasurer | 15,600 |
| (3) Sheriff | 22,381 |
| (4) Judge of Probate | 13,834 |
| (5) Register of probate | 13,696 |
| (6) Register of deeds | 13,696 |
| N. York County: | |
| (1) Commissioners | $ 0 |
| (2) Treasurer | 3,900 |
| (3) Sheriff | 27,000 |
| (4) Judge of Probate | 11,463 |
| (5) Register of probate | 15,935 |
| (6) Register of deeds | 17,563 |

2. Clerk hire and expenses. Expenses of county officers shall be allowed as follows.

A. County commissioners shall allow all necessary and proper office expenses, clerk hire and travel to the county officers, except clerks of courts. They shall also allow to the sheriffs, whether acting within or outside the county, the costs of boarding, guarding and transporting:

(1) Prisoners, whether awaiting trial, during trial or after conviction; or

(2) Juveniles, whether awaiting hearing, during hearing or after adjudication that a juvenile offense has been committed.

B. The Chief Justice of the Supreme Judicial Court or the Chief Justice's designee shall allow to clerks of court, for payment by the State, their necessary and proper office expenses, clerk hire and travel expenses.Clerks must obtain approval of these expenses at such time and in such manner as the Chief Justice or the Chief Justice's designee directs.

3. Fees and charges. The payment of fees and charges to the county treasurer is governed by the following provisions.

A. All fees and charges received by any county officer, except clerks of court, shall be paid by that county officer to the county treasurer by the 15th day of every month following the month in which they were collected. Fees received by any clerk of courts shall be paid by that clerk as elsewhere provided by law or, in the absence of express provision, to the State.

B. All fees and charges received by any deputy sheriff shall be paid by that deputy sheriff to the county treasurer by the 15th day of every month following the month in which they were collected, except that deputies not on a salary or per diem basis may receive and retain fees for the service of criminal or civil process.

(1) Sheriffs and their deputies shall collect fees chargeable for the service of civil process only from the litigants.

(2) Fees chargeable for the service of criminal process by deputies not on salary or per diem must be approved by the respective district attorneys and paid by the respective county treasurers.

4. Salaries and expenses of court and jury officers. Each county shall pay the salaries and expenses of bailiffs and other court and jury officers who work for courts located in that county. The Judicial Department shall reimburse each county quarterly for these salaries and expenses as provided in Title 4, section 25.

§3. Expense accounts to be under oath

Whenever required by law to provide a bill of expenses, every county officer shall itemize the bill and swear, before presenting it for auditing or payment, that it includes only actual cash spent in performing the officer's official duties.

§4. County officer's private benefit from county labor

No county officer may receive a private benefit from the labor of any person employed by the county.

§5. Conflicts of interest

Sections 2604 and 2605, invalidating certain actions due to conflicts of interest, apply to all county officials.

§6. Transition period

There is a 30-day transition period for all newly elected county officers from December 1st to January 1st in each year. During this period, each newly elected county officer may, without pay, attend the office to which that county officer has been elected in order to become familiar with its duties. During this period, all of the personnel of that office, including the incumbent county officer, shall assist the officer in learning the duties of that office.

§7. Violation and penalty

Any agent or officer who willfully violates section 701, 921, 922, 923, 924 or 951 is guilty of a Class E crime.

§8. Civil violation

Any county officer who fails to follow the requirements of this chapter or chapter 3 commits a civil violation for which a forfeiture of not more than $200 may be adjudged.

## SUBCHAPTER II

## COUNTY COMMISSIONERS

### ARTICLE 1. GENERAL PROVISIONS

§51. Salaries; county commissioners

1. Salaries; time of payment. Except as provided in section 82, the county commissioners in the several counties shall receive annual salaries as set forth in section 2 from the county treasurer in weekly, biweekly, monthly, semiannual or annual payments, as determined by the county commissioners. If these payments are made monthly, they shall be made on the last day of each month; if semiannually, they shall be made on the last day of June and the last day of December; if annually, they shall be made on the last day of December.

2. Salaries; full compensation. These salaries are in full compensation for all services of the commissioners, including the management of the jails and for any expenses or travel to and from the county seat for any commissioner, except as provided in subsection 3, section 82, subsection 4 and section 105.

3. Travel expenses. Travel expenses shall be allowed as follows.

A. The county commissioners may allow, by majority vote, the payment of all necessary and proper expenses and travel allowances to and from the county seat by commissioners who live more than 5 miles from the county seat.

B. When outside of the county seat on official business, including attendance at or participation in public hearings, inspection and supervision of construction, snow removal and maintenance of roads in unincorporated townships in their county, all county commissioners shall be allowed in addition to their salaries all necessary traveling and hotel expenses connected with those activities. All bills for expenses under this paragraph must be approved by the district attorney serving their county and shall be paid by the treasurer of the county.

§52. Incompatible offices

1. Municipal offices. No person holding the office of county commissioner may at the same time hold either the office of mayor or assessor of a city or the office of selectman or assessor of a town.

2. County offices. No county commissioner, during the term for which that commissioner has been elected and for one year thereafter may be appointed to any office of profit or employment position of the county,

which was created or the compensation of which was increased by the action of the county commissioners during the county commissioner's term.

§53. Commissioner not agent; spend money

No commissioner may be appointed to expend money assessed or raised for any purpose by the board of which that commissioner is a member.

ARTICLE 2. ELECTION AND TENURE

§61. Board of commissioners; election; chairman

There shall be a board of commissioners for each county consisting of a chairman and 2 other persons. Each of the commissioners of a county must represent one of the commissioner districts established under section 66 for the commissioner's county.

1. Residency; election by district. Members of each board of commissioners must be residents of the commissioner district which they represent and shall be elected by the voters of that district.

2. Mode of election. County commissioners shall be elected on the Tuesday following the first Monday of November in each even-numbered year. The votes shall be received, sorted, counted and declared in the same manner as votes for Representatives. The municipal clerk shall record in the municipal records the names of the persons voted for, the number of votes for each and the whole number of ballots received. The municipal clerk shall send true copies of these records, sealed and attested in the same manner as returns of votes for Senators, to the Secretary of State.

3. Chairman. The commissioners shall select their chairman annually at their first meeting on or after the first day of January to act for one year.

§62. Vacancies; expiration of term

Vacancies to occur by expiration of the term of office at the end of any year in which a biennial election is held shall be filled by election on the Tuesday following the first Monday of November in that year.

1. Term of office. The term of office for a county commissioner is 4 years, except when a person is elected to fill an unexpired term, in which case it is for the remainder of the unexpired term.

2. Election designation. When only one county commissioner is to be elected, the nomination papers and official ballot shall specify simply the office of county commissioner. When 2 or more county commissioners are to be elected, the nomination papers and ballots shall also designate the respective terms for which they are to be nominated or elected.

§63. Vacancies during other times

When no choice is effected or a vacancy happens in the office of county commissioner by death, resignation, removal from the county or for any other reason, the Governor shall appoint a person to fill the vacancy. That person shall hold office until the first day of January following the next biennial election at which a person shall be elected to fill the office.

In the case of a vacancy in the term of a commissioner who was nominated by primary election before the general election, the commissioner appointed by the Governor must be enrolled in the same political party as the commissioner whose term was vacant.

§64. Military or naval service; substitutes

Whenever a county commissioner during the commissioner's term of office in time of war, contemplated war or emergency, enlists, enrolls, is called or ordered or drafted into the military or naval service of the United States, that commissioner is not deemed to have thereby resigned from or abandoned the office, nor is the commissioner removable from that office during the period of military or naval service except that the term of office is not lengthened because of this section. From the time of induction into service, the commissioner is regarded as on leave of absence without pay from the office, and the Governor shall appoint a competent citizen, a resident of the same county, to fill the office while the county commissioner is in the federal service, but not for a longer period than the remaining portion of that commissioner's term. In the case of a vacancy in the term of a commissioner who was nominated by primary election before the general election, the commissioner appointed by the Governor must be enrolled in the same political party as the commissioner whose term was vacant. During the period of military or naval service, the county shall pay to the substitute county commissioner a salary at the same rate as the rate of pay of the county commissioner and amounts so paid shall be deducted from the salary of the county commissioner. The citizen appointed to fill the temporary vacancy has the title of "substitute county commissioner" and possesses all the rights and powers and is subject to all the duties and obligations of the county commissioner.

§65. Apportionment of county commissioner districts

1. Redistricting, generally. In 1983 and every 10 years thereafter, the apportionment commission established under the Constitution of Maine, Article IV, Part Third, Section 1-A, shall review the existing county commissioner districts and, as necessary, reapportion those districts in each county to establish as nearly as practicable equally populated districts. The Speaker of the House is responsible for calling the commission together to review the county commissioner districts. No action may be taken by the commission without a quorum of 7.

A. The apportionment commission shall divide the number of commissioners in each county into the number of inhabitants of the county, excluding foreigners

not naturalized, according to the latest Federal Decennial Census or a state census previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a mean population figure for each county commissioner district. Each county commissioner district must be formed of contiguous and compact territory and must cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts. Whenever the population of a municipality entitles it to more than one district, all whole districts must be drawn within the municipal boundaries. Any population remainder within the municipality must be included in a district drawn to cross the municipal boundary, provided that the population remainder within the municipality is contiguous to another municipality or municipalities included in the district. Any county which already meets the standards and guidelines for equally populated districts, as established by this section, the Constitution of Maine and the Constitution of the United States, need not be reapportioned.

B. Interested parties from each county may submit redistricting plans for the commission to consider. Those plans must be submitted to the commission no later than 30 calendar days after the commission is called together by the Speaker of the House under this subsection. The commission may hold public hearings on plans affecting each county.

C. The commission shall submit its plan to the Clerk of the House no later than 120 calendar days after the commission is called together by the Speaker of the House under this subsection. The Clerk of the House shall submit to the Legislature, no later than January 15, 1984, and every 10th year thereafter, one legislative document to reapportion the county commissioner districts based on the plan submitted by the apportionment commission. The Legislature must enact the submitted plan or a plan of its own in regular or special session by a vote of 2/3 of the members of each House within 30 calendar days after the plan is submitted to it by the Clerk of the House. This action is subject to the Governor's approval, as provided in the Constitution of Maine, Article IV, Part Third, Section 2.

2. Supreme Judicial Court. If the Legislature fails to make an apportionment within the 30 calendar days, the Supreme Judicial Court shall make the apportionment within 60 calendar days following the period in which the Legislature is required to act, but fails to do so. In making the apportionment, the Supreme Judicial Court shall consider plans and briefs filed by the public with the court during the first 30 days of the period in which the court is required to apportion.

3. Funding. The commission shall make equal amounts of money available to the 2 major parties represented on the commission for the purpose of this apportionment. In addition, sufficient funds shall be made available to the chairman of the commission. The commission shall recommend to the Legislature, if that body is in session, otherwise to the Legislative Council, an appropriation sufficient to cover the cost of reapportionment.

§66. County commissioner districts

1. Creation of Androscoggin County Commissioner Districts. Androscoggin County is divided into the following 3 districts.

A. Commissioner District Number 1, in the County of Androscoggin, consists of the municipalities of Greene, Leeds, Lisbon, Livermore, Livermore Falls, Sabattus, Turner, Wales and that portion of the City of Lewiston described as follows: Beginning on College Road at the Greene town line; thence in a general southeasterly direction along the Greene town line to Old Greene Road; thence in a general southwesterly direction along Old Greene Road to North Temple Street; thence in a general southwesterly direction along North Temple Street to Sabattus Street; thence in a general westerly direction along Sabattus Street to Nichols Street; thence in a general northeasterly direction along Nichols Street to Holland Street; thence in a general northwesterly direction along Holland Street to College Street; thence in a general northeasterly direction along College Street to the point of beginning. The term of office of the county commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2, in the County of Androscoggin, consists of the municipalities of Auburn, Durham, Mechanic Falls, Minot and Poland. The term of office of the county commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3, in the County of Androscoggin, consists of all of the City of Lewiston, excepting that portion as described in County Commissioner District Number 1. The term of office of the county commissioner from this district shall expire in 1990 and every 4 years thereafter.

2. Creation of Aroostook County Commissioner Districts. Aroostook County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Amity, Ashland, Bancroft, Benedicta, Blaine, Bridgewater, Cary Plantation, Crystal, Dyer Brook, E Plantation, Easton, Fort Fairfield, Garfield Plantation, Glenwood Plantation, Hammond, Haynesville, Hersey, Hodgdon, Houlton, Island Falls, Linneus, Littleton, Ludlow, Macwahoc Plantation, Mars Hill, Masardis, Merrill, Monticello, Moro Plantation, Nashville Plantation, New Limerick, Oakfield, Orient, Oxbow Plantation, Reed Plantation, Sherman, Smyrna, Westfield, Weston and the unorganized territories of

Central Aroostook and South Aroostook. The term of office of the county commissioner from this district shall expire in 1990 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Allagash, Caribou, Castle Hill, Chapman, Eagle Lake, Mapleton, Perham, Portage Lake, Presque Isle, St. Francis, St. John Plantation, Wade, Washburn, Westmanland, Winterville Plantation and the unorganized territories of Northwest Aroostook and Square Lake. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Caswell Plantation, Cyr Plantation, Fort Kent, Frenchville, Grand Isle, Hamlin, Limestone, Madawaska, New Canada, New Sweden, Saint Agatha, Stockholm, Van Buren, Wallagrass Plantation, Woodland and the unorganized territory of Connor. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

3. Creation of Cumberland County Commissioner Districts. Cumberland County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Falmouth and Portland. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Baldwin, Cape Elizabeth, Gorham, Scarborough, South Portland, Standish and Westbrook. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Bridgton, Brunswick, Casco, Cumberland, Freeport, Gray, Harpswell, Harrison, Naples, New Gloucester, North Yarmouth, Pownal, Raymond, Sebago, Windham and Yarmouth. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

4. Creation of Franklin County Commissioner Districts. Franklin County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Jay and Wilton. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Chesterville, Farmington, Industry and New Sharon. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Avon, Carrabassett Valley, Carthage, Coplin Plantation, Dallas Plantation, Eustis, Kingfield, Madrid, New Vineyard, Phillips, Rangeley Plantation, Rangeley, Sandy River Plantation, Strong, Temple, Weld and the unorganized territories of East Franklin, North Franklin, South Franklin, West Central Franklin and Wyman. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

5. Creation of Hancock County Commissioner Districts. Hancock County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Amherst, Aurora, Blue Hill, Dedham, Eastbrook, Ellsworth, Gouldsboro, Great Pond, Mariaville, Osborn, Otis, Sorrento, Sullivan, Surry, Waltham, Winter Harbor and the unorganized territories of Central Hancock, East Hancock and North Hancock. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Brooklin, Brooksville, Bucksport, Castine, Deer Isle, Orland, Penobscot, Sedgwick, Stonington and Verona. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Bar Harbor, Cranberry Isles, Franklin, Frenchboro, Hancock, Lamoine, Mount Desert, Southwest Harbor, Swan's Island, Tremont and Trenton. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

6. Creation of Kennebec County Commissioner Districts. Kennebec County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Augusta, Chelsea, China, Randolph, Sidney, Vassalboro and Windsor. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Belgrade, Farmingdale, Fayette, Gardiner, Hallowell, Litchfield, Manchester, Monmouth, Mount Vernon, Pittston, Readfield, Rome, Vienna, Wayne, West Gardiner and Winthrop. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Albion, Benton, Clinton, Oakland, Waterville, Winslow and Unity Township. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

7. Creation of Knox County Commissioner Districts. Knox County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Owls Head, Rockland and South Thomaston. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Cushing, Friendship, Isle au Haut, Matinicus Isle Plantation, North Haven, St. George, Thomaston, Vinalhaven, Warren and the unorganized territory of Criehaven. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Appleton, Camden, Hope, Rockport, Union and Washington. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

8. Creation of Lincoln County Commissioner Districts. Lincoln County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Boothbay, Boothbay Harbor, Southport, Westport and Wiscasset. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Bremen, Bristol, Monhegan Plantation, Nobleboro, South Bristol and Waldoboro. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Alna, Damariscotta, Dresden, Edgecomb, Jefferson, Newcastle, Somerville, Whitefield and the unorganized territory of Hibberts Gore. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

9. Creation of Oxford County Commissioner Districts. Oxford County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Andover, Bethel, Brownfield, Denmark, Fryeburg, Gilead, Hanover, Hiram, Lovell, Newry, Norway, Porter, Stoneham, Stow, Sweden, Waterford and the unorganized territories of North Oxford and those portions of South Oxford known as Batchelders Grant and Mason. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Byron, Dixfield, Lincoln Plantation, Magalloway Plantation, Mexico, Peru, Roxbury, Rumford and Upton. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Buckfield, Canton, Greenwood, Hartford, Hebron, Otisfield, Oxford, Paris, Sumner, West Paris, Woodstock and the unorganized territories of Milton and that portion of South Oxford known as Albany. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

10. Creation of Penobscot County Commissioner Districts. Penobscot County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Bangor, Brewer and Hampden. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Carmel, Clifton, Corinna, Corinth, Dexter, Dixmont, Eddington, Etna, Exeter, Garland, Glenburn, Hermon, Holden, Kenduskeag, Levant, Newburgh, Newport, Orono, Orrington, Plymouth, Stetson and Veazie. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Alton, Bradford, Bradley, Burlington, Carroll Plantation, Charleston, Chester, Drew Plantation, East Millinocket, Edinburg, Enfield, Greenbush, Greenfield, Howland, Hudson, Lagrange, Lakeville, Lee, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Old Town, Passadumkeag, Patten, Prentiss Plantation, Seboeis Plantation, Springfield, Stacyville, Webster Plantation, Winn, Woodville, Penobscot Indian Island Reservation and the unorganized territories of Argyle, Grand Falls, Kingman, North Penobscot, Summit, Twombly and Whitney. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

11. Creation of Piscataquis County Commissioner Districts. Piscataquis County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Abbot, Beaver Cove, Blanchard Plantation, Greenville, Guilford, Kingsbury Plantation, Monson, Shirley, Wellington, Willimantic and the unorganized territory of Elliottsville. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the

municipalities of Dover-Foxcroft, Parkman and Sangerville. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Atkinson, Bowerbank, Brownville, Lake View Plantation, Medford, Milo, Sebec and the unorganized territories of Barnard, Northeast Piscataquis, Northwest Piscataquis and Southeast Piscataquis. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

12. Creation of Sagadahoc County Commissioner Districts. Sagadahoc County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Bowdoin, Bowdoinham and Topsham. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Arrowsic, Georgetown, Phippsburg, Richmond, West Bath, Woolwich, the unorganized territory of Perkins and that portion of the City of Bath south and east of a line described as follows: Beginning at the Carleton Bridge a line west to King Street at Water Street, thence west on King Street to Washington Street, thence south on Washington Street to Bath Street, thence west on Bath Street to High Street, thence south on High Street to Pine Street, thence east on Pine Street to Washington Street, thence south on Washington Street to an inlet of the Kennebec River (which is just north of Hunt Street). The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of that portion of the City of Bath north and west of a line described as follows: Beginning at the Carleton Bridge a line west to King Street at Water Street, thence west on King Street to Washington Street, thence south on Washington Street to Bath Street, thence west on Bath Street to High Street, thence south on High Street to Pine Street, thence east on Pine Street to Washington Street and thence south on Washington Street to an inlet of the Kennebec River (which is just north of Hunt Street). The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

13. Creation of Somerset County Commissioner Districts. Somerset County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Anson, Athens, Bingham, Brighton Plantation, Cambridge, Caratunk, Dennistown Plantation, Embden, Harmony, Hartland, Highland Plantation, Jackman, Moose River, Moscow, New Portland, Palmyra, Pleasant Ridge Plantation, Ripley, St. Albans, Starks, The Forks Plantation, West Forks Plantation and the unorganized territories of Central Somerset, Northeast Somerset, Northwest Somerset and Seboomook Lake. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Fairfield, Madison, Mercer, Norridgewock, Smithfield and Solon. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Canaan, Cornville, Detroit, Pittsfield and Skowhegan. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

14. Creation of Waldo County Commissioner Districts. Waldo County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Belfast, Belmont, Islesboro, Lincolnville and Northport. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Frankfort, Jackson, Monroe, Prospect, Searsport, Stockton Springs, Swanville and Winterport. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Brooks, Burnham, Freedom, Knox, Liberty, Montville, Morrill, Palermo, Searsmont, Thorndike, Troy, Unity and Waldo. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

15. Creation of Washington County Commissioner Districts. Washington County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities and unorganized territories of Calais, Danforth, Topsfield, Indian Township Voting District, unorganized territories of T8 R4, Forest City T9 R4, Forest T10 R3, T8 R3, Brookton Township, T11 R3, Lambert Lake T1 R3, Kossuth T7 R2, T6 R1, Dyer T1 R2, Fowler T1 R1, T5 ND, T6 ND, T42 MD, T43 MD, T27 ED, T36 MD, T37 MD and T26 ED, Vanceboro, Codyville Plantation, Waite, Talmadge, Grand Lake Stream Plantation, Plantation Number 21, Princeton, Baileyville, Alexander, Crawford, Meddybemps and Baring Plantation. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities and unorganized territories of East Machias, Machiasport, Northfield, Robbinston, Perry, Charlotte, Wesley, Cooper, Plantation Number 14, Dennysville, Whiting, Cutler, unorganized territories of T30 MD, T25 MD, T19 ED, T18 ED, Marion Township, Edmunds Township, Trescott, Lubec, Pembroke, Pleasant Point Voting District and Eastport. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities and unorganized territories of Deblois, Cherryfield, Steuben, Milbridge, Harrington, Addison, Jonesport, Beals, Beddington, Columbia, Columbia Falls, Centerville, Jonesboro, Roque Bluffs, Whitneyville, Marshfield and Machias and unorganized territories of Deveraux T29 MD, T24 MD, T18 MD and T19 MD. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

16. Creation of York County Commissioner Districts. York County is divided into the following 3 districts.

A. Commissioner District Number 1 consists of the municipalities of Acton, Berwick, Buxton, Cornish, Eliot, Hollis, Kittery, Lebanon, Limerick, Limington, Newfield, North Berwick, Parsonsfield and South Berwick. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

B. Commissioner District Number 2 consists of the municipalities of Arundel, Biddeford, Kennebunk, Kennebunkport, Ogunquit, Wells and York. The term of office of the commissioner from this district shall expire in 1990 and every 4 years thereafter.

C. Commissioner District Number 3 consists of the municipalities of Alfred, Dayton, Lyman, Old Orchard Beach, Saco, Sanford, Shapleigh and Waterboro. The term of office of the commissioner from this district shall expire in 1988 and every 4 years thereafter.

## ARTICLE 3. SESSIONS

### §71. Sessions; times and places; notice

The county commissioners shall hold sessions in the county seat at least 3 times annually in 3 different months and at other times or other places which they may designate. The county commissioners shall give public notice of the time and place of each regular meeting of the commissioners at least 7 days before the meeting. Any policy decisions made by the county commissioners at meetings other than their regular meetings shall be recorded in the minutes of the next regular meeting after the decision is made.

### §72. Quorum

A majority of the commissioners constitutes a quorum. When fewer attend, they may adjourn to a convenient time and place. When no commissioner attends, the clerk may adjourn the meeting.

## ARTICLE 4. CLERK: COUNTY ADMINISTRATOR

### §81. Designation of clerk; duties

1. Appointment of clerk; term; clerk pro tempore. The county commissioners in each county may appoint a suitable person to serve as clerk to the county commissioners. If the county has a county administrator, the commissioners may not appoint a clerk. The clerk of the county commissioners shall be known as the county clerk.

A. The county clerk serves at the will of the county commissioners.

B. When a clerk is absent, the clerk may appoint a clerk pro tempore to the commissioners for whose actions the clerk is responsible.

2. Duties; commissioners' records. County clerks must be sworn and shall make a record of the actions of the county commissioners. The commissioners shall examine these records and, when correct, shall certify them and they shall be adopted into the records of the county commissioners by the clerk.

### §82. County administrator

The county commissioners of each county may appropriate funds for the hiring of a county administrator. If the county commissioners do not hire a full-time county administrator, then no county employee, other than county commissioners, may perform any of the administrative functions of a county administrator.

1. Appointment; qualifications. The county commissioners shall choose the county administrator solely on the basis of executive and administrative qualifications with special reference to the actual experience in, or knowledge of, the duties of the office as set forth in the policies established by the board of county commissioners and by law.

A. At the time of appointment, the county administrator need not be a resident of the county, but, while in office, the county administrator may reside outside the county only with the county commissioners' approval.

B. A county administrator may not hold any other elective or appointed county office, except as provided in this section.

2. Compensation; tenure of office. The county commissioners shall determine the compensation of the county administrator. The county administrator shall hold office for an indefinite term unless otherwise speci-

fied by contract. The county commissioners may, for cause, remove or suspend the county administrator in accordance with the procedure for removing or suspending a town manager under section 2633. In the absence or during the disability of the county administrator, the county commissioners may appoint an official of the county to perform the administrator's duties.

3. Duties. The county administrator is the chief administrative official of the county and is responsible for the administration of all departments and offices controlled by the county commissioners. The county administrator shall act as the clerk of the county. The county administrator shall act as purchasing agent for all departments and offices of the county, although the county commissioners may require that all purchases greater than a designated amount must be submitted to sealed bid. The county administrator shall attend all meetings of the county commissioners, except when the county administrator's removal or suspension is being considered. The county administrator shall keep the county commissioners and the county legislative delegation informed as to the financial condition of the county and shall collect all data necessary to prepare the budget.

4. County commissioners' compensation. Notwithstanding any other provision of law, if the county commissioners hire a full-time county administrator, they shall forego the annual salary otherwise due them and shall receive only $75 each for each meeting attended and reimbursement for travel at the same rate established for state employees.

## ARTICLE 5. POWERS AND DUTIES

### §101. Commissioners' duties

The commissioners of each county shall:

1. Receipts and expenditures. Examine, allow and settle accounts of the money of the county;

2. Representation. Represent the county;

3. Manage property and business. Care for its property and manage its business;

4. Convey real estate. By a recorded order, appoint an agent to convey its real estate;

5. County ways. Lay out, alter or discontinue ways;

6. Keep books and accounts. Keep their books and accounts on forms and in a manner approved by the Department of Audit; and

7. Other duties. Perform all other duties required by law.

### §102. County commissioners' authority

The county commissioners have final authority over the operation of all county offices by elected or appointed county officers, except in circumstances for which a County Personnel Board has been established under subchapter VII, article 2 with the powers and duties set forth in that article and in section 501. The county commissioners must act as a board and not on an individual basis in exercising this authority.

### §103. County office hours

The county commissioners may establish reasonable office hours for offices in the county buildings. County offices, in the discretion of the county commissioners, may be closed in part or in whole on Saturdays.

1. County offices of Androscoggin County. Except on any holiday listed in Title 4, section 1051, all county offices of Androscoggin County shall remain open from 9 a.m. to 5 p.m. during each working day. This subsection does not apply to the offices of sheriff, Judge of Probate and district attorney.

### §104. Execution of process

Sheriffs and their deputies and constables shall execute all legal processes directed to them by the commissioners.

### §105. Services in condemnation cases

The county commissioners shall charge $3 a day and actual traveling expenses for their services in the assessment of damages for land or easement sought to be taken or acquired by private corporations. They must certify these charges and expenses in a bill of items to the district attorney. The district attorney shall collect these sums from the party seeking to exercise the right of eminent domain and immediately pay those sums to the county treasurer. The county treasurer shall pay the actual traveling expenses to the commissioners when they are collected by the district attorney.

### §106. Warrants of distress; actions

Warrants of distress on judgments legally rendered by the county commissioners may be originally issued within 2 years after judgment and made returnable to the clerk's office within 90 days from their date. New warrants may be issued within 2 years from the return day of the last preceding warrant for any sums remaining unpaid.

1. Warrants against municipalities. No warrant may be originally issued against a municipality until 20 days after the county clerk transmits a certificate of rendition of the judgment to the assessors of that municipality.

2. Interest. Interest on the damages shall be included and collected by warrants as in executions.

3. Civil action. A party, for whose benefit a judgment is rendered by the county commissioners, may recover the amount in a civil action founded on that judgment.

§107. Contracts with municipalities

The county commissioners of each county may contract with municipalities within the county to provide services that either a county or a municipality may perform. Under such a contract, the county commissioners may also contract with other political subdivisions of the State, quasi-municipal corporations, any agency or instrumentality of the State or with private enterprises, to enable or assist in performing all or part of the services contracted for by a municipality.

1. Municipal action required. The legislative body of any municipality entering into a contract under this section must take appropriate action by ordinance, resolution or other action pursuant to law before the contract takes effect.

2. Contents of contract. Any contract with a municipality must specify the following:

A. Its duration;

B. Its purpose;

C. The manner and amount of financing for the contracted services and maintaining a budget;

D. The scope and nature of the services to be performed by the county;

E. The manner of administering the performance of the contract and the methods and extent of municipal control of that administration;

F. The manner of acquiring, holding and disposing of real and personal property acquired or used in performing the contract;

G. Any limitations on the county commissioners' power to contract with other political subdivisions, quasi-municipal corporations, agencies, instrumentalities or enterprises to perform the services specified in the municipal-county contract, including the duties and activities that may be contracted for by the county;

H. The method of partial or complete termination of the contract and the obligations and responsibilities of each party on termination; and

I. Any other necessary and proper matters.

3. Filing. A copy of the contract shall be filed with the clerk of each municipality that is a party to the contract and in the office of the county commissioners.

§108. Charges and rents

1. Publication charges. The county commissioners shall set the amount to be charged by the register of probate for the publication of notices required by law. The amount set may not be less than the county's actual cost of providing the publication service, including the actual cost of publication.

2. Rent for county housing. The county commissioners shall set the amount of rent to be charged the sheriff or jailer occupying the house or apartment connected with the county jail. The amount of rent must be reasonable, but may not be less than the actual cost of operating and maintaining the house or apartment, including the cost of any fuel and electricity supplied by the county.

ARTICLE 6. BUILDINGS AND PROPERTY

§121. County buildings and land; records; parking areas

1. Buildings. The county commissioners, in the county seat of their county, may provide a jail and shall keep it in proper repair. The county commissioners, in the county seat of their county, shall provide and keep in repair:

A. Courthouses pursuant to Title 4, section 115, with a suitable room in each for the county law library;

B. Fireproof buildings of brick or stone, with separate fireproof rooms and suitable alcoves, cases or boxes for each office, for the safekeeping of records and papers belonging to the offices of:

(1) The register of deeds;

(2) The register of probate;

(3) The register of insolvency; and

(4) The clerk of courts; and

C. Any other necessary buildings.

2. Acquiring land. The county commissioners may acquire land by purchase or by condemnation proceedings for the enlargement of the grounds around county buildings. These condemnation proceedings must be in conformity with Title 23, sections 2051 to 2058.

3. Files and records. If, in the judgment of the county commissioners, public convenience so requires, they, at the county's expense, may cause the files and records of the probate and other county courts to be rearranged, indexed and docketed, the dockets which are worn or defaced to be renewed and the indexes to be consolidated under the direction of the respective registers and clerks of courts.

4. Parking areas. The county commissioners may lay out parking areas on county lands near county buildings and may enact ordinances and enforce them by suitable penalties for the reasonable use of those areas. Any violation of these ordinances is a traffic infraction.

§122. Location of county buildings; referendum required

The county commissioners may not remove a county building or erect a new one outside of the county seat, without first notifying the officers of each municipality in the county of their intentions and of the place where they propose to locate it. The municipal officers shall present that proposal to the municipality at its next annual meeting or election for choosing state or municipal officers and receive, sort and count the votes for and against the proposal. They and the clerks shall certify and return the votes to the county clerk. The commissioners shall examine the votes and act according to the decision of a majority.

§123. Inventory of property

By January 1st of each year, the county commissioners of each county shall make or require an inventory to be made of all property belonging to the county. Copies of the inventory shall be filed in the county commissioners' office by January 1st of each year.

§124. Bids, awards and contracts

Any contract for construction, renovation or improvement of county buildings or facilities involving a total cost of $2,500 or more must be awarded by a system of competitive bidding.

Except for purchases through the State, the county commissioners shall make all purchases over $1,000 of services, supplies, materials and equipment needed by the county, or any department or agency of the county, by competitive bidding. Title 5, section 1816 governs these purchases as far as applicable. Title 5, section 1816, subsection 2, paragraph A, governs purchases through the State.

## SUBCHAPTER III

## COUNTY TREASURERS

### ARTICLE 1. ELECTION AND TENURE

§151. Election; vacancy

Except as provided in section 156, the voters of each county shall elect a county treasurer.

1. Qualifications. The county treasurer must be a resident of the county. Neither the Attorney General, district attorney, clerk of courts, sheriff of the county nor any deputy sheriff may be county treasurer.

2. Term. The county treasurer shall hold office for 4 years from the first day of January following the election and until another is chosen and qualified in the county treasurer's place.

3. Vacancy. If a person so chosen declines to accept or a vacancy occurs, the Governor may appoint a suitable resident of the county to serve as treasurer. When that person has accepted the office, provided a bond and been sworn, that person shall be treasurer until the first day of January following the next biennial election, at which election a treasurer shall be chosen for the remainder of the term, if any; but, in any event, that person shall hold office until another is chosen and qualified.

§152. Conduct of election; notice to county commissioners

The meetings for the election of treasurers shall be conducted and returns made as provided in Title 33, section 602. The Governor shall immediately notify the county commissioners of the county where the person resides of the election.

§153. Bond required

The person elected under section 152 and accepting the office of county treasurer shall give bond to the county for the faithful discharge of duties in the sum ordered by the commissioners and with such sureties as they approve in writing on the bond.

§154. Salaries

County treasurers shall receive annual salaries as set forth in section 2. The deputy treasurer shall receive an annual salary as established by the treasurer and approved by the county commissioners.

§155. Androscoggin County treasurer to be full time

The office of treasurer of Androscoggin County is a full-time office.

§156. Creation of position of appointed county treasurer

1. County commissioners' decision. Notwithstanding sections 151 and 152, the county commissioners may decide to abolish the position of elected county treasurer and replace it with an appointed county treasurer. This decision is not effective until approved by the voters of the county under subsection 3.

2. Petition by voters. On the written petition of a number of voters equal to at least 10% of the number of votes cast in the county at the last gubernatorial election, the county commissioners, by order, shall provide for the abolition of the position of elected county treasurer and its replacement with an appointed county treasurer in the form and manner provided in this section.

A. The petition procedure of section 1321, subsection 3, shall be used in this alternative method except that the legend at the top of each petition form shall read as follows:

"County of ** ..... **

Each of the undersigned voters respectively requests the county commissioners to abolish the position of elected county treasurer and replace it with a county treasurer appointed by the county commissioners."

B. The procedure after the petition is filed is the same as that under section 1321, subsection 4.

3. Election procedure. Within 30 days after a decision under subsection 1 or the receipt of a certificate or final determination of sufficiency under subsection 2, paragraph B, the county commissioners, by order, shall submit the question of the abolition of the position of elected county treasurer and its replacement with an appointed county treasurer to the voters of the county at the next regular or special statewide election. The question to be submitted to the voters shall be in substance as follows:

"Shall the position of elected county treasurer be abolished and replaced with a treasurer appointed by the county commissioners?"

If a majority of those voting on this question vote in the affirmative, the position of elected county treasurer shall be abolished after the term of the current elected county treasurer expires and the county commissioners shall appoint a treasurer under subsection 4.

4. Term; compensation; qualifications. Upon abolition of the position of elected county treasurer under this section, the county commissioners shall appoint a treasurer to serve at their will and, notwithstanding section 154, with the compensation they set. The treasurer must be qualified in matters of business administration and finance. The appointed treasurer has all authority granted to treasurers under this subchapter and is subject to all the requirements of this subchapter.

## ARTICLE 2. DEPUTIES

### §161. Deputy treasurers; duties

Each county treasurer may appoint a deputy treasurer for their county, subject to the requirements of section 501. The deputy treasurer shall assist the treasurer in performing the duties of the treasurer's office. The deputy treasurer shall give bond to the county for the faithful discharge of duties in the sum ordered by the county commissioners and with such sureties as they approve in writing on the bond, the premium of the bond to be met by the county. The deputy treasurer shall act as treasurer in the event of a vacancy until a treasurer is chosen and qualified under section 151.

### §162. Provisional treasurer

If the offices of county treasurer and deputy treasurer are both vacant, the county commissioners shall appoint a provisional treasurer who shall serve until a treasurer is chosen and qualified under section 151. The provisional treasurer has all the authority granted to treasurers under this subchapter and is subject to all the requirements of this subchapter.

## ARTICLE 3. DUTIES GENERALLY

### §171. Deposit or investment of county funds

The treasurer, with the approval of the county commissioners, may deposit the money received for the use of the county in any of the banking institutions or trust companies or mutual savings banks organized under the laws of this State or in any national bank or banks located in the State. When, in the treasurer's judgment, there is money in the treasury which is not needed to meet current obligations, the treasurer, with the advice and consent of the county commissioners, may invest any amount considered advisable in bonds, notes, certificates of indebtedness or other obligations of the United States which mature within one year from the date of investment.

### §172. Receipt of costs in favor of State

Costs in all civil actions in the name of the State, paid before execution issues, shall be paid to the clerk of the court where the action is pending. The clerk shall pay these costs, without deduction, to the county treasurer.

### §173. Payments out of treasury

1. Payment on written order of commissioners. The county treasurer shall apply all money received for the use of the county toward defraying its expenses, as the county commissioners direct by written order.

2. Itemization required; public record. The treasurer may not pay out any funds for an account or claim against the county unless the account or claim is itemized and declared to be a public record. Notwithstanding Title 17-A, section 4-A, any violation of this subsection is a Class E crime, punishable by a fine of not more than $300 or by imprisonment for not more than 30 days, or both.

### §174. Enforcing payment of taxes; collection of accounts due counties

1. Enforcing payment of taxes. The county treasurer may enforce the payment of taxes in the manner prescribed for the Treasurer of State.

2. Charging off accounts. The county treasurer may charge off the county's books of account, in whole or in part, any accounts receivable, including taxes, that the county commissioners certify as impracticable of realization.

## ARTICLE 4. RECORDS AND ACCOUNTS

§181. Method of accounting; report to commissioners

The county treasurer shall keep the books and accounts on forms and in the manner approved by the Department of Audit. The treasurer shall report all county receipts and payments to the commissioners of the county.

§182. Accounts to commissioners

Each county treasurer shall provide the commissioners of the county with the following.

1. Annual accounting of county books. The county treasurer shall prepare and deliver the annual account as treasurer to the county clerk. This account shall be enclosed with the estimates for county taxes made by the county commissioners and sent to the Secretary of State.

2. Account of money or effects. Every treasurer holding money or effects belonging to the county, annually and more often if required, shall provide an account of the money or effects to the county commissioners for adjustment.

3. Account of federal money for use of jails. The county treasurer shall receive, for the county, all money paid by the United States for the use and keeping of county jails and account for that money according to law.

§183. Annual statement of financial standing

At the end of each year, in cooperation with the commissioners, each treasurer shall make a statement of the financial condition of the county and shall publish in pamphlet form a reasonable number of copies for distribution among its citizens. This statement must show in detail all money received into and paid out of the county treasury, including a statement in detail of:

1. Unclaimed inheritances. All sums received under Title 18-A, section 3-914;

2. Division among accounts. The division of money among general, special and capital reserve accounts and the amounts remaining in each account;

3. Federal funds. All federal funds received; and

4. Facts and statistics. Other facts and statistics necessary to exhibit the true state of the county's finances, including the number of weeks' board and expense of clothing furnished prisoners.

## SUBCHAPTER IV

## CLERKS

§201. Clerical help

In all county offices, there shall be allowed for clerk hire the amount authorized by the county commissioners. The county commissioners shall determine the salary of all clerks after receiving a recommendation from the county officer under whom the clerk is employed. The county treasurer shall pay weekly to the clerks employed by the county the wages to which they are entitled. The county commissioners shall certify the names of the clerks to the county treasurer. The county commissioners may provide for a county pay scale, vacations and sick leave for clerical help.

## SUBCHAPTER V

## DISTRICT ATTORNEYS

### ARTICLE 1. ELECTION AND TENURE

§251. Election; qualifications

District attorneys shall be elected as provided in this section. They shall enter office on the first day of January following their election.

1. Election. The district attorneys shall be elected on the Tuesday following the first Monday of November in every 4th year, by the voters of the respective prosecutorial districts. The votes shall be received, sorted, counted and declared in the same manner as votes for Representatives. The names of the persons voted for, the number of votes for each and the whole number of ballots received shall be recorded by the clerk of each municipality within the prosecutorial district. The clerk shall send true copies of these names and totals, sealed and attested as returns of votes for Senators, to the Secretary of State.

2. Qualifications. Only attorneys admitted to the general practice of law in this State and who reside in the prosecutorial district may be elected or appointed district attorney. Removal from the prosecutorial district vacates the office.

3. Term of office. The term of office for a district attorney is 4 years, except when one is elected to fill out an unexpired term, in which case it is for the remainder of the unexpired term.

§252. Vacancies in office

A vacancy in the office of district attorney, because of expiration of the term of office, death, permanent incapacity, removal from office under section 257, removal from the prosecutorial district, or otherwise, shall be filled under this section, except as provided in section 253.

1. Vacancies caused by expiration of the term. Vacancies occurring by expiration of the term of office shall be filled by election in that year as provided in section 251.

2. Vacancies caused by other reasons. When no person is elected or a vacancy happens in the office of district attorney, other than as provided in subsection 1, the Governor shall appoint a competent attorney, a resident of the prosecutorial district affected, to serve as a substitute district attorney until the first day of January following the next biennial election. At that election, a person shall be elected to the office of district attorney to serve for the remainder of the unexpired term. When the office of district attorney becomes vacant after the first day of October in the 2nd year after the election of a district attorney under section 251, a new election shall not be held to fill the vacancy, but the substitute district attorney shall serve for the remainder of the unexpired term.

A. In the case of a vacancy in the term of a district attorney who was nominated by primary election before the general election, the district attorney appointed by the Governor must be enrolled in the same political party as the district attorney whose term was vacant.

§253. Military or naval service; substitutes

Whenever a district attorney during the district attorney's term of office in time of war, contemplated war or emergency, enlists, enrolls, is called or drafted into the military service of the United States, that district attorney is not deemed to have thereby resigned from or abandoned the office; nor is the district attorney removable from that office during military service except that the term of office may not be held to have been lengthened because of this section. From the time of induction into service, the district attorney is regarded as on leave of absence without pay from the office and the Governor shall appoint a competent attorney, a resident of the same prosecutorial district, to fill the office while the district attorney is in the federal service, but not for a longer period than the remaining portion of the district attorney's term. During the period of military or naval service, the Treasurer of State shall pay to the substitute attorney a salary at the same rate as the rate of pay of the district attorney and amounts so paid shall be deducted from the salary of the district attorney. The attorney so appointed to fill the temporary vacancy has the title of "substitute district attorney" and possesses all the rights and powers and is subject to all the duties and obligations of the district attorney.

§254. Prosecutorial districts

1. Prosecutorial District Number 1. There shall be one district attorney for York County, which shall be known as "Prosecutorial District Number 1." The district attorney shall be elected by the voters of York County in the manner set forth in section 251.

2. Prosecutorial District Number 2. There shall be one district attorney for Cumberland County, which shall be known as "Prosecutorial District Number 2." The district attorney shall be elected by the voters of Cumberland County in the manner set forth in section 251.

3. Prosecutorial District Number 3. There shall be one district attorney for Oxford, Franklin and Androscoggin Counties, which shall be known as "Prosecutorial District Number 3." The district attorney shall be elected by the voters of Oxford, Franklin and Androscoggin Counties in the manner set forth in section 251.

4. Prosecutorial District Number 4. There shall be one district attorney for Kennebec and Somerset Counties, which shall be known as "Prosecutorial District Number 4." The district attorney shall be elected by the voters of Kennebec and Somerset Counties in the manner set forth in section 251.

5. Prosecutorial District Number 5. There shall be one district attorney for Penobscot and Piscataquis Counties, which shall be known as "Prosecutorial District Number 5." The district attorney shall be elected by the voters of Penobscot and Piscataquis Counties in the manner set forth in section 251.

6. Prosecutorial District Number 6. There shall be one district attorney for Sagadahoc, Lincoln, Knox and Waldo Counties, which shall be known as "Prosecutorial District Number 6." The district attorney shall be elected by the voters of Sagadahoc, Lincoln, Knox and Waldo Counties in the manner set forth in section 251.

7. Prosecutorial District Number 7. There shall be one district attorney for Hancock and Washington Counties, which shall be known as "Prosecutorial District Number 7." The district attorney shall be elected by the voters of Hancock and Washington Counties in the manner set forth in section 251.

8. Prosecutorial District Number 8. There shall be one district attorney for Aroostook County, which shall be known as "Prosecutorial District Number 8." The district attorney shall be elected by the voters of Aroostook County in the manner set forth in section 251.

§255. District attorney salaries

1. Annual salary. The district attorney for each of the prosecutorial districts in section 254 shall receive an annual salary of $35,000.

2. Biweekly payments. The district attorneys and their assistants shall receive their annual salaries from the State Treasury in biweekly payments on a date to be determined by the State Controller and in a sum which, in a year aggregate, will most nearly equal the annual salary.

3. Additional sums. In addition to the annual salary under subsection 1, each district attorney shall receive the additional sums for which the district attorney qualifies under the following provisions:

A. One thousand two hundred dollars for each full calendar year of prior service as an elected or appointed Attorney General, Deputy Attorney General, United States Attorney or district attorney within the State;

B. Three hundred dollars for each 50,000 persons constituting the population of the prosecutorial district according to the latest Federal Dicennial Census;

C. Three hundred dollars for each county within the prosecutorial district;

D. Four hundred dollars for each full calendar year of prior service as assistant district attorney, United States Attorney or Assistant Attorney General; and

E. Four hundred dollars for each full calendar year of prior service as an elected or appointed county attorney.

4. Prior service. The method of proving prior service is as follows.

A. Whenever it appears that any district attorney qualifies for any payments under subsection 3, the records of the Secretary of State control as to the length and type of prior service.

B. If any district attorney qualifies for payment because of prior service with the Federal Government or in another state, that district attorney must secure and furnish to the Secretary of State such official records as may properly document the prior service.

5. Limitation. The salary of any district attorney may not exceed that of a Justice of the Superior Court.

§256. Full-time district attorneys

All district attorneys and assistant district attorneys designated as full-time assistants are full-time officers of the State. During their terms of office, they may not:

1. Appear as counsel. Appear as counsel in any civil or criminal case or controversy before the Supreme Judicial Court, Superior Courts or District Courts of the State or comparable courts in any other state or before the United States District Court or at any administrative hearing held by any state or United States agency other than in their capacity as district attorney; or

2. Private practice of law. Engage in the private practice of law nor be a partner or associate of any person engaged in the private practice of law nor be a member or employee of a professional association engaged in the private practice of law.

§257. Removal from office

The Justices of the Supreme Judicial Court have jurisdiction to remove any district attorney from office, by majority vote of the justices sitting, upon complaint filed with the court by the Attorney General, and after notice and hearing, as provided in this section.

1. Expedited proceeding. Proceedings under this section shall be expedited insofar as practicable and shall take precedence over all other matters except requests for opinions of the justices and petitions for writs of habeas corpus.

2. Complaint; application of court rules. The complaint in a proceeding under this section shall contain a short and plain statement of facts showing that grounds for removal exist. The proceedings shall be conducted in accordance with the Maine Rules of Civil Procedure and the Maine Rules of Evidence, except that:

A. Discovery procedures may be used only by order of the court on motion for cause shown; and

B. The court may modify any rule or restrict its application as is necessary or appropriate to expedite the proceeding and ensure that the court is as fully informed of the relevant and material facts as practicable.

3. Removal. If a majority of the justices sitting finds, by clear and convincing evidence, that the respondent district attorney has violated a statute or is not performing the duties of office faithfully and efficiently, and finds in consequence that removal from office is necessary in the public interest, judgment to that effect shall be entered, and the respondent shall thereby be removed from office as district attorney.

ARTICLE 2. ASSISTANTS AND SUBSTITUTES

§271. Appointment of temporary substitutes

When the district attorney does not attend a criminal session or the office is vacant, the court may appoint an attorney to perform duties during the session and allow a reasonable compensation to be paid from the county treasury, in the county where the appointment is made. The justice shall notify the Attorney General who shall deduct that amount from the district attorney's salary and forward it to the county treasurer.

§272. Assistant district attorneys

1. Appointment. Each district attorney shall appoint assistant district attorneys, one or more of whom may be full-time, to serve at the district attorney's will. The district attorney shall designate whether each assistant district attorney will serve full-time or part-time when appointed.

2. Duties. The assistants shall take the oath prescribed for district attorneys and assist the district attorney in the ordinary duties of that office, in the drawing of indictments, in the hearing of complaints before the grand juries and in the preparation and trial of criminal

causes. They, when directed by the district attorney, shall act as counsel for the State in the trial of complaints before Judges of the District Court and Justices of the Superior Court and in the prosecution of appeals before the Supreme Judicial Court.

3. Salaries. The district attorney shall set the salaries of assistant district attorneys. Salaries for full-time assistants may not exceed 80% of the salary designated for the district attorney. Salaries for part-time assistants may not exceed 50% of the salary designated for the district attorney. Salaries for assistant district attorneys shall be on an annual basis and shall be paid in the same manner as is provided for the payment of salaries for district attorneys.

4. Deputy district attorney. Each district attorney may designate one full-time assistant district attorney or, if there is no full-time assistant district attorney, one part-time assistant district attorney to be the deputy district attorney. In the absence of the district attorney, the deputy shall act in the district attorney's place and shall have the authority, duties and responsibilities of the district attorney. Notwithstanding any other provision of law, any full-time assistant district attorney designated as a deputy district attorney may receive a salary up to 90% of the salary designated for the district attorney.

5. Staff. Each district attorney shall be allowed sufficient sums to ensure an adequate staff of assistants to screen, process and investigate complaints, to assist law enforcement agencies, to conduct trials in the District and Superior Courts, to prosecute appeals in the Supreme Judicial Court and to carry out all other duties and responsibilities.

6. Allowance for compensation. For the compensation of assistant district attorneys, the district attorneys shall be allowed annually sums up to the limit of $40,000 plus 68¢ for each person constituting the population of the district according to the latest formal population estimate of the Office of Vital Statistics of the Department of Human Services until June 30, 1988 and $40,000 plus 69¢ for each such person thereafter. In addition to the sums allowed in this section, funds shall be provided for fringe benefits for which other state employees, including confidential employees, are eligible.

## ARTICLE 3. DUTIES

### §281. District attorney operations

1. Expenses allowed. County commissioners shall allow to the district attorney serving the county sufficient funds for all office expense, clerk hire and travel, including, but not limited to, funds for:

A. Consultation and services of experts;

B. Rendition of prisoners; and

C. Training and reference books and treatises which may aid the district attorney and staff in the prosecution of criminal matters.

2. Office space. The county commissioners shall also provide to the district attorney serving the county office space suitable for the performance of the duties of office, including sufficient private area for research, conferences and meetings with officers, witnesses, complainants and citizens. If office space is not available on county property, the county commissioners shall provide sufficient funds to the district attorney for the rental of suitable quarters at locations convenient to courthouses within the county.

### §282. Civil proceedings

1. Representation of counties. The county commissioners shall immediately transmit to the district attorney serving the county any writs, summonses or other processes served upon the county or commissioners. The district attorney for each prosecutorial district shall appear for each county within the district for which the district attorney was elected, under the direction of the county commissioners for each county within that district, in all actions and other civil proceedings in which any county within the district is a party or is interested, or in which the official acts of the county commissioners are called in question, in all the courts of the State, and in such actions and proceedings before any other tribunal when requested by the commissioners. The district attorney shall prosecute or direct the prosecution of all such actions and proceedings. The county commissioners may employ other counsel if in their judgment the public interest so requires.

2. Traffic infractions. The district attorney, or someone acting under the district attorney's direction, shall prosecute all traffic infraction cases and shall be present at the trial of any such case.

3. Civil actions; State as party. The district attorney shall prosecute to final judgment and execution all civil cases in which the State is a party in any county within the district attorney's prosecutorial district and shall institute proceedings against sureties on any recognizance upon which the principal and sureties have been defaulted, before the term next succeeding that at which the default was entered upon the docket of the court, unless by order in open court the presiding justice grants a delay in proceedings against the sureties.

4. Compensation. For the services mentioned, the district attorney may receive no compensation other than the salary from the State, except actual expenses when performing those services. Those expenses shall be audited by the county commissioners and paid from the county treasury.

5. Limitation. This section does not relate to or give the district attorney control of litigation in which any county within the prosecutorial district is not financially

interested although the official acts of the county commissioners may be called in question.

§283. Criminal proceedings

The district attorney shall attend all criminal terms held in the counties within the prosecutorial district for which the district attorney was elected and act for the State in all cases in which the State or county is an interested party. Unless the district attorney makes an order of dismissal under section 284, the district attorney or someone acting under the district attorney's direction shall prosecute all criminal cases and shall be present at the trial of any such case before the District Court of any of the counties within the district. If the Attorney General is absent from a term in any of the counties, the district attorney shall perform the Attorney General's duties in state cases, in any of the counties, under directions from the Attorney General. The district attorney shall appear and act for the State with the Attorney General in the Law Court in all state cases coming into that court from any of the counties. No additional compensation may accrue to the district attorney for performing these duties.

§284. Dismissal of cases

1. Civil cases. In order to dismiss civil cases, the district attorney must sign a written order of dismissal together with a statement of the reasons for dismissal upon the back of the writ or complaint in those cases. This order of dismissal does not take effect unless approved in writing by the justice presiding at the term when the dismissal is made.

2. Criminal cases. The district attorney may dismiss criminal cases in such manner and under such circumstances as the Supreme Judicial Court may provide by rule.

§285. Collection of fines and costs; examination of sheriff's bond

1. Enforce collection of fines; move examination of sheriff's bond. For counties within the district attorney's prosecutorial district, the district attorney shall:

A. Enforce the collection and payment to the county treasurers of all fines, forfeitures and costs accruing to the State and the faithful performance of their duties by sheriffs and constables and inform the court of their defaults in this respect; and

B. Annually move the county commissioners of each of the counties within the prosecutorial district, at their respective meetings immediately following the 3rd Tuesday of June, to examine and consider the sufficiency of the bond of the sheriff for their county.

2. Civil violation. If the district attorney neglects either of these duties, the district attorney commits a civil violation for which a forfeiture of not more than $100 may be adjudged. This forfeiture is to be recovered in a civil action in the name of the Treasurer of State.

§286. Restrictions and obligations

The district attorney is under the same restrictions as to fees and the same obligations as to witnesses as imposed on the Attorney General by Title 5, sections 201 and 205.

§287. Physical examination of crime victims

1. Payment of expenses by district attorney. In all cases of alleged rape, gross sexual misconduct, sexual abuse of minors and assault when serious bodily injury has been inflicted, which are reported to a law enforcement officer, the office of the district attorney of the county in which the alleged crime occurred shall pay all expenses for a physical examination of a victim of the alleged crime which is conducted for the purpose of obtaining evidence for the prosecution.

2. Limitation. The office of the district attorney is not liable for the payment of any charges, costs or fees for an examination under subsection 1 until the district attorney has received copies of all reports and records pertaining to the examination, if the copies have been requested.

3. Medical personnel not liable for furnishing reports, records or testimony. No physician, nurse, hospital, clinic or any other person, firm or corporation attending a victim under subsection 1 may be liable in damages or otherwise for providing reports or records, copies of reports or records or for their testimony relating to any examination performed under this section when those reports, records or testimony are provided to a district attorney, a law enforcement officer or a court for the purpose of prosecuting the alleged crime, whether or not the reports, records or testimony are provided with the written authorization of the victim examined under this section.

§288. Disclosure of minor victims of sexual offenses

The Legislature finds that publicity given to the identity of minor victims of sexual offenses causes intense shame and humiliation for which abused children are particularly ill-prepared and may cause severe and permanent emotional harm to the victim of such an offense.

Therefore district attorneys, their assistants and employees and other law enforcement officials shall refrain from any unnecessary pretrial public disclosure of information that may identify a minor victim of an offense under Title 17, chapter 93-B, Title 17-A, chapter 11 or Title 17-A, section 556.

§289. Investigation of child abuse cases

Unless a written agreement exists between a law enforcement agency and a district attorney concerning

primary responsibility for investigating any of the following offenses, the district attorney may direct the investigation of any offense under Title 17, chapter 93-B, and Title 17-A, chapter 11, or Title 17-A, sections 207, 208 and 556, when a victim may not have attained his 18th birthday, and may designate, by geographical boundaries or otherwise, a particular law enforcement agency to have primary responsibility for that investigation.

Any case involving the sexual or physical abuse of children which is discovered by or reported to any law enforcement department or officer shall be immediately reported by that department or officer to the appropriate district attorney or assistant district attorney or, in their absence, to the Attorney General or one of the Attorney General's assistants.

## SUBCHAPTER VI

## SHERIFFS AND OFFICERS

### ARTICLE 1. GENERAL PROVISIONS

#### §351. Definitions

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

1. Deputy. "Deputy" means either a full-time or part-time county law enforcement officer appointed under section 381.

2. Full-time deputy. "Full-time deputy" means a deputy who is compensated on a salaried or per diem basis under section 386, subsection 1, and who is employed in county law enforcement for at least 40 hours a week.

3. Part-time deputy. "Part-time deputy" means a deputy who is compensated on an hourly or per diem basis under section 386, subsection 2, and who does not receive more than the maximum amount allowed under that subsection in any one calendar or fiscal year for performing county law enforcement duties.

4. Special deputy. "Special deputy" means a person appointed under section 382 who may exercise the powers of a deputy only when a state of war or emergency exists.

#### §352. Pension for dependents

If a sheriff or deputy dies as a result of injury received in the line of duty, the spouse or, if none, the minor child or children, of the sheriff or deputy shall receive a pension equal to 1/2 of the pay of the sheriff or deputy at the time of death, but in no case may the pension be less than $1,000 annually. This pension shall be paid to the spouse until the spouse dies or remarries and to a child or children until they die or reach the age of 18 years.

The county commissioners of each county shall pay these pensions from county funds.

#### §353. Officer not to act as attorney or draw papers; employee of jailer not to act as judge or attorney

No officer may appear before any court as attorney or adviser of any party in an action or draw any writ, complaint, declaration, citation, process or plea for any other person; all such acts are void. No person employed by the keeper of a jail in any capacity may exercise any power or duty of a magistrate or act as attorney for any person confined in the jail; all such acts are void.

#### §354. Uniforms

1. Uniforms provided. Every county shall furnish one uniform to the sheriff and to each full-time deputy, sufficient to identify them as officers of the law. If the county commissioners approve, the county may provide more than one uniform for each. The sheriffs shall require each deputy, while engaged in the enforcement of Title 29, section 2501, to wear a uniform as required by this section.

2. Labor disputes. No deputy or special deputy may wear or display a uniform or badge that identifies the deputy or special deputy as a public law enforcement officer at the site of a labor dispute, strike or lockout, except while on active duty in the public service and while traveling to and from public work.

#### §355. Political activities

1. Sheriff. No sheriff may directly or indirectly coerce, attempt to coerce or command any county employee or deputy to pay, lend or contribute anything of value to, or to engage in any political service or activity on behalf of, a party, committee, organization, agency or person for political purposes.

2. Full-time deputies. No full-time deputy may hold the municipal office of selectman, city councilman or budget committeeman or any county or state office.

3. Sheriffs and deputies. No sheriff or deputy, whether a full-time, part-time or chief deputy, may directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, contribution or political service, whether voluntary or involuntary, for any political purpose from any person, except that while off duty and not in uniform a sheriff or deputy may engage in political activities relating to nonpartisan municipal, school board or special district elections and may solicit or receive contributions or political services for the purpose of electing that sheriff or deputy to a political office.

4. Official duties. Official duties undertaken solely to preserve the public peace and the order and security of polling places are not political services or activities.

5. Rights of voting and free expression. Sheriffs or deputies retain the right to vote as they choose, to express opinions on political subjects or candidates and to attend and vote at party caucuses and conventions.

## ARTICLE 2. ELECTION AND TENURE; BOND

### §371. Election or appointment

Sheriffs shall be elected or appointed and shall hold their offices according to the Constitution of Maine. Their election shall be conducted and determined as is provided for county commissioners. They shall take office on the first day of January following their election.

### §372. Sheriff's bond

1. Bond required. Every person elected or appointed sheriff for the Counties of York, Cumberland, Kennebec or Penobscot, before receiving that commission, must give bond to the Treasurer of State with at least 3 sufficient sureties or with the bond of a surety company authorized to do business in this State as surety in the sum of $40,000 and for any of the other counties in the sum of $25,000, conditioned for the faithful performance of the duties of the office and to answer for all neglect and misdoings of the chief deputy.

2. Approval of bond; delivery to State Auditor. After executing the required bond, every sheriff shall file it in the office of the county clerk, to be presented to the county commissioners at their next meeting for approval. After the bond has been approved by the commissioners, the clerk shall record it and certify the fact of approval on the bond. The clerk shall retain a copy of the bond and deliver the original to the sheriff who shall deliver it to the State Auditor within 20 days after its approval to be filed in the State Auditor's office.

3. Annual examination of bonds. The county commissioners of each county, at their first meeting after the 3rd Tuesday of June, on motion of the district attorney, shall annually examine the sufficiency of the bond of the sheriff of their county and have their clerk make a record of their determination. The clerk shall report the commissioner's findings to the State Auditor within 30 days.

4. New bond where insufficient. If the bond of any sheriff is found to be insufficient, the clerk shall certify that fact to the sheriff within 10 days. Within 20 days after that notice is given, the sheriff must give a new bond with sufficient sureties, to be filed in the office of the county clerk and approved by the county commissioners, and then filed in the State Auditor's office.

5. Forfeiture for neglect to give bond. A sheriff forfeits $150 to the State for each month's neglect to give the security required in this section. The State Auditor shall report that neglect to the Treasurer of State. The Attorney General shall prosecute a civil action for the Treasurer of State to recover the fofeiture. The clerk of courts of the sheriff's county shall certify the sheriff's name to the Governor and the Attorney General. Unless reasonable cause for this neglect is shown or within 20 days after the clerk certifies the sheriff's name the sheriff gives or renews the security to the satisfaction of the Governor, the sheriff thereby vacates the office.

6. Governor may require new bond. If the Treasurer of State certifies to the Governor that money due to the State on warrants or any other sums or balances are in a sheriff's possession and furnishes the names of the sheriff's sureties, and it appears to the Governor that the sureties are insufficient or have left the State, the Governor may require the sheriff to give a new bond with sufficient sureties within 60 days after the sheriff is notified. The new bond must be filed as required in subsections 1 and 2. If the sheriff neglects to file this new bond, the sheriff's office becomes vacant.

7. New bond required on application of sureties. When a surety on the official bond of a sheriff or the surety's heirs, executors or administrators petition the county commissioners to be discharged from suretyship, the commissioners shall have an attested copy of the petition served on the sheriff and may require a new bond to be given to their satisfaction. When it is given and accepted, the surety or the surety's legal representatives are not liable for any neglect or misdoings after that time.

### §373. Salaries

1. Salaries; full compensation. County sheriffs shall receive annual salaries as set forth in section 2. The salaries are in full compensation for:

A. Services in attendance upon the Supreme Judicial Court and upon the Superior Court;

B. Services as jailer, master or keeper of the jail in each county;

C. Receiving and committing prisoners in the jail;

D. The service of all criminal and civil processes; and

E. The performance of all duties relating to the enforcement of all criminal laws.

2. Expenses allowed. The county commissioners shall allow and pay from the county treasuries all actual and necessary expenses for travel and hotel bills within their respective counties and necessary incidental expenses as are just and proper, incurred in the performance of the sheriffs' public duties, including all necessary expense for aid in keeping the jails.

### §374. County sheriff to be full time

The office of county sheriff is a full-time office in each county.

ARTICLE 3. DEPUTIES

§381. Deputies; appointments and removal

The sheriff may appoint, subject to the requirements of section 501, full-time or part-time deputies, whose special duties are to enforce the criminal laws in the county.

1. Qualifications for appointment. To be eligible for appointment, a deputy must have:

A. Actual experience in law enforcement duties;

B. Training in criminal justice or law enforcement from an accredited college or university or from the Maine Criminal Justice Academy; or

C. Knowledge of the duties, activities and responsibilities of a deputy gained from other experience or training.

2. Training at Maine Criminal Justice Academy required. Appointed deputies are subject to the training requirements of Title 25, sections 2805 and 2805-A.

3. Tenure of office. Deputies shall be originally appointed for a probationary period of not more than 6 months and thereafter may be appointed or reappointed for a term of 3 years.

A. The failure of a sheriff to reappoint a deputy, except for appointment at the end of the probationary period, is subject to the procedures and standards for dismissal of an applicable collective bargaining agreement.

4. Sheriff to furnish names. From time to time, each sheriff shall furnish to the county commissioners of that county the names of the deputies appointed, with the residence and post office address of each.

5. Residence. A full-time deputy may reside outside the county during the term of appointment only with the permission of the sheriff and county commissioners.

§382. Special deputies; duties

1. Appointment. Sheriffs may at any time appoint and train as special deputies citizens more than 18 years of age. The appointment must be in writing, signed by the sheriff, and include the residence and post office address of each special deputy. The appointment must be recorded in the office of the county commissioners in the county and is not valid until recorded.

2. Active duty. The sheriff or the sheriffs' chief deputy may order special deputies to active duty only when:

A. A state of war exists;

B. The Governor proclaims an emergency under Title 37-B, chapter 13; or

C. The Director of the Maine Emergency Management Agency declares that a state of emergency is imminent.

3. Powers; liability. Special deputies shall exercise all the powers of deputy sheriffs appointed under the general law, except the service of civil process, only for the duration of the emergency that exists or which has been proclaimed or during the time for which they have been ordered to active duty. Special deputies are personally responsible for any unreasonable, improper or illegal acts committed by them in the performance of their duties, but the sheriffs are not liable upon their bonds or otherwise for any neglect or misdoings of these deputies.

§383. Chief deputy

1. Appointment. As soon as possible after taking office, the sheriff in each county shall appoint a chief deputy to serve under the sheriff. The appointment must be in writing, signed by the sheriff and recorded in the office of the county commissioners in the county. The appointment is not valid until recorded, except by operation of law or by vacancy in the office of sheriff.

2. Tenure. The chief deputy serves at the will of the sheriff.

3. Powers and duties. The chief deputy has all the powers and duties of a deputy sheriff and is subject to the direction of the sheriff in the administration of that office.

4. Sheriff responsible for misconduct. The sheriff is responsible for the official misconduct or neglect of the chief deputy.

§384. Chief deputy, deputies, bond; approval and filing

Before receiving a commission, every person appointed chief deputy under section 383, or appointed a deputy under section 381, must give bond to the Treasurer of State with at least 3 sufficient sureties, or with the bond of a surety company authorized to do business in this State as surety, in the sum required by the county commissioners of that county, conditioned for the faithful performance of the duties of that office. The bond of the chief deputy and of each part-time deputy shall be filed and approved in the same manner as is required for the bond of a sheriff under section 372, subsection 2, and all of that subsection applies to these bonds. The county may furnish a bond for all full-time deputies, which complies with this section. That bond must be recorded in the county records and delivered to the State Auditor to be filed.

§385. Vacancy in sheriff's office

1. Chief deputy's powers. If the office of sheriff becomes vacant because of death, resignation or otherwise, the chief deputy shall have and exercise the same rights and powers and be subject to the same duties and liabilities as a sheriff until the vacancy in the office of sheriff is filled as provided in the Constitution of Maine and the new sheriff has qualified under law.

2. Other deputies. During the vacancy in the office of sheriff, all other deputies of the sheriff vacating the office shall continue to have and exercise the powers and duties of deputy sheriffs and are subject to the direction and control of the chief deputy in the same manner and to the same extent as if the chief deputy were sheriff.

§386. Compensation of deputies

1. Full-time deputies. Full-time deputies shall be compensated at a rate of at least $21 per day, based on a 7-day work week, or at a rate of at least $23 per day, based on a 7-day work week, if the deputy has:

A. An associate degree in criminal justice, with an emphasis on law enforcement from an accredited college or university; or

B. Successfully completed the basic training course at the Maine Criminal Justice Academy or its equivalent, as determined by the board of trustees of the academy and has served at least 3 years as a full-time law enforcement officer in the preceding 4 years.

The minimum compensation rate does not apply to any deputy sheriff who is in a probationary period or who is undergoing disciplinary action.

The respective county commissioners shall establish the compensation of full-time deputies for their county. The respective county treasurers shall pay the compensation, together with those incidental expenses which are necessary for the proper enforcement of the laws.

All fees received by full-time deputies for the service of civil process are deemed fees for the use of the county and shall be paid to the county treasurer for the use and benefit of the county.

2. Part-time deputies. Part-time deputies shall be compensated at a reasonable rate established by the county commissioners, which may not exceed the lowest per diem compensation rate of a full-time deputy in the county. No part-time deputy may be compensated under this section more than $6,000 in any one calendar or fiscal year. Incidental expenses as are necessary for the proper enforcement of the laws shall also be paid in the same manner as provided for full-time deputies and are not included in the $6,000 limitation on compensation. Compensation paid to a part-time deputy for serving as a court officer is not included in the $6,000 limitation on compensation.

3. Special deputies. Special deputies shall only be compensated when on active duty as provided under section 382. They shall be compensated at a rate equal to the rate of compensation of full-time or part-time deputies, depending on the actual duties performed while on active service.

ARTICLE 4. DUTIES

§401. County law enforcement administration

1. Sheriff's duties. The sheriff shall act as the chief county law enforcement officer and is responsible for administering and directing the sheriff's department as authorized by the county budget. The sheriff shall inform the county commissioners of sheriff's department activities on a regular basis and shall meet with the commissioners as required under subsection 3.

2. County commissioners' duties. The county commissioners shall regularly review the sheriff's operations and shall ensure that the law enforcement functions required under the budget are being adequately performed. The county commissioners may not give orders directly to any deputies or other subordinates of the sheriff, either publicly or privately.

3. Meetings with municipal officers. At least annually, the county commissioners and sheriff shall hold a special meeting for reviewing county law enforcement activities. The county commissioners shall set a date, time and place for this meeting and inform the sheriff and all municipal officers, including all municipal police chiefs within the county, of the meeting at least one week in advance. The purpose of this meeting is to review activities of the sheriff's department, to coordinate law enforcement activities throughout the county and to resolve problems in law enforcement.

4. Orders from the Governor. Sheriffs shall obey all orders relating to law enforcement which they receive from the Governor.

5. Construction. Nothing in this subchapter may be construed to relieve any state or municipal law enforcement agency of its authority and responsibility.

§402. Aid required by officer; refusal

1. Officer may require aid. Any law enforcement officer may require suitable aid in the execution of official duties in criminal and traffic infraction cases for the following reasons:

A. For the preservation of the peace; or

B. For apprehending or securing any person for the breach of the peace or in case of the escape or rescue of persons arrested on civil process.

2. Violation and penalty. Any person required to aid a law enforcement officer under this section who neglects

or refuses to do so commits a civil violation for which a forfeiture of not less than $3 nor more than $50 to be paid to the county may be adjudged.

§403. Officer to pay money collected

Any officer, who unreasonably neglects or refuses, on demand, to pay money received by him on execution to the person entitled to the money, shall pay 5 times the lawful interest on that money so long as the officer retains the money.

§404. Arrest in other counties

Every sheriff or deputy sheriff in fresh pursuit of a person who travels beyond the limits of the county in which the sheriff or deputy is appointed has the same power to arrest that person as the sheriff or deputy has within the sheriff's or deputy's own county. This section applies to all classes of crimes and traffic infractions.

As used in this section, with respect to felonies, the term "fresh pursuit" has the same meaning as in Title 15, section 152. With respect to misdemeanors and traffic infractions, "fresh pursuit" means instant pursuit of a person with intent to apprehend.

ARTICLE 5. FEES

§421. Fees

Sheriffs and their deputies shall receive the following fees, unless the sheriffs and deputies are paid a salary instead of the fees:

1. Civil process. For service of all writs or complaints with summonses, precepts, notices, executions, court orders, orders of service, copies and all other civil process or papers requiring service which are not specified in this section, $4 for each such service and $8 if the service is made in hand;

2. Disclosure subpoena. For the service of a disclosure subpoena as provided by Title 14, chapter 502, $8;

3. Complaint for divorce. For the service of a complaint for divorce with a writ of attachment by serving summonses and attested copy of the writ and complaint, or for the service of a complaint for divorce with an order of court by attested copy, $8;

4. Attachment of real estate. For the attachment of real estate at the registry of deeds, $4;

5. Attachment of personal property; replevin. For the attachment of personal property or for the service of a writ of replevin, $6, and $2 more for each hour after the first required for the service;

6. Civil arrests and custody. For civil arrests, $5 for the arrest and $5 shall be charged for custody under the arrest, including arrest and custody under paternity proceedings;

7. Tax summonses and warrants. For the service of tax summonses and arrest under tax warrants, the same as for service of civil process;

8. Executions in personal actions. For levying and collecting executions in personal actions, for every dollar of the first $100, 4¢; for every dollar above $100 and not exceeding $200, 3¢; and for every dollar above $200, 2¢;

9. Redeeming mortgaged real estate. For advertising in a newspaper a right in equity of redeeming mortgaged real estate to be sold on execution, the sums that they pay the printer for those advertisements; for posting notice of the sale of the equity in the municipality where the land lies and in 2 adjoining municipalities, $6 and usual travel, and for a deed and return of the sale of the equity, $3;

10. Warrant; mittimus. For the service of a warrant, the officer is entitled to $2 and $2 for the service of a mittimus to commit a person to jail and usual travel, except as limited by Title 15, section 1363, and reasonable expenses incurred in the conveyance of the prisoner;

11. Attending court and keeping prisoner. For attending court and keeping the prisoner in criminal cases, $18 a day, and in that proportion for a greater or shorter length of time;

12. Sales or use tax warrant. For the services of a sales or use tax warrant and arrest as provided by Title 36, section 173, the same as for service of civil process, and for civil arrests. For collecting sales or use taxes, penalties and interest, under such warrants, for every dollar of the first $100, 4¢; for every dollar above $100 and not exceeding $200, 3¢; and for every dollar above $200, 2¢. Additional services, including travel, shall be charged as provided in this section;

13. Service of an income tax warrant. For the service of an income tax warrant and arrest as provided by Title 36, Part 8, the same as for service of civil process, and for civil arrests. For collecting income tax, penalties and interest, under such warrants, for every dollar of the first $100, 4¢; for every dollar above $100 and not exceeding $200, 3¢; and for every dollar above $200, 2¢. Additional services, including travel, shall be charged as provided in this section; and

14. Search for persons to serve. For diligently searching for persons upon whom they are commanded to serve civil process when that party cannot be located at an address given to the sheriff or the deputy sheriff by the plaintiff or the plaintiff's attorney when commanding the service to be made, $2, plus necessary travel.

15. Levy on real estate. The fees of the register of deeds for recording a levy upon real estate or the deed of the officer for the sale of real estate on execution and all sums paid by the officers for the state transfer tax shall be taxed by the officers in their return. All officers making levy on real estate by appraisal shall have the execution and their return on the execution recorded by the register of deeds for the district where the land lies within 3 months after the levy.

A sheriff or deputy sheriff may not charge a fee for attesting copies of any writ.

In addition to the fees charged for service, travel shall be charged for each mile actually traveled at the same rate at which state employees are reimbursed under Title 5, section 8.

The county commissioners of each county may require that the fees collected under subsections 1, 2, 3, 5, 7, 12, 13 and 14 be increased by $1. The sheriff or deputy shall collect this additional dollar and pay it to the county treasurer for the use and benefit of the county.

§422. Fees from deputies

No sheriff may receive any fees earned by the sheriff's deputies or any percentage of those fees from any of the deputies.

§423. Collection and accounting for fees

The sheriff shall charge and collect, as provided by law, all fees chargeable under the laws for performing any of the duties described in section 373. The sheriff shall keep an accurate account of those fees, and of those specified in section 424, and transmit that account to the county treasurer on the last days of March, June, September and December annually, and the amount deducted from the quarter's salary for the quarter then ending. If these fees are greater than the amount of salary then due the sheriff, the sheriff shall pay the excess to the county treasurer. No county treasurer may pay any quarter's salary until this statement has been filed.

§424. Disposal of fees for prisoners confined in jail

For all prisoners committed from other counties or from any court of the United States and for all other persons confined on civil processes, sheriffs shall collect the same fees for their entire support as are provided by law or may be set by the county commissioners as provided by law. They shall include those fees in the statement provided for in section 423 and the fees shall be deducted from the salary as prescribed. They shall not make any charge or collect any fees for the support of prisoners committed on criminal process from any court in the county in which the jail is located.

## ARTICLE 6. ACTIONS AGAINST SHERIFFS

§431. Persons injured sue on sheriff's bond; endorsement of writ; costs; judgment

Any person injured by the neglect or misdoings of a sheriff, who has first determined the amount of those damages by judgment in a civil action against the sheriff, the sheriff's executors or administrators, or by a decree of the Probate Court allowing that claim, at the injured person's expense in the name of the Treasurer of State, may institute a civil action on the sheriff's official bond in the county where the sheriff was authorized to act and prosecute it to final judgment and execution. The injured person's name and place of residence or that of the injured person's attorney shall be endorsed on the writ, summons or complaint and the endorser alone is liable for costs. If judgment is rendered for the Treasurer of State, it shall be for the damages determined, or so much of those damages as remains unpaid, with interest. The party's name for whom the action was brought shall be set forth in the execution issued on that judgment. If the judgment is for the defendant, execution for costs shall be issued against the party for whom the action was brought.

§432. Additional actions on sheriff's bond; proceedings

Any other person having a right of action on a sheriff's bond may file an additional complaint in the same action in the office of the clerk of courts. The clerk shall issue a summons, directed to the defendant, specifying the cause of action and the amount demanded, returnable to the same court and endorsed by the name and place of residence of that other person or that person's attorney. The endorser is liable for costs like endorsers of writs, summonses and complaints.

1. Service; answer. The summons shall be served on the defendant and attachment may be made, as in an original action. After service, the person filing the complaint has all the rights of a plaintiff in the action. The defendant shall answer to the complaint, and judgment may be rendered on the complaint as if it were filed in an action originally instituted for the same cause.

2. Judgment; execution. When judgment is rendered against the defendant in such an action, damages shall be assessed on each complaint for the amount which the party filing it would recover in an action on the bond, with costs. Executions shall issue for that amount in the name of each party so recovering in the order in which the complaints were filed, but not beyond the amount of the bond. If judgment is for the defendant on any such complaint, execution for costs shall issue against the party filing it. No such action may be dismissed, except by order of court, without the consent of all plaintiffs.

§433. Exemption from arrest in civil action; proceedings on failure to pay execution; office vacated

No sheriff may be arrested upon any writ or execution in a civil action. When a judgment is rendered

against the sheriff in the sheriff's private or official capacity, the execution on that judgment shall issue against the sheriff's property but not against the sheriff's body.

1. Sheriff's disclosure. The sheriff, after notice that execution has issued, unless upon a judgment for the sheriff's official delinquency, may cite the creditor and disclose the actual state of the sheriff's affairs in the manner provided for poor debtors arrested upon execution.

2. Filing with Governor; office vacated. If the execution is returned unsatisfied and the sheriff has not made a disclosure under subsection 1 or if the judgment was rendered for the sheriff's own official delinquency, the creditor may file an attested copy of the execution and return with the Governor, and serve on the sheriff a copy of that copy, attested by the Secretary of State, with a signed notice of the day on which the first copy was filed. If, within 40 days after this service, the sheriff does not pay the creditor the full debt with reasonable costs for copies and service of the copies, he thereby vacates the office of sheriff. When the office is vacated, the clerk may issue alias executions against the former sheriff's property and body, as in other cases.

§434. Copy of bond available; evidence

The Treasurer of State shall deliver an attested copy of a sheriff's bond to anyone applying and paying for it. That copy is competent evidence in any case relating to the sheriff's bond, unless its execution is disputed, in which case the court may order the treasurer to produce the bond in court for the purposes of the trial.

§435. Survival of actions against sheriff or deputy

Actions for the neglect or misdoings of a sheriff or the sheriff's deputies survive the sheriff and may be brought against the sheriff's executors or administrators.

## ARTICLE 7. REMOVAL OF SHERIFF

§441. Removal of sheriff

Whenever the county commissioners find that the sheriff is not faithfully or efficiently performing any duty imposed by this chapter or that the sheriff is improperly exercising or acting outside the sheriff's authority, the commissioners may file a complaint with the Governor describing in detail the facts of those actions or omissions and requesting the Governor to remove the sheriff from office and appoint another sheriff in that office for the remainder of the term.

## ARTICLE 8. COUNTY LAW ENFORCEMENT FUNCTIONS

§451. Definitions

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

1. Ambulance services. "Ambulance services" means those emergency services primarily designed to transport ill or injured persons to available medical facilities and to administer first aid and emergency life-support systems in the interim period.

2. Civil emergency services. "Civil emergency services" means those emergency services administered to populations or areas to minimize and repair injury and damage resulting from disasters or catastrophes caused by hostile action or natural events.

3. Communications. "Communications" means a system for sending and receiving information to aid in law enforcement or law enforcement functions between fixed or mobile points, including telephone, teletype or radio systems. Communications also includes dispatching, which means the operation of sending messages and directing the operations of mobile units from a central fixed-base transmitter.

4. Detention. "Detention" means the confining of an adult or juvenile held in lawful custody in a specially constructed or modified facility designed to ensure continued custody and control. Detention may be confinement before trial or another hearing by a court or confinement to serve court-imposed sentences or dispositions and may be in a jail or lock-up.

5. Emergency services. "Emergency services" means assistance given to one or more persons or areas, when there is imminent danger of damage or injury to property or personal health and safety, and includes ambulance services, civil emergency services and rescue services.

6. Intelligence. "Intelligence" means the collection, storage, retrieval, analysis and use of information about persons known to be repeatedly violating the criminal law in a manner difficult to detect as part of a covertly planned, deliberate or organized attempt to undertake criminal acts.

7. Investigation. "Investigation" means the inquiry about, or examination or observation of, persons or objects to gather evidence concerning unlawful acts or the apprehension of wrongdoers. Investigation may also mean examination, inquiry or observation of persons or things in order to determine compliance with qualifications or requirements for the issuing of licenses or permits, when those actions are taken at the request of the issuing authority.

8. Jail. "Jail" means a specially constructed or modified facility designated by law or regularly used for detention for a period of up to 12 months.

9. Juvenile services. "Juvenile services" means the personnel, procedures and services provided to deal with delinquents or criminal offenders under 18 years of age. "Delinquent" means a person under 18 years of age who:

A. Is habitually truant;

B. Behaves in an incorrigible or indecent and lascivious manner;

C. Knowingly and willfully associates with vicious, criminal or grossly immoral people; or

D. Repeatedly deserts home without just cause.

10. Laboratory services. "Laboratory services" means those services which concern the testing or analyzing of physical evidence, by chemical or physical science methods and techniques, in order to determine its properties, composition, attributes or other information required for law enforcement purposes.

11. Law enforcement functions. "Law enforcement functions" means functions or services related to law enforcement, including patrol, laboratory services, intelligence, investigation, juvenile services, emergency services, detention and communications, whether or not those services are administered or directed through the sheriff's department or municipal police departments.

12. Lock-up. "Lock-up" means a facility designated by law or regularly used for detention for a temporary period before trial or transfer to a jail or other facility.

13. Patrol. "Patrol" means the regular and repeated circuit of the jurisdictional area as a method of deterring criminal activities, of observing or inspecting for possible violations or criminal activities, of providing for rapid response to calls for assistance and of maintaining order and the general peace. Patrol includes regulating and facilitating the movement of people and vehicles and maintaining highway safety by routine enforcement of the traffic laws and also the response to particular calls for assistance. Patrol may be conducted on foot or in a motor vehicle, aircraft or watercraft.

14. Rescue. "Rescue" means those services required to free or save persons from imminent injury or death due to accidents or other emergencies.

§452. Patrol

The sheriff in each county, in person or by the sheriff's deputies, may patrol throughout the county, but may not be required by law to patrol the entire county. The county commissioners, with the sheriff's agreement, may enter into a contract with a municipality under section 107 to provide specific patrol services by the sheriff's department in return for payment for these services.

§453. Communications centers

Each county may establish a communications center, separate from any communications function of the sheriff's department and capable of serving the communication needs of the county and the municipalities which may wish to use the center.

The county commissioners, after consulting with municipal officers, are responsible for setting policies for the communications center. They shall appoint a director or chief dispatcher who is responsible for carrying out their policies. The director or chief dispatcher, if qualified, may be the County Director of the Maine Emergency Management Agency.

The county communications center shall provide communication services for the sheriff's department, county civil emergency services, county or municipal rescue or ambulance services, county or municipal fire departments or municipal police departments.

The county commissioners, after consulting with the director or chief dispatcher, may enter into an agreement with a municipality under section 107 to provide specific communications for municipal law enforcement functions, including dispatching of municipal units, in return for payment for these services.

§454. Detention

Each county shall provide detention facilities, either within the county or, by contract with another county, outside the county. Counties may enter into an agreement under chapter 115 to provide consolidated detention facilities for the use of the agreeing counties.

§455. Investigation, intelligence or laboratory services

Counties may provide investigation, intelligence or laboratory services within the sheriff's department to aid county law enforcement, municipal police departments or the district attorney. The county may set uniform charges payable by municipalities for specific laboratory procedures or tests, when those charges reflect the actual cost of the procedures or tests, but may not require or accept any additional payments, other than the county tax, for investigation, intelligence or other laboratory services when they are provided to municipal departments or the district attorney.

§456. Rescue services

Each county may provide rescue services through the sheriff's department and deputies.

§457. Ambulance service

1. Scope of service. Each county may provide ambulance service:

A. To the entire county, omitting only those municipalities who request not to be included; or

B. By municipal-county contracts under section 107 or chapter 115, to those municipalities who enter into contracts, provided that county tax revenues are not used to support the ambulance services.

2. Method of service. Within the limits of subsection 1, the county may provide ambulance services by county personnel and vehicles or by contract with private organizations, corporations or persons, or with municipalities under section 107 or chapter 115.

§458. Juvenile services

Each county may provide juvenile services either through the sheriff's department or by other county personnel.

§459. Administrative services

Each county may undertake administrative, management and supporting functions required to implement the law enforcement functions authorized by this chapter, including the recruitment and training of county personnel, maintenance of records and preservation of evidence, purchasing of necessary supplies and planning and budget preparation.

§460. Victim and witness support

Each county is encouraged to establish a victim and witness support program to assist the victims and witnesses of criminal offenses in the prosecution of those offenses. Each county is further encouraged to hire, train and provide support staff to a qualified person or persons to carry out the victim and witness support program. The district attorney for the prosecutorial district in which the county is located shall administer any program established under this section.

## SUBCHAPTER VII

## COUNTY EMPLOYMENT

### ARTICLE 1. GENERAL PROVISIONS

§501. Employment and dismissal of county employees

1. Employment. All county officers or department heads shall submit to the county commissioners or the County Personnel Board, if one has been established under article 2, the name of any person the county officer or department head proposes to employ or the names of more than one person from which the county commissioners or personnel board are to select a person for employment. The county commissioners or the County Personnel Board may approve the employment of that person or select another person for employment. If approval is withheld or a selection is not made, the county commissioners or the County Personnel Board, within 14 days after the name or names have been submitted, shall notify the county officer or department head of the reasons for their disapproval or failure to make a selection.

2. Qualifications. All county employees shall be appointed without regard to any political affiliation and solely on the basis of professional qualifications relating to the work to be performed or their potential for acquiring those qualifications.

3. Dismissal, suspension, discipline. A county officer or department head may dismiss, suspend or otherwise discipline a department employee only for cause, except as provided in paragraph A. Cause for dismissal, suspension or disciplinary action must be a just, reasonable, appropriate and substantial reason for the action taken that relates to or affects the ability, performance of duties, authority or actions of the employee or the public's rights or interests.

A. An employee may be dismissed by a county officer or department head only for cause and only with the prior approval of the county commissioners or personnel board, except that county employees may be laid off or dismissed, with the approval of the county commissioners or personnel board, to meet the requirements of budget reductions or governmental reorganization.

B. In every case of suspension or disciplinary action other than dismissal, at the employee's request, the county commissioners or personnel board shall investigate the circumstances and fairness of the action and, if they find the charges unwarranted, shall order the employee's reinstatement to the employee's former position with no loss of pay, rights or benefits resulting from the suspension or disciplinary action.

4. Application to county commissioners' employees. Subsections 1 and 3 do not apply to county employees directly employed by the county commissioners, unless a County Personnel Board has been established under article 2.

§502. Mandatory retirement age prohibited

No county or county officer may adopt any rule or take any action which requires a county employee, as a condition of employment, to retire at or before a specified age or after a specified number of years of service. All of the provisions of section 2704 relating to the prohibition of mandatory retirement of municipal employees also apply to and prohibit the mandatory retirement of county employees.

§503. Personnel records

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Working papers, research materials, records and the examinations prepared for and used specifically in the examination or evaluation of applicants for county employment;

B. County records containing the following:

(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the credit worthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed; and

C. Other information to which access by the general public is prohibited by law.

2. Employee right to review. On written request from an employee or former employee, a county official with custody of the records shall provide that employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the county official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained.

A. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits of which the county official has possession.

B. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

## ARTICLE 2. COUNTY PERSONNEL BOARD

### §521. Establishment

The county commissioners may establish, after a public hearing, a County Personnel Board. The County Personnel Board has the duties and powers set forth in section 501 and this article.

### §522. Membership, term and compensation

The County Personnel Board shall be composed of not less than 3 nor more than 5 members who may not be county officers or employees. The county commissioners shall appoint the members. The term of office of the members is 3 years, except that for the first appointment one shall be appointed for one year, one for 2 years and one for 3 years. Vacancies shall be filled for the remainder of the term of the vacated appointment. The board shall elect its own chairman annually. The members may receive $25 a day for the time actually spent in the discharge of their duties and their necessary expenses.

### §523. Powers and duties

1. Duties. The board shall:

A. Appoint a director;

B. Approve appointments as authorized under section 501;

C. Investigate and make orders in cases of dismissal, suspension or other disciplinary action as authorized under section 501;

D. Investigate, hold hearings and report its findings, recommendations and orders for the purpose of approving appointments and dismissals, or reviewing suspensions or other disciplinary actions;

E. Enforce the rules made under subsection 2, paragraph A;

F. Receive, review and send to the county commissioners and sheriff the annual report of the director. The director's report may be supplemented by any additional comment, criticism or suggestions for the more effectual accomplishment of the purposes of this subchapter that the commission may care to submit; and

G. Keep full and complete minutes of its proceedings, which are, subject to reasonable rules, open to public inspection.

2. Powers. The board may:

A. After a public hearing, adopt or amend rules relating to:

(1) Examination or standards for appointments;

(2) Probationary period;

(3) Reinstatement;

(4) Demotion;

(5) Suspension, layoff or dismissal;

(6) Provisional, emergency, exceptional and temporary appointments; and

(7) Leave of absence, resignation, hours of service, vacations and sick leave; and

B. In the course of any investigation through any member of the board, administer oaths and subpoena and require the attendance of witnesses and the production of books, papers, public records and other documentary evidence relating to the investigation.

(1) If any person refuses to comply with any subpoena issued under this section or to testify to any matter regarding which that person which may be lawfully interrogated, the Superior Court in the county on application of any one of the members of the commission or of the director, when authorized by the commission, may issue an order requiring that person to comply with the subpoena and to testify. The court may punish any failure to obey this order as contempt of court.

§524. Director; qualifications; tenure; compensation; powers and duties

At the time of appointment, the director must be a person familiar with the principles, methods and techniques of public personnel administration on the merit basis. The director's tenure of office is at the will of the personnel board and the director shall receive the compensation set by the board with the county commissioners' approval.

The director shall administer and make effective this subchapter and the rules of the personnel board.

SUBCHAPTER VIII

COUNTY RECORDS LAW

§551. Short title

This subchapter shall be known and may be cited as the "County Records Law."

§552. Definitions

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

1. County official. "County official" means any elected or appointed member of a county government.

2. Record. "Record" means all documentary material, regardless of media or characteristics, made or received and maintained by a county in accordance with law or rule or in the transaction of its official business.

§553. General requirements

The following provisions apply to county records.

1. Delivery to successor in office. County officials shall deliver the records of their office to their successors in office when their terms expire.

2. Records available for public use. County officials shall make records under their supervision available for public use at reasonable times unless the use of those records is otherwise restricted by law.

3. Protection of records. County officials shall carefully protect and preserve the records of their office from deterioration, mutilation, loss or destruction.

4. Disposition of records. No record may be destroyed or otherwise disposed of by any county official, except as provided by the County Records Board. Records which have been determined by the board to possess sufficient archival value to warrant permanent preservation shall be preserved by the county or deposited with the State Archivist.

5. Rules of County Records Board. Each county official shall comply with the standards, procedures and rules adopted by the County Records Board.

§554. County Records Board

The County Records Board is established as follows.

1. Membership. The County Records Board as established by Title 5, section 12004, subsection 10, shall consist of 5 members.

A. Four persons shall be appointed by the Governor for terms of 3 years:

(1) One of whom must be a county commissioner;

(2) One of whom must be a register of deeds;

(3) One of whom must be a register of probate; and

(4) One of whom must be experienced in real estate title examinations; and

B. The State Archivist shall serve as chairman.

Any person appointed to fill a vacancy in the membership of the board shall serve for the remainder of the term for which that person's predecessor was appointed.

2. Meetings; quorum; compensation. The board shall meet at the call of the chairman, but not less than 4 times during each calendar year. Three members of the board constitute a quorum. Appointed members shall be compensated according to the provisions of Title 5, chapter 379.

§555. Powers and duties of board

The County Records Board shall establish standards, procedures and rules for the effective management of county records. These standards, procedures and rules shall follow, as far as practicable, the program established under the "Archives and Records Management Law" to govern the creation, utilization, maintenance, retention,

preservation and disposal of state records, except as otherwise provided in this subchapter, and shall follow the standards for the making of records set forth in Title 33, chapter 11, subchapter II. The board may revise these standards, procedures and rules as it considers necessary. The Maine State Archives shall provide administrative services to the board and serve as secretariat of the board.

§556. Assistance to counties

The State Archivist shall provide advice and assistance to counties in the establishment and administration of county archival programs. The State Archivist shall provide program services to counties similar to those furnished the agencies of State Government to the extent the State Archivist considers desirable in the administration of the state program and facilities. The State Archivist may acquire and maintain sufficient microfilm equipment and supplies to microfilm records that the board may order microfilmed in accordance with section 555. These services shall be furnished to counties at cost.

§557. Violation

Notwithstanding Title 17-A, section 4-A, whoever violates any provision of this subchapter or rules of the County Records Board adopted under section 555 is guilty of a Class E crime and shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 90 days, or both.

## CHAPTER 3

## COUNTY BUDGET AND FINANCES

## SUBCHAPTER I

## ASSESSMENT OF TAXES

### ARTICLE 1. ASSESSMENT OF TAXES; GENERALLY

§701. Annual estimates for county taxes

Except as otherwise provided, the county commissioners shall make the county estimates and cause the taxes to be assessed as follows.

1. Forms. The county estimates must be made on forms and in the manner approved by the Department of Audit. The Secretary of State shall provide copies of these forms to the county commissioners of each county no later than September 19th of each year.

2. Preparation of estimates. In order to assess a county tax, the county commissioners, prior to November 7th in each year, shall prepare estimates of the sums necessary to pay the expenses which have accrued or may probably accrue for the coming year, including the building and repairing of jails, courthouses and appurtenances, with the debts owed by their counties. The estimates must be drawn so as to authorize the appropriations to be made to each department or agency of the county government for the year. The estimates must provide specific amounts for personal services, contractual services, commodities, debt service and capital expenditures.

3. Public hearing. The county commissioners shall hold a public hearing in the county on these estimates before December 1st. They shall publish a notice of the hearing at least 10 days before the hearing in a newspaper of general circulation within the county. Written notice and a copy of the estimates shall be sent by mail or delivered in person to the clerk of each municipality in the county and to each member of the county legislative delegation at least 10 days before the hearing. The municipal clerk shall notify the municipal officers of the receipt of the estimates.

4. Meeting with legislative delegation. Before the Legislature convenes, the county commissioners of each county shall meet with the legislative delegation of their county to finalize estimates for the year.

§702. Estimates recorded and sent to Secretary of State

1. Estimates sent to Legislature for approval; amendments. The county clerk shall record the estimates made under section 701 in a book. A copy of the estimates shall be signed by the chairman of the county commissioners and attested by their clerk. The clerk shall transmit that copy to the office of the Secretary of State on or before the first day of each January, together with the county reports under section 952 for the 2 preceding years, to be presented by the Secretary to the Legislature for its approval.

A. Except as otherwise provided, the Legislature may change or alter specific line categories within the county estimates before approving a budget.

2. Records. The Legislature shall file a copy of these estimates, with any amendments that it adopts, including any changes in specific line categories, with the State Auditor who shall retain them for 3 years. These records shall be a public record at the office of the county commissioners in the county which submitted them.

§703. Acceptance of state and federal grants

A county may accept and expend grants.

1. Federal. Counties may apply for and accept and expend Federal Government grants for any purpose for which Federal Government grants are available to counties, either directly or through the State.

2. State. Counties may apply for and accept and expend state grants for any purpose for which state grants are available to counties, either directly or through a state agency.

3. Application. This section is not intended to increase, expand or broaden the powers of the counties or to apply to the general revenue sharing funds of the counties.

§704. Federal funds received by counties

1. Anticipated federal funds. Any county which receives federal funds shall provide for the expenditure of those funds in accordance with the laws and procedures governing the expenditure of its own revenue and shall record estimates of the expenditure as provided in section 702, except as provided in subsection 2.

2. Procedure if federal funds could not be anticipated. If federal funds become available to the county for expenditure by the county while the Legislature is not in session, and if the availability of those funds could not reasonably have been anticipated and included in the estimate adopted by the Legislature for the fiscal year in question, the county may accept and spend these funds in compliance with federal and state law. Upon application for those funds and upon receipt of those funds, the chairman of the county commissioners shall submit to the clerk of each municipality in the county and to each member of the county legislative delegation a statement:

A. Describing the proposed federal expenditure in the same manner as it would be described in the estimate; and

B. Containing a statement as to why the availability of these federal funds and the necessity of their expenditure could not have been anticipated in time for that expenditure to be adopted as part of the estimates for that particular fiscal year.

§705. Grants to agencies outside of county government

Any grants placed in the county budget by the Legislature to any agency outside of the regular county departments shall be paid to those agencies on a quarterly basis. The commissioners may withhold funds from an agency if there is evidence that funds have been misappropriated or misapplied by the agency.

§706. Apportionment of county tax; warrants

When a county tax is authorized, the county commissioners, within 30 days of that authorization, shall apportion it upon the municipalities and other places according to the last state valuation and fix the date for the payment of the tax. This date may not be earlier than the first day of the following September. They may add that sum above the sum so authorized, not exceeding 2% of that sum, as a fractional division necessitates and demonstrate that necessity in the record of that apportionment, and issue their warrant to the assessors requiring them to immediately assess the sum apportioned to their municipality or place, and to commit their assessment to the constable or collector for collection. The county treasurer shall immediately certify the millage rate to the State Tax Assessor. The State Tax Assessor shall separately assess this millage rate upon the real and personal property in the unorganized territory within the appropriate county.

The county may collect delinquent county taxes and charge interest on delinquent county taxes as provided under Title 36, sections 891, 892 and 892-A.

§707. Illegal assessments

All assessments under this Part made by the county commissioners which include sums assessed for an illegal object are not void, nor shall any error, mistake, omission or inclusion of illegal sums in the assessment by the county commissioners void any part of the assessment that is assessed for legal purposes.

Any person paying a tax assessed for an illegal object may bring a civil action against the county in the Superior Court for the same county and may recover as much of the sum paid as was assessed for an illegal object, with 25% interest and costs and any damages which that person has sustained because of the mistakes, errors or omissions of the commissioners.

§708. Alternative fiscal year

The county commissioners of a county may adopt a July 1st to June 30th fiscal year. A county may raise one or 2 taxes during a single valuation, if the taxes raised are based on appropriations made for a county fiscal year that does not exceed 18 months. A county fiscal year may extend beyond the end of the current tax year. The county commissioners, when changing the county's fiscal year, may for transition purposes, adopt one or more fiscal years not longer than 18 months each.

ARTICLE 2. ANDROSCOGGIN COUNTY BUDGET COMMITTEE

§721. Purpose

The purpose of this article is to establish in Androscoggin County a method of appropriating money for county expenditures, including the salaries for county officers, according to a budget which must first be adopted by a budget committee and must then be approved by the Legislature. This article amends the statutory method in sections 2, 701 and 702 by creating a committee elected by Androscoggin County municipal officers with authority to adopt or amend the budget. The Legislature continues to have authority to approve but not to amend the budget. This article applies only to Androscoggin County.

§722. Definitions

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

1. County commissioners. "County commissioners" means the county commissioners of Androscoggin County.

2. Municipal officials. "Municipal officials" means the mayor, aldermen, councillors or manager of a city and the selectmen, councillors or manager of a town located in Androscoggin County.

§723. Androscoggin County budget committee

In Androscoggin County there is established a budget committee to carry out the purposes of this article.

1. Membership. The budget committee shall consist of 9 members, 3 members from each commissioner district selected as provided in this section. The county commissioners shall serve on the committee in an advisory capacity only and may not vote on any committee matters.

In 1989, and every 3rd year thereafter, at least 90 days before the end of the fiscal year, the 9 members shall be elected by the following procedure.

A. The county commissioners shall notify all municipal officers in the county to caucus by county commissioner districts at a specified date, time and place for the purpose of nominating at least 3 residents of the district of voting age as candidates for the county budget committee. At least 2 of the persons nominated must not be municipal officials. A county commissioner shall serve as nonvoting moderator for that district caucus. Nominations shall be received from the floor and require a majority vote of those present to be approved. The names of those duly nominated shall be recorded and forwarded to the county commissioners to be placed on a written ballot.

B. The county commissioners shall have written ballots printed with the names of those candidates selected in each county commissioner district under paragraph A. Each commissioner district shall require a separate ballot and each ballot shall specify each candidate's full name and municipality. The county commissioners shall distribute the appropriate ballots to each municipality within a commissioner district. The municipal officers shall vote, as a board, for 3 budget committee members from the candidates on the ballot. The municipal officers must vote for at least 2 candidates who are not municipal officials. After voting, the municipal officers shall return the ballot to the county commissioners by a certain date.

C. The ballots shall be counted at a regular meeting of the county commissioners. Each municipality's vote shall be weighted according to the formula set out in paragraph D to ensure that each municipality's vote reflects its proportion of the commissioner district's total population. The 2 candidates with the highest vote totals and who are not municipal officials and the candidate with the otherwise highest vote total are elected to membership on the county budget committee for each district. The county commissioners shall:

(1) Notify each municipality, in writing, of the election results; and

(2) Certify the results to the Secretary of State.

D. The votes of each municipality shall be multiplied by the figure opposite the municipality's name as follows:

(1) For Commissioner District Number One:

| | |
|---|---|
| (a) Greene | 902 |
| (b) Leeds | 435 |
| (c) Lewiston | 2231 |
| (d) Lisbon | 2605 |
| (e) Livermore | 542 |
| (f) Livermore Falls | 1061 |
| (g) Sabattus | 915 |
| (h) Turner | 1051 |
| (i) Wales | 256 |

(2) For Commissioner District Number 2:

| | |
|---|---|
| (a) Auburn | 7034 |
| (b) Durham | 631 |
| (c) Mechanic Falls | 800 |
| (d) Minot | 398 |
| (e) Poland | 1141 |

(3) For Commissioner District Number 3:

| | |
|---|---|
| (a) Lewiston | 1 |

These adjustment figures will be revised after each decennial census.

2. Duties. The county budget committee shall review the budget and estimates, including the salaries for county officers, prepared by the county commissioners, and shall approve a final county budget.

3. Term of office. The term of office for budget committee members is 3 years.

4. Vacancies. A vacancy occurring on the budget committee shall be filled by the committee for the balance

of the unexpired term. The person appointed to fill the vacant office must be from the same municipality as the person vacating the office.

5. Expenses. Members shall serve without compensation, but shall be reimbursed from the county treasury for expenses lawfully incurred by them in the performance of their duties.

§724. Budget committee organization

The budget committee shall conduct its meetings in public at the county courthouse. The county commissioners shall direct the county clerk to call an organizational meeting of the budget committee at least 60 days before the end of the county's fiscal year. The county commissioners shall provide the committee with necessary clerical assistance, office expenses and suitable meeting space, as well as access to county files and information. The budget committee shall select its own chairman, vice-chairman and secretary. The budget committee shall adopt its own rules or procedures and bylaws.

§725. Budget procedure

1. Proposed budget. The county commissioners shall submit itemized budget estimates, as described in sections 701 and 702 to the budget committee in a timely fashion, at least 60 days before the end of the county's fiscal year.

2. Public hearing on commissioners' budget. The budget committee shall review the proposed itemized budgets prepared by the county commissioners, together with any supplementary material prepared by the head of each county department or provided by any independent board or institution or another governmental agency. The budget committee shall hold a public hearing, with notice as provided in subsection 4, on the proposed itemized budgets prepared by the county commissioners.

3. Budget committee process. After the public hearing required under subsection 2 is completed, the budget committee may increase, decrease, alter or revise the proposed budgets provided that:

A. The budget committee shall enter into its minutes an explanation for any change in the estimated expenditures and revenues as initially presented by the county commissioners; and

B. The total estimated revenues, together with the amount of county tax to be levied, must equal the total estimated expenditures.

4. Public hearing on revised budget. The budget committee shall hold at least one additional public hearing in the county on the proposed budget, as revised by the budget committee, before the end of the county's fiscal year and before the final adoption of the budget. Notice of the hearing must be given at least 10 days before the hearing in all newspapers of general circulation within the county. Written notice and a copy of the proposed budget shall be mailed or delivered in person to the clerk of each municipality in the county. The municipal clerk shall notify the municipal officials of the proposed budget.

5. Adoption of budget. After the public hearing or hearings held under subsection 4 are completed, the budget committee may further increase, decrease, alter and revise the proposed itemized budgets, subject to the conditions and restrictions imposed in subsection 3. The proposed itemized budget must be finally adopted by a majority vote of the budget committee at a duly called meeting held before the end of the county's fiscal year.

6. Final budget approval. Before January 15th of the fiscal year for which the budget is prepared, the budget committee shall submit the proposed budget to the Legislature. The Legislature shall approve or disapprove the budget as submitted before May 1st of each year.

If the Legislature disapproves of the budget, the budget committee shall submit, within 15 calendar days, new budget proposals in accordance with subsection 1 and the provisions of this section shall be followed until a budget is finally approved.

7. Assessment of taxes. The budget as approved by the Legislature is the final authorization for the assessment of county taxes. The budget shall be sent to the county commissioners and the county tax authorized shall be apportioned and collected in accordance with section 706.

8. Interim budget. Until a budget is finally adopted, the county shall operate on an interim budget which may not exceed the previous year's budget.

§726. Budget amendments

The approved budget shall govern the expenditures of the county during the fiscal year. No expenses may be incurred in excess of those shown in the approved budget, but the county commissioners may transfer funds as provided in section 922, and the budget may be from time to time revised by the preparation and submission of a proposed amended budget by the county commissioners to the budget committee. The budget committee shall within 15 calendar days approve, disapprove or amend this revised budget. If the proposed revised budget is approved or amended, the budget committee within this same time period shall forward the revised budget to the Legislature for final approval. The Legislature has 15 calendar days to approve or disapprove the revised budget. If the Legislature is not in session or does not approve the revised budget within this time, it is disapproved. A report of approval of a revised budget shall be transmitted to the State Auditor within 15 days of the Legislature's approval of a revised budget.

§727. Filing of county budget

A copy of the final budget and any subsequent amendments shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

## ARTICLE 3. AROOSTOOK COUNTY BUDGET COMMITTEE

### §731. Purpose

The purpose of this article is to establish in Aroostook County a method of appropriating money for county expenditures, including expenditures for municipal services in the unorganized territory, according to a budget, which must first be adopted by a budget committee and must then be approved by the Legislature. This article amends the statutory method in sections 701 and 702 by creating a committee elected by Aroostook County municipal officers with authority to advise on the budget. The Legislature has authority to approve the budget. This article applies only to Aroostook County.

### §732. Definitions

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

1. County commissioners. "County commissioners" means the county commissioners of Aroostook County.

2. Municipal officials. "Municipal officials" means the mayor, aldermen, councillors or manager of a city, the selectmen, councillors or manager of a town and the assessors of a plantation located in Aroostook County.

3. Municipal officers. "Municipal officers" means the elected mayor, aldermen or councillors of a city, the selectmen or councillors of a town and the assessors of a plantation located in Aroostook County.

### §733. Aroostook County budget committee

In Aroostook County there is established a budget committee to carry out the purposes of this article.

1. Membership. The budget committee shall consist of 10 members, 3 members from each commissioner district selected under paragraphs A and B and one member selected under paragraph C. The county commissioners shall serve on the committee in an advisory capacity only and shall not vote on any committee matters.

In 1985, and every 3rd year thereafter, at least 90 days before the end of the fiscal year, the 10 members shall be elected by the following procedure.

A. The county commissioners shall notify all municipal officers in the county to caucus by county commissioner districts at a specified date, time and place for the purpose of nominating at least 3 residents of the district of voting age as candidates for the county budget committee. A county commissioner shall serve as nonvoting moderator for the county commissioner's district caucus. Nominations shall be received from the floor and require a majority vote of those present to be approved. The names of those duly nominated shall be recorded and forwarded to the county commissioners to be placed on a written ballot.

B. The county commissioners shall have written ballots printed with the names of those candidates selected in each district in accordance with paragraph A. Each commissioner district shall require a separate ballot and each ballot shall specify each candidate's full name and municipality. The county commissioners shall distribute the appropriate ballots to each municipality within a commissioner district. The municipal officers shall vote, as a board, for 3 budget committee members from the candidates on the ballot and return the ballot to the county commissioners by a certain date. The ballots shall be counted at a regular meeting of the county commissioners. Each vote shall be weighted according to that municipality's population as a proportion of the district's total population. The county commissioners shall:

(1) Notify each municipality, in writing, of the election results; and

(2) Certify the results to the Secretary of State.

C. The county commissioners shall appoint one qualified budget committee member from the unorganized territory of Aroostook County to serve on the budget committee.

D. It is the responsibility of the county budget committee to review the budget and estimates, including the budget for municipal services in the unorganized territory prepared by the county commissioners, and to provide advice on a final county and unorganized budget.

E. The term of office is 3 years.

F. A vacancy occurring on the budget committee shall be filled by the committee for the balance of the unexpired term. The person appointed to fill the vacant office must be from the same municipality or unorganized territory as the person vacating the office.

G. Members shall serve without compensation.

H. Two out of the 3 members from each commissioner's district shall be municipal officers.

### §734. Budget committee organization

The budget committee shall conduct its meetings in public at the county courthouse. The county commissioners shall direct the county clerk to call an organizational meeting of the budget committee no later than 60

days before the end of the county's fiscal year. The county commissioners shall provide the committee with necessary clerical assistance, office expenses and suitable meeting space, as well as access to county files and information. The budget committee shall select its own chairman, vice-chairman and secretary. The budget committee shall adopt its own rules or procedures and bylaws.

§735. Budget procedures

1. Proposed budget. The county commissioners shall submit itemized budget estimates, as described in sections 701, 702 and 7503, to the budget committee in a timely fashion, no later than 60 days before the end of the county's fiscal year.

2. Budget review process. The budget committee shall review the proposed itemized budgets prepared by the county commissioners, together with any supplementary material prepared by the head of each county department or provided by any independent board or institution or another governmental agency. The budget committee may recommend increases, decreases or alterations to the proposed budgets provided that:

A. The budget committee shall enter into its minutes an explanation for any suggested change in the estimated expenditures and revenues as initially presented by the county commissioners; and

B. The total estimated revenues, together with the amount of county tax to be levied, must equal the total estimated expenditures.

3. Public hearing. The budget committee shall hold a public hearing in the county on the proposed budget before the end of the county's fiscal year and before the final adoption of the budget. Notice of the hearing shall be given at least 10 days before the hearing in all newspapers of general circulation within the county. Written notice and a copy of the proposed budget shall be sent by registered or certified mail with return receipt requested, or delivered in person, with proof received of the delivery, to the clerk of each municipality in the county. The municipal clerk shall notify the municipal officials of the proposed budget.

4. Adoption of budget. After the public hearing is completed, the county commissioners may further increase, decrease, alter and revise the proposed itemized budgets, subject to the conditions and restrictions imposed in subsection 2. The proposed itemized budget must be finally adopted by a majority vote of the county commissioners at a duly called meeting not later than the end of the county's fiscal year.

5. Final budget approval. The county commissioners shall submit the proposed budget to the Legislature before January 15th of the fiscal year for which the budget is prepared.

6. Assessment of taxes. The budget as approved by the Legislature is the final authorization for the assessment of county taxes. The budget shall be sent to the county commissioners and the county tax authorized shall be apportioned and collected in accordance with section 706. The budget for the unorganized territories will be sent to the State as provided by section 7503.

7. Interim budget. Until a budget is finally adopted, the county shall operate on an interim budget which shall not exceed the previous year's budget.

8. Transfer of funds. The county commissioners may transfer funds as provided in section 922.

§736. Budget amendments

The approved budget shall govern the expenditures of the county during the fiscal year. No expenses may be incurred in excess of those shown in the approved budget, but the budget may be from time to time revised by the preparation and submission of a proposed amended budget by the county commissioners to the Legislature for final approval. Only after the Legislature has approved or amended the budget shall it become effective. A report of approval of a revised budget shall be transmitted to the State Auditor within 15 days of an approval of a revised budget by the Legislature.

§737. Filing of county budget

A copy of the final budget and subsequent amendments shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

§738. Repeal

This article is repealed on September 30, 1988.

ARTICLE 4. CUMBERLAND COUNTY BUDGET

§741. Budget; appropriations; approval

Notwithstanding sections 2, 701 and 702, in Cumberland County the county commissioners may appropriate money, according to a budget, which must be approved by a majority of the county commissioners.

§742. Interim budget

If the budget is not approved before the start of a fiscal year, until a budget is finally adopted, the county shall operate on an interim budget which may not exceed 80% of the previous year's budget.

§743. Advisory committee

There is established a Cumberland County Budget Advisory Committee comprised as follows.

1. Municipal officers. Municipal officers within each

commissioner district shall caucus and shall elect municipal officers from that district to fill vacancies as they arise, for terms as provided in paragraph A.

A. Members shall serve for 3-year terms, except that initially each district caucus shall select one member for a one-year term, one member for a 2-year term and one member for a 3-year term. If a committee member ceases to be a municipal officer during the term of membership, the committee member shall resign the membership and the next district caucus shall elect a qualified municipal officer to fill the membership for the remainder of the unexpired term.

2. Human Services Board representative. The Cumberland County Human Services Board shall annually appoint one member representing human service agencies within the county who shall serve as an ex officio nonvoting member.

The committee shall select its own chairman each year.

§744. Public hearing

The Cumberland County commissioners shall hold one or more public hearings on the budget estimate before October 1st.

§745. Budget estimate; submission to advisory committee

The Cumberland County commissioners shall submit a budget estimate to the advisory committee no later than October 1st for the coming year. The advisory committee shall review the budget estimate and make recommendations to the commissioners before November 15th. The county commissioners shall act on the budget in a timely fashion and, in any event, not later than December 15th of the budget year.

§746. Final budget estimates; filing

A copy of the final budget estimates shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

## ARTICLE 5. KENNEBEC COUNTY BUDGET ADVISORY COMMITTEE

§771. Definitions

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

1. County commissioners. "County commissioners" means the county commissioners of Kennebec County.

2. Municipal officers. "Municipal officers" means the mayor, aldermen or councillors of a city, the selectmen or councillors of a town and the assessors of a plantation located in Kennebec County.

§772. Kennebec County Budget Advisory Committee

In Kennebec County, there is established the Kennebec County Budget Advisory Committee to carry out the purposes of this article. This article applies only to Kennebec County.

1. Membership. The budget advisory committee shall consist of 9 members, 3 members from each commissioner district to be appointed by the county commissioners. The term of each member of the budget advisory committee is 2 years.

2. Responsibilities. It is the responsibility of the county budget advisory committee to review the budget estimates prepared by the county commissioners and to make recommendations to the county commissioners concerning a final county budget.

3. Vacancies. The county commissioners shall fill, by appointment, any vacancy on the budget advisory committee for the balance of the unexpired term. The person appointed to fill the vacant office must be from the same municipality as the person vacating the office.

4. Expenses. Members shall serve without compensation, but shall be reimbursed from the county treasury for expenses lawfully incurred by them in performing their duties.

§773. Budget advisory committee organization

The budget advisory committee shall conduct its meetings in public at the county courthouse. The county commissioners shall direct the county clerk to call an organizational meeting of the budget advisory committee no later than 60 days before the end of the county's fiscal year. The county commissioners shall provide the committee with necessary clerical assistance, office expenses and suitable meeting space, as well as access to county files and information. The budget advisory committee shall select its own chairman, vice-chairman and secretary. The budget advisory committee shall adopt its own rules or procedures and bylaws.

§774. Budget procedures

1. Proposed budget. The county commissioners shall submit an itemized budget estimate, as described in sections 701 and 702, to the budget advisory committee in a timely fashion, no later than 60 days before the end of the county's fiscal year.

2. Budget review process. The budget advisory committee shall review the proposed itemized budget prepared by the county commissioners, together with any supplementary material prepared by the head of each county department or provided by any independent board, institution or other governmental agency. The budget advisory committee may make recommendations concerning any increase, decrease, alteration or revision to the proposed budget.

3. Public hearing. The budget advisory committee shall hold a public hearing in the county on the proposed budget before the end of the county's fiscal year and before the final adoption of the budget. Notice of the hearing shall be given at least 10 days before the hearing in a newspaper of general circulation within the county. Written notice and a copy of the proposed budget shall be sent by registered or certified mail with return receipt requested, or delivered in person, with proof received of the delivery, to the clerk of each municipality in the county. The municipal clerk shall notify the municipal officers of the proposed budget.

4. Adoption of budget. After the public hearing is completed, the county commissioners may further increase, decrease, alter and revise the proposed itemized budget, provided that:

A. The county commissioners shall enter into their minutes an explanation for any rejection of any recommendation of the budget advisory committee; and

B. The total estimated revenues, together with the amount of county tax to be levied, must equal the total estimated expenditures.

The county commissioners shall then send the recommended budget to the Legislature for its approval. The county tax authorized shall be apportioned and collected in accordance with section 706.

§775. Budget amendments

The approved budget shall govern the expenditures of the county during the fiscal year. No expenses may be incurred in excess of those shown in the approved budget, but the budget may be from time to time revised by the commissioners with the advice of the budget advisory committee.

§776. Filing of county budget

A copy of the final budget and subsequent amendments shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

§777. Repeal

This article is repealed on September 30, 1988.

## ARTICLE 6. PISCATAQUIS COUNTY BUDGET COMMITTEE

§821. Purpose

The purpose of this article is to establish in Piscataquis County a method of appropriating money for county expenditures, including expenditures for municipal services in the unorganized territory, according to a budget, which shall first be reviewed by a budget committee and shall then be approved by the Legislature. This article amends the statutory method in sections 701 and 702 by creating a committee with authority to review the budget and make recommendations to the county commissioners. The Legislature has authority to approve and amend the budget. This article applies only to Piscataquis County.

§822. Definitions

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

1. County commissioners. "County commissioners" means the elected county commissioners of Piscataquis County.

2. Municipal officials. "Municipal officials" may include the mayor, aldermen, councillors or manager of a city, the selectmen, councillors or manager of a town and the assessors of a plantation located in Piscataquis County.

3. Municipal officers. "Municipal officers" means the elected mayor, aldermen or councillors of a city, the selectmen or councillors of a town and the assessors of a plantation located in Piscataquis County.

§823. Piscataquis County Budget Committee

In Piscataquis County there is established the Piscataquis County Budget Committee to carry out the purposes of this article.

1. Membership. The budget committee shall consist of 9 members, 3 members from each commissioner district selected at least 90 days before the end of the fiscal year as provided for in this section.

A. Of the 3 members from each commissioner district, one must be a municipal official and one must be a representative of the general public. All 3 members shall be appointed by the county commissioners.

One member of the general public on the committee must be a resident of the unorganized territories. No other member of the general public on the committee may be a resident of the unorganized territories.

B. It is the responsibility of the county budget committee to review the budget and estimates, including the budget for municipal services in the unorganized territory prepared by the county commissioners, and to make recommendations concerning the budget and estimates.

C. The term of office is as follows:

(1) The member who is a municipal officer, appointed by the county commissioners, has an initial term of one year;

(2) The member who is a representative of the general public, appointed by the county commissioners, has an initial term of 2 years; and

(3) The 3rd member has an initial term of 3 years.

The terms of the respective members shall increase by one year at the time of reappointment, except the 3-year term, which shall become a one-year term.

D. A vacancy occurring on the budget committee shall be filled in the same manner as the original appointment for the balance of the unexpired term. The person appointed to fill the vacant office must have the same qualifications as the person vacating the office.

E. Members shall serve without compensation.

§824. Budget committee organization

The budget committee shall conduct its meetings in public at the county courthouse. The county commissioners shall direct the county clerk to call an organizational meeting of the budget committee within 15 days after the county budget has been prepared by the county commissioners. The county commissioners shall provide the committee with necessary clerical assistance, office expenses and suitable meeting space, as well as access to county files and information. The budget committee shall select its own chairman, vice-chairman and secretary. The budget committee shall adopt its own rules or procedures and bylaws.

§825. Budget procedures

1. Proposed budget. The county commissioners shall submit itemized budget estimates, as described in sections 701, 702 and 7503, to the budget committee in a timely fashion, no later than 90 days before the end of the county's fiscal year.

2. Budget review process. The budget committee shall review the proposed itemized budgets prepared by the county commissioners, together with any supplementary material prepared by the head of each county department or provided by any independent board, institution or another governmental agency. The budget committee may make recommendations concerning any increase, decrease, alteration or revision to the proposed budget. These activities shall be done before November 1st.

3. Meeting with legislative delegation. Before November 15th, the county commissioners shall meet with the county legislative delegation to review and finalize estimates for the year.

4. Public hearing. The county commissioners shall hold a public hearing in the county on the proposed budget prior to December 1st and before the final adoption of the budget. Notice of the hearing shall be given at least 10 days before the hearing in all newspapers of general circulation within the county. Written notice and a copy of the proposed budget shall be sent by mail or delivered in person to the clerk of each municipality in the county and to the members of the budget committee. The municipal clerk shall notify the municipal officials of the proposed budget and the date of the public hearing.

5. Adoption of budget. After the public hearing is completed, the county commissioners may further increase, decrease, alter and revise the proposed itemized budgets provided that:

A. The county commissioners shall enter into their minutes and submit to the budget committee a statement of their bases for any rejection of any recommendation of the budget committee; and

B. The county commissioners shall hold a public meeting prior to December 7th with the budget committee to discuss any rejections.

The proposed itemized budget must be finally adopted by a majority vote of the county commissioners at a duly called meeting not later than December 15th.

6. Interim approval by legislative delegation. Before submitting the budget to the Legislature under subsection 7, the county commissioners shall submit the proposed budget to the legislative delegation. The delegation shall render a decision by January 1st. Failure to do so is considered approval of the budget as submitted. If the legislative delegation disapproves of the budget, the county commissioners shall submit, within 15 calendar days, new budget proposals in accordance with subsection 1 and the provisions of this section shall be followed until a budget is approved by the legislative delegation.

7. Final budget approval. Before January 15th of the fiscal year for which the budget is prepared, the county commissioners shall submit the proposed budget to the Legislature. The Legislature shall approve, disapprove or amend the budget as submitted.

8. Assessment of taxes. The budget as approved by the Legislature is the final authorization for the assessment of county taxes. The budget shall be sent to the county commissioners and the county tax authorized shall be apportioned and collected in accordance with section 706. The budget for the unorganized territories shall be sent to the State as provided by section 7503.

9. Interim budget. Until a budget is finally adopted, the county shall operate on an interim budget which shall not exceed the previous year's budget.

10. Transfer of funds. The county commissioners may transfer funds as provided in section 922.

§826. Budget amendments

The approved budget shall govern the expenditures of the county during the fiscal year. No expenses may be incurred in excess of those shown in the approved budget, but the budget may be from time to time revised by the preparation of a proposed amended budget by the county commissioners. This proposed amended budget shall be submitted to the county budget committee for review. Any recommendations by this committee must be submitted within 10 calendar days. After receiving the recommendation of the budget committee, the county commissioners shall forward the proposed revised budget to the legislative delegation for approval. The delegation has 10 calendar days to render a decision on the proposed revision. Failure of the delegation to render a decision within the specified time is considered an approval of the revision. If the delegation disapproves of the revision, the procedure of section 825, subsection 6, shall be followed. The county commissioners shall submit the proposed revised budget to the Legislature for approval, disapproval or amendment. If approved, the Legislature shall transmit a report of approval of a revised budget to the State Auditor within 15 days of that approval.

§827. Filing of county budget

A copy of the final budget and subsequent amendments shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

## ARTICLE 7. WALDO COUNTY BUDGET COMMITTEE

§851. Purpose

The purpose of this article is to establish in Waldo County a method of appropriating money for county expenditures, according to a budget, which must first receive approval of a budget committee. This article amends the statutory method in sections 2, 701 and 702 by transferring the authority of the Waldo County legislative delegation and the Legislature to approve the Waldo County budget to a committee comprised of Waldo County and municipal officials. This article applies only to Waldo County.

§852. Definitions

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

1. County commissioners. "County commissioners" means the county commissioners of Waldo County.

2. Municipal officers. "Municipal officers" means the mayor, councillors or selectmen.

§853. Waldo County Budget Committee

In Waldo County there is established a Waldo County Budget Committee to carry out the purposes of this article.

1. Membership. The budget committee shall consist of 9 members, 3 members from each commissioner district selected as provided for in this section. The county commissioners shall serve on the committee in an advisory capacity only and may not vote on any committee matters.

In 1987, and thereafter, at least 90 days before the end of every fiscal year, the members shall be elected by the following procedure.

A. The county commissioners shall notify all municipal officers in the county to caucus by county commissioner districts at a specified date, time and place for the purpose of nominating at least one municipal officer from each district as a candidate for the county budget committee; except that in 1987, at least 3 municipal officers shall be nominated from each district. A county commissioner shall serve as nonvoting moderator for his district's caucus. Nominations shall be received from the floor. The nominee receiving the most votes shall be approved. Any other nominees who receive a majority vote of those present shall also be approved. The names of those duly approved shall be recorded and forwarded to the county commissioners to be placed on a written ballot.

B. The county commissioners shall have written ballots printed with the names of those candidates selected in their districts under paragraph A. Each commissioner district shall require a separate ballot and each ballot shall specify each candidate's full name and municipality. The county commissioners shall distribute the appropriate ballots to each municipality within a commissioner district. The municipal officers shall vote as a board for one budget committee member from the candidates on the ballot and return the ballot to the county commissioners by a certain date, except that in 1987, the municipal officers shall vote as a board for 3 budget committee members. The ballots shall be counted at a regular meeting of the county commissioners. Each vote shall be weighted according to that municipality's population as a proportion of the district's total population, except that no municipality may have more than one budget committee member. The county commissioners shall notify each municipality, in writing, of the results of the election and shall certify the results to the Secretary of State.

2. Duties. The county budget committee shall review the budget estimates prepared by the county commissioners and approve a final county budget.

3. Term of office. The term of office shall be 3 years, provided that a budget committee member remains a municipal officer in the municipal officer's municipality, except that of those elected in 1987, one from each district shall be elected for a term of 3 years; one from each district shall be elected for a term of 2 years; and one from each district shall be elected for a term of one year.

4. Vacancies. A vacancy occurring on the budget committee shall be filled by the committee for the balance

of the unexpired term. The person appointed to fill the vacant office must be a municipal officer from the same municipality as the person vacating the office.

5. Expenses. Members shall serve without compensation, but shall be reimbursed from the county treasury for expenses lawfully incurred by them in the performance of their duties.

§854. Budget committee organization

The budget committee shall conduct its meetings in public at the county courthouse. The county commissioners shall direct the county clerk to call an organizational meeting of the budget committee no later than 60 days before the end of the county's fiscal year. The county commissioners shall provide the committee with necessary clerical assistance, office expenses and suitable meeting space, as well as access to county files and information. The budget committee shall adopt its own rules or procedures and bylaws.

§855. Budget procedures

1. Proposed budget. The county commissioners shall submit an itemized budget estimate, as described in sections 701 and 702, to the budget committee in a timely fashion, no later than 60 days before the end of the county's fiscal year.

2. Budget review process. The budget committee shall review the proposed itemized budget prepared by the county commissioners, together with any supplementary material prepared by the head of each county department or provided by any independent board or institution or another governmental agency. The budget committee may increase, decrease, alter or revise the proposed budget, provided that:

A. The budget committee shall enter into its minutes an explanation for any change in the estimated expenditures and revenues as initially presented by the county commissioners; and

B. The total estimated revenues, together with the amount of county tax to be levied, must equal the total estimated expenditures.

3. Public hearing. The budget committee shall hold a public hearing in the county on the proposed budget before the end of the county's fiscal year and before the final adoption of the budget. Notice of the hearing shall be given at least 10 days before the hearing in a newspaper of general circulation within the county. Written notice and a copy of the proposed budget shall be sent by registered or certified mail with return receipt requested, or delivered in person, with proof received of the delivery, to the clerk of each municipality in the county. The municipal clerk shall notify the municipal officers of the proposed budget.

4. Adoption of budget. After the public hearing is completed, the budget committee may further increase, decrease, alter and revise the proposed itemized budget, subject to the conditions and restrictions imposed in subsection 2. The proposed itemized budget must be finally adopted by a majority vote of the budget committee at a duly called meeting not later than the end of the county's fiscal year. The approved budget is the final authorization for the assessment of county taxes. The budget shall be sent to the county commissioners and the county tax authorized shall be apportioned and collected in accordance with section 706.

5. Interim budget. If the budget is not approved before the start of a fiscal year, until a budget is finally adopted, the county shall operate on an interim budget which may not exceed the previous year's budget.

6. Transfer of funds. The county commissioners may transfer funds as provided in section 922.

§856. Budget amendments

The approved budget shall govern the expenditures of the county during the fiscal year. No expenses may be incurred in excess of those shown in the approved budget, but the budget may be revised from time to time by the preparation and submission of a proposed amended budget by the county commissioners to the budget committee. The budget committee shall render, not less than 15 calendar days, except in emergencies, nor more than 30 days after the submission to it, a decision on any such revised budget. An approved revised budget shall be transmitted to the State Auditor within 15 days of the budget committee's action.

§857. Filing of county budget

A copy of the final budget and subsequent amendments shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

## SUBCHAPTER II

## COUNTY FISCAL MATTERS

### ARTICLE 1. EXPENDITURES

§901. Insurance for firefighters

Any county may expend funds to be accounted for as other money of the county for the purchase of accident and disability insurance on a county-wide basis, protecting all persons whether part-time, full-time or on-call, and whether paid or unpaid, while acting as firefighters for any municipal fire department or incorporated volunteer fire association.

§902. Authority to operate a regional solid waste collection and disposal service

1. Authorization. The county commissioners of each county may operate a solid waste collection and disposal

system or contract for solid waste collection and disposal services to serve their respective counties. The county commissioners may contract with municipalities, unorganized townships, other governmental agencies, including regional refuse disposal districts, and private enterprises for the financing, implementation and operation of collection and disposal services.

2. Municipalities and others served. A county solid waste collection and disposal system or service may serve municipalities, unorganized townships and other public and private producers of solid waste. The system or service may serve municipalities, unorganized townships and other public and private producers of solid waste in an adjoining county with the approval of the county commissioners of that county.

A county may not require municipalities, unorganized territories and other public or private producers to join or be served by the system or service.

3. Fees. Each municipality, unorganized territory and each public or private producer of solid waste using the solid waste collection and disposal system or service offered by the county shall be assessed for the cost of that service. These costs shall be prorated equitably among those served. In determining the costs, consideration shall be given to, but not limited to, the nature and quantity of solid waste collected and disposed of.

The county commissioners shall determine the amount of assessments annually. In the case of municipalities, the county commissioners shall include these assessments in their warrants to municipal assessors of the municipalities served, issued under section 706. In the case of unorganized territory, the county commissioners shall certify the amount of the assessments for the unorganized territory as provided in section 5903.

4. Personnel. County commissioners may not employ additional personnel solely for administrative and clerical purposes related to solid waste collection and disposal systems or services.

§903. Authority to contract for energy conservation improvements

1. Agreement with energy service and 3rd-party financing companies. County commissioners may enter into an agreement with a private party, such as an energy service or 3rd-party financing company, for the design, installation, operation, maintenance and financing of energy conservation improvements at county facilities.

2. Future operation. The county commissioners, at the termination of the agreement with the private party under this section, may acquire, operate and maintain the improvement, renew the agreement with the private party or make an agreement with another private party to operate and maintain the improvement.

3. Budgetary approval required. Expenditures by the county commissioners under this section are subject to the county budgetary approval process.

§904. Food stamp or donated food program

The county commissioners of any county may provide for a food stamp or donated food program in conformity with regulations adopted by the United States Department of Agriculture and the United States Department of Health, Education and Welfare and may expend county funds to operate and administer such a program.

§905. Priority social services programs

The county commissioners may expend county funds, from whatever source received, for a priority social services program under the Priority Social Services Act of 1973 contained in Title 22, Subtitle IV. They may assist in, contribute to and participate in providing a priority social services program through agreements between public or nonprivate organizations and the Department of Human Services.

1. Cumberland County. The county commissioners of Cumberland County may also expend county funds for other nonwelfare programs as authorized by the Cumberland County legislative delegation.

§906. Kennebec County fire protection services for Unity Township

The county commissioners of Kennebec County may contract with municipalities for fire protection services for Unity Township, assess Unity Township and expend funds to provide those services.

§907. Piscataquis County child and family services

The county commissioners of Piscataquis County may expend county funds to support programs for child and family services.

§908. Ambulance service in the plantations and unorganized territories of Piscataquis County

The county commissioners of Piscataquis County may expend funds for ambulance service in the plantations and unorganized territories of that county. Those funds may be raised by tax levy in those plantations and territories. The commissioners may contract with either a profit or nonprofit agency or a municipality to provide ambulance service and may enter into reciprocal agreements with private, public and municipal agencies for ambulance service.

## ARTICLE 2. BUDGETARY ACCOUNTS

§921. Capital reserve accounts

1. Capital reserve accounts authorized. Section 5801, subsections 1 and 2, and section 5802, which contain the capital reserve account provisions for munici-

palities, apply equally to counties. The county commissioners have the powers and duties of municipal officers under those provisions.

2. Purpose of account stated. Before establishing any account under this section, including capital reserve accounts established for the unorganized territory, the county commissioners shall clearly specify the purpose for which the account is created, state the anticipated amount of the account and report that purpose and that amount, in writing, to the Department of Audit. Once a purpose for an account is specified, any expenditure from that account must be for that purpose unless the Department of Audit states in writing that an account for that purpose is no longer needed.

§922. Insufficient appropriations

1. Transfer of funds within department or agency. Whenever any specific appropriation of a department or agency of county government is insufficient to pay the required expenditures for the statutory purposes for which the appropriation was made, the county commissioners may transfer an amount from any other specific line appropriation of the same department or agency to meet the expenditure, upon the written request of the department or agency. This request must bear the written approval of a majority of the county commissioners.

2. Contingent fund. There is established a contingent account in each county in an amount not to exceed $50,000 annually. Any funds that are available to each county may be used for this purpose. This fund may be used at the discretion of the county commissioners for emergency purposes only. At the end of each fiscal year there shall be transferred from unencumbered county funds an amount sufficient to restore the established county contingent account.

3. Record of transfers. The county treasurer shall keep a record of any transfers between specific line categories or from the contingent account. This record must be certified by the county commissioners within 30 days of each transfer.

§923. Capital expenditure accounts to carry over

Any unexpended balance of capital expenditures shall not lapse but shall be carried forward into the next year or until the purpose for which that account was established has been completed.

§924. Surplus funds

The county commissioners of each county shall use the unexpended balances and the actual revenue in excess of estimates from the previous fiscal year only as provided in this section.

1. Restore contingent fund. The county commissioners shall first use any unencumbered surplus funds to restore the contingent account as provided in section 922, subsection 2.

2. Reduce tax levy. After restoring the contingent account under subsection 1, the county commissioners shall use any unencumbered surplus funds to reduce the tax levy in the ensuing year as provided in this subsection. On the first day of each fiscal year, the county commissioners shall use any remaining unencumbered surplus funds in excess of 10% of the amount to be raised by taxation in that year to reduce the tax levy.

3. Other uses; working capital. The county commissioners may use any remaining unencumbered surplus funds to fund a county charter commission, as provided in section 1322, subsection 4, or to establish a capital reserve account under section 921, as provided in section 5801. If not used for these purposes, any remaining surplus funds may not be expended but shall be retained as working capital for the use and benefit of the county.

## ARTICLE 3. DEBTS AND BORROWING

§931. Property taken for debt due from county

The personal property of the residents and the real estate within the boundaries of a county may be taken to pay any debt due from the county. The owner of property so taken may recover from the county under Title 14, section 4953.

§932. Anticipatory borrowing

1. Taxes. The county commissioners of all counties may borrow in anticipation of taxes. If the county budget has not yet been approved by the Legislature, the county commissioners of each county may borrow an amount not exceeding 80% of the previous year's budget, except as otherwise provided.

2. Sale of notes or securities. The county officers authorized to issue notes and securities may borrow money in anticipation of their sale by issuing temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding the authorized amount of the notes and securities. The period of this anticipatory borrowing may not exceed one year and the time within which the securities are to become due may not be extended by such anticipatory borrowing beyond the time fixed in the vote authorizing their issue or, if no term is specified there, beyond the term permitted by law.

§933. Temporary loans

Without obtaining the consent of their county, the county commissioners of each county may raise funds through temporary loans not exceeding 1/5 of 1% of the assessed valuation of their respective counties. These loans must be paid, within one year from the time when the loan is contracted, out of money raised during the current year by taxes.

§934. Loans

The county commissioners may obtain loans of money for the use of their county and cause notes or obligations, with coupons for lawful interest, to be issued for payment of the loans. These loans may not exceed $10,000, except in Franklin County as provided in section 935, without first obtaining the consent of the county, substantially as provided in section 122.

§935. Franklin County loans

The county commissioners of Franklin County may obtain loans of money for the use of Franklin County, not to exceed $50,000, and cause notes or obligations, with coupons for lawful interest, to be issued for payment of the loans. Any loans of money in excess of $10,000 may be incurred only for the purpose of building, rebuilding, altering or otherwise improving county owned real estate and personal property in that real estate.

§936. Bonds

A county which issues bonds must first receive approval of the Legislature. The Legislature shall determine the period over which installments will be paid.

ARTICLE 4. AUDITS AND REPORTS

§951. County audit

1. Annual audit. Every county shall have an audit made of its accounts annually covering the last complete fiscal year by the Department of Audit or by a certified public accountant selected by the county commissioners. The audit must be performed in accordance with generally accepted auditing standards and procedures pertaining to governmental accounting and must include a management letter covering the audit of the operational aspects of the county, as well as suggestions which the auditor considers advisable for the proper administration of the county. The auditor shall produce at least those reports on those forms required in section 952. When an audit is conducted by a certified public accountant, the audit, upon completion, shall be forwarded to the Department of Audit. The audit, including the management letter, is a public document.

2. Improper transactions; report to district attorney. If, in the course of the audit, the auditor finds evidence of improper transactions, including the use of contingency funds for nonemergency purposes, the transfer of funds between departments or agencies, incompetence in keeping accounts or handling funds, failure to comply with this subchapter or any other improper practice of financial administration, the auditor shall report the same to the district attorney immediately.

3. Commissioners responsible. The county commissioners are responsible for the proper financial administration of each county department or agency and for approving county expenditures.

§952. Annual report

The county commissioners of each county shall publish annually a complete report subject to the following provisions.

1. Record of financial transactions. The report must contain a record of all financial transactions of the county during the last fiscal year, showing all revenue receipts by sources and showing all disbursements for each department by major items of expense comparable with the approved budgetary expenditure classifications under the captions of personal services, contractual services, commodities, debt service and capital expenditures.

This reporting must be made in the manner or format recommended by the Department of Audit.

2. Statement of assets, liabilities, reserves and surplus. The report must contain a detailed statement of the assets, liabilities, general, special and capital reserves and surplus of the county.

3. Postaudit report. The report must contain the statement that the complete postaudit report for the latest fiscal year is on file at the county commissioners' office and the following excerpts from that report:

A. Auditor's comments and suggestions for improving the financial administration;

B. Comparative balance sheet;

C. Statement of departmental operations;

D. Analysis of surplus; and

E. Statement of public debt.

4. Copies for distribution. Copies of the report shall be deposited in the county commissioners' office or a convenient place of business for distribution to the public and shall be distributed to each municipality in the county.

5. Copies open for inspection. Copies of the report and all county records shall be kept in the county commissioners' office and shall be open to the inspection of the public during usual business hours.

CHAPTER 5

MERIDIAN LINES AND STANDARDS OF LENGTH

§1001. Meridian line; record

1. Line constructed. The county commissioners, at the expense of their respective counties, shall erect and maintain a true meridian line in their county, at a place convenient to the public and remote from electrical disturbances. The line must be perpetuated by stone pillars with brass or copper points firmly fixed on the tops of the pillars, indicating the true range of the meridian.

2. Record book. The commissioners shall provide a book of records to be kept by the county commissioners or by their appointee who is nearer to the structure and is accessible to all persons wishing to refer to the book.

§1002. Care and custody

The structures referred to in section 1001 are under the care and custody of the county commissioners. Any surveyor residing in the county or engaged in surveying in the county shall have free access to the structure for the purpose of testing the variation of the magnetic needle.

§1003. Annual verification of compass; record of needle declination

When the meridian lines required by section 1001 have been established and completed, every land surveyor shall, at least annually before making any survey, test and verify his compass or other instrument using the magnetic needle by the meridian line established in the county where his surveys are to be made.

1. Test recorded. The surveyor shall enter the declination of that needle from the true meridian in the book mentioned in section 1001, together with the style and make of the instrument and its number, if any, and the date and hour of observation and sign his name for future reference. The surveyor shall insert corresponding entries as to date and declination in the field notebooks. The surveyor's field notebooks must also show the dates on which the surveys are made.

2. Violation. Neglect or refusal to comply with this section is a civil violation for which a forfeiture of $25 for each neglect may be adjudged, to be recovered on complaint in the county where any survey is made, half to the complainant and half to the county.

3. Application. This section does not apply to surveys that are made by angles from some fixed, permanent line or by a solar instrument and independent of the magnetic needle.

§1004. Standards of length; verification of tape or chain

1. Standard of length constructed. The county commissioners, at the expense of their respective counties, shall erect and maintain in their county, at a place convenient to the public, a standard of length at least 100 feet long with suitable subdivisions marked on it. This standard may consist of stone monuments permanently fixed with metal plates on the tops of the monuments, properly marked and protected, or of a steel bar of the necessary length properly marked and suitably placed and protected. All such standards must correspond with the standard of the National Bureau of Standards and must be provided with proper means for determining the tension of tapes or chains during comparison. These standards are under the care and custody of the county commissioners.

2. Record book; comparisons. The county commissioners shall keep a suitable book for the record of comparisons. The standards shall be accessible to any person for comparing any tape, chain or other linear measure.

3. Surveyors' comparisons. Before making surveys in this State and at least annually, every surveyor must compare the tape or chain used in those surveys with the standard in the county in which the surveyor resides or in which surveys are to be made, and shall record the result in the book provided for that purpose. The surveyor must describe the tape or chain with the difference, if any, between that tape or chain and the standard, together with the date and temperature and the tension on the tape or chain at the time of comparison.

4. Violation. When this standard is completed in any county, any surveyor residing or making surveys in that county who neglects or refuses to comply with this section is liable to the penalties under section 1003.

§1005. Appointment of commissioners to verify meridians and standards

When the meridian line or standard of length is established, repaired or rebuilt in any county, the Governor shall appoint a competent commissioner, not necessarily a resident of this State, to inspect and verify the meridian line or standard of length. In case of a meridian line, the commissioner shall verify the line by astronomical observation and in the commissioner's report shall accurately describe the structure, its latitude and longitude and the declination of the needle at the time. In case of a standard of length, the commissioner shall describe the structure, its location and exact length as determined by comparison with some authentic standard from the National Bureau of Standards. All such reports must be full and accurate and shall be deposited in the Department of the Secretary of State and a certified copy shall be filed and recorded in the office of the county commissioners in the county where the structure is located. The commissioner appointed by the Governor shall receive from the State such just compensation as the Governor allows.

§1006. Damage to meridians; penalty

Whoever willfully displaces, alters, defaces, breaks or otherwise damages any of the pillars or points, plates, enclosures, bars, locks, bolts or any part of the structure of any meridian line or standard of length:

1. Civil violation. Commits a civil violation for which a forfeiture of not more than $100 may be adjudged, to be recovered on complaint in the county where the structure is located, half to the complainant and half to the county; and

2. Liable for cost of repairs. Is liable in a civil action for the amount necessarily expended in repairing damages caused by that act.

§1007. Exceptions

This chapter does not apply to the County of Kennebec and the County of Aroostook.

## CHAPTER 7

## CIVIL DEFENSE

§1101. Activities authorized; costs

County commissioners may provide for civil defense activities as provided by law within their respective counties. The county commissioners shall include the cost of these activities in the annual estimate under chapter 3.

## CHAPTER 9

## REGIONAL DEVELOPMENT

§1201. Membership in a regional planning commission

As provided in section 2323, a county may become a member of a regional planning commission by resolution of the county commissioners, provided that all or part of the county is located within the regional planning and development district or subdistrict served by the commission.

## CHAPTER 11

## COUNTY CHARTERS

## SUBCHAPTER I

## GENERAL PROVISIONS

§1301. Purpose

The purpose of this chapter is to provide a method for each county, by vote of its voters, to determine the structure of county government in that county. The county charter adopted in each county may determine the officers of the county, their relationship, the administrative structure necessary to perform county functions and the organization of county government, subject to the limits of the Constitution of Maine.

§1302. Definitions

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

1. County commissioners. "County commissioners" means the county commissioners in a county or the officers, under a charter, who exercise legislative powers within the county.

## SUBCHAPTER II

## PROCEDURES

§1321. Charter adoptions, revisions, procedure

1. County commissioners. The county commissioners may determine that the adoption of a county charter should be considered or that the revision of a county charter already adopted under this chapter should be considered and, by order, provide for the establishment of a charter commission to carry out that purpose as provided in this chapter.

2. Petition by voters. On the written petition of a number of voters equal to at least 10% of the number of votes cast in the county at the last gubernatorial election, the county commissioners shall, by order, provide for the establishment of a charter commission for the preparation or revision of a county charter in the form and manner provided in this chapter.

3. Petition procedure. The following procedure shall be used in the alternative method under subsection 2.

A. Any 5 voters of the county may file an affidavit with the county clerk stating:

(1) They will constitute the petitioner's committee;

(2) They will circulate the petition and file it in proper form;

(3) The names and addresses of the members; and

(4) The address to which all notices to the committee are to be sent.

Promptly after the affidavit is filed, the clerk shall issue petition blanks to the committee. Petition blanks shall be issued for each municipality.

The petitioner's committee may designate additional voters of the county, who are not members of the committee, to circulate the petition.

B. The clerk shall prepare petition forms at the county's expense. The petition forms shall be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary.

(1) Petition forms shall carry the following legend in bold lettering at the top of the face of each form.

"County of ...."

"Each of the undersigned voters respectfully requests the county commissioners to establish a charter commission for the purpose of revising the county charter or preparing a new county charter."

Each signature to a petition must be in ink or other indelible instrument and must be followed by the residence of the voter with street and number, if any. No petition may contain any party or political designation.

(2) The clerk shall note the date of each petition form issued. All petitions must be filed within 120 days of the date of issue or they are void.

(3) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating that the circulator personally circulated the form, the number of signatures on the form, that all the signatures were signed in the circulator's presence, that the circulator believes them to be genuine signatures of the persons whose names they purport to be, that each signer has signed no more than one petition and that each signer had an opportunity to read the petition before signing. Before filing the petitions under subparagraph (4), the circulator shall submit them to the registrar of each municipality concerned for certification according to Title 21-A, section 354, subsection 7, paragraph B.

(4) Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note the date of filing on the forms.

4. Procedure after filing. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars which render it defective. The clerk shall promptly send a copy of the certificate to the petitioners' committee by mail and shall file a copy with the county commissioners.

A. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of the clerk's certificate.

Within 10 days after the notice of intention is filed, the committee may file a supplementary petition to correct the deficiencies in the original petition. This supplementary petition must in form and content comply with the requirements for an original petition under subsection 3.

B. Within 5 days after a supplementary petition is filed, the clerk shall complete and file a certificate as to its sufficiency in the manner provided for an original petition.

C. Any petition finally determined to be insufficient is void. The clerk shall stamp the petition void and seal and retain it in the manner required for secret ballots.

5. Election procedure. Within 30 days after the adoption of an order under subsection 1 or the receipt of a certificate or final determination of sufficiency under subsection 4, the county commissioners shall by order submit the question for establishment of a charter commission to the voters of the county at the next regular or special statewide election held at least 155 days from the date of this order.

A. The question to be submitted to the voters shall be in substance as follows.

"Shall a charter commission be established for the purpose of revising the county charter or establishing a new county charter?"

§1322. Charter commission; membership; procedure

1. Membership. The charter commission shall consist of 9 members, 6 of whom must be voters of the county, elected as provided in paragraph A, and 3 of whom shall be appointed by the county commissioners under paragraph B.

A. Voter members shall be nominated as provided in Title 21-A, sections 351, 352, 354, 355 and 356, and shall be nominated and elected by district if the county commissioners are elected by district. The number of voter members from each district shall be apportioned equally. When equal apportionment is not possible, one or more voter members may be nominated and elected at large. The voter members must be nominated and elected without party designation. County commissioners are not eligible for election. Election of voter members may be held at the same election as the referendum for the charter commission, but must be held within 60 days of that election. The names of the candidates shall be arranged on the ballot alphabetically by last name. If the elections are held at the same time, they shall appear immediately below the question relating to the charter commission.

B. Appointive members must be residents of the county. No person may be appointed who is a resident of a municipality in which another member resides, unless this is impossible due to the composition of the county's districts and the residences of any of those eligible under this paragraph to be appointive members. The county commissioners shall make the appointments within 30 days after the voter members have been selected. No more than 2 appointive members may be members of the same political party. One appointive member must be a county commissioner, one must be a municipal officer and one must be either a Senator or Representative. The county clerk shall give at least 7 days' notice to the clerk of each municipality within the county and each member of the county legislative delegation of the date, time and place of the meeting at which the appointive members will be selected. The county commissioners shall set the date, time and place of the meeting.

2. Organization. Immediately after receiving notice of the appointment of the members by the county commissioners, the county clerk shall notify the appointed and elected members of the charter commission of the date, time and place of the commission's organizational meeting. The clerk shall set the date, time and place and give at least 10 days' notice of the meeting.

The charter commission shall organize by electing from its members a chairman, vice-chairman and a secretary and shall file notice of those elections with the county clerk. Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the county and, when the vacating member was elected by a district, the district, except that a vacancy among appointive members shall be promptly filled by the county commissioners. Members shall serve without compensation, but shall be reimbursed from the commission's account for expenses lawfully incurred by them in performing their duties.

3. Rules; staff. The charter commission may adopt rules governing the conduct of its meetings and proceedings and may employ any necessary legal, research, clerical or other employees and consultants within the limits of its budget.

4. Funding. A county shall provide its charter commission, free of charge, with suitable office space and with reasonable access to facilities for holding public hearings, may contribute clerical and other assistance to the commission, and shall permit it to consult with and obtain advice and information from county officers, officials and employees during ordinary working hours. Within 20 days after the election of a charter commission, the county commissioners shall credit $500 to the charter commission account. A county may from time to time transfer additional funds to the charter commission account from surplus or from other accounts in the county budget.

A. In addition to funds made available by a county, the charter commission account may receive funds from any other source, public or private, except that no contribution of more than $5 may be accepted from any source other than the county or a municipality in the county unless the name and address of the person or agency making the contribution and the amount of the contribution are disclosed in writing filed with the clerk.

B. Prior to its termination, the charter commission shall file with the clerk a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the county's surplus account.

5. Hearings, reports, time limits. The charter commission shall hold at least 3 public hearings to receive information, views, comments and other material relating to its functions. The first hearing shall be held within 30 days after the charter commission's organizational meeting.

A. The charter commission shall hold its public hearings within the county at times and places set by the commission. At least 10 days before a hearing, the charter commission shall publish the date, time and place of the hearing in a notice in a newspaper having general circulation in the county. Hearings may be adjourned from time to time without further published notice.

B. Within 9 months after its election, the charter commission shall:

(1) Prepare a preliminary report including the text of the charter or charter revision which the commission intends to submit to the voters and any explanatory information the commission considers desirable;

(2) Have the report printed and circulated throughout the county; and

(3) Provide sufficient copies of the preliminary report to the county clerk to permit its distribution to each voter requesting a copy.

C. Within 12 months after its election the charter commission shall submit its final report to the county commissioners. This report must include:

(1) The full text and an explanation of the proposed new charter or charter revision;

(2) Any comments that the commission considers desirable;

(3) An indication of the major differences between the current and proposed charters; and

(4) A written opinion by an attorney admitted to the bar of this State that the proposed charter or charter revision does not conflict with the United States Constitution, the Constitution of Maine or the general laws.

Minority reports may be filed.

D. The county commissioners may extend the time limits for the preparation and submission of preliminary and final reports of the charter commission for up to 24 months after the election of the charter commission, if the extension is necessary to:

(1) Properly complete the reports;

(2) Have them printed or circulated; or

(3) Obtain the written opinion of an attorney.

6. Election. When the final report is filed, the county commissioners shall order the proposed new charter or charter revision to be submitted to the voters of the county at the next regular or special statewide election held at least 30 days after the final report is filed.

7. Termination. Except as provided in paragraph A, the charter commission shall continue in existence for 30 days after submitting its final report to the county commissioners to wind up its affairs.

A. If judicial review is sought under section 1325, the charter commission shall continue in existence until that review and any appeals from that review are finally completed for the purpose of intervening in those proceedings.

§1323. Charter amendments; procedure

1. County commissioners. The county commissioners may determine that amendments to the county charter should be considered and, by order, provide for notice and hearing on them in the same manner as provided in subsection 4, paragraph A. Within 7 days after the hearing, the county commissioners may order the proposed amendment to be placed on a ballot at the next regular or special statewide election held in the county at least 30 days after the order is passed.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

2. Petition by voters. On the written petition of a number of voters equal to at least 10% of the number of votes cast in a county at the last gubernatorial election the county commissioners shall, by order, provide that the proposed amendments to the county charter be placed on a ballot in accordance with the following procedures.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

3. Petition procedure. The petition forms shall carry the following legend in bold lettering at the top of the face of each form.

"County of ...."

"Each of the undersigned voters respectfully requests the county commissioners to provide for the amendment of the county charter as set out below."

No more than one subject may be included in a petition.

In all other respects, the form, content and procedures governing amendment petitions are the same as provided for charter revision and adoption petitions under section 1321, including procedures relating to filing, sufficiency and amendments.

4. Action on petition. The following procedures shall be followed upon receipt of a report that a petition is sufficient.

A. Within 10 days after receiving a report that a petition is sufficient, the county commissioners shall, by order, provide for a public hearing on the proposed amendment. At least 10 days before the hearing, they shall publish a notice of the hearing in a newspaper having general circulation in the county. The notice must contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the county commissioners or a committee appointed by them.

B. Within 7 days after public hearing, the county commissioners or the committee appointed by them shall file with the county clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment does not conflict with the general laws, the United States Constitution or the Constitution of Maine. In the case of a committee report, a copy shall also be filed with the county commissioners.

C. On all petitions filed more than 120 days before the end of the current county fiscal year, the county commissioners shall order the proposed amendment to be submitted to the voters of the county at the next regular or special statewide election held within that year after the final report is filed. If no such election is held before the end of the current county fiscal year, the county commissioners may order a special election to be held before the end of the current county fiscal year for the purpose of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions.

5. Summary. When the county commissioners, with the advice of an attorney, determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the county commissioners shall include in their order a summary of the proposed amendment and instruction to the clerk to include the summary on the ballot instead of the text of the proposed amendment.

§1324. Submission to voters

1. Voting procedure. The method of voting at all elections, when a question relating to a charter revision, a charter adoption or a charter amendment is involved, shall be by secret ballot in the manner prescribed for state elections. The county commissioners shall notify the municipal officers of the county of the date on which the election will be held. The municipal officers shall notify the inhabitants of their respective municipalities in that county to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of these recommended charter revisions by voting on the question in paragraphs A and B.

A. In the case of a charter revision or a charter adoption, the question to be submitted to the voters shall be in substance as follows.

"Shall the county approve the (charter revision) (new charter) recommended by the charter commission?"

B. In the case of a charter amendment, the question to be submitted to the voters shall be in substance as follows.

"Shall the county approve the charter amendment reprinted (summarized) below?"

The voters of each municipality in the county shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the words "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings in the county and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns, and, if it appears that a majority of the votes in the county are in favor of the recommended adoption, amendment or revision, the Governor shall proclaim that fact without delay. The adoption, amendment or revision becomes part of that county's charter 30 days after the date of the Governor's proclamation.

The Secretary of State shall prepare and furnish to each municipality in the county all ballots and returns necessary to carry out the purpose of this referendum.

2. Voter information. The following procedures shall be performed before the election.

A. In the case of a charter revision or charter adoption, at least 2 weeks before the election, the county commissioners shall:

(1) Have the final report of the charter commission printed;

(2) Make copies of the report available to the voters in the clerk's office; and

(3) Post the report in at least one public place in each municipality in the county.

B. In the case of a charter amendment, at least 2 weeks before the election, the county commissioners shall:

(1) Have the proposed amendment and any summary of the amendment printed;

(2) Make copies available to the voters in the clerk's office; and

(3) Post the amendment and any summary of the amendment in the same manner as required under paragraph A.

§1325. Judicial review

1. Petition. The Superior Court, upon petition of 10 voters of the county or on petition of the Attorney General, may enforce this chapter. The charter commission may intervene as a party in any such proceeding.

2. Declaratory judgment. A petition for declaratory relief under Title 14, chapter 707, may be brought on behalf of the public by the Attorney General or, by leave of the court, by 10 voters of the county. The charter commission shall be served with notice of the petition for declaratory judgment.

A. If 10 voters petition for declaratory relief, they shall serve the Attorney General and the charter commission with notice of the preliminary petition for leave.

B. The Attorney General or the charter commission may intervene as a party at any stage of the proceedings.

C. The petitioners are liable for costs. The court has discretion to award costs and reasonable attorney fees to the petitioners.

3. Judicial review. Any 10 voters of the county may, by petition, obtain judicial review to determine the validity of the procedures under which a charter was adopted, revised or amended. The 10 voters must serve the charter commission with notice of the petition. The charter commission may intervene as a party in the proceeding. The petition must be brought within 30 days after the election at which the charter, revision or amendment is approved. If no such petition is filed within this period, compliance with all the procedures required by this chapter and the validity of the manner in which the charter adoption, revision or amendment was approved is conclusively presumed. No charter adoption, revision or amendment may be found invalid because of any procedural error or omission, unless it is shown that the error or omission materially and substantially affected the adoption, revision or amendment.

4. Resubmission upon judicial invalidation for procedural error. If the court finds that the procedures under which any charter was adopted, revised or amended are invalid, the Superior Court may, on its own motion or the motion of any party, order the resubmission of the charter adoption, revision or amendment to the voters. This order shall require only the minimum procedures on resubmission to the voters that are necessary to cure the material and substantial errors or omissions. The Superior Court may also recommend or order other curative procedures to provide for valid charter adoption, revision or amendment.

## SUBCHAPTER III

## CHARTER POWERS

§1351. Charter powers; limits

1. Charter powers. The charter for any county may provide for:

A. The organization of county government;

B. The election of a county legislative body and the method of selecting officers, officials and employees;

C. The establishment of county departments, agencies, boards or commissions, and their descriptions, powers and duties; and the powers and authority of county officers or officials to direct, regulate and control these agencies, departments, boards and commissions;

D. The internal activities of county government; and

E. The provisions required for the transition to the new form.

2. Limitations. A county adopting a charter under this chapter may exercise only those powers specifically stated in the charter. New powers may only be exercised upon amendment or revision of the charter. In any event, no county may, by the adoption, amendment or revision of a charter, exercise any power or function which the Legislature has not conferred on that county either expressly or by clear implication by general or specific law. A county may not alter the statutory method of raising money for county expenditures.

3. Districts. A county adopting a charter under this chapter shall provide for the election of county officers from 3, 5 or 7 districts, from each of which one officer shall be elected. The charter shall specify the number of districts and establish the boundaries of each district.

§1352. Application of general law; duties designated

1. Application. In those counties that adopt county charters, the following general laws do not apply:

A. Sections 2, 52 and 53;

B. Chapter 1, subchapter II, sections 61 to 82;

C. Chapter 1, subchapter III, sections 151 to 162;

D. Section 201; and

E. Title 33, sections 601 to 608.

2. Duties designated. The county charter must designate the county officers, officials or employees who will carry out the duties required of county commissioners, county treasurers and registers of deeds under general law if the new charter abolishes any of these offices or positions.

§1353. Finance committee

A county adopting a charter under this chapter may provide for a method of appropriating money for county expenditures other than the method in sections 2, 701 and 702. Any alternative method provided must give the county legislative body the authority to appropriate money, according to the budget, which must first be approved by majority vote of the finance committee. If the budget is not approved before the start of a fiscal year, the county shall, until a budget is finally adopted, operate on an interim budget which may not exceed 80% of the previous year's budget.

1. Creation of finance committee. A county choosing to exercise its authority under this section shall specify in the charter the number, term and method of selection of members of the finance committee. Each commissioner district must be equally represented. One of the following methods of selection shall be used.

A. Each county commissioner shall appoint the finance committee members from that commissioner's district from among the municipal officers of that district.

B. The municipal officers within each commissioner district shall caucus and elect the finance committee members from that district. The principle of proportional representation shall be followed in the election of the finance committee.

2. Chairman; membership; terms. The finance committee shall select its own chairman each year. Members may not serve ex officio and shall have terms covering at least one full budget cycle.

3. Budget estimate. The county commissioners shall submit a budget estimate to the finance committee in a timely fashion, no later than October 1st for the coming year, and shall provide the committee with necessary clerical assistance, office expenses and meeting space, as well as access to county files and information. The committee shall act on the budget in a timely fashion, in any event not later than December 15th of the budget year.

4. Budget procedures. Any county adopting an alternative method of appropriating money for county expenditures under this section shall require in the charter that the county commissioners hold one or more public hearings in the county on the budget estimates before October 1st. A copy of the final budget estimates shall be filed, on forms approved by the Department of Audit, with the State Auditor, who shall retain them for 3 years.

## CHAPTER 13

## COUNTY JAILS AND JAILERS

### SUBCHAPTER I

### OFFICIALS AND PERSONNEL

§1501. Custody of jail and prisoners; jailer

The sheriff has the custody and charge of the county jail and of all prisoners in that jail and shall keep it in person, or by a deputy as jailer, master or keeper.

1. Subordinate assistants and employees. The jailer, master or keeper shall appoint, subject to the requirements of section 501, all subordinate assistants and employees. Subordinate assistants and employees shall be appointed for the same period that is provided for deputy sheriffs under section 381. The professional qualifications required of them must emphasize training or experience in or knowledge of corrections. The jailer, master or keeper and all subordinate assistants and employees are subject to the training requirements of Title 25, section 2805.

2. Compensation. The pay of the jailer, master or keeper and all subordinate assistants and employees shall be set by the county commissioners and paid by their respective counties, except when otherwise provided by law.

3. Jailer and subordinates may be deputies. The jailer and the jailer's subordinate assistants and employees may be deputy sheriffs.

§1502. Jailer's duties when office of sheriff vacant

When a vacancy occurs in the office of sheriff, the jailer lawfully acting continues in office and shall retain charge of the jail and of all prisoners in or committed to the jail. The jailer's official neglects and misdoings are a breach of the principal's official bond until a new sheriff is qualified, or the Governor removes that jailer and appoints another, which the Governor may do. The jailer so appointed shall give bond in the manner required of a sheriff for the faithful discharge of duties.

§1503. Offices of jailer and sheriff vacant; appointment by county commissioners

If the office of jailer becomes vacant while the office of sheriff is vacant, the county commissioners may appoint a jailer, who shall give bond as a sheriff is required to do and continue in office, if the appointment is confirmed at the commissioners' next meeting, during the vacancy in the office of sheriff or until a new jailer is appointed.

§1504. Jailer to return list of prisoners at each criminal session of court

At the opening of every criminal term of the Superior Court for a county, every jailer shall return a list of prisoners in custody and afterwards a list of all committed during the session, certifying the cause for which and the person by whom committed, and shall have the calendar of prisoners in court for its inspection. If the jailer fails to do so, the court may impose a reasonable fine.

§1505. Record of persons committed

Every sheriff shall keep in a suitable bound book a true and exact calendar containing the names of all prisoners committed to the jail under the sheriff's charge, their residences, additions, time of their commitments, for what cause and by what authority, and a particular description of the persons of those committed for offenses. The sheriff shall register in that book the name and description, the time when and the authority by which any prisoner was discharged, and the time and manner of any prisoner's escape.

§1506. Official papers filed and kept with calendar and delivered to successor

All warrants, mittimuses, processes and other official papers by which any prisoner is committed or released, or attested copies of those papers, shall be regularly filed in order of time and safely kept with the calendar. When vacating the sheriff's office, the sheriff or the sheriff's personal representative shall deliver those papers to the new sheriff on penalty of forfeiting $200 to the county.

§1507. Sheriff responsible for delivery of prisoners to successors

All sheriffs are responsible for the delivery to their successor of all prisoners in custody at the time of their removal. For that purpose they shall retain the keeping of the jail in their counties and the prisoners in the jail until their successors enter office.

§1508. Liability of sheriff or jail keeper for escape

1. To creditor of other person. When a prisoner escapes through the insufficiency of the jail or the negligence of the sheriff or jail keeper, the sheriff is chargeable to the creditor or other person at whose suit the prisoner was committed or to whose use any forfeiture was adjudged against that prisoner.

2. Fine. If any jail keeper, through negligence, allows a prisoner charged with an offense to escape, the jail keeper shall be fined according to the nature of the offense charged against the escaped prisoner, but if a person committed for debt escapes from jail and the sheriff or jail keeper returns the prisoner to the jail within 3 months, the sheriff is liable only for the costs of any action commenced against the sheriff for that escape.

§1509. Escape through insufficiency of jail

1. Payment by county; sheriff's action. When an escape happens through the insufficiency of the jail, the county commissioners may order the county treasurer to pay to the sheriff the amount of the fine paid under section 1508. If they do not make an order within 6 months after the demand is presented to them, the sheriff may bring action against the inhabitants of that county, to be tried in that county or in an adjoining county. Service shall be made as in other actions.

2. Appointment of agent to defend county; execution. The commissioners may appoint an agent to appear and defend an action brought under subsection 1. If they have no meeting between the time of service and

the time within which the answer is required to be served, the action shall be continued for such time as the court directs, saving all advantages to the defendants.

## SUBCHAPTER II

## PRISONERS AND THEIR CONDUCT

### §1551. Positions of trust for certain prisoners

A sheriff may grant positions of trust only to a prisoner confined in a jail who was sentenced to serve a term in that particular jail or who was transferred to that particular jail from another correctional facility where the prisoner was serving a sentence.

### §1552. Treatment of prisoners for debt and minors

All jail keepers shall keep prisoners committed for debt separate from prisoners charged with felony or infamous crimes. They shall keep all minors so committed and all prisoners upon a first charge, before or after conviction, separate from those convicted more than once of felony or infamous crimes, so far as the construction or state of the jail allows.

### §1553. Violations or furnishing liquor to prisoners

If any jail keeper violates section 1552 or voluntarily or negligently allows any prisoner in custody, charged with or convicted of any offense, to have any intoxicating liquor, unless the physician authorized to attend the sick in that jail certifies in writing that the prisoner's health requires it and prescribes the quantity, the jail keeper forfeits $25 for the first offense and $50 for the 2nd offense. These forfeitures shall be recovered for the county by indictment, or by persons suing therefor, to their own use. The jail keeper shall be removed from office and may not hold the office of sheriff, deputy sheriff or jailer for 5 years.

### §1554. Federal prisoners

The keepers of the county jails shall receive and safely keep all prisoners committed under authority of the United States until discharged, under the penalties provided for the safekeeping of prisoners under the laws of this State.

### §1555. Prisoners may attend funerals

Prisoners at the county jails may, at the discretion of the sheriff, attend funerals of their legally considered mother, father, husband, wife or child if the funeral is held within the State. Prisoners must pay the cost of transportation and the fee and expenses of the officer who takes them to the funeral.

### §1556. Furloughs

1. Furlough authorized. The sheriff may establish rules for and permit a prisoner under the final sentence of a court a furlough from the county jail in which the prisoner is confined. Furlough may be granted for not more than 3 days at one time in order to permit the prisoner to visit a dying relative, to obtain medical services or for any other reason consistent with the rehabilitation of an inmate or prisoner which is consistent with the laws or rules of the sheriff's department. Furlough may be granted for a period longer than 3 days if medically required.

2. Copy of rules provided to prisoner. Any prisoner permitted furlough from the county jail under this section shall be furnished a copy of the rules of the county jail applicable to the furlough. The prisoner must attest to receiving the copy.

3. Violation of terms of release. All prisoners who willfully violate the terms of their release under this section in relation to the time for reporting to their places of furlough, the activities they may conduct while on furlough or time of reporting back to the county jail, may be punished by imprisonment for not more than 60 days, except that prisoners who do not return to the county jail within 24 hours from the time they are scheduled to return may be prosecuted for escape under Title 17-A, section 755. They shall be prosecuted in the county in which the jail to which they were sentenced is located.

4. Violation; obstruction or assistance to furloughed prisoner. Notwithstanding Title 17-A, section 4-A, any person 18 years of age or over who willfully obstructs, intimidates or abets any prisoner on furlough under this section, and thereby contributes to or causes the prisoner's violation of the terms and conditions of the furlough, after having been warned by the sheriff to cease and desist in that relationship or association with the prisoner, is guilty of a Class D crime and shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or both.

### §1557. Transfer from jails

The sheriff may transfer a prisoner serving a sentence in a county jail from one jail to another to serve any part of that sentence, upon request of the sheriff and approval of the county commissioners of the county of the sending jail and upon the approval of the sheriff and county commissioners of the county of the receiving jail.

1. Cost of transfer or return. The county of the sending jail shall pay the cost of the transfer or return of the prisoner.

2. Cost of support. The county of the sending jail shall pay the cost of the support of the prisoner in the receiving jail which shall be an amount agreed upon by the county commissioners party to the transfer.

3. Commissioner of Corrections to determine temporary housing assignments. If a county that has no jail is unable to locate space in any county facility, that county may contact the Commissioner of Corrections to

obtain temporary housing in a correctional facility operated by the Department of Corrections. The sending county shall, on a daily basis, contact each county facility in a continuing effort to locate placement in a county facility. When the sending county locates available space in a county facility, the sheriff shall transfer the prisoner from the department's correctional facility and place the prisoner in the county facility.

§1558. Transfer from state correctional facilities

The sheriffs may accept custody of prisoners transferred to their jail from state correctional facilities under Title 34-A, section 3063.

§1559. Administration of medication

1. Administration of medication by sheriff or deputy. The sheriff of any county may administer to any prisoner in custody any oral or topical medication as prescribed by a licensed physician or dentist or, if requested by a prisoner, any nonprescription medication in accordance with the directions on its container. The sheriff may delegate this authority to administer medication to the deputy who is in charge of the county jail or to the master or keeper of the county jail.

2. Limitations on administration of medication. The sheriff or the sheriff's delegate may not administer any prescription or nonprescription medication to any prisoner who has been incarcerated in the county jail for less than 24 hours, unless the sheriff or the delegate has consulted with and received permission to administer that medication from a licensed physician.

3. Insulin injections. This section does not prevent any prisoner from self-administering insulin injections, provided that:

A. A duly licensed physician has authorized that self-administration; and

B. That self-administration takes place in the presence of the sheriff or the sheriff's delegate.

4. Statement by prisoner. Before administering any nonprescription medication to any prisoner who has been incarcerated in the county jail for 24 hours or longer, the sheriff or the sheriff's delegate shall obtain a written statement signed by the prisoner, which states that the prisoner has requested that medication and has had no previous adverse allergic reaction to that medication.

5. Records of medication administered. Every sheriff or the sheriff's delegate shall maintain for at least 2 years a record which includes a description of each prescription and nonprescription medication administered in the county jail and the identity of each person to whom that medication is administered.

6. Administration of medication not a violation. The administration of medication to prisoners, as provided in this section, is not a violation of Title 32, section 2102, subsection 2, paragraph D, or Title 32, section 3270, or any other law.

§1560. Removal for disease

The removal of prisoners afflicted with dangerous diseases is governed as follows.

1. Removal. If a prisoner in a jail is afflicted with a disease which the local health officer, by medical advice, considers dangerous to the safety and health of other prisoners or of the inhabitants of the municipality, the local health officer shall, by written order, direct the person's removal to some place of safety, to be securely kept and provided for until the officer's further order.

2. Return. Upon recovering from the disease, the prisoner shall be returned to the place of confinement.

3. Removal not escape. A removal under this section is not an escape.

4. Notice. If the diseased person was committed to the place of confinement by an order of court or judicial process, the local health officer shall send the following to the office of the clerk of court from which the order or process was issued:

A. The order for the diseased person's removal or a copy of the order attested by the local health officer; and

B. A statement describing the actions taken under the order.

§1561. Recovery of medical expenses

The county may bring a civil action in any court of competent jurisdiction to recover the cost of any medical, dental, psychiatric or psychological expenses incurred by the county on behalf of a prisoner incarcerated in a county jail. The following assets are not subject to judgment under this section:

1. Joint ownership of real property. Joint ownership, if any, that the offender has in real property;

2. Joint ownership in sources of income. Joint ownership, if any, that the offender has in any assets, earnings or other sources of income; and

3. Assets of offender's spouse or family. The income, assets, earnings or other property, both real and personal, owned by the offender's spouse or family.

§1562. Damage to property by inmates; restitution

Restitution may be imposed for the purpose of replacing or repairing property destroyed or damaged by the inmate or juvenile while at the jail. The jail shall col-

lect the amount provided for in subsection 1 from the prisoner and apply it to defray the cost of replacement or repair of the items destroyed or damaged.

1. Income available. When restitution is imposed, any inmate or juvenile subject to that punishment and who is able to generate income from whatever source shall pay to the county jail where the damage occurred 25% of that income, up to the cost of replacement or repair of the items destroyed or damaged. Any payments made for the support of dependents which is required by the Department of Human Services shall be subtracted from the prisoner's income before the restitution share is calculated under this subsection.

2. Transfer of prisoner. Any inmate or juvenile who is transferred to another facility remains liable for any restitution authorized under this subchapter. The facility receiving the inmate or juvenile shall collect the restitution and transfer it to the facility where the damage occurred.

§1563. Disposal of body of person who died in jail

When a person dies in jail, the jailer or sheriff shall deliver the body to the friends of the deceased, if requested. Otherwise, the jailer or sheriff shall dispose of it for anatomical purposes, as provided in Title 22, chapter 709, unless the deceased at any time requested to be buried, in which case the jailer or sheriff shall bury the body in the common burying ground and the burial expenses shall be paid by the municipality in which the deceased had a residence, if any in the State or, if not, by the State.

§1564. Assistance to discharged prisoners

The sheriff or the deputy keeping the jail may, at the county's expense, give a prisoner about to be discharged from jail a sum of money not exceeding $2 and wearing apparel to a value not exceeding $10 and may furnish to that discharged prisoner a railroad ticket, nontransferable, to any place to which the fare does not exceed $8. All sums so expended by the sheriff or jailer shall be repaid from the county treasury after the account of those expenses has been audited and the amount found correct by the county commissioners.

SUBCHAPTER III

PRISON LABOR

§1601. Employment of prisoners generally

The county commissioners may authorize the employment of prisoners committed for crime, for the benefit of the county or of their dependent families, in some suitable manner not inconsistent with their security and the discipline of the prison. The commissioners may pay the proceeds of that labor, less a reasonable sum to be deducted for the cost of maintenance of those prisoners, to the dependent families of the prisoners.

This section does not apply to sections 1602 and 1603.

§1602. Charitable organizations

The county commissioners may authorize the use of prisoners committed for crime to provide assistance in the improvement of property owned by charitable organizations. The charitable organizations must pay for the transportation of the prisoners and for the transportation and per diem compensation for any guards who accompany the prisoners.

§1603. Contracts subject to cancellation or suspension

Except for contracts made under section 1602, any contract for the employment of prisoners made by the county commissioners with any person, firm or corporation, shall be made subject to the right of the county commissioners to withdraw, cancel or suspend the contract in whole or in part.

§1604. Pay for labor of prisoners before sentence

Any person charged with a crime or awaiting sentence who, while confined in any jail where provision for labor has been made, chooses to labor as provided for persons under sentence, shall receive such sum for that labor as, in the judgment of the commissioners of that county, that person has earned.

§1605. Employment of county jail prisoners

1. Order of release; purpose. Any person sentenced or committed to a county jail for crime, nonpayment of a fine or forfeiture or court order or criminal or civil contempt of court, may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

A. Employment;

B. Conducting that person's own business or occupation, including, in the case of a person primarily responsible for the family's housekeeping and domestic needs, housekeeping and attending the needs of that family;

C. Attendance at a weekly religious service;

D. Attendance at an educational institution;

E. Medical treatment;

F. Voluntary services within the county in which the jail is located; or

G. To work or provide service to the victim of the crime in accordance with Title 17-A, chapter 54, but only with the express approval of the victim.

2. Grant of privilege; withdrawal. Unless the court expressly grants a privilege described in subsection 1, the prisoner is sentenced to ordinary confinement. The

court may grant a privilege at the time of sentence or commitment or thereafter. The court may withdraw the privilege at any time by order entered with or without notice of hearing.

3. Wages, self-employment income; collection. If a prisoner is employed for wages or salary, the sheriff shall collect the wages or salary or require the prisoner to turn over the wages or salary in full when received. If the prisoner is self-employed, the self-employment income shall be turned over to the sheriff as may be ordered by the court. The sheriff shall deposit the income in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. The wages or salaries are not subject to trustee process in the hands of either the employer or the sheriff, and the self-employment income is not subject to trustee process in the hands of the sheriff during the prisoner's term and shall be disbursed only as provided in this section; but for tax purposes they are income of the prisoner.

4. Board; transportation. Every prisoner gainfully employed is liable for the cost of board in the jail, as fixed by the county commissioners. If necessarily absent from jail at a mealtime, the prisoner shall by request be furnished with an adequate nourishing lunch to carry to work. The sheriff shall charge the prisoner's account, if there is one, for board.

If prisoners are gainfully self-employed, they shall pay the sheriff for board, in default of which privileges under this section are automatically forfeited.

If the jail food is furnished directly by the county, the sheriff shall account for and pay over these board payments to the county treasurer. The county commissioners may provide that the county furnish or pay for the transportation of prisoners employed under this section to and from the place of employment.

5. Disbursements. By order of the court, the wages or salaries of employed prisoners and employment income of self-employed prisoners shall be disbursed by the sheriff for the following purposes, in the order stated:

A. The board of the prisoners;

B. Necessary travel expenses to and from work and other incidental expenses of the prisoners;

C. Support of the prisoners' dependents, if any;

D. Payments, either in full or ratably, of restitution, and of the prisoners' obligations, acknowledged in writing, in accordance with Title 17-A, chapter 54, or which have been reduced to judgment; and

E. The balance, if any, to the prisoners upon their release.

6. Restitution disbursements. Notwithstanding subsection 5, the wages or salaries of employed prisoners, employment income of self-employed prisoners or income from any other source shall be disbursed by the sheriff in accordance with any restitution authorized by section 1562. These disbursements may not be authorized until any disbursements required by subsection 5, paragraphs A to D have been made.

7. Employment in other county. The court may by order authorize the sheriff, to whom the prisoner is committed, to arrange with another sheriff for the employment of the prisoner in the other's county, and while so employed to be in the other's custody, but in other respects to be and continue subject to the commitment.

8. Evaluation of need of dependents. The welfare director or the overseers of the poor of the municipality in which the prisoner's dependents reside, or the Department of Human Services, shall at the request of the court investigate and report to the court the amount necessary for the support of the prisoner's dependents.

9. Denial of privilege. The sheriff may refuse to permit prisoners to exercise their privileges to leave the jail, as provided in subsection 1, for any breach of discipline or other violation of jail regulations. Any prisoner so disciplined may petition either the District Court or the Superior Court for a review of that disciplinary action. The court, after review, shall make any order that it considers appropriate.

10. Violations. Persons who willfully violate the terms of their release relating to the time for reporting to their place of employment or to any other place to which they may be released under subsection 1, paragraphs A to E, or for reporting back to the county jail may be punished by imprisonment for not more than 60 days. A prisoner who does not return to the county jail within 48 hours from the time scheduled to return is guilty of escape under Title 17-A, section 755.

11. Rules of procedure. Proceedings under this section are subject to the rules of procedure adopted under Title 4, section 9.

§1606. Prisoner participation in public works projects

1. Participation in public works projects authorized. The sheriff in charge of a county jail may, by discretion, permit certain inmates of that jail to participate in public works-related projects in the county where the jail is located. Before an inmate is permitted to participate in this type of project, the judge or justice who originally sentenced the inmate to the county jail must sign an approval to the inmate's participation.

2. Sentence prorated. Inmates participating in a public works-related project under this section shall have their sentences to the jail prorated at the rate of one day removed from the sentences for every 16 hours of participation in the project.

3. Participation not deemed employment. Participation in this type of project may not be deemed employment under section 1605, subsections 3 to 8.

## SUBCHAPTER IV

## MISCELLANEOUS PROVISIONS

### §1651. Examination of jails

At the commencement of each session required by law, the county commissioners shall examine the jail in their county, take necessary precaution for the security of prisoners, for the prevention of infection and sickness and for the accommodations of the prisoners.

### §1652. Jails to be clean and healthful

The sheriff shall see that the county jail is kept clean and healthful, have the walls whitewashed in April or May annually and as often as the county commissioners order, at the county's expense, and pay strict attention to the personal cleanliness of the prisoners.

### §1653. Bible, books and instruction for prisoners

The jailer, at the county's expense, shall have available to each prisoner who is able to read a copy of the Bible, and to all, on Sundays, such religious instruction as may be obtained without expense, and to those who may be benefited hereby, instruction in reading, writing and arithmetic one hour every evening except on Sunday. The jailer shall receive for their use from whatever source, by loan or contribution, any books or literature of a moral or religious tone and exclude those of opposite tendencies.

### §1654. Supplies for jails; accounts audited

The county commissioners of the several counties shall, without extra charge or commission to themselves or to any other person, procure all necessary supplies, including necessary food, fuel, bedding and clothing for the jails and the prisoners in the jails, to be furnished and purchased under their direction and at the expense of the counties. No county commissioner may be interested directly or indirectly in the purchase of any such supplies or in any contract for such supplies made by the board of which and while he is a member, and all contracts made in violation of this provision are void. A suitable person shall be employed to prepare the foods of the prisoners in each county at the expense of the county. The service of the food to the prisoners is under the general direction of the jailer, master or keeper. The sheriff shall appoint the person employed to prepare the food of the prisoners subject to the approval of the county commissioners. The county commissioners may at any time direct specific rations or articles of food, clothing, soap, fuel or other necessities to be provided to the prisoners. The bills and accounts for supplies furnished and the items of expense incurred in preparing and serving these supplies shall be audited by the Department of Audit, as provided by Title 5, section 243, subsection 2.

### §1655. Cumberland commissioners annually advertise for supplies

The county commissioners of the County of Cumberland may each year, as soon after January 1st as possible, estimate the amount of food, fuel, clothing and supplies as far as practicable which will be required by the county jail and for the support of the prisoners in the jail for the current year. They shall advertise for sealed proposals for furnishing those supplies according to specifications furnished by them, in the daily papers of the City of Portland, 3 days successively, at least 14 days before the time limited for the reception of those proposals, at which time they shall examine all the proposals and award the contract to the lowest responsible bidder. The county commissioners shall procure such other necessary supplies and articles for the foregoing purposes as may not be furnished by contract and account for the same in the manner provided for in section 1654.

### §1656. Transfer of prisoners when jail unfit or insecure

1. Transfer of prisoners when jail unfit or insecure. Whenever complaint on oath is made to a Justice of the Superior Court that a prisoner or prisoners should be removed from a jail to another jail or to a state correctional facility because that jail is unfit for occupation or is insufficient for the secure keeping of any person charged with a crime and committed to await trial, the Justice of the Superior Court shall:

A. Schedule the time and place for a hearing on this complaint;

B. Have not less than 3 days' notice of that hearing given to the sheriff or sheriffs of the county jail or jails involved and, if transfer to a state correctional facility is anticipated, to the Commissioner of Corrections;

C. Order removal, at the expense of the sending county, of the prisoner or prisoners to a state correctional facility pending hearing, provided that the Commissioner of Corrections and the sending sheriff agree; and

D. Conduct a hearing and if the matter complained of is found true:

(1) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of the sending county, to any jail; or

(2) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of the sending county, to a state correctional facility, provided that the Justice of the Superior Court finds that the receiving institution is able to resolve the problem causing the need to transfer, the nature of the offense committed by the prisoner is so severe that it requires sending to the receiving institution and the security of the sending facility is inadequate to handle the problem.

2. Emergency. In the event of an emergency, regardless of whether a complaint on oath has been made to a Justice of the Superior Court, the sheriff, with the agreement of the Commissioner of Corrections, may immediately, at the expense of the sending county, remove any prisoner from the county jail to a state correctional facility. If removal is made under this section, a complaint on oath shall be made to a Justice of the Superior Court within 24 hours and a hearing shall be conducted in accordance with the requirements in subsection 1, paragraph D.

3. Transfer of prisoners when jail unfit due to a casualty. If by fire or other casualty any jail is destroyed or rendered unfit for use, any Justice of the Superior Court may, upon being notified by the district attorney of the county where the jail was or is located, issue a order to the sheriff and the deputies and constables of that county to have all prisoners who might be liable to imprisonment in that county imprisoned in the jail of some adjoining county or in any other place of confinement. The order shall be printed in the newspapers having general circulation in that county.

§1657. Fines applied to building and repair of jail

All fines imposed by this chapter and chapter 1, subchapter VI; Title 14, section 555; and Title 14, chapter 203, subchapter IV, not otherwise appropriated, shall be applied to building and repairing the jails in the county where the offense is committed.

§1658. Additional accommodations

The county commissioners may make such additions in workshops, fences and other suitable accommodations in, adjoining or appurtenant to the jails in the several counties as may be found necessary for the safekeeping, governing and employing of offenders committed to the jails by authority of the State or the United States. For the better employing of these offenders, they may lease or purchase necessary lands or buildings anywhere within their respective counties and may authorize the employment on those lands for the benefit of the county or of dependent families of prisoners committed for crime, as provided in section 1601. Whenever the county commissioners determine that the use of the land and buildings is unnecessary for that use, they may sell and dispose of the land and buildings in the manner required by law. The county commissioners may raise by loan of their respective counties, or otherwise, a total sum not exceeding $5,000 to make those purchases, alterations and improvements, and may expend so much of that amount as is necessary.

PART 2

MUNICIPALITIES

SUBPART 1

GENERAL PROVISIONS

CHAPTER 101

GENERAL PROVISIONS

§2001. Definitions

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

1. Clerk or municipal clerk. "Clerk" or "municipal clerk" means the clerk of a municipality.

2. Cable television company. "Cable television company" means any person owning, controlling, operating, managing or leasing a cable television system within the State.

3. Cable television system. "Cable television system" means any facility that, in whole or in part, receives directly or indirectly over the air, amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes those signals by wire or cable to subscribing members of the public who pay for that service.

A. This term does not include:

(1) Any facility that serves fewer than 50 subscribers; or

(2) Any facility that serves only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of the apartment dwellings.

4. Federal Government. "Federal Government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

5. Funded debt. "Funded debt" means an obligation for the payment of which some fund is set aside.

6. General obligation security. "General obligation security" means a note, bond or other certificate of indebtedness to the payment of which is pledged the full faith and credit of the issuing body.

7. Home rule authority. "Home rule authority" means the powers granted to municipalities under chapter 111; section 3001; and the Constitution of Maine, Article VIII, Part Second.

8. Municipality. "Municipality" means a city or town.

9. Municipal legislative body. "Municipal legislative body" means:

A. The town meeting in a town;

B. The city council in a city; or

C. That part of a municipal government that exercises legislative powers under a law or charter.

10. Municipal officers. "Municipal officers" means:

A. The selectmen or councillors of a town; or

B. The mayor and aldermen or councillors of a city.

11. Municipal official. "Municipal official" means any elected or appointed member of a municipal government.

12. Municipal year. "Municipal year" means a municipality's fiscal year as determined by the municipal officers under section 708.

13. Open areas. "Open areas" means any space or area the preservation or restriction of the use of which would:

A. Maintain or enhance the conservation of natural or scenic resources;

B. Protect natural streams or water supplies;

C. Promote conservation of swamps, wetlands, beaches or tidal marshes;

D. Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open areas or open spaces;

E. Affect or enhance public recreation opportunities;

F. Preserve historic sites;

G. Implement the plan of development adopted by the planning commission of any municipality; or

H. Promote orderly urban or suburban development.

14. Person. "Person" means an individual, corporation, partnership, firm, organization or other legal entity.

14-A. Public sewer or public drain. "Public sewer" or "public drain" means any sewer or drain constructed or laid by a governmental entity for the use of the public and includes both gravity and pressure mains.

15. Real estate. "Real estate" means land and structures attached to it.

16. Resident. "Resident" and "residence" refer to an individual's place of domicile.

17. Sewage. "Sewage" means the water-carried wastes created in and carried or to be carried away from any structure together with any surface or ground water or household and industrial waste that is present.

18. Sewer system. "Sewer system" includes both sewers and sewage disposal systems and all property, rights, easements and franchises relating to those sewers and sewage disposal systems.

19. Sewers. "Sewers" means and includes mains, pipes and laterals for the reception of sewage and carrying that sewage to an outfall or some part of a sewage disposal system, including pumping stations.

20. Sinking fund. "Sinking fund" means a fund created for the purpose of paying a debt.

21. Voter. "Voter" means a person registered to vote.

§2002. Municipality as body corporate

The residents of a municipality are a body corporate which may sue and be sued, appoint attorneys and adopt a seal.

§2003. Nonstatutory municipal functions

In addition to those offices and departments required by general law, a municipality may provide under its home rule authority for the performance of any other municipal function.

§2004. General powers of cities

When no specific provision in a city charter exists in reference to the exercise of a municipal power, the city has all of the powers granted to towns or municipalities under the general law.

## SUBPART 2

## ORGANIZATION AND INTERLOCAL COOPERATION

## CHAPTER 111

## HOME RULE

§2101. Purpose

The purpose of this chapter is to implement the home rule powers granted to municipalities by the Constitution of Maine, Article VIII, Part Second.

§2102. Charter revisions, adoptions, procedure

1. Municipal officers. The municipal officers may determine that the revision of the municipal charter be considered or that adoption of a new municipal charter be considered and, by order, provide for the establishment of a charter commission to carry out that purpose as provided in this chapter.

2. Petition by voters. On the written petition of a number of voters equal to at least 20% of the number

of votes cast in the municipality at the last gubernatorial election, but in no case less than 10, the municipal officers, by order, shall provide for the establishment of a charter commission for the revision of the municipal charter or the preparation of a new municipal charter as provided in this chapter.

3. Petition procedure. The following procedure shall be used in the alternative method set out in subsection 2.

A. Any 5 voters of the municipality may file an affidavit with the municipal clerk stating:

(1) That the 5 voters will constitute the petitioners' committee;

(2) The names and addresses of the 5 voters;

(3) The address to which all notices to the committee are to be sent; and

(4) That the 5 voters will circulate the petition and file it in proper form.

The petitioners' committee may designate additional voters of the municipality, who are not members of the committee, to circulate the petition.

Promptly after the affidavit is filed, the clerk shall issue petition blanks to the committee.

B. The municipal clerk shall prepare the petition forms at the municipality's expense. The petition forms shall be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary.

(1) Petition forms shall carry the following legend in bold lettering at the top of the face of each form.

"Municipality of ...."

"Each of the undersigned voters respectfully requests the municipal officers to establish a Charter Commission for the purpose of revising the Municipal Charter or preparing a New Municipal Charter."

Each signature to a petition must be in ink or other indelible instrument and must be followed by the residence of the voter with street and number, if any. No petition may contain any party or political designation.

(2) The clerk shall note the date of each petition form issued. All petitions must be filed within 120 days of the date of issue or they are void.

(3) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating:

(a) That the circulator personally circulated the form;

(b) The number of signatures on the form;

(c) That all the signatures were signed in the circulator's presence;

(d) That the circulator believes them to be genuine signatures of the persons whose names they purport to be;

(e) That each signer has signed no more than one petition; and

(f) That each signer had an opportunity to read the petition before signing.

C. Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note the date of filing on the forms.

4. Procedure after filing. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars which render it defective. The clerk shall promptly send a copy of the certificate to the petitioners' committee by mail and shall file a copy with the municipal officers.

A. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of the clerk's certificate.

Within 10 days after this notice of intention is filed, the committee may file a supplementary petition to correct the deficiencies in the original. This supplementary petition, in form and content, must comply with the requirements for an original petition under subsection 3.

B. Within 5 days after a supplementary petition is filed, the clerk shall complete and file a certificate as to its sufficiency in the manner provided for an original petition.

C. When an original or supplementary petition has been certified insufficient, the committee, within 2 days after receiving the copy of the clerk's certificate, may file a request with the municipal officers for review.

The municipal officers shall inspect the petitions in substantially the same form, manner and time as a recount hearing under section 2531 and shall make due certificate of that inspection. The municipal officers shall file a copy of that certificate with the municipal clerk and mail a copy to the committee. The certificate of the municipal officers is a final determination of the sufficiency of the petitions.

D. Any petition finally determined to be insufficient is void. The clerk shall stamp the petition void and seal and retain it in the manner required for secret ballots.

5. Election procedure. Within 30 days after the adoption of an order under subsection 1 or the receipt of a certificate or final determination of sufficiency under subsection 4, the municipal officers shall by order submit the question for the establishment of a charter commission to the voters at the next regular or special municipal election held at least 90 days after this order.

A. The question to be submitted to the voters shall be in substance as follows:

"Shall a Charter Commission be established for the purpose of revising the Municipal Charter or establishing a New Municipal Charter?"

§2103. Charter commission, membership, procedure

1. Membership. The charter commission shall consist of several voters in the municipality, elected under paragraph A, and 3 members appointed by the municipal officers under paragraph B.

A. Voter members shall be elected by one of the following methods:

(1) Six voter members shall be elected in the same manner as the municipal officers, except that they must be elected at-large and without party designations; or

(2) One voter shall be elected from each voting district or ward in the same manner as municipal officers, except that they must be elected without party designation.

Election of voter members may be held at the same municipal election as the referendum for the charter commission, but must be held within 90 days of the referendum election. The names of the candidates on the ballot shall be arranged alphabetically by last name. If the elections are held at the same time, the names of the candidates shall appear immediately below the question relating to the charter commission.

B. Appointive members need not be residents of the municipality, but only one may be a municipal officer. The municipal officers shall make the appointments in accordance with municipal custom or bylaws within 30 days after the election approving the establishment of the charter commission.

2. Organization. Immediately after receiving notice of the appointment of the members by the municipal officers, the municipal clerk shall notify the appointed and elected members of the charter commission of the date, time and place of the charter commission's organizational meeting. The clerk shall set the date, time and place of the meeting and give at least 7 days' notice of the meeting.

The charter commission shall organize by electing from its members a chairman, vice-chairman and a secretary and shall file notice of these elections with the municipal clerk. Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the municipality, except that a vacancy among appointive members shall be promptly filled by the municipal officers. Members shall serve without compensation, but shall be reimbursed from the commission's account for expenses lawfully incurred by them in the performance of their duties.

3. Regulations, staff. The charter commission may adopt regulations governing the conduct of its meetings and proceedings and may employ any necessary legal, research, clerical or other employees and consultants within the limits of its budget.

4. Funding. A municipality shall provide its charter commission, free of charge, with suitable office space and with reasonable access to facilities for holding public hearings, may contribute clerical and other assistance to the commission and shall permit it to consult with and obtain advice and information from municipal officers, officials and employees during ordinary working hours. Within 20 days after the members of a charter commission are elected and appointed, the municipal officers shall credit $100 to the charter commission account. A municipality, from time to time, may appropriate additional funds to the charter commission account. These funds may be raised by taxation, borrowed or transferred from surplus.

A. In addition to funds made available by a municipality, the charter commission account may receive funds from any other source, public or private, except that no contribution of more than $5 may be accepted from any source other than the municipality, unless the name and address of the person or agency making the contribution and the amount of the contribution are disclosed in writing filed with the clerk.

B. Prior to its termination, the charter commission shall file with the clerk a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the municipality's surplus account.

5. Hearings, reports, time limits. The following requirements regarding hearings, reports and time limits apply to a charter commission.

A. Within 30 days after its organizational meeting, the charter commission shall hold a public meeting to receive information, views, comments and other material relating to its functions.

B. The charter commission shall hold its public hearings within the municipality at the times and places set by the commission. At least 10 days before a hearing, the charter commission shall publish the date, time and place of the hearing in a notice in a newspaper having general circulation in the municipality. Hearings may be adjourned from time to time without further published notice.

C. Within 9 months after its election, the charter commission shall:

(1) Prepare a preliminary report including the text of the charter or charter revision which the commission intends to submit to the voters and any explanatory information the commission considers desirable;

(2) Have the report printed and circulated throughout the municipality; and

(3) Provide sufficient copies of the preliminary report to the municipal clerk to permit its distribution to each voter requesting a copy.

D. Within 12 months after its election, the charter commission shall submit its final report to the municipal officers. This report must include:

(1) The full text and an explanation of the proposed new charter or charter revision;

(2) Any comments that the commission considers desirable;

(3) An indication of the major differences between the current and proposed charters; and

(4) A written opinion by an attorney admitted to the bar of this State that the proposed charter or charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.

Minority reports if filed may not exceed 1,000 words.

E. The municipal officers may extend the time limits for the preparation and submission of preliminary and final reports of the charter commission for up to 24 months after the election of the commission if the extension is necessary to:

(1) Properly complete the reports;

(2) Have them printed or circulated; or

(3) Obtain the written opinion of an attorney.

6. Election. When the final report is filed, the municipal officers shall order the proposed new charter or charter revision to be submitted to the voters at the next regular or special municipal election held at least 35 days after the final report is filed.

7. Charter modification summaries. When a proposed charter revision is submitted to the voters in separate questions as charter modifications under section 2105, subsection 1, paragraph A, and the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed charter modification on the ballot and that a summary would not misrepresent the subject matter of the proposed modification, a summary of the modification may be substituted for the text of the proposed modification in the same manner as a summary is substituted for a proposed amendment under section 2104, subsection 6.

8. Termination. Except as provided in paragraph A, the charter commission shall continue in existence for 30 days after submitting its final report to the municipal officers for the purpose of winding up its affairs.

A. If judicial review is sought under section 2108, the charter commission shall continue in existence until that review and any appeals are finally completed for the purpose of intervening in those proceedings.

§2104. Charter amendments; procedure

1. Municipal officers. The municipal officers may determine that amendments to the municipal charter should be considered and, by order, provide for notice and hearing on them in the same manner as provided in subsection 5, paragraph A. Within 7 days after the hearing, the municipal officers may order the proposed amendment to be placed on a ballot at the next regular municipal election held at least 30 days after the order is passed; or they may order a special election to be held at least 30 days from the date of the order for the purpose of voting on the proposed amendments.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

2. Petition by voters. On the written petition of a number of voters equal to at least 20% of the number of votes cast in a municipality at the last gubernatorial election, but in no case less than 10, the municipal officers, by order, shall provide that proposed amendments to the municipal charter be placed on a ballot in accordance with paragraphs A and B.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

3. Petition procedure. The petition forms shall carry the following legend in bold lettering at the top of the face of each form.

"Municipality of . . . ."

"Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below."

No more than one subject may be included in a petition.

In all other respects, the form, content and procedures governing amendment petitions shall be the same as provided for charter revision and adoption petitions under section 2102, including procedures relating to filing, sufficiency and amendments.

4. Amendment constituting revision. At the request of the petitioners' committee, the petition form shall also contain the following language:

"Each of the undersigned voters further requests that if the municipal officers determine that the amendment set out below would, if adopted, constitute a revision of the charter, then this petition shall be treated as a request for a charter commission."

Upon receipt of a petition containing this language, the municipal officers, if they determine with the advice of an attorney that the proposed amendment would constitute a revision of the charter, shall treat the petition as a request for a charter commission and follow the procedures applicable to such a request.

5. Action on petition. The following procedures shall be followed upon receipt of a petition certified to be sufficient.

A. Within 10 days after a petition is determined to be sufficient, the municipal officers, by order, shall provide for a public hearing on the proposed amendment. At least 7 days before the hearing, they shall publish a notice of the hearing in a newspaper having general circulation in the municipality. The notice must contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them.

B. Within 7 days after the public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment does not contain any provision prohibited by the general laws, the United States Constitution or the Constitution of Maine. In the case of a committee report, a copy shall also be filed with the municipal officers.

C. On all petitions filed more than 120 days before the end of the current municipal year, the municipal officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election held within that year after the final report is filed. If no such election will be held before the end of the current municipal year, the municipal officers shall order a special election to be held before the end of the current municipal year for the purpose of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions.

6. Summary of amendment. When the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the municipal officers shall include in their order a summary of the proposed amendment, prepared subject to the requirements of section 2105, subsection 3, paragraph C, and instruction to the clerk to include the summary on the ballot instead of the text of the proposed amendment.

§2105. Submission to voters

The method of voting at municipal elections, when a question relating to a charter adoption, a charter revision, a charter modification or a charter amendment is involved, shall be in the manner prescribed for municipal elections under sections 2528 to 2532, even if the municipality has not accepted the provisions of section 2528.

1. Charter revision or adoption. Except as provided in paragraph A, in the case of a charter revision or a charter adoption, the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the (charter revision) (new charter) recommended by the charter commission?"

A. If the charter commission, in its final report under section 2103, subsection 5, recommends that the present charter continue in force with only minor modifications, those modifications may be submitted to the voters in as many separate questions as the commission finds practicable. The determination to submit the charter revision in separate questions under this paragraph and the number and content of these questions must be made by a majority of the charter commission.

(1) If a charter commission decides to submit the charter revision in separate questions under this paragraph, each question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter modification recommended by the charter commission and reprinted (summarized) below?"

2. Charter amendment. In the case of a charter amendment the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?"

3. Voter information. Reports shall be made available and summaries prepared and made available as follows.

A. In the case of a charter revision or charter adoption, at least 2 weeks before the election, the municipal officers shall:

(1) Have the final report of the charter commission printed;

(2) Make copies of the report available to the voters in the clerk's office; and

(3) Post the report in the same manner that proposed ordinances are posted.

B. In the case of a charter amendment, at least 2 weeks before the election, the municipal officers shall:

(1) Have the proposed amendment and any summary of the amendment prepared under this section printed;

(2) Make copies available to the voters in the clerk's office; and

(3) Post the amendment and any summary of that amendment in the same manner that proposed ordinances are posted.

C. The municipal officers shall prepare any summary of a proposed amendment with the advice of an attorney. The summary must fairly describe the content of the proposed amendment and shall not contain information designed to promote or oppose the amendment.

4. Effective date. If a majority of the ballots cast on any question under subsection 1 or 2 favor acceptance, the new charter, charter revision, charter modification or charter amendment becomes effective as provided in this subsection, provided the total number of votes cast for and against the question equals or exceeds 30% of the total votes cast in the municipality at the last gubernatorial election.

A. Except as provided in subparagraph (1), new charters, charter revisions or charter modifications adopted by the voters take effect on the first day of the next succeeding municipal year.

(1) New charters, charter revisions or charter modifications take effect immediately for the purpose of conducting any elections required by the new provisions.

B. Charter amendments adopted by the voters take effect on the date determined by the municipal officers, but not later than the first day of the next municipal year.

§2106. Recording

Within 3 days after the results of the election have been declared, the municipal clerk shall prepare and sign 3 identical certificates setting forth any charter that has been adopted or revised and any charter modification or amendment approved. The clerk shall send one certificate to each of the following:

1. Secretary of State. The office of the Secretary of State, to be recorded;

2. Law library. The Law and Legislative Reference Library; and

3. Clerk's office. The office of the municipal clerk.

§2107. Effect of private and special laws

Private and special laws applying to a municipality remain in effect until repealed or amended by a charter revision, adoption, modification or amendment under this chapter.

§2108. Judicial review

1. Petition. The Superior Court, upon petition of 10 voters of the municipality or on petition of the Attorney General, may enforce this chapter. The charter commission may intervene as a party in any such proceeding.

2. Declaratory judgment. A petition for declaratory relief under Title 14, chapter 707, may be brought on behalf of the public by the Attorney General or, by leave of the court, by 10 voters of the municipality. The charter commission shall be served with notice of the petition for declaratory judgment.

A. If 10 voters petition for declaratory relief, they shall serve the Attorney General and the charter commission with notice of the preliminary petition for leave.

B. The Attorney General or the charter commission may intervene as a party at any stage of the proceedings.

C. The petitioners are liable for costs. However, the court has discretion to award costs and reasonable attorney fees to the petitioners.

3. Judicial review. Any 10 voters of the municipality, by petition, may obtain judicial review to determine the validity of the procedures under which a charter was adopted, revised, modified or amended. The petition must be brought within 30 days after the election at which the charter, revision, modification or amendment is approved. If no such petition is filed within this period, compliance with all the procedures required by this chapter and the validity of the manner in which the charter adoption, revision, modification or amendment was approved is conclusively presumed. No charter adoption, revision, modification or amendment may be found invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected the adoption, revision, modification or amendment.

4. Resubmission upon judicial invalidation for procedural error. If the court finds that the procedures under which any charter was adopted, revised, modified or

amended are invalid, the Superior Court, on its own motion or the motion of any party, may order the resubmission of the charter adoption, revision, modification or amendment to the voters. This order shall require only the minimum procedures on resubmission to the voters that are necessary to cure the material and substantial errors or omissions. The Superior Court may also recommend or order other curative procedures to provide for valid charter adoption, revision, modification or amendment.

§2109. Liberal construction

This chapter, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to accomplish its purposes.

## CHAPTER 113

## CONSOLIDATION

§2151. Authority to consolidate

Any 2 or more municipalities may consolidate by following the procedure of section 2152 or the alternative procedure of section 2153.

§2152. Joint charter commission

1. Petition. The voters of a municipality may file a petition in the municipal office that must:

A. Be addressed to the municipal officers;

B. Be signed by at least 10% of the voters of that municipality, except that only 1,000 signatures are necessary in municipalities of 10,000 or more voters;

C. Propose that the municipality be consolidated with another municipality, or other municipalities, named in the petition; and

D. Request that 3 persons be elected by the voters of the municipality to serve as members of a joint charter commission for the purpose of drafting a consolidation agreement.

2. Joint charter commission. If a petition is filed as required under subsection 1, the 3 members of a joint charter commission shall be elected at the next special or regular election in the manner provided for the election of municipal officers. The election of members by 2 or more municipalities authorizes the commission to draft the consolidation agreement. If a municipality does not elect members, it may not participate in the consolidation.

3. Consolidation agreement. The joint charter commission shall draft an agreement between the consolidating municipalities which includes:

A. The names of the municipalities;

B. The name under which it is proposed to consolidate, which must be distinguishable from the name of any other municipality in the State, other than the consolidating municipalities;

C. The property, real and personal, belonging to each municipality, and its fair value;

D. The indebtedness, bonded and otherwise, of each municipality;

E. The proposed name and location of the municipal office;

F. The proposed charter;

G. The terms for apportioning tax rates to service the existing bonded indebtedness of the respective municipalities; and

H. Any other necessary and proper facts and terms.

4. Submission of consolidation agreement. The consolidation agreement shall be submitted to the voters of each municipality at a municipal election after notice and hearing as provided in paragraphs A and B. The consolidation agreement may be amended, provided that the amended agreement meets the notice and hearing requirements of paragraphs A and B. Upon approval of a majority of those voting in each of 2 or more municipalities, the consolidation agreement becomes effective, according to its terms, in those municipalities.

A. The municipal officers of each municipality shall hold a public hearing on the consolidation agreement. The public hearing may be held on more than one day, provided that it adjourns permanently at least 10 days before the election.

B. The municipal officers shall notify the voters of each municipality of the consolidation agreement and of the time and place of the public hearing in the same manner that the voters of each municipality are notified of ordinances to be enacted. This notice must be given at least 30 days before the election and at least 10 days before the hearing.

§2153. Alternative procedure

The municipal officers of 2 or more municipalities may act as a joint charter commission without a petition under section 2152, subsection 1.

§2154. Effects of consolidation

All the rights, privileges and franchises of each of the municipalities and all property, real and personal, and all debts due on whatever amounts, belonging to and of the municipalities, are transferred to and vested in the consolidated municipality, provided that all bonded debt of each municipality remains in effect after consolidation as a debt of that portion of the consolidated municipality

within the limits of the former municipality that incurred the debt. Ordinances of the former municipalities remain in effect in their respective territories until 2 years after the effective date of the consolidation when they become void.

§2155. Limitation

If the voters of a municipality reject a consolidation agreement, that municipality may not be a party to any consolidation agreement for 3 years after the date of the rejection, except when 30% of the qualified voters have requested an agreement by signing a petition under section 2152, subsection 1.

§2156. Certificate to Secretary of State

The municipal officers shall declare the results of any vote under this chapter and file a certificate of the result with the Secretary of State.

## CHAPTER 115

## INTERLOCAL COOPERATION

§2201. Purpose

It is the purpose of this chapter to permit municipalities to make the most efficient use of their powers by enabling them to cooperate with other municipalities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

§2202. Definitions

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

1. Public agency. "Public agency" means:

A. Any political subdivision of the State;

B. Any quasi-municipal corporation, including, but not limited to, school administrative districts, urban renewal authorities and sewer districts; or

C. Any agency of State Government or the Federal Government.

§2203. Joint exercise of powers

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of the State may be exercised and enjoyed jointly with any other public agency of this State, or of the Federal Government to the extent that federal laws permit the joint exercise. When acting jointly with any public agency, any agency of State Government may exercise all of the powers, privileges and authority conferred by this chapter upon a public agency.

1. Agreement. Any 2 or more public agencies may enter into agreements with one another for joint or cooperative action under this chapter. The governing bodies of the participating public agencies must take appropriate action by ordinance, resolution or other action under law before any such agreement may become effective.

2. Specifications. Any agreement made under this chapter must specify the following:

A. Its duration;

B. The precise organization, composition and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to that entity, provided the entity may be legally created;

C. Its purpose;

D. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for the undertaking;

E. The method to be used to partially or completely terminate the agreement and to dispose of property upon termination; and

F. Any other necessary and proper matters.

3. Additional items. If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement, in addition to the items listed in subsection 2, must contain the following.

A. It must provide for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, all public agencies party to the agreement must be represented.

B. It must provide the manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

4. Responsibility. No agreement made under this chapter may relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made under this chapter. This performance may be offered in satisfaction of the obligation or responsibility.

5. Liability. An action is maintainable against any public agency whose default, failure of performance or other conduct caused or contributed to the incurring of damage or liability by the other public agencies jointly.

6. Notice to regional councils. Any agreement made under this chapter is subject to the reporting requirements of section 2342, subsection 6, if applicable.

7. Liberal construction. It being the intent of the Legislature to avoid the proliferation of special purpose districts and inflexible enabling laws, this chapter shall be liberally construed toward that end.

8. Limitation. Notwithstanding any other provision of this chapter:

A. No powers, privileges or authority may be jointly exercised unless each type of power, privilege or authority exercised is capable of being exercised by at least one of the parties within the entire jurisdictional area of the contract, or by each of the several parties within each of their several jurisdictions if all of the several jurisdictions make up the total jurisdictional area of the contract; or

B. No essential legislative powers, taxing authority or eminent domain power may be delegated by contract to a joint authority or administrative entity.

§2204. Filing of agreement

Before becoming effective, an agreement made under this chapter must be filed with the clerk of each concerned municipality and the Secretary of State.

§2205. Approval by state officers

If an agreement made under this chapter deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the State Government has constitutional or statutory powers of control, the agreement must be submitted to the state officer or agency having that power of control before becoming effective. The state officer or agency shall approve or disapprove it as to all matters within the state officer's or agency's jurisdiction.

The officer or agency shall approve any agreement submitted to the officer or agency under this chapter unless the officer or agency finds that it does not in substance comply with any law regarding matters within that officer's or the agency's jurisdiction. The officer or agency shall detail in writing, addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement substantially fails to meet the requirements of law. Failure to disapprove an agreement submitted under this chapter within 30 days of its submission constitutes approval of the agreement.

§2206. Funds, personnel and services

Any public agency entering into an agreement under this chapter may appropriate funds and may sell, lease, give or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing any personnel or services for that purpose that it may legally furnish.

§2207. Former districts unaffected

In municipalities which acted under the repealed section 8-A of chapter 90-A of the Revised Statutes of 1954, the district formed remains effective so far as it complies with this chapter and may be continued accordingly.

## CHAPTER 117

## PUBLIC SELF-FUNDED POOLS

§2251. Intent

The Legislature finds that:

1. Insurance protection necessary. Insurance protection is essential to the proper functioning of this State's political subdivisions;

2. Burden on political subdivisions. The resources of political subdivisions are burdened by the securing of that protection through standard carriers;

3. Political subdivision services are vital. The services provided by this State's political subdivisions are vital to the people of the State; and

4. Contributions to pool are public purpose. All financial and administrative contributions made by a political subdivision to a public self-funded pool, as authorized by chapter 115 and section 3001 and created under this chapter, are made for a public and governmental purpose and that the contributions benefit each contributing political subdivision.

§2252. "Political subdivision" defined

"Political subdivision" means any municipality, plantation, county, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, municipal electric utility and school administrative unit. "School administrative unit" has the same meaning as found in Title 20-A, section 1, subsection 26.

§2253. Public self-funded pools; powers; limitations

1. Coverage. Any public self-funded pool formed by 10 or more municipalities or school administrative districts or an organization representing 10 or more political subdivisions may provide risk management and coverage for pool members and employees of pool members, for acts or omissions arising out of the scope of their employment, including any of the following:

A. Casualty insurance, including general and professional liabilities coverage, but excluding workers' compensation insurance provided under Title 39;

B. Property insurance, including marine insurance and inland navigation, transportation, boiler and machinery insurance coverage;

C. Automobile insurance and protection against other liability and loss associated with the ownership of motor vehicles;

D. Surety and fidelity insurance coverage; and

E. Environmental impairment insurance coverage.

2. Limitations. Any public self-funded pool may not provide for hospital, medical, surgical or dental benefits to the employees of the member political subdivisions in the pool except when those benefits arise from the obligations and responsibilities of the pool in providing automobile insurance coverage and protection against other liability and loss associated with the ownership of motor vehicles.

3. Excess insurance; reinsurance. A public self-funded pool shall obtain excess insurance or reinsurance. Aggregate excess insurance to be purchased by the pool under its plan shall be bound before the effective date of the plan. The insurance shall limit the exposure of the pool to a defined level both as to ultimate claims values and loss ratio at which recovery from the insurer will be realized. The attachment point of continuing aggregate excess coverage shall provide risk relief to the plan adequate to its financing needs.

4. Amounts to be paid when coverage issued. Any member joining the pool before the effective date of the plan or during the first year of operation must pay at least 25% of the first year's annual contribution before coverage becomes effective.

5. Underwriting guidelines. Prior to the operation of the pool's plan, underwriting guidelines shall be adopted which embody rate charges to prospective members at a level adequate to its financial needs as certified by the pool's actuary. Fixed costs of operations shall likewise be covered for the first prospective fund year and an overlay sufficient to reasonably meet immediate claims costs shall be held in a separate account to be used solely for this purpose.

6. Actuarial advisory opinion. Prior to the operation of the pool's plan, the pool must obtain an independent actuarial advisory opinion report given by a member of the American Academy of Actuaries qualified as a casualty loss reserve specialist as defined by the National Association of Insurance Commissioners. Two copies of this report shall be filed with the Superintendent of Insurance; one copy shall be filed with each member of the board of directors; and one copy shall be provided to each prospective pool member. The report shall address:

A. The financial viability of the plan; and

B. Ultimate risk exposures attendant to each line being underwritten by the plan.

7. General powers. A public self-funded pool, for the purposes of carrying on the business of the public self-funded pool whether or not a body corporate, may:

A. Sue or be sued;

B. Make contracts;

C. Hold and dispose of real property; and

D. Borrow money, contract debts and pledge assets in the name of the public self-funded pool.

8. Establishment as separate legal or administrative entity. The public self-funded pool may be established as a separate legal or administrative entity for purposes of effectuating public self-funded pool agreements.

§2254. Public self-funded pool not insurance company

Any public self-funded pool operating under this chapter is not an insurance company, reciprocal insurer or insurer under the laws of the State. The development, administration and provision of public self-funded pool programs and coverages authorized by section 2253, subsection 1, by the governing authority created to administer the pool does not constitute doing an insurance business.

§2255. Contract establishing public self-funded pool; provisions

Any contract entered into under this chapter must provide:

1. Financial plan. A financial plan setting forth in general terms:

A. The insurance coverages to be offered by the public self-funded pool; applicable deductible levels; and the maximum level of claims which the pool will self-insure;

B. The amount of cash reserves to be set aside for the payment of claims;

C. The amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not satisfied directly from the pool's resources and the terms of that policy set forth in section 2253, subsection 3; and

D. The amount of aggregate excess insurance coverage to be purchased;

2. Management plan. A plan of management which provides for all of the following:

A. The means of establishing the governing authority of the pool;

B. The responsibility of the governing authority with regard to fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposal of surpluses and administering the pool in the event of termination or insolvency;

C. The basis upon which new members may be admitted to and existing members may leave the pool;

D. The identification of funds and reserves by exposure area;

E. Other provisions necessary or desirable for the operation of the pool; and

F. The selection of a governing authority, which shall be a board of directors for the pool, a majority of whom must be elected or appointed officials of pool members and 2 of whom must be members of the public from the areas served by the pool who are not currently serving as either elected or appointed officials; and

3. Assessments. A provision that, if the assets of a public self-funded pool are at any time actuarily determined to be insufficient to enable the pool to discharge its legal liabilities and other obligations and to maintain actuarily sound reserves, it shall, within 30 days of that determination, make up the deficiency or levy a prorated assessment upon its members for the amount needed to make up the deficiency.

A. Members of the pool shall be given 30 days notice of any assessment due.

B. The contract must provide sanctions for any failure to comply with a mandatory assessment.

§2256. Audit requirements

1. Filing of audited financial statements. Each public self-funded pool shall file with the members of the pool, by the last day of the 6th month following the end of the pool's fiscal year, audited financial statements certified by an independent certified public accountant. The financial statement must include, but is not limited to:

A. Actuarially certified appropriate reserves for known claims and expenses associated with those claims;

B. Claims incurred but not reported and expenses associated with those claims;

C. Unearned premiums; and

D. Reserve for bad debts.

The audited financial statement shall include information concerning the adequacy of the plan. This report shall result from a charge by the directors to the pool's actuary and auditor and shall address excess insurance, charges for coverage to members, service agent's costs and costs of administration of the program. The actuarial opinion must be given by a member of the American Academy of Actuaries qualified as a casualty loss reserve specialist as defined by the National Association of Insurance Commissioners. Two additional copies of the audited financial statements shall be filed with the Superintendent of Insurance.

2. Failure to provide for audited financial statements. If a public self-funded pool fails to provide for the audited financial statements required by subsection 1, the Superintendent of Insurance shall perform or cause to be performed the audit. The public self-funded pool shall reimburse the Superintendent of Insurance for the cost of the audit.

## CHAPTER 119

## REGIONAL COOPERATION

## SUBCHAPTER I

## REGIONAL COUNCILS

### ARTICLE 1. GENERAL PROVISIONS

§2301. Declaration of policy

The Legislature recognizes that a high level of cooperation and understanding between the State and its local governments is necessary to achieve common public goals and that coordination through regional councils is a way to achieve improved state and local cooperation. The Legislature further recognizes that regional councils are uniquely qualified to assist in the development of technical capacities of local governments; to develop regional policies, services and solutions to meet local needs; and to serve as a vital link between local governments and the State.

§2302. Forms of regional councils

The Legislature recognizes councils of governments and regional planning commissions as forms of regional councils.

§2303. Lead agency

1. State Planning Office. The State Planning Office shall serve as the coordinator between regional councils and the State. The State Planning Office shall administer state funds supporting regional council tasks and may provide technical assistance to regional councils as appropriate.

2. Rulemaking. The Director of the State Planning Office may adopt rules to create standardized contracts and administrative and audit requirements for state funds received by regional councils.

§2304. Tax status

Regional councils established in accordance with this Title are tax-exempt institutions which are exempt only from income and sales taxes.

§2305. Construction

This subchapter shall be liberally construed toward the end of enabling councils to implement municipal programs and services on behalf of member municipalities, while avoiding the creation of special districts or other legal or administrative entities to accomplish these purposes.

ARTICLE 2. COUNCILS OF GOVERNMENTS

§2311. Establishment

The municipal officers of any 2 or more municipalities, by appropriate action and as authorized by Title 5, chapter 379, may enter into an agreement, between or among those municipalities, for the establishment of a regional council of governments.

§2312. Contents of agreement

The agreement must provide for representation, but at least 1/2 of the representatives of each member must be municipal officers. The agreement must specify the organization, the method of withdrawal, the method of terminating the agreement and the grounds for suspension of member municipalities.

§2313. Powers and duties

1. Powers. The council may:

A. Study any area governmental problems common to 2 or more members of the council that it considers appropriate, including, but not limited to, matters affecting health, safety, welfare, education, economic conditions and regional development;

B. Promote cooperative arrangements and coordinate action among its members; and

C. Make recommendations for review and action to its members and other public agencies that perform functions within the region.

2. Authority. The council, on behalf of one or more member municipalities and upon appropriate action of the legislative bodies of one or more member municipalities, may exercise any power, privilege or authority capable of exercise by a member municipality and necessary or desirable for dealing with problems of local or regional concern, except essential legislative powers, taxing authority or eminent domain power. This authority is in addition to any other authority granted to municipalities by the general laws.

3. Standing committee. The council, by appropriate action of the legislative bodies of the member municipalities, may establish a standing committee to prepare and maintain a comprehensive regional plan.

4. Transfer. Where a regional planning commission has been established under article 3, the member municipalities, by appropriate action, may provide for the transfer of all assets, liabilities, rights and obligations of the commission to the council and provide for the dissolution of the comission.

§2314. Bylaws

The council shall adopt bylaws designating the officers of the council and providing for the conduct of its business.

§2315. Staff

The council may employ any staff and consult and retain any experts that it considers necessary.

§2316. Finances; annual report

1. Expenses. The legislative bodies of the member governments may appropriate funds under their home rule authority to meet the expenses of the council. Services of personnel, use of equipment and office space and other necessary services may be accepted from members as part of their financial support.

2. Funds. The council may accept funds, grants, gifts and services from:

A. The Federal Government;

B. The State or its departments, agencies or instrumentalities;

C. Any other governmental unit, whether participating in the council or not; and

D. Private and civic sources.

3. Report. The council shall make an annual report of its activities to the member governments.

4. Borrowing. To accomplish the purposes of this subchapter and for paying any indebtedness and any necessary expenses and liabilities incurred for those purposes, the council may borrow money and issue therefor its negotiable notes having any terms and provisions that the governing body of the council determines. The council may contract with one or more member municipalities for the receipt of funds to accomplish any of the purposes authorized by this article and may incur indebtedness in anticipation of the receipt of these funds by issuing its negotiable notes payable in not more than one year. The notes may be renewed from time to time by the issue of other notes, provided that no notes may be issued or renewed in an amount which at the time of issuance or renewal exceeds the amount of funds remaining to be paid under contracts with one or more member municipalities.

## ARTICLE 3. REGIONAL PLANNING COMMISSIONS

### §2321. Establishment; purposes

1. Establishment. Any 7 or more municipalities, all of which are within one regional planning and development district and within one subdistrict if any, by vote of their municipal officers, may join together to form a regional planning commission.

2. Purposes. The purposes of a regional planning commission are to:

A. Promote cooperative efforts toward regional development;

B. Prepare and maintain a comprehensive regional plan;

(1) The public shall be given an adequate opportunity to be heard in the preparation of a comprehensive plan;

C. Coordinate with state and federal planning and development programs; and

D. Provide planning assistance and advisory services to municipalities.

### §2322. Incorporation; powers

Regional planning commissions shall be incorporated under Title 13, chapter 81, and possess all the powers of a corporation organized without capital stock, except as limited by this article.

### §2323. Representation

The municipal members of the commission's governing body shall consist of representatives of each member municipality appointed by the municipal officers.

1. Municipal representatives. Municipalities with a population of less than 10,000, as determined by the last Federal Decennial Census, shall have 2 representatives. Municipalities with populations greater than 10,000, as determined by the last Federal Decennial Census, shall have 2 representatives and an additional representative for each 10,000 increment in population, or fraction exceeding 1/2 of that number, over 10,000.

At least one representative for each municipality regardless of size must be a municipal officer or a designee elected by a majority vote of the municipal officers. This designee serves at the will of the municipal officers. All other representatives shall serve for terms of 2 years and may be removed by the municipal officers for cause after notice and hearing. A permanent vacancy shall be filled for the unexpired term in the same manner as a regular appointment.

2. County representatives. A regional planning commission, in its bylaws, shall make available voting membership to any county within its regional planning and development district or subdistrict as provided in section 1201. Each member county shall have 2 representatives, to be appointed by vote of the county commissioners.

3. Alternates. The commission, by bylaw, may provide for one alternate representative for each member municipality or county.

### §2324. Bylaws; records

The commission shall adopt bylaws, not inconsistent with this article, designating the officers of the commission and providing for the conduct of its business.

The minutes of the proceedings of the commission shall be filed in the commission's office. These minutes are a public record. Copies shall be provided to the municipal officers and planning board of each member municipality.

### §2325. Finances

1. Budget; member contributions. The commission shall prepare an annual budget and shall determine on an equitable basis the contribution of each member toward the support of the commission.

2. Funds. The commission may accept funds, grants, gifts and services from:

A. The Federal Government;

B. The State or its departments, agencies or instrumentalities;

C. Any other governmental unit, whether a member or not; and

D. Private and civic sources.

### §2326. Staff services

To avoid duplication of staffs for various regional bodies assisted by the Federal Government, a commission may provide basic administrative, research and planning services for any regional development and planning bodies established in this State.

## SUBCHAPTER II

## REGIONAL PLANNING AND DEVELOPMENT DISTRICTS

### §2341. Regional planning and development districts

1. Districts. The Governor may designate regional planning and development districts and subdistricts for the purpose of coordinating policies, plans and programs

among and within the various levels of government affecting the development of those districts or subdistricts.

2. Revisions. The Governor, after consulting with the Department of Economic and Community Development, regional councils and the officers of the municipalities and counties involved, may revise the district boundaries to reflect changing conditions or otherwise to fulfill the purposes of this subchapter.

3. Agreements. The Governor may enter into agreements on behalf of the State with the governor of an adjoining state or, with the consent of the United States Congress, with the premier of an adjoining province of Canada to establish interstate or international regional planning or development districts.

§2342. Planning and program review

1. Review authority. The Governor may designate a regional council as the authorized agency to receive, review and comment on federal projects and plans affecting regional planning, coordination and development, those significant local and state projects that exceed $200,000 in total cost and those state projects involving more than one municipality.

A. When 2 or more contiguous regional councils are affected, and the Department of Economic and Community Development determines that:

(1) A project clearly concerns the jurisdictional area of only one regional council, that council is the authorized review agency; or

(2) A project clearly concerns the jurisdictional area of 2 or more councils, joint receipt and review and comment is required.

B. When the Department of Economic and Community Development determines that a project clearly concerns both incorporated and unincorporated areas within a district, joint receipt and review and comment by the affected regional council or councils and the Maine Land Use Regulation Commission is required.

C. All regional planning councils must complete the review under this subsection within 30 days after receiving the project information unless the requesting agency agrees to extend this period.

2. Planning review of federal program grant application. All applications for federal program grants affecting regional planning, coordination and development, including programs under Section 204 of the United States Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754, and the United States Intergovernmental Cooperation Act of 1968, Public Law 90-577, and the objectives set forth in the United States Office of Management and Budget Circular A-95, shall be submitted to the regional council for review and comment. Subsection 5 applies to these grant applications.

3. Planning review of state agency long-term plans. Each state department, commission, board or agency shall submit to the regional council, for review and comment, all long-term comprehensive plans that will have a significant regional effect within the council's jurisdiction. The regional council shall complete its review within 30 days after receiving the long-term comprehensive plan. When 2 or more regional councils coexist within a district, subsection 1 applies.

4. Planning review of local government and special district plans and programs. Each municipality, watershed district and soil conservation district, all or part of which lies within the jurisdictional area of the regional council, shall submit to the council, for comment and recommendation, its long-term comprehensive plans or any matter which in the council's judgment has a substantial effect on regional development, including, but not limited to, plans for land use.

A. No action may be taken to institute any such plan or part of a plan until 30 days after all the relevant information has been submitted to the regional council for review and comment.

B. The council shall notify each municipality or special district, which may be affected by the plans, of:

(1) The general nature of the plan;

(2) The date of submission; and

(3) The identity of the unit submitting the plans.

C. The council may conduct a hearing on the submitted plans if it considers the hearing to be in the best interest of the region.

5. Review of applications for state-aid programs. Within each planning and development district or subdistrict in which a regional council has been organized, the governing body of each governmental unit and special district shall submit to the regional council for review any applications to state agencies for loans or grants-in-aid before the application is made. The regional council shall determine whether or not the proposed application is properly coordinated with other existing or proposed projects within the district, as well as any district plans or policies where they exist. In making this determination, the council shall inform both the applicant agency and the granting authority of its opinion within 30 days.

6. Referral of proposals for interlocal agreements or formation of special purpose districts. Before any 2 or more municipalities may join together through an interlocal agreement or the formation of a special purpose district under the Maine Revised Statutes or any special act for purposes of jointly developing or operating physical facilities and services for the performance of municipal or regional functions, the municipalities shall submit the proposal to the regional council or councils

within whose areas of jurisdiction the municipalities are located. The council or councils, within 30 days, shall render an advisory report of the regional significance of the proposal, unless the referring municipalities agree to extend this period.

7. Notice to regional council to establish or change land use zones. When a municipality proposes to establish or change a land use zone or any regulation affecting the use of a zone, any portion of which is within 500 feet of the boundary of another municipality located within the jurisdiction of a regional council, the municipality shall give written notice to the council of its public hearing to be held in relation to that establishment or change. The council shall study the proposal and shall report its findings and recommendations to the municipality at or before the public hearing. Failure to submit the council's advisory report at or before the hearing constitutes approval.

8. Local assistance. Regional councils may provide local assistance as provided in this subsection.

A. The council may make recommendations on the basis of its plans and studies to local planning boards or to the municipal officers of any member and to any county, state or federal authorities.

B. A municipal planning board may use any part of the regional planning studies which pertain to the municipality in its own comprehensive plan.

C. The council may assist any of its members in solving a local planning problem. All or part of the cost of local assistance may be paid by any of its members.

## CHAPTER 120

## QUASI-MUNICIPAL CORPORATIONS OR DISTRICTS

### §2351. Definitions

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

1. Affected municipalities. "Affected municipalities" means all those municipalities which, in whole or in part, lie within the boundaries of the quasi-municipal corporation or district.

2. Charter amendment. "Charter amendment" means a change in the charter of a quasi-municipal corporation or district which is not a charter revision.

3. Charter revision. "Charter revision" means a change in the charter of a quasi-municipal corporation or district which has an effect on:

A. The number of or method of selecting trustees;

B. The powers of trustees;

C. The powers of the corporation or district;

D. Election procedures, other than election dates;

E. The boundaries of the corporation or district;

F. Methods of establishing rates;

G. Any debt limitation;

H. Methods of land acquisition, including eminent domain;

I. Amount of spending without voter approval; or

J. Liens.

4. Quasi-municipal corporation or district. "Quasi-municipal corporation or district" means any governmental unit that includes a portion of a municipality, a single municipality or several municipalities and which is created by law to deliver public services but which is not a general purpose governmental unit. Quasi-municipal corporation or district does not include School Administrative Districts or hospital districts.

5. Quasi-municipal corporation or district voters. "Quasi-municipal corporation or district voters" means the voters who reside within the boundaries of the quasi-municipal corporation or district.

### §2352. Charter amendments

If, after the board of trustees of the quasi-municipal corporation or district holds a public hearing on the proposed amendment, the board unanimously votes in favor of an amendment to the charter of the quasi-municipal corporation or district, the board shall submit that amendment to the joint standing committee of the Legislature having jurisdiction over utilities to be included in the annual omnibus legislation as provided in section 2355. The amendment is effective upon the effective date of the omnibus legislation.

### §2353. Charter revisions

1. Board of trustees and municipal legislative bodies. If, after the board of trustees of the quasi-municipal corporation or district holds a public hearing on the proposed revision, a majority of the board and a majority of each municipal legislative body of the affected municipalities vote in favor of a revision of the charter of the quasi-municipal corporation or district, the proposed revision shall be submitted to the quasi-municipal corporation or district voters in each affected municipality according to the procedures in section 2354. If the charter revision passes, the trustees of the quasi-municipal corporation or district shall submit that change to the joint standing committee of the Legislature having jurisdiction over utilities to be included in the annual omnibus legislation as provided in section 2355. The revision is effective upon the effective date of the omnibus legislation.

2. Alternative method, initiated petition. On the written petition of a number of voters equal to at least 20% of the total number of the votes cast in the affected municipalities in the last gubernatorial election, but in no case less than 10 voters, the proposed revision shall be submitted to the quasi-municipal corporation or district voters in each affected municipality according to the procedures in section 2354. If the charter revision passes, the trustees of the quasi-municipal corporation or district shall submit that change to the joint standing committee of the Legislature having jurisdiction over utilities to be included in the annual omnibus legislation as provided in section 2355. The revision is effective upon the effective date of the omnibus legislation.

§2354. Procedure for referenda on charter changes

1. Board of trustees of quasi-municipal corporation or district. When a referendum on a charter revision is required under section 2353, the board of trustees of the quasi-municipal corporation or district shall initiate a corporation or district referendum and place before the voters the specific charter revision which has been proposed by the board or the petitioners.

2. Method of calling a corporation or district referendum. A corporation or district referendum shall be initiated by a warrant prepared and signed by a majority of the board of trustees. The warrant shall be countersigned by the municipal officers in each municipality where the warrants are posted.

A. The warrant shall direct the municipal officers of the affected municipalities to call a referendum on a date and time determined by the board of trustees. A warrant shall be prepared and distributed at least 30 days before the referendum.

(1) The warrant shall be directed to a resident of one of the affected municipalities by name ordering the resident to notify the municipal officers of each of the affected municipalities to call a town meeting or municipal election on the date specified by the board of trustees. No other date may be used. The person who serves the warrant shall make a return on the warrant stating the manner of service and the time when it was given.

(2) The warrant shall be served on the municipal clerk of each of the affected municipalities by delivering an attested copy of the warrant in hand within 3 days of the date of the warrant. The municipal clerk, on receipt of the warrant, shall immediately notify the municipal officers within the municipality. The municipal officers shall forthwith meet, countersign and have the warrant posted.

(3) The warrants and other notices for the referendum shall be in the same manner as provided in Title 21-A.

B. The warrant shall set forth the articles to be acted on in each municipal referendum. The articles shall have the following form.

"Shall the charter of the quasi-municipal corporation or district of
be revised to
(insert summary of revision)?

Yes No "

3. Referendum procedures. The following procedures apply to a corporation or district referendum.

A. The board of trustees shall prepare and furnish the required number of ballots for carrying out the referendum as posted, including absentee ballots. It shall prepare and furnish all other materials necessary to fulfill the requirements for voting procedures.

B. Voting shall be held and conducted as follows.

(1) The voting at referenda held in towns shall be held and conducted in accordance with sections 2524 and 2528 to 2532, even though the town has not accepted the provisions of sections 2528 and 2529. The facsimile signature of the clerk under section 2528, subsection 6, paragraph F, shall be that of the chairman of the board of trustees. If a corporation or district referendum is called to be held simultaneously with any statewide election, the voting in towns shall be held and conducted in accordance with Title 21-A, except that the duties of the Secretary of State shall be performed by the board. The absentee voting procedure of Title 21-A shall be used, except that the duties of the Secretary of State shall be performed by the board.

(2) The voting at referenda in cities shall be held and conducted in accordance with Title 21-A, including the absentee voting procedure, except that the duties of the Secretary of State shall be performed by the board of trustees.

C. The return and counting of votes shall be as follows.

(1) The municipal clerk shall, within 24 hours of the determination of the results of the vote in the municipality, certify and send to the board of trustees the total number of votes cast in the affirmative and in the negative on the article.

(2) As soon as all of the results from all of the municipalities have been returned to the board of trustees, the board shall meet and compute the total number of votes cast in all of the affected municipalities in the affirmative and in the negative on the article.

(3) If the board of trustees determines that there were more votes cast in the affirmative than in the negative on the article, it shall declare that the article has passed.

(4) If the board of trustees determines that the total number of votes cast on the article in the affirmative is equal to or less than those cast in the negative, it shall declare that the article has not passed.

(5) The board of trustees shall enter its declaration and computations in its records and send certified copies of it to the clerk of each affected municipality.

4. Reconsideration. The procedure to reconsider votes taken at a corporation or district referendum shall be as follows.

A. The board of trustees shall, within 60 days, initiate a new corporation or district referendum to reconsider the vote of the previous referendum if, within 7 days of the first referendum, at least 10% of the number of voters voting for the gubernatorial candidates in the last gubernatorial election in the affected municipalities petition to reconsider a prior corporation or district referendum vote.

B. A reconsideration referendum is not valid unless the number of persons voting in that referendum is at least equal to the number who voted in the prior corporation or district referendum.

C. If the margin of the vote being reconsidered was between 10% and 25%, the petitioners shall post a bond with the petition equal to the actual and reasonable costs of the new referendum. If the margin of the vote being reconsidered exceeded 25%, the petitioners shall post an additional bond equal to the actual and reasonable costs which may be incurred as a result of the delay of an authorization or approval granted in the prior corporation or district referendum. If the petitioners are successful, the bonds shall be canceled.

5. Inspection and recount. Upon written application of 10% of the persons, or 100 persons, whichever is less, whose names were checked on the voting lists at any quasi-municipal corporation or district referendum held under this chapter, a ballot inspection or a recount hearing shall be granted. The time limits, rules and all other matters applying to candidates under sections 2530 and 2531 apply equally to applicants for either the inspection or recount.

§2355. Annual omnibus legislation

The joint standing committee of the Legislature having jurisdiction over utilities shall report each year an omnibus bill including amendments to and revisions of the charters of quasi-municipal corporations or districts which have been submitted to the committee as provided in this chapter.

§2356. General provisions

1. Other legislation not precluded. This chapter does not preclude the introduction of any legislation concerning quasi-municipal corporation or district charter amendments or revisions.

2. Effect of contrary charter provisions. Any portion of the charter of any quasi-municipal corporation or district which is contrary to this chapter has no effect.

3. Trustees' compensation; water districts and sewer districts. This chapter does not affect the procedures concerning changes in the compensation of trustees of water districts and sewer districts as provided in Title 35-A, section 6303, subsection 4, and Title 38, section 1252, subsection 5.

## SUBPART 3

## MUNICIPAL AFFAIRS

## CHAPTER 121

## MEETINGS AND ELECTIONS

### SUBCHAPTER I

### GENERAL PROVISIONS

§2501. Applicability of provisions

Except as otherwise provided by this Title or by charter, the method of voting and the conduct of a municipal election are governed by Title 21-A. The qualifications for voting in a municipal election conducted under this Title are governed solely by Title 21-A, section 111.

§2502. Campaign reports in municipal elections

1. Reports by candidates. Title 21-A, sections 1001 to 1020 do not apply to a candidate for municipal office in a town. A candidate for municipal office of a city with a population of 10,000 or more is governed by Title 21-A, sections 1001 to 1020, except that notices of appointment of a treasurer and campaign reports must be filed with the municipal clerk instead of the Secretary of State.

A. Notwithstanding Title 17-A, section 4-A, a candidate who fails to file a notice or report, as required by this section, is guilty of a Class E crime and shall be punished by a fine of $5 for every day the candidate is in default or by imprisonment for not more than 30 days, or both.

2. Municipal referenda campaigns. Title 21-A, chapter 13, subchapter IV, does not apply to municipal referenda campaigns.

§2503. Reapportionment

1. Adoption by ordinance. Districts established for the purpose of electing, from each district, an equal number of municipal officers may be adjusted, by ordinance, by the municipal legislative body subject to the following conditions.

A. Each district must be formed of compact, contiguous territory. Its boundary lines may follow the center lines of streets.

B. Each district must contain as nearly as possible the same number of inhabitants as determined according to the latest Federal Decennial Census, but districts may not differ in number of inhabitants by more than 10% of the inhabitants in the smallest district created.

C. The ordinance must include a map and a description of the districts.

D. The ordinance takes effect on the 30th day after adoption by the legislative body. The new districts and boundaries, as of the effective date, supersede previous districts and boundaries for the purposes of the next regular municipal election, including nominations.

2. Failure to enact ordinance. The municipal legislative body must enact the reapportionment ordinance within 18 months after the official publication of the latest decennial census as required by the United States Code, Title 13, Section 141, paragraph (c); provided that ordinance is enacted at least 90 days before a regular municipal election occurring within that 18-month period. If the legislative body fails to do so, all municipal officers to be elected shall be elected at large and shall serve until their terms expire. Such at-large elections shall continue until the legislative body enacts an ordinance in accordance with subsection 1 at least 90 days before a regular municipal election.

3. Referendum. Except when the municipal legislative body is the town meeting, the voters of the municipality may require the municipal legislative body to reconsider any ordinance adopted under subsection 1. If the legislative body does not repeal an ordinance so reconsidered, the voters may approve or reject it at a municipal election.

A. Any 5 voters may commence referendum proceedings by filing an affidavit with the municipal clerk stating:

(1) They will constitute the petitioners' committee;

(2) They will be responsible for circulating the petition and filing it in proper form;

(3) Their names and addresses;

(4) The address to which all notices to the committee are to be sent; and

(5) The ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

B. Petitions under this subsection must meet the following requirements.

(1) Petitions must be signed by a number of voters of the municipality equal to at least 15% of the total number of voters in the municipality at the last presidential election.

(2) All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature must be executed in ink or indelible pencil and must be followed by the address of the person signing. While being circulated, petitions must have the full text of the ordinance sought to be reconsidered contained in or attached to the petition.

(3) When filed, each paper of a petition must have an affidavit, executed by the circulator of the petition, attached to it stating:

(a) That the circulator personally circulated the paper;

(b) The number of signatures on the paper;

(c) That all the signatures were signed in the circulator's presence;

(d) That the circulator believes them to be the genuine signatures of the persons whose names they purport to be; and

(e) That each signer had an opportunity before signing to read the full text of the ordinance sought to be reconsidered.

(4) Petitions must be filed within 30 days after the municipal legislative body adopts the ordinance sought to be reconsidered.

C. The following procedure shall be followed after the petition is filed with the municipal clerk.

(1) Within 20 days after the petition is filed, the municipal clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars which render it defective. The clerk shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of the clerk's certificate and files a supplementary petition upon additional papers within 10 days after receiving a copy of the certificate. This supplementary petition must comply with the requirements of paragraph B, subparagraphs (2) and (3). Within 5 days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a

copy of that certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend the petition or request review under subparagraph (2), within the time required, the clerk shall promptly present the clerk's certificate to the municipal legislative body and the certificate is then a final determination as to the sufficiency of the petition.

(2) If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee, within 2 days after receiving the copy of the certificate, may file a request that it be reviewed by the municipal legislative body. The legislative body shall review the certificate at its next meeting following the filing of the committee's request and approve or disapprove it. This determination is then final as to the sufficiency of the petition.

(3) A final determination as to the sufficiency of a petition is subject to court review. A final determination of insufficiency, even if sustained upon court review, does not prejudice the filing of a new petition for the same purpose.

D. When a petition is filed with the clerk under this subsection, the ordinance sought to be reconsidered is suspended from taking effect. This suspension ends when:

(1) There is a final determination of insufficiency of the petition;

(2) The petitioners' committee withdraws the petition;

(3) The council repeals the ordinance; or

(4) Thirty days have elapsed after a vote of the municipality on the ordinance.

E. The following procedure shall be followed if a petition is determined to be sufficient.

(1) When a petition has been finally determined sufficient, the municipal legislative body shall promptly reconsider the referred ordinance by voting its repeal. If the legislative body fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the referred ordinance to the voters of the municipality.

(2) The vote of the municipality on a referred ordinance shall be held at least 30 days and not more than one year after the municipal legislative body's final vote on the ordinance. If no regular municipal election is to be held within this period, the legislative body shall provide for a special election; otherwise the vote shall be held at the same time as a regular election occurring within this period, except that the legislative body, in its discretion, may provide for a special election at an earlier date within the prescribed period. Copies of the referred ordinance shall be made available at the polls.

(3) The form of the ballot for the repeal of the ordinance shall be substantially as follows:

"Shall the ordinance entitled '.....' be repealed?

YES / / NO / /"

(The voters shall indicate their choice by a cross or check mark placed in the appropriate box opposite the words YES or NO.)

(4) A petition may be withdrawn at any time before the 15th day prior to the day scheduled for a vote of the municipality. The petitioners' committee must file with the municipal clerk a request for withdrawal signed by at least 4 members of the petitioners' committee. Upon filing this request, the petition has no further effect and all proceedings on the petition shall be terminated.

F. If a majority of the voters who vote on a referred ordinance vote against it, it is considered repealed upon certification of the election results.

4. Exception. This section does not apply to municipalities whose charters specify different methods of reapportionment.

## SUBCHAPTER II

## TOWN MEETINGS AND ELECTIONS

### §2521. Call of town meeting

Each town meeting shall be called by a warrant. The warrant must be signed by a majority of the selectmen, except as follows.

1. First town meeting. The first town meeting shall be called in the manner provided in the act of incorporation.

2. Majority of selectmen. If, for any reason, a majority of the selectmen do not remain in office, a majority of those remaining may call a town meeting.

3. Petition of 3 voters, if no selectmen. When a town, once organized, is without selectmen, a notary public may call a meeting on the written petition of any 3 voters.

4. Petition by voters, if selectmen refuse. If the selectmen unreasonably refuse to call a town meeting,

a notary public may call the meeting on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10.

§2522. Petition for article in warrant

On the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration.

§2523. Warrant

The warrant for calling any town meeting must meet the following requirements.

1. Time and place. It shall specify the time and place of the meeting.

2. Business to be acted upon. It shall state in distinct articles the business to be acted upon at the meeting. No other business may be acted upon.

3. Notification. It shall be directed to a town constable, or to any resident by name, ordering that person to notify all voters to assemble at the time and place appointed.

4. Attested copy posted. The person to whom it is directed shall post an attested copy in some conspicuous, public place in the town at least 7 days before the meeting, unless the town has adopted a different method of notification.

5. Return on warrant. The person who notifies the voters of the meeting shall make a return on the warrant stating the manner of notice and the time when it was given.

A. If an original town meeting warrant is lost or destroyed, the return may be made or amended on a copy of the original warrant.

§2524. General town meeting provisions

The following provisions apply to all town meetings.

1. Qualified voter. Every voter in the town may vote in the election of all town officials and in all town affairs.

2. Moderator elected and sworn. The clerk, or in the clerk's absence a selectman or constable, shall open the meeting by:

A. Calling for the election of a moderator by written ballot;

B. Receiving and counting the votes for moderator; and

C. Swearing in the moderator.

3. Moderator presides. As soon as the moderator has been elected and sworn, the moderator shall preside over and supervise the voting at the meeting and may appoint a deputy moderator to assist the moderator. If the moderator is absent or is unable to carry out the duties, the clerk, or in the clerk's absence a selectman or constable, may call for the election of a deputy moderator to act in the absence of the moderator.

A. All persons shall be silent at the moderator's command. A person may not speak before that person is recognized by the moderator. A person who is not a voter in the town may speak at the meeting only with the consent of 2/3 of the voters present.

(1) If any person, after a command for order by the moderator, continues to act in a disorderly manner, the moderator may direct that person to leave the meeting. If the person refuses to leave, the moderator may have that person removed by a constable and confined until the meeting is adjourned.

B. When a vote declared by the moderator is immediately questioned by at least 7 voters, the moderator shall make it certain by polling the voters or by a method directed by the municipal legislative body.

C. The moderator shall serve until the meeting is adjourned. The moderator is subject to the same penalties for neglect of official duty as other town officials.

4. Votes recorded by clerk. The clerk shall accurately record the votes of the meeting.

A. If the clerk is absent, the moderator shall appoint and swear in a temporary clerk.

5. Written ballots. The clerk shall prepare the ballots. Ballots shall be of uniform size and color, and must be blank except that 2 squares with "yes" by one and "no" by the other may be printed on them.

The moderator shall ensure that each voter receives only one ballot for each vote taken.

6. Location of meetings. Town meetings may be held outside the corporate limits of the municipality if the municipal officers determine that there is no adequate facility for the meeting within the municipality. The proposed location must be:

A. Within an adjoining or nearby municipality;

B. Not more than 25 miles from the corporate limits of the municipality holding the meetings; and

C. Reasonably accessible to all voters of the town.

§2525. Annual meeting

1. Officials required to be elected. Each town shall hold an annual meeting at which the following town officials shall be elected by ballot:

A. Moderator;

B. Selectmen; and

C. School committee.

2. Other officials. A town, at a meeting held at least 90 days before the annual meeting, may designate other town officials to be elected by ballot. The election of officials at the last annual town meeting is deemed to be such a designation until the town acts otherwise.

3. Limitation. A town official may not be elected on a motion to cast one ballot.

§2526. Choice and qualifications of town officials

Unless otherwise provided by charter, the following provisions apply to the choice and qualifications of town officials.

1. Manner of election. In a town with a population greater than 4,000, according to the last Federal Decennial Census, election shall be by plurality. Except as provided in section 2528, subsection 10, in a town with a population of 4,000 or under, election shall be by majority.

2. Appointment in writing. The appointment of any town official or deputy must be in writing and shall be signed by the appointing party.

3. Qualifications. In order to hold a municipal office, a person must be a resident of the State, at least 18 years of age and a citizen of the United States.

A. In order to hold the office of selectman, a person must be a voter in the town in which that person is elected.

4. Selectmen and overseers. The following provisions apply to selectmen and overseers.

A. A town may determine at a meeting held at least 90 days before the annual meeting whether 3, 5 or 7 will be elected to each board and their terms of office.

(1) Once the determination has been made, it stands until revoked at a meeting held at least 90 days before the annual meeting.

(2) If a town fails to fix the number, 3 shall be elected. If a town fails to fix the term, it is for one year.

B. When others have not been elected, the selectmen shall serve as overseers of the poor.

C. A selectman may also serve as a member of the board of assessors.

D. A town, in electing selectmen and overseers, may designate one of them as chairman of the board.

(1) If no person is designated as chairman, the board shall elect by ballot a chairman from its own membership, before assuming the duties of office. When no member receives a majority vote, the clerk shall determine the chairman by lot.

E. If the town fails to fix the compensation of these officials at its annual meeting, they shall be paid $10 each per day for every day actually and necessarily employed in the service of the town.

5. Assessors. The following provisions apply to assessors.

A. A town may determine at a meeting of its legislative body held at least 90 days before the annual meeting whether a single assessor will be appointed under subparagraph (3) or a board of 3, 5 or 7 will be elected and the term of office of the assessor or assessors. In towns where the municipal legislative body is the town meeting, the determination is effective only if the total number of votes cast for and against the determination equals or exceeds 10% of the number of votes cast in the town at the last gubernatorial election.

(1) Once a determination has been made, it stands until revoked at a meeting held at least 90 days before the annual meeting.

(2) If a town fails to fix the number, 3 shall be elected. If a town fails to fix the term, it is for one year.

(3) When a town has chosen a single assessor under this paragraph, the selectmen shall appoint the assessor for a term not exceeding 5 years.

B. In addition to the method provided by paragraph A and notwithstanding the provision of any town charter to the contrary, the municipal officers of any town, or the municipal officers of 2 or more towns acting jointly, may enact an ordinance providing for a single assessor. The municipal officers shall appoint the assessor for a term not exceeding 5 years.

(1) Seven days' notice of the meeting at which the ordinance is to be proposed shall be given in the manner provided for town meetings.

(2) In towns where the municipal legislative body is the town meeting, the ordinance is effective immediately after the next regular town meeting if enacted at least 90 days before the meeting. The ordinance stands until revoked by the municipal legislative body or the municipal officers at a meeting held at least 90 days before the annual town meeting.

C. When a town has not elected a full board of assessors, the selectmen shall serve as assessors as provided in Title 36, section 703.

D. A town, if it elects a board of assessors, may designate one member as chairman of the board.

(1) If no person is designated as chairman, the board shall elect by ballot a chairman from its own membership, before assuming the duties of office. When no member receives a majority vote, the clerk shall determine the chairman by lot.

E. If the town fails to fix the compensation of assessors at its annual meeting, they shall be paid $10 each per day for every day actually and necessarily employed in the service of the town.

F. This subsection does not apply to any municipality which is incorporated into a primary assessing area.

6. Board of assessment review. The following provisions apply to a board of assessment review.

A. Any municipality may adopt a board of assessment review at a meeting of its legislative body held at least 90 days before the annual meeting.

B. The board of assessment review shall consist of 3 members appointed by the selectmen. The town, when adopting such a board, may fix the compensation of the members. Initially, one member shall be appointed for one year, one member for 2 years and one member for 3 years. Thereafter, the term of each new member is 3 years.

C. Any town adopting a board of assessment review may discontinue the board by vote in the same manner and under the same conditions as in adopting the board.

D. Towns with a population of 5,000 or more may provide by ordinance for a board of assessment review consisting of 5 or 7 members. The terms of office of members may not exceed 5 years and initial appointments shall be such that the terms of office of no more than 2 members will expire in any single year.

E. Any town, by ordinance, may designate a board of appeals appointed under section 2691 as the board of assessment review.

F. A board of assessment review shall annually elect from its membership a chairman and a secretary.

G. The procedure of a board of assessment is governed by section 2691, subsection 3.

H. This subsection does not apply to any municipality which is incorporated into a primary assessing area.

7. Road commissioners. The following provisions apply to road commissioners.

A. A town may determine at a meeting held at least 90 days before the annual meeting whether one or more road commissioners will be chosen and the term of office which may not exceed 3 years.

(1) Once the determination has been made, it stands until revoked at a meeting held at least 90 days before the annual meeting.

(2) If a town fails to fix the number, one shall be chosen. If a town fails to fix the term, it is one year.

B. A road commissioner appointed by the selectmen may be removed from office for cause by the selectmen.

C. The board of selectmen may act as a board of road commissioners.

8. Treasurers and tax collectors. Treasurers and tax collectors of towns may not be selectmen or assessors until they have completed their duties and had a final settlement with the town.

A. The same person may serve as treasurer and tax collector of a municipality.

9. Sworn in. Before assuming the duties of office, a town official or deputy shall be sworn by the moderator in open town meeting, by the clerk, or by any other person authorized by law to administer an oath.

A. Unless the oath is administered in the clerk's presence, the person who administers it shall give the official or deputy sworn a certificate which shall be returned to the clerk for filing. The certificate must state:

(1) The name of the official or deputy sworn;

(2) His office;

(3) The name of the person who administered the oath; and

(4) The date when the oath was taken.

B. The clerk shall be sworn to accurately record the votes of town meetings and to discharge faithfully all the other duties of that office, until another clerk is elected and sworn.

C. After the town meeting, the clerk shall immediately issue a warrant directed to a constable containing the names of persons chosen for office who have not been sworn.

(1) The constable shall immediately summon the named persons to appear before the clerk within 7 days from the time of notice to take the oath of office.

(2) The constable shall make a return immediately to the clerk.

(3) The town shall pay the constable a reasonable compensation for these services.

D. The clerk shall record the election or appointment of each official or deputy, including the clerk's own, and the other information specified in paragraph A.

E. A record by the clerk that a person was sworn for a stated town office is sufficient evidence that the person was legally sworn for the office. The entire oath need not be recorded.

§2527. Alternative nomination procedure

When any town accepts this section at a meeting held at least 90 days before the annual meeting, the following provisions apply to the nomination of all town officials required by section 2525 to be elected by ballot, except for the moderator, and to the nomination of any other officials which the town designates by a separate article in the warrant at the time of acceptance. No change may be made thereafter in the nomination of town officials, except at a meeting held at least 90 days before the annual meeting.

1. Nomination papers; certificate of political caucus. The nomination of candidates for any office shall be by nomination papers or certificate of political caucus as provided in section 2528, subsection 4.

2. Attestation and posting. The names of candidates nominated and the office for which they are nominated shall be attested by the clerk and posted at least 7 days before town meeting.

§2528. Secret ballot

The following provisions govern a town's use of a secret ballot for the election of town officials or for municipal referenda elections. A vote by secret ballot takes precedence over a vote by any other means at the same meeting.

1. Acceptance by town. When any town accepts this section at a meeting held at least 90 days before the annual meeting, the provisions of this section apply to the election of all town officials required by section 2525 to be elected by ballot, except the moderator, who shall be elected as provided in section 2524, subsection 2.

A. The provisions of this section relating to the nomination of town officials by political caucus apply only when a town separately accepts those provisions at a meeting held at least 90 days before the annual meeting. If any town accepts those provisions, they remain effective until the town votes otherwise.

B. A town may accept only the provisions of subsection 4, relating to the nomination of town officials, as provided in section 2527.

2. Designation, number and terms of officials. At the time of acceptance, the town shall determine, by a separate article in the warrant, which other officials are to be elected according to this section, and may determine the number and terms of selectmen, assessors and overseers according to section 2526.

A. After the determination under this subsection, a town may not change the designation, number or terms of town officials, except at a meeting held at least 90 days before the annual meeting.

3. Voting place specified; polls. The warrant for a town meeting for the election of officials shall specify the voting place, which must be in the same building or a building nearby where the meeting is to be held. It shall specify the time of opening and closing the polls, which must be kept open at least 4 consecutive hours.

A. In the warrant for a town meeting under this section, the municipal officers may designate the date of the election and designate another date within 14 days of the date set for elections as the time for considering the other articles of business in the warrant.

4. Nomination papers; caucuses. The nomination for any office shall be made by nomination papers or by political caucus as provided in this subsection.

A. The municipal clerk shall make nomination papers available to prospective candidates during the 40 days before the filing deadline. Before issuing nomination papers, the clerk must complete each sheet by writing in the name of the candidate and the title and term of office being sought.

(1) Nomination papers must be signed by the following number of voters based on the population of the town according to the last Federal Decennial Census of the United States:

(a) Not less than 3 nor more than 10 in towns with a population of 200 or less;

(b) Not less than 10 nor more than 25 in towns with a population of 201 to 500; and

(c) Not less than 25 nor more than 100 in towns with a population of more than 500.

(2) Each voter who signs a nomination paper shall add the voter's residence with the street and number, if any. The voter may sign only as many nomination papers for each office as there are vacancies to be filled. If a voter signs more nomination papers for an office than there are vacancies to be filled, any signatures of that voter on nomination papers, submitted after the clerk has received a number of nomination papers bearing that voter's signature which equals the number of vacancies to be filled, are not valid.

B. At the end of the list of candidates for each office, there shall be left as many blank spaces as there are vacancies to be filled in which a voter may write in the name and municipality of residence of any person for

whom the voter desires to vote. A sticker may not be used to vote for a write-in candidate in any municipal election.

C. Completed nomination papers or certificates of political caucus nomination must be filed with the clerk during business hours by the 35th day prior to election day. They must be accompanied by the written consent of the person proposed as a candidate agreeing:

(1) To accept the nomination if nominated;

(2) Not to withdraw; and

(3) If elected at the municipal election, to qualify as such municipal officer.

When filed, the clerk shall make these papers and certificates available to public inspection under proper protective regulations. The clerk shall keep them in the office for 6 months.

D. A nomination paper or a certificate of political caucus nomination which complies with this section is valid unless a written objection to it is made to the selectmen by the 33rd day prior to election day.

(1) If an objection is made, the clerk shall immediately notify the candidate affected by it.

(2) The selectmen shall determine objections arising in the case of nominations. Their decision is final.

E. Notwithstanding this subsection, when the municipal officers determine to fill a vacancy under section 2602, which must be filled by election, the municipal officers may designate a shorter time period for the availability of nomination papers, but not less than 10 days before the filing deadline, and may designate a shorter time period for the final date for filing nomination papers, but not less than the 14th day before election day. Notice of the designation shall be posted in the same place or places as town meeting warrants are posted and local representatives of the media shall be notified of the designation.

5. Referendum questions. By order of the municipal officers or on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall have a particular article placed on the next ballot printed or shall call a special town meeting for its consideration. A petition or order under this subsection is subject to the filing provisions governing nomination papers under subsection 4.

The municipal officers shall hold a public hearing on the subject of the article at least 10 days before the day for voting on the article. At least 7 days before the date set for the hearing, the municipal officers shall give notice of the public hearing by having a copy of the proposed article, together with the time and place of hearing, posted in the same manner required for posting a warrant for a town meeting under section 2523. The municipal officers shall make a return on the original notice stating the manner or notice and the time it was given.

A. The requirement for public hearing is not a prerequisite to the valid issuance of any bond, note or other obligation of a municipality authorized to borrow money by vote under any such particular article.

B. If a particular article to be voted on by secret ballot requests an appropriation of money by the municipality, the article, when printed in the warrant and on the ballot, must be accompanied by a recommendation of the municipal officers.

(1) If by town meeting vote or charter provision, a budget committee has been established to review proposed town expenditures, the recommendations of the budget committee shall be printed in addition to those of the municipal officers.

(2) If the action affects the school budget, a recommendation by the school board shall be printed in addition to those of the municipal officers and the budget committee, if any.

6. Ballots, specimen ballots and instruction cards. The clerk shall prepare ballots, specimen ballots and instruction cards according to the following provisions.

A. The ballot shall contain the names of properly nominated candidates arranged under the proper office designation in alphabetical order by last name. It may contain no other names.

B. At the end of the list of candidates for each office, there shall be left as many blank spaces as there are vacancies to be filled in which a voter may write in the name and municipality of residence of any person for whom the voter desires to vote. A sticker may not be used to vote for a write-in candidate in any municipal election.

C. Any question or questions required by law to be submitted to a vote shall be printed either below the list of candidates or on a separate ballot from the ballot listing candidates. If a separate ballot is used, this ballot must be a different color than the ballot listing candidates.

D. A square shall be printed at the left of the name of each candidate, and 2 squares shall be printed at the left of any question submitted with "yes" above one and "no" above the other, so that a voter may designate the voter's choice clearly by a cross mark (X) or a check mark ( ).

E. Words of explanation such as "Vote for one" and "Vote yes or no" may be printed on the ballot.

F. Before distribution, the ballot shall be folded in marked creases to measure, when folded, from 4 1/2 to 5 inches wide and from 6 to 13 1/2 inches long. On the back and outside, when folded, shall be printed "Official Ballot for the Town of . . . .," the date of election and a facsimile of the signature of the clerk.

G. A sufficient number of ballots shall be printed, photocopied or otherwise mechanically reproduced and furnished, and a record of the number shall be kept by the clerk. The printed ballots shall be packaged in convenient blocks so that they may be removed separately.

H. Ten or more specimen ballots printed on paper of a distinctive color without the endorsement of the clerk shall be provided.

I. Instruction cards containing the substance of Title 21-A, sections 671 to 674, 681, 682, 692 and 693, to guide voters in obtaining and marking ballots and to inform them of penalties for improper conduct shall be printed.

J. The ballots and specimen ballots shall be packed in sealed packages with marks on the outside specifying the number of each enclosed.

K. When voting machines are used, the clerk shall prepare and furnish ballot labels that comply, as nearly as practicable, with the provisions of this section which apply to ballots.

7. Specimen ballot posted. At least 4 days before the election, the clerk shall have posted in one or more conspicuous, public places a specimen ballot or a list, substantially in the form of a ballot, containing the name and office designation of each candidate.

8. Ballot clerks. Before the polls are opened, the selectmen shall appoint the necessary number of ballot clerks as provided in Title 21-A, section 503. When there are vacancies after the polls are opened, the moderator shall appoint replacement clerks. The ballot clerks shall be sworn before assuming their duties.

A. On election day, before the polls are opened, the clerk shall deliver the ballots to the ballot clerks and shall post an instruction card at each voting compartment and at least 3 instruction cards and 5 specimen ballots in the voting room outside the guardrail enclosure.

B. The ballot clerks shall give a receipt to the clerk for the ballots received by them. The clerk shall keep the receipt in the clerk's office for 6 months.

C. Ballots may not be delivered to the voters until the moderator has been elected. The moderator may appoint a qualified person to act as temporary moderator during a temporary absence from the polling place.

D. The selectmen shall prepare a duplicate incoming voting list for the use of the ballot clerks. The law pertaining to incoming voting lists applies equally to duplicate incoming voting lists.

9. After votes counted, ballots delivered to clerk. After the ballot clerks have counted and tabulated the votes cast, the moderator shall deliver the ballots to the clerk who shall seal them in a suitable package and keep them in the clerk's office for 2 months.

10. Election by plurality vote; tie vote. Election shall be by plurality vote. In the case of a tie vote, the meeting shall be adjourned to a day certain, when ballots shall again be cast for the candidates tied for the office in question.

§2529. Absentee ballots

If a town has accepted section 2528, absentee ballots may be cast at all regular and special elections to which section 2528 applies, including elections for town meeting members where the representative town meeting form of government is used.

1. Procedure. The absentee voting procedure outlined in Title 21-A shall be used, except that the clerk shall perform the duties of the Secretary of State.

2. Absentee ballot. The absentee ballot requirements of Title 21-A, section 752, apply, provided that the words "Absentee Ballot" are marked conspicuously, instead of printed, on both sides of the folded ballot, if at least one such marking includes an attestation with the written signature of the clerk and is sealed with the municipal seal.

§2530. Ballot inspection

Upon written application of any candidate for a municipal office within 3 days after the result of a city election or an election under section 2528 has been declared, the clerk shall permit the candidate or the candidate's agent to inspect the ballots under proper protective regulations, subject to the following provisions.

1. Notice. The inspection shall be permitted only after written notice by the clerk to:

A. The ward officers who signed the election returns in a city or the moderator in a town; and

B. All candidates for the office specified in the application.

This notice must state the time and place of the inspection and provide these persons with a reasonable opportunity to be present and heard in person or to be represented by counsel.

2. Time. The inspection must be held within 5 days after the clerk receives the written application.

3. Packages resealed. After each inspection, the clerk shall reseal the packages and note the fact and date of inspection on them.

4. Candidate defined. As used in this section, and in section 2531, "candidate" means any person who has received at least one vote for the municipal office in question.

5. Percentage difference. For purposes of this section, "percentage difference" means the percentage of the total vote for an office represented by the difference between the votes received by the candidate requesting a ballot inspection and the votes received by the nearest winning candidate.

6. When deposit is required. A deposit is not required if the percentage difference shown by the official tabulation is:

A. Ten percent or less if the combined vote for the 2 candidates is 1,000 or less, otherwise a deposit of $150 is required;

B. Five percent or less if the combined vote for the 2 candidates is 1,001 to 5,000, otherwise a deposit of $200 is required;

C. Four percent or less if the combined vote for the 2 candidates is 5,001 to 10,000, otherwise a deposit of $250 is required;

D. Three percent or less if the combined vote for the 2 candidates is 10,001 to 50,000, otherwise a deposit of $300 is required;

E. One percent or less if the combined vote received by the 2 candidates is 50,001 to 100,000, otherwise a deposit of $500 is required; or

F. Half of one percent or less if the combined vote received by the 2 candidates is 100,001 or over, otherwise a deposit of $1,000 is required.

All deposits required by this section must be made with the municipal clerk when the ballot inspection is requested. This deposit, made by the candidate requesting the ballot inspection, is forfeited to the municipality if the ballot inspection has begun and it fails to result in a recount which changes the result of the election. If a recount following the ballot inspection reverses the election, the deposit shall be returned to the candidate requesting the ballot inspection.

§2531. Recount hearing

A candidate for any municipal office who has first inspected the ballots under section 2530 may obtain a recount of the votes cast for that office.

1. Petition. The candidate must file a sworn petition with the clerk within 3 days from the date of the ballot inspection.

A. The petition must state the office for which that person was a candidate, and the reason for the recount based on the candidate's own knowledge or on information and belief.

2. Notice. When the petition has been filed, the clerk shall immediately set a date for the recount hearing, which must be held within 5 days after the petition is filed. The clerk shall notify the municipal officers, the petitioner and the opposing candidates of the hearing date.

3. Hearing. At the hearing, the clerk shall sort and count the votes under the supervision of the municipal officers who were in office immediately before the election.

A. The municipal officers in making corrected returns, in their discretion, may accept any facts that the candidates agreed upon at the ballot inspection.

B. The petitioner or the petitioner's opponents may have all ballots in any way involved in the election and all records required by law to be kept in connection with absentee ballots displayed for counting or inspection. Upon request, absentee ballots may be segregated from other ballots.

C. Witnesses may be called by the candidates and may be sworn by any municipal officer. If authorized by the municipal officers, the municipality shall pay witness fees as provided in Title 16, section 251. A record shall be kept if requested by any candidate.

D. If, during the recount, the election is conceded to a candidate by a statement signed by the other interested candidates and addressed to the municipal officers, the municipal officers shall issue a certificate of election to the candidate whose election is conceded.

4. Certificate of election. Within 24 hours after the results of a contested election are determined, the municipal officers shall certify the results of their count to the respective candidates involved, and shall issue a certificate of election to the candidate whom they find to have been elected. This certificate of election supersedes any certificate issued previously.

§2532. Referendum ballot inspection and recount procedure

In the case of a referendum, a ballot inspection or a recount hearing shall be granted upon written application of 10% or 100, whichever is less, of the persons whose names were checked on the voting list at any town referendum or ballot question under section 2105 or 2528, or any city referendum. The time limits, rules and all other matters applying to candidates under sections 2530 and 2531 apply equally to applicants for either the inspection or recount.

§2533. Title to municipal office

Within 20 days after election day, a person who claims to have been elected to any municipal office may proceed against another who claims title to the office by following the procedure outlined in Title 21-A, section 746.

## SUBCHAPTER III

## CITY ELECTIONS

### §2551. Warrant for city election; conduct of election

Each city election shall be called by a warrant. The warrant must meet the requirements listed in section 2523. An attested copy shall be posted in a conspicuous, public place in each ward.

### §2552. Designation of officials

1. Assessors and assistant assessors. The following provisions apply to assessors and their assistants.

A. Assessors and their assistants shall be chosen annually on the 2nd Monday of March to serve for one year and until others are chosen and qualified in their places, unless the city charter provides otherwise.

B. In addition to the assistant assessors chosen under a city charter, the municipal officers may authorize the assessors to appoint any necessary assistants to serve during the municipal year in which they are appointed.

C. Notwithstanding the provisions of any city charter to the contrary, the city council, by ordinance, may provide for a single assessor whose powers and duties are the same as for towns, and who is appointed for a term not exceeding 5 years.

2. Board of assessment review. The following provisions apply to a board of assessment review.

A. Any city choosing a single assessor may adopt a board of assessment review by vote of the city council at least 30 days before the annual city election.

B. The board of assessment review shall consist of 3 members appointed by the city council.

C. The city council, when adopting a board of assessment review, may fix the compensation of the board's members. One member shall be appointed for one year, one member for 2 years and one member for 3 years. Thereafter, the term of each new member is 3 years.

D. Any city adopting a board of assessment review may discontinue the board by vote of the city council at least 30 days before the annual city election, in which case the board ceases to exist at the end of the municipal year.

E. Cities with a population of 5,000 or more may provide by ordinance for a board of assessment review consisting of 5 or 7 members. The terms of office of members must not exceed 5 years and initial appointments must be such that the terms of office of no more than 2 members will expire in any single year.

F. This subsection does not apply in any city which is incorporated into a primary assessing area.

3. Constable. When a vacancy occurs in the office of constable, the municipal officers may appoint a qualified person to fill the vacancy for the remainder of the term.

4. Warden and clerk. A warden and clerk for each ward shall be elected by secret ballot at the regular election of municipal officers.

A. They shall assume the duties of office on the Monday following election.

B. They shall hold office for one year and until others are chosen and qualified in their places.

5. Officials elected by aldermen and common council. In the election of any official by the board of aldermen or jointly by the aldermen and common council in which the mayor has a right to give a deciding vote, if the candidates have an equal number of votes, the mayor shall determine which of them is elected.

6. Officials appointed by the municipal officers. Whenever appointments to office are made by the municipal officers, they shall be made by the mayor with the consent of the aldermen and may be removed by the mayor.

### §2553. Nomination to city office by petition

A person may be nominated to any city office by nomination petition following the procedure prescribed by Title 21-A, chapter 5, subchapter II. A person seeking nomination under this section may use a political designation only if permitted by the city charter. The petition and consent must be filed with the clerk at least 14 days before election day.

### §2554. Ballots, specimen ballots and instruction posters

Except as otherwise provided by its charter, the ballots, specimen ballots and instruction posters for use in a city election are governed by the following provisions.

1. Prepared by clerk. The clerk shall prepare, at the city's expense, the ballots, specimen ballots and instruction posters for use in a city election a reasonable time and as nearly as practicable before each election, in accordance with section 2528, subsection 6.

2. Write-in votes. In any city election, a voter may write in the name and municipality of residence of any person for whom the voter desires to vote in the blank

space provided at the end of the list of candidates for office. A sticker may not be used to vote for a write-in candidate in any city election.

3. Specimen ballots and instruction posters. At least 4 days before election day, the clerk shall post a specimen ballot in one or more conspicuous, public places in each ward. Before the election, the clerk shall publish a composite specimen ballot containing the names of all the nominees in a newspaper having general circulation in the city. On election day, when the polls are opened, the clerk shall post an instruction poster in each voting booth, and 3 instruction posters and 5 specimen ballots in the voting room outside the guardrail enclosure.

§2555. Election by plurality

In a city election, unless otherwise provided by municipal charter, the person who receives a plurality of the votes cast for election to any office is elected to that office.

§2556. Ballot inspection; recount; challenge for office

Sections 2530 to 2533 apply in a city and govern ballot inspections, recounts of elections for office, referenda and the procedure for challenging a person who claims title to an office.

## CHAPTER 123

## MUNICIPAL OFFICIALS

## SUBCHAPTER I

## GENERAL PROVISIONS

§2601. Appointment and term of officials; generally

1. Appointment of officials and employees. Except where specifically provided by law, charter or ordinance, the municipal officers shall appoint all municipal officials and employees required by general law, charter or ordinance and may remove those officials and employees for cause, after notice and hearing.

2. Term of officials. Unless otherwise specified, the term of all municipal officials is one year.

§2602. Vacancy in municipal office

1. When vacancy exists. A vacancy in a municipal office may occur by the following means:

A. Nonacceptance;

B. Resignation;

C. Death;

D. Removal from the municipality;

E. Permanent disability or incompetency;

F. Failure to qualify for the office within 10 days after written demand by the municipal officers; or

G. Failure of the municipality to elect a person to office.

2. Vacancy in office other than selectman, assessor or school committee. When there is a vacancy in a town office other than that of selectman, assessor or school committee, the selectmen may appoint a qualified person to fill the vacancy.

3. Vacancy in office of selectman or assessor. When there is a vacancy in the office of selectman or assessor, the selectmen may call a town meeting to elect a qualified person to fill the vacancy.

4. Vacancy in school committee. A vacancy in a municipality's school committee shall be filled as provided in Title 20-A, section 2305, subsection 4.

5. Person appointed qualifies. The person appointed to fill a vacant office must qualify in the same manner as one chosen in the regular course of municipal activity.

6. Home rule authority. Under its home rule authority, a municipality may apply different provisions governing the existence of vacancies in municipal offices and the method of filling those vacancies as follows:

A. Any change in the provisions of this section relating to municipal officers or a school committee must be accomplished by charter; and

B. Any change in the provisions of this section relating to any other municipal office may be accomplished by charter or ordinance.

§2603. Deputy officials

The clerk, treasurer and collector of a municipality may each appoint in writing a qualified person as deputy.

1. Sworn and oath recorded. Before assuming the duties of office, the deputy must be sworn and the fact of the oath recorded as provided in section 2526, subsection 9.

2. Term; duties. The deputy serves at the will of the appointing official. The deputy may perform any of the duties of office prescribed by the appointing official.

3. Bond liability. The appointing official and the surety on the official's bond are liable for all acts and omissions of the official's deputy.

4. Absence. If the clerk, treasurer or tax collector fails to do so, the municipal officers may appoint a deputy to act during any absence.

§2604. Definitions

As used in section 2605, unless the context otherwise indicates, the following terms have the following meanings.

1. Body. "Body" means the governing unit of a municipality or county, and any subunit of government of a municipality or county, including, but not limited to, agencies, authorities, boards, commissions and offices.

2. Official. "Official" means any elected or appointed member of a municipal or county government or of a quasi-municipal corporation.

3. Quasi-municipal corporation. "Quasi-municipal corporation" means any governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public services but which is not a general purpose governmental unit. This definition includes, but is not limited to, utility districts under the jurisdiction of the Public Utilities Commission and school administrative districts.

§2605. Conflicts of interest

Certain proceedings of municipalities, counties and quasi-municipal corporations and their officials are voidable and actionable according to the following provisions.

1. Voting. The vote of a body is voidable when any official in an official position votes on any question in which that official has a direct or an indirect pecuniary interest.

2. Contracts. A contract, other than a contract obtained through properly advertised bid procedures, made by a municipality, county or quasi-municipal corporation during the term of an official of a body of the municipality, county or quasi-municipal corporation involved in the negotiation or award of the contract who has a direct or an indirect pecuniary interest in it is voidable, except as provided in subsection 4.

3. Restrain proceedings. The Superior Court may restrain proceedings in violation of this section on the application of at least 10 residents of the municipality, county or area served by the quasi-municipal corporation.

4. Direct or indirect pecuniary interest. In the absence of actual fraud, an official of a body of the municipality, county government or a quasi-municipal corporation involved in a question or in the negotiation or award of a contract is deemed to have a direct or indirect pecuniary interest in a question or in a contract where the official is an officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity to which the question relates or with which the unit of municipal, county government or the quasi-municipal corporation contracts only where the official is directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity.

When an official is deemed to have a direct or indirect pecuniary interest, the vote on the question or the contract is not voidable and actionable if the official makes full disclosure of interest before any action is taken and if the official abstains from voting, from the negotiation or award of the contract and from otherwise attempting to influence a decision in which that official has an interest. The official's disclosure and a notice of abstention from taking part in a decision in which the official has an interest shall be recorded with the clerk or secretary of the municipal or county government or the quasi-municipal corporation.

A. This subsection does not prohibit a member of a city or town council or a member of a quasi-municipal corporation who is a teacher from making or renewing a teacher employment contract with the municipality or quasi-municipal corporation for which the member serves.

§2606. Prohibited appointments

No municipal officer, during the term for which that officer has been elected and for one year thereafter, may be appointed to any civil office of profit or employment position of the municipality, which was created or the compensation of which was increased by the action of the municipal officers during the officer's term. This section shall not be construed to prohibit actions allowed or required under state or federal law, municipal ordinance or municipal charter.

§2607. Neglect of official duty

A municipal official who neglects or refuses to perform a duty of office commits a civil violation for which a fine of not more than $100 for each offense may be adjudged, when no other penalty is provided. The fine shall be recovered on complaint to the use of the municipality.

SUBCHAPTER II

TOWN MANAGER PLAN

§2631. Town manager plan

1. Applicable laws. The form of government provided in this subchapter shall be known as the "town manager plan" and, together with general law not inconsistent, shall govern any town in which the voters have adopted this plan at a meeting held at least 90 days before the annual meeting.

2. Government. The government of each town under this subchapter shall consist of a town meeting, an elected board of selectmen, an elected school committee, an appointed town manager and any other officials and

employees that may be appointed under this subchapter, general law or ordinance. Other town officials may be elected by ballot, including, but not limited to, moderator, assessors, overseers of the poor, clerk and treasurer. The election of officials at the last annual town meeting shall require that those town offices continue to be filled by election until the town designates otherwise.

3. Duration. Once adopted, the town manager plan remains in effect until revoked at a town meeting held at least 90 days before the annual meeting unless the voters of the town adopt a charter.

§2632. Qualifications of town manager

1. Selection by board; professional qualification. The selectmen shall choose the town manager solely on the basis of executive and administrative qualifications with special reference to actual experience in, or knowledge of, the duties of office under this subchapter.

2. Residency. The town manager need not be a resident of the town or State when appointed, but, while in office, may reside outside the town or State only with the approval of the board of selectmen.

3. Prohibited offices. A town manager may not serve as moderator, selectman, assessor or member of the school committee.

§2633. Term, compensation, removal, suspension

1. Term. The town manager shall hold office for an indefinite term unless otherwise specified by contract.

2. Compensation. The selectmen shall determine the compensation of the town manager.

3. Removal, suspension. The selectmen may remove or suspend the town manager for cause in accordance with the following procedures.

A. The selectmen shall file a written preliminary resolution with the town clerk stating the specific reasons for the proposed removal. A copy of that resolution shall be delivered to the manager within 10 days of filing.

B. Within 20 days of receiving the resolution, the manager may reply in writing and request a public hearing.

C. Upon request for a public hearing, the selectmen shall hold one at least 10 days but not more than 30 days after the request is filed.

D. After the public hearing or at the expiration of the time permitted the manager to request the public hearing, if no such request is made, the selectmen may adopt or reject the resolution of removal.

E. The selectmen may suspend the manager from duty in the preliminary resolution, but the manager's salary may not be affected until the final resolution of removal has been adopted.

§2634. Absence or disability of town manager

The town manager may designate a qualified administrative official of the town to perform the manager's duties during a temporary absence or disability, subject to confirmation by the selectmen. If the town manager does not make this designation, the selectmen may appoint a town official to perform the manager's duties during the absence or disability and until the manager returns or the disability ceases.

§2635. Board of selectmen to act as a body; administrative service to be performed through town manager; committees

It is the intention of this subchapter that the board of selectmen as a body shall exercise all administrative and executive powers of the town except as provided in this subchapter. The board of selectmen shall deal with the administrative services solely through the town manager and shall not give orders to any subordinates of the manager, either publicly or privately. This section does not prevent the board of selectmen from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any official or department, or any matter relating to the welfare of the town.

§2636. Powers and duties of town manager

The town manager:

1. Executive and administrative officer. Is the chief executive and administrative official of the town;

2. Administer offices. Is responsible to the selectmen for the administration of all departments and offices over which the selectmen have control;

3. Execute laws and ordinances. Shall execute all laws and ordinances of the town;

4. Department head. Shall serve in any office as the head of any department under the control of the selectmen when directed by the selectmen;

5. Appoint department heads. Shall appoint, subject to confirmation by the selectmen, supervise and control the heads of departments under the control of the selectmen when the department is not headed by the town manager under subsection 4;

6. Appoint town officials. Unless otherwise provided by town ordinance, shall appoint, supervise and control all town officials whom the municipal officers are required by law to appoint, except members of boards, commissions, committees and single assessors; and ap-

point, supervise and control all other officials, subordinates and assistants, except that the town manager may delegate this authority to a department head and report all appointments to the board of selectmen;

7. Purchasing agent. Shall act as purchasing agent for all departments, except the school department, provided that the town or the selectmen may require that all purchases greater than a designated amount must be submitted to sealed bid;

8. Attend meetings of selectmen. Shall attend all meetings of the board of selectmen, and the town manager may attend meetings when the manager's removal is being considered;

9. Make recommendations. Shall make recommendations to the board of selectmen for the more efficient operation of the town;

10. Attend town meetings. Shall attend all town meetings and hearings;

11. Inform of financial condition. Shall keep the board of selectmen and the residents of the town informed as to the town's financial condition;

12. Collect data. Shall collect data necessary to prepare the budget;

13. Assist residents. Shall assist, insofar as possible, residents and taxpayers in discovering their lawful remedies in cases involving complaints of unfair vendor, administrative and governmental practices; and

14. Remove appointments. Has exclusive authority to remove for cause, after notice and hearing, all persons whom the manager is authorized to appoint and report all removals to the board of selectmen.

§2637. Transitional provisions

The selectmen, by resolve, may provide for the orderly transition of the town government. These resolves may not infringe upon the rights of any official or employee of the town and may not be inconsistent with this subchapter.

§2638. Regional cooperation

1. Agreement. Any 2 or more towns may enter into an agreement, not inconsistent with this subchapter, to employ and share a manager.

2. Selection of manager. The selectmen of the contracting towns shall act as a joint board for the purposes of selecting and removing for cause the manager, provided that each town has a single vote.

3. Compensation. The agreement must contain a formula establishing the percentage of the manager's compensation to be contributed by each town. The selectmen shall determine the manager's total compensation acting as a joint board, each town having a single vote.

4. Duration. The agreement must specify the method of partial or complete termination of the agreement.

§2639. Application

All municipalities operating under the repealed Title 30, chapter 213, subchapter II are deemed to have made the adoption under section 2631, subsection 1, as of October 1, 1969.

SUBCHAPTER III

MUNICIPAL CLERKS

§2651. Bond

A municipality may require its clerk to be bonded according to section 5601, before assuming the duties of office.

§2652. Fee schedule

Except as provided in Title 11, the clerk shall charge for services according to the following fee schedule:

1. Recording; general. Recording the following:

A. Administration of an oath, $1;

(1) The municipality shall pay this fee;

B. A birth, marriage or death as required by Title 22, sections 2702, 2703, 2763 and 2802, 50 cents;

(1) The municipality shall pay this fee;

C. Affidavit establishing or correcting a record of birth, marriage or death as provided by Title 22, sections 2705 and 2764, $2;

(1) Issuance of a copy of the record to the applicant, $5 for the first copy and $2 for each additional copy;

D. Affidavit legitimating a birth as provided by Title 22, section 2765, $2;

(1) Issuance of a copy of the amended birth record to the applicant, $5 for the first copy and $2 for each additional copy;

E. Release of an attachment, $2;

F. Certificate of partnership, $5;

G. Certificate of withdrawal of a partner, $5;

H. Certificate of a person engaging in trade under a name, style or designation other than that person's own, $5;

I. Honorable discharge or release papers of veterans of the Armed Forces of the United States of America, $2;

(1) A copy of such a document attested by the clerk is prima facie evidence of its existence and validity;

J. Petition for enforcement of a lien on monumental works, $2;

K. License for clam cultivation or an assignment of it, $1; and

L. Any instrument entitled to be recorded, except those under the Uniform Commercial Code, including an executed assignment attached to or made a part of it before it is received for recording, $2 for the first page and $1 for each succeeding page or part of a page;

(1) The acts of any municipality in recording any instrument by microfilm before September 21, 1963 are ratified, confirmed and made effective;

2. Marriage intentions and license. Recording marriage intentions and issuing a marriage license, $10, except, where the laws of this State require 2 licenses, the fee is $5 each;

3. Birth, marriage or death certificates. Issuing the following:

A. Certificate of birth, marriage or death, $5 for the first copy and $2 for each additional copy; and

B. Burial permit, $2; and

4. Marginal release. Entering in the margin of a record the release of an attachment, no charge;

A. The person making the marginal release must sign it.

If a municipality provides for a salary to be paid to the clerk as full compensation, all revenues received by the clerk on behalf of the town accrue to the municipality.

§2653. Expenses

Each municipality shall pay the reasonable expenses of its clerk and deputy clerk incurred in attending the annual meetings of the Maine Municipal Association and the Maine Town and City Clerks' Association.

§2654. Assistant clerks

The clerk may appoint in writing one or more assistants who shall perform any duties of the office prescribed by the clerk.

1. Sworn and oath recorded. Before assuming the duties of office, an assistant clerk must be sworn and the fact of the oath recorded as provided in section 2526, subsection 9.

2. Term. The assistant clerk serves at the will of the clerk.

3. Bond liability. The clerk and the surety on the clerk's bond are liable for all acts and omissions of the assistant.

SUBCHAPTER IV

LAW ENFORCEMENT OFFICERS

§2671. Police officers

1. Appointment. Except as provided by charter, ordinance or section 2636, subsection 6, the municipal officers may appoint police officers for a definite term, and control and fix their compensation. Police officers, including chiefs of police, may be removed for cause after notice and hearing.

A. Before appointing any law enforcement officer, the municipal officers shall investigate the qualifications and background of any person being considered for appointment. This includes investigating the applicant's abilities, reputation for truthfulness and respect for the law.

B. An appointed law enforcement officer is subject to the training requirements of Title 25, sections 2805 and 2805-A.

2. Powers. Police officers may serve criminal and traffic infraction processes and arrest and prosecute offenders of the law. A police officer has all the statutory powers of a constable, unless limited by charter or ordinance. No police officer has any authority in criminal or traffic infraction matters beyond the limits of the municipality in which the officer is appointed, except to:

A. Recapture a prisoner whom the officer has arrested and who has escaped;

B. Take a person before the District Court;

C. Execute a mittimus given to the officer by the District Court;

D. Pursue a person who has gone into another municipality and for whose arrest the officer has a warrant;

E. Arrest a person who travels beyond the limits of the municipality in which the officer is appointed when in fresh pursuit of that person. This paragraph applies to felonies, misdemeanors and traffic infractions. As used in this paragraph:

(1) With respect to felonies, the term "fresh pursuit" is defined in Title 15, section 152; and

(2) With respect to misdemeanors and traffic infractions, "fresh pursuit" means instant pursuit of a person with intent to apprehend; or

F. As provided for in section 2675.

3. Representation of the municipality in District Court. The municipal officers may authorize a law enforcement officer certified by the Maine Criminal Justice Academy, under Title 25, section 2803, subsection 3-A, to represent the municipality in District Court in the prosecution of alleged violations of ordinances which the officer may enforce. Under this subsection, the municipal officers may delegate their power to authorize law enforcement officers to represent the municipality to the municipality's full-time chief of police.

§2672. Special police officers

Special police officers of limited jurisdiction may be appointed for a term of not more than one year and as provided in section 2671, subsection 1. These officers have all the powers of a police officer, except as specifically provided by charter, ordinance or the certificate of appointment.

§2673. Constables

Constables shall be appointed in the same manner and with the same effect as special police officers under section 2672. Persons injured by the neglect or misdoings of a constable have the same remedy by preliminary action and action of the constable's bond, as in the case of a sheriff's bond. For services which may be performed either by a deputy sheriff or a constable, the constable is allowed the same fees as a deputy sheriff, unless otherwise provided.

1. Carrying weapons. A constable's certificate of appointment shall state whether or not the constable is allowed to carry a weapon, concealed or unconcealed, in the performance of duties. If a constable is restricted in carrying a weapon, this prohibition is not affected by any weapons license the individual may possess.

§2674. Aid to other municipalities

Except as otherwise provided by municipal charter or ordinance, the municipal officers may authorize the chief of police or other designee to request other municipalities to provide police officers to assist the requesting municipality. The municipal officers may authorize the chief of police or other designee to provide police officers to assist other municipalities when so requested by a properly authorized chief of police or other designee of the requesting municipality.

The authorizations of the municipal officers shall be accompanied by an agreement between the requesting municipality and the responding municipality that specifies which municipality shall be liable, if any liability is determined to exist, for personal injury or property damage caused by or occurring to the police officers of the responding municipality in the course of assisting the requesting municipality.

The police officers of the responding municipality shall have the same authority as police officers within the limits of the requesting municipality, except as to the service of civil process and, when assisting other municipalities, shall have the same privileges and immunities as when acting within their own municipality.

§2675. Wearing of uniforms or badges; labor disputes

No municipal police officer, special police officer, constable or other municipal law enforcement officer may wear or display a uniform or badge that identifies the officer as a public law enforcement officer at the site of a labor dispute, strike or lockout, except while on active duty in the public service and while traveling to and from public work.

SUBCHAPTER V

BOARD OF APPEALS

§2691. Board of appeals

This section governs all boards of appeals established after September 23, 1971.

1. Establishment. A municipality may establish a board of appeals under its home rule authority. Unless provided otherwise by charter or ordinance, the municipal officers shall appoint the members of the board and determine their compensation.

2. Organization. A board of appeals shall be organized as follows.

A. The board shall consist of 5 or 7 members, serving staggered terms of at least 3 and not more than 5 years, except that municipalities with a population of less than 1,000 residents may form a board consisting of at least 3 members. The board shall elect annually a chairman and secretary from its membership.

B. Neither a municipal officer nor a spouse of a municipal officer may be a member or associate member of the board.

C. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the members, excluding the member who is being challenged.

D. The municipal officers may dismiss a member of the board for cause before the member's term expires.

E. Municipalities may provide under their home rule authority for a board of appeals with associate members not to exceed 3. If there are 2 or 3 associate members, the chairman shall designate which will serve in the place of an absent member.

3. Procedure. The following provisions govern the procedure of the board.

A. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers. A quorum of the board necessary to conduct an official board meeting must consist of at least a majority of the board's members. The chairman shall preside at all meetings of the board and be the official spokesman of the board.

B. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the municipal clerk's office and may be inspected at reasonable times.

C. The board may provide, by regulation which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that the chairman waives any regulation upon good cause shown.

D. The board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.

E. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, constitute the record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision shall be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within 7 days of the board's decision.

F. The board may reconsider any decision reached under this section within 30 days of its prior decision. The board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

G. Any party may take an appeal, within 30 days after the decision is rendered, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown. The hearing before the Superior Court shall be without a jury.

4. Jurisdiction. Any municipality establishing a board of appeals may give the board the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, regulation or failure to act of any officer, board, agency or other body when an appeal is necessary, proper or required. No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board. Any board of appeals shall hear any appeal submitted to the board in accordance with Title 28-A, section 1054.

## SUBCHAPTER VI

## MUNICIPAL EMPLOYMENT

### §2701. Employee probation periods

Except as specifically provided otherwise by charter or ordinance, any reference to cause and hearing in this Part only applies to an employee who has completed a reasonable probation period established by the municipality. Periods of probation may not exceed 6 calendar months or the length of time in effect in a municipality on January 1, 1984, whichever is greater.

### §2702. Personnel records

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Working papers, research materials, records and the examinations prepared for and used specifically in the examination or evaluation of applicants for employment by that municipality;

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment or mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the credit worthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed. The decision shall state the conduct or

other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and

C. Other information to which access by the general public is prohibited by law.

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

§2703. Residency requirement; ordinances and collective bargaining

A municipality may not enact any ordinance which requires employees to reside within the boundaries of the municipality as a condition of employment, nor may collective bargaining agreements contain these strict requirements. A municipality may negotiate collective bargaining agreements or, if the municipality does not engage in collective bargaining, enact ordinances that require employees to reside within a specified distance or a specific response time of a facility where those provisions represent a legitimate job requirement, and provided that the ordinances do not apply to employees already employed when the ordinance takes effect.

This section applies only to public employees, as defined in Title 26, section 962, subsection 6.

§2704. Mandatory retirement age prohibited

1. Legislative findings and intent. The legislative findings and intent for this section are the same as the findings and intent specified in Title 5, section 4575, subsection 1.

2. Prohibition. A municipality may not enact any ordinance or adopt any regulation which requires a municipal employee, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. A municipality may establish reasonable criteria and standards of job performance to be used for the purpose of determining when the employment of municipal employees should be terminated. These criteria and standards are subject to all of the provisions included under Title 5, section 4575, subsection 2.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in the United States Employee Retirement Income Security Act of 1974, Public Law 93-406, as amended, in computing pension or retirement benefits, provided that normal retirement age and the accrual or awarding of pension or retirement benefits may not be used in any way to require the retirement of an employee or to deny employment to a person.

5. Federal requirements. This section shall not be construed to affect or limit any power or duty relating to pension or retirement plans which the Federal Government reserves to itself.

## CHAPTER 125

## MUNICIPAL RECORDS

§2751. Short title

This chapter shall be known and may be cited as the "Municipal Records Law."

§2752. Definitions

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

1. Record. "Record" means all documentary material, regardless of media or characteristics, made or received and maintained by a municipality in accordance with law or regulation or in the transaction of its official business.

§2753. General requirements

The following provisions apply to municipal records.

1. Omissions or errors corrected. When omissions or errors exist in municipal or school district records, they shall be corrected under oath by the person whose duty it was to make them correct, whether or not that person remains in office.

2. Safe or vault for preservation. Each municipality shall provide a fireproof safe or vault for the preservation of all completed record books. When a record book is completed, the clerk shall deposit it in the safe or vault where it shall be kept, except when required for use.

3. Attestation. The records of the clerk may be attested by volume. Each document is sufficiently attested when the volume in which it is recorded bears an attestation with the written signature of the clerk.

4. Delivery to successor in office. Municipal officials shall deliver the records of their office to their successors in office when their terms expire.

5. Records available for public use. Each municipal official shall make records under the official's supervision available for public use at reasonable times unless the use of the records is otherwise restricted by law.

6. Protection of records. Municipal officials shall carefully protect and preserve the records of their office from deterioration, mutilation, loss or destruction.

7. Disposition of records. No municipal official may destroy or otherwise dispose of any record, except as provided by the Municipal Records Board. Records which have been determined by the board to possess sufficient archival value to warrant their permanent preservation shall be preserved by the municipality or deposited with the State Archivist.

8. Rules of Municipal Records Board. Each municipal official shall comply with the standards, procedures and rules adopted by the Municipal Records Board.

§2754. Municipal Records Board

1. Composition of board; terms; compensation. The Municipal Records Board, as authorized by Title 5, chapter 379, shall consist of the State Archivist, who is chairman, the State Registrar of Vital Statistics and 3 municipal officials.

A. The Governor shall appoint the 3 municipal officials for terms of 3 years upon the recommendation of the governing board of the Maine Municipal Association. One of the municipal officials must represent a municipality with a population of not more than 3,500 persons.

B. Any person appointed to fill a vacancy in the membership of the board shall serve for the remainder of the term for which the person's predecessor was appointed.

C. Appointive members shall be compensated according to the provisions of Title 5, chapter 379.

2. Meetings. The board shall meet at the call of the chairman, but not less than 4 times during each calendar year. Three members of the board constitute a quorum.

§2755. Powers and duties of board

The Municipal Records Board shall establish standards, procedures and rules for the effective management of municipal records. These standards, procedures and rules, as far as practical, shall follow the program established under the "Archives and Records Management Law" to govern the creation, utilization, maintenance, retention, preservation and disposal of state records, except as otherwise provided in this chapter. The board may revise the standards, procedures and rules as it considers necessary. Administrative services shall be provided by the Maine State Archives which shall serve as secretariat of the board.

§2756. Assistance to municipalities

The State Archivist shall provide advice and assistance to municipalities in the establishment and administration of municipal archival programs. The State Archivist shall provide program services to municipalities similar to those furnished the agencies of State Government to the extent considered desirable in the administration of the state program and facilities. The State Archivist may acquire and maintain sufficient microfilm equipment and supplies to microfilm records that the board may order microfilmed in accordance with section 2755. These services shall be furnished to municipalities at cost.

§2757. Violation

Notwithstanding Title 17-A, section 4-A, whoever violates this chapter or rules of the Municipal Records Board adopted under section 2755 is guilty of a Class E crime and shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 90 days, or both.

## CHAPTER 127

## MUNICIPAL REPORTS

§2801. Annual report

The officers of each municipality shall publish annually a complete report subject to the following provisions.

1. Record of financial transactions. The report shall contain a record of all financial transactions of the municipality during the last municipal year. It may include an itemized list of receipts and disbursements indicating to whom and for what purpose each amount was paid.

2. Statement of assets and liabilities; delinquent taxpayers. The report shall contain a detailed statement of the assets and liabilities of the municipality including a list of all delinquent taxpayers and the amount due from each. It shall also contain any engineering and survey reports relating to the boundaries of the municipality and all related proceedings and actions of the municipal officers, together with any other information that the municipal officers consider to be of historical significance.

3. Postaudit report. The report shall contain the statement that the complete postaudit report for the last municipal year is on file at the municipal office and the following excerpts from the report:

A. Name and address of the auditor;

B. Auditor's comments and suggestions for improving the financial administration;

C. Comparative balance sheet; and

D. Statement of departmental operations.

3-A. Names of those issued concealed firearms permits. The names of persons issued concealed firearms permits under Title 25, chapter 252, may not be printed in the annual report.

4. Copies for distribution. Copies of the report shall be deposited in the municipal office or a convenient place of business for distribution to the voters at least 3 days before the annual meeting.

5. Copies open for inspection. Copies of the report and all municipal records shall be kept in the municipal office, or in the office of the clerk, and are open to the inspection of voters during usual business hours.

6. Penalty. A municipal official who refuses or neglects to perform any duty required by this section commits a civil violation for which a fine of $50 for each offense may be adjudged.

§2802. Reports by sworn officials

A municipal official who has been sworn to the faithful performance of the official's duty need not swear to any report, account or statement to be filed with any of the state departments.

## CHAPTER 129

## TOWN LINES

§2851. Identification of boundary lines

Boundary lines between municipalities shall be perambulated once every 5 years to determine whether the boundary location is apparent within 5 meters. The following procedures apply.

1. Notice. The municipal officers shall give a 10-day written notice to the officers of the adjoining municipalities advising them of the time and place of meeting for perambulation.

2. Failure to appear. If the officers of any municipality fail to appear in person, or by representative, at the time and place appointed for the required perambulation, the municipality which complies with its duty may perambulate the line and charge the other municipality for 1/2 the expense incurred.

3. Expense. Each municipality shall pay an equal share of the expense of perambulation.

4. Unorganized area. Where a municipality adjoins an unorganized area, the county in which this area is located has the duties of a municipality for the purpose of perambulating its boundary lines and paying its share of the expense of the perambulation. The county commissioners shall perform the duties required of municipal officers.

5. Record of observations. The adjoining municipalities shall record:

A. The dates and times when the perambulation took place;

B. The names of the municipal officers participating; and

C. Either:

(1) A certification by the participants that they were able to identify all monuments described in the legislated definition of the boundary and that the boundary location was apparent within 5 meters at all locations along its length; or

(2) A statement of the deficiencies found and a record of the action taken to correct those deficiencies.

6. Deficiencies. If all monuments are found in place and apparently undisturbed, but the boundary location is in doubt because of obstructions to visibility between monuments occurring since the last perambulation, the municipal officers shall have the line cleared of obstructions. If monuments have been disturbed or destroyed, or for some other reason it is necessary to precisely locate the boundary line, the municipal officers shall locate and monument the line, so that the certification required by subsection 5 may be completed.

7. Monumentation and record. Municipal boundaries need not be perambulated more often than once every 10 years if:

A. Monuments of granite or other material of comparable life and resistance to movement are located at all angle points and at intervals not exceeding 500 meters along straight boundaries, except for water crossings which exceed that interval;

B. Monuments have drill holes or punch marks in inserts not exceeding one centimeter in diameter, indicating the point on the monument to be used as the boundary; and

C. Boundaries are shown to scale on a plan filed at the offices of the adjoining municipalities and at the registry of deeds of the county, or adjoining counties, in which the municipalities are located, and that plan includes:

(1) The location of all monuments together with dimensions by which those monuments may be found and checked for accuracy; and

(2) A certification by a qualified and registered land surveyor that the surveyor has examined the records of the legislative action which created that boundary, verified the location of the boundary monuments on the ground and finds agreement, subject to any minor discrepancies that have been noted on the plan.

§2852. Disputed boundary lines

When a controversy over a boundary line exists between adjoining municipalities, either may file a complaint with the Superior Court stating the facts and requesting that the line be run.

1. Commissioners appointed. The court, after due notice to all parties, shall appoint 3 commissioners.

2. Ascertain and describe line. The commissioners, after giving the interested municipal officers at least 10 days' written notice of the time and place of meeting, shall ascertain the line and describe it by courses and distances.

3. Temporary markers. The commissioners shall set temporary markers to indicate the established line.

4. Report. The commissioners shall report their proceedings to the court.

5. True line. When the court accepts the report, the line established by the commissioners becomes the true line for every municipal purpose, and the court shall order the interested municipalities to replace the temporary markers with monuments as provided in section 2851, subsection 7.

6. Expense. Each municipality shall pay an equal share of the expense of erecting monuments.

7. Compensation of commissioners. The court shall allow the commissioners a proper compensation for their services and issue a warrant for its collection from the interested municipalities in equal proportions.

## CHAPTER 131

## HISTORY AND OBSERVANCES

§2901. Decoration of veterans' graves on Memorial Day; erection of flagpoles

1. Decoration of veterans' graves. Each municipality, as directed by its municipal officers, shall annually decorate on May 30th the graves of veterans of the Armed Forces of the United States of America with an American flag and appropriate floral decorations.

2. Erection of flagpole as alternative. When authorized by the municipal officers, any group of citizens or any veterans' organization of that municipality may erect a flagpole of durable material in any cemetery within the municipality in which at least 25 veterans of the Armed Forces of the United States are interred. The American flag may be flown from this pole between the dates of April 20th and May 10th of each year, or on any day officially designated to commemorate veterans of the Armed Forces of the United States. The display of a flag under this subsection satisfies the requirements of subsection 1.

3. No effect on individuals' right to decorate. This section does not in any way affect the right of any friend or relative of a deceased veteran to decorate the grave.

§2902. Old Home Week

The week beginning with the 2nd Sunday in August of each year, or any other week designated by the municipality's legislative body, is designated and set apart as Old Home Week.

## CHAPTER 133

## FENCES AND FENCE VIEWERS

§2951. Legal fences

All fences 4 feet high and in good repair, consisting of rails, timber, stone walls, iron or wire, and brooks, rivers, ponds, creeks, ditches and hedges, or other things which in the judgment of the fence viewers having jurisdiction thereof are equivalent thereto, are legal and sufficient fences.

§2952. Maintenance

The occupants of lands enclosed with fences shall maintain partition fences between their own and the adjoining enclosures, in equal shares, while both parties continue to improve them.

§2953. Neglect of owners; function of fence viewers

If any party neglects or refuses to repair or rebuild any such fence, which that party is legally required to maintain, the aggrieved party may complain to 2 or more fence viewers of the town where the land is situated who, after due notice to the delinquent party, shall proceed to survey it and, if they determine that it is insufficient, they shall signify it in writing to the delinquent occupant and direct the delinquent occupant to repair or rebuild it within such time as they judge reasonable not exceeding 30 days. If the fence is not repaired or rebuilt accordingly, the complaint may make or repair it.

§2954. Double compensation for building fence

When the complainant has completed such fence and, after notice given, it has been adjudged sufficient by 2 or more of the fence viewers, and the value thereof, with the fence viewers' fees, certified under their hands, the complainant may demand of the occupant or owner of the land where the fence was deficient double the value and fees thus ascertained.

In case of neglect or refusal for one month after demand, the complainant may recover the same by a civil action, with interest at the rate of 1% a month, and if the delinquent owner or occupant repairs or rebuilds such fence without paying the fees of the fence viewers, certified by them, double the amount thereof may be recovered by the complainant as provided.

§2955. Division of partition fences; record of assignments; fees

When the occupants or owners of adjacent lands disagree respecting their rights in partition fences and their obligation to maintain them, on application of either party, 2 or more fence viewers of the town where the lands lie, after reasonable notice to each party, may in writing under their hands assign to each the occupants' or owners' share thereof and limit the time in which each shall build or repair each occupant's or owner's part of the fence, not exceeding 30 days. Such assignment and all other assignments of proprietors of partition fences provided for, recorded in the town clerk's office, shall be binding upon the parties and they shall thereafter maintain their part of the fence. If such fence has been built and maintained by the parties in unequal proportions and the fence viewers adjudge it to be good and sufficient, they may, after notice in writing under their hands, award to the party who built and maintained the larger portion the value of such excess, to be recovered in a civil action against the other party if not paid within 6 months after demand. Parties to assignments shall pay the fees of the fence viewers certified under their hands in equal proportions, and if either party neglects to pay the party's proportion within one month after demand, the party applying to the fence viewers may pay the same and recover of the delinquent party, in a civil action, double the amount of that party's proportion thereof.

§2956. Building of part assigned; remedy on failure

If any party refuses or neglects to build and maintain the part thus assigned to that party, it may be done by the aggrieved party who is entitled to double the value and expenses, to be ascertained and recovered as provided in section 2954, and shall have a lien therefor on the land owned or occupied by the party neglecting or refusing to build or maintain the partition fence assigned to that party by the fence viewers, to be enforced by attachment made within one year from the day of division by them.

§2957. Repairs

All division fences shall be kept in good repair throughout the year, unless the occupants of adjacent lands otherwise agree.

§2958. Fences may vary from dividing line

When, in the opinion of the fence viewers having jurisdiction of the case, it is, by reason of natural impediments, impracticable or unreasonably expensive to build a fence on the true line between adjacent lands and the occupants disagree respecting its position, on application of either party as provided in section 2955, and after notice to both parties and a view of the premises, they may determine by a certificate under their hands communicated to each party on which side of the true line and at what distance, or whether partly on one side and partly on the other and at what distances, the fence shall be built and maintained and in what proportion by each party. Either party may have the same remedy against the other as if the fence were on the true line.

§2959. Assignment of parts before fence is built

When adjacent lands have been occupied in common without a partition fence and either party desires to occupy in severalty or when it is necessary to make a fence running into the water and the parties liable to build and maintain it disagree, either party may apply to the fence viewers of the town, who shall proceed as in section 2955, except that the fence viewers may allow longer than 30 days for building the fence, having regard to the season of the year. In other respects, the remedy shall be as provided in section 2955.

§2960. Occupant ceasing to improve land; adjoining owner may buy fence

When one party ceases to improve that party's land or lays open that party's enclosure, that party shall not take away any part of that party's partition fence adjoining the next enclosure improved if the owner or occupant thereof will pay therefor what 2 or more fence viewers, on due notice to both parties, determine to be its reasonable value.

§2961. Liability of owner starting to improve land lying in common

When any land which has been unenclosed is afterwards enclosed or used for pasturing, its occupant or owner shall pay for 1/2 of each partition fence on the line between that occupant's or owner's land and the enclosure of any other occupant or owner and its value shall be ascertained in writing; if the parties do not agree, by 2 or more of the fence viewers of the town where such fence stands. After the value is so ascertained, on notice to such occupant or owner, if the occupant or owner neglects or refuses for 30 days after demand to pay it, the proprietor of the fence may have a civil action for such value and the cost of ascertaining it.

§2962. Fences on town line

If the line on which a partition fence is to be made or divided is the boundary between 2 or more towns, or partly in one town and partly in another, a fence viewer shall be taken from each town.

§2963. Division of fences; notice; verbal agreements

When a fence between owners of improved lands is divided either by fence viewers or by the written agreement of the parties recorded in the town clerk's office where the land lies, the owners shall erect and support it accordingly. If any person lays that person's own lands common, and determines not to improve any part of them adjoining such fence, and gives 6 months' notice to all occupants of adjoining lands, that person shall not

be required to maintain such fence while that person's land so lies common and unimproved. All partition fences divided by parol agreement and actually built in pursuance of such agreement, including fences so built heretofore, shall be deemed legal fences as if divided by fence viewers or written agreement, and the adjoining owners shall support their respective portions of fence under such agreement until otherwise ordered by the fence viewers on application to them by either party. When a party has constructed that party's part of a fence in pursuance of a parol or written agreement or assignment of fence viewers, no assignment may thereafter be made by fence viewers depriving that party of the full value of such fence or any part thereof.

§2964. Applicability to house lots or written agreements

Nothing in this chapter extends to house lots, the contents of which do not exceed half an acre; but if the owner of such lot improves it, the owner of the adjacent land shall make and maintain 1/2 of the fence between them whether that owner of adjacent land improves or not; nor does this chapter make void any written agreement respecting partition fences.

§2965. Neglect of duty by fence viewers

Any fence viewer who, when requested, unreasonably neglects to view any fence or to perform any other duties required of the fence viewer forfeits $3 to any person suing therefor within 40 days after such neglect and is liable for all damages to the party injured.

§2966. Compensation of fence viewers

Each fence viewer shall be paid by the person employing the fence viewer at the rate of $3 a day for the time employed. If the party liable neglects to pay the same for 30 days after demand, each fence viewer may recover double the amount in a civil action.

## SUBPART 4

## ORDINANCE AUTHORITY AND LIMITATIONS

## CHAPTER 141

## ORDINANCES

§3001. Ordinance power

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.

2. Presumption of authority. There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.

3. Standard of preemption. The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.

4. Penalties accrue to municipality. All penalties established by ordinance shall be recovered on complaint to the use of the municipality.

§3002. Enactment procedure

Unless otherwise provided by charter or law, a municipality must enact ordinances by the following procedure.

1. Posted. The proposed ordinance must be attested and posted in the manner provided for town meetings.

2. Certification. The municipal officers shall certify one copy of the proposed ordinance to the municipal clerk at least 7 days before the day of meeting. The clerk shall keep that copy as a public record and shall make copies available for distribution to the voters from the time of certification. Copies shall be made available at the town meeting.

A. No ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is prejudiced or harmed by that failure.

3. Question. The subject matter of the proposed ordinance shall be reduced to the question: "Shall an ordinance entitled ' ' be enacted?" and shall be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.

4. Application. Subsections 1, 2 and 3 do not apply to ordinances which may be enacted by the municipal officers.

§3003. Adoption of codes by reference

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

A. "Code" means any published compilation of regulations or enforceable standards which has been prepared by any association or organization that is nationally recognized for establishing standards in the areas set out below, or any department or agency of the Federal Government or the State, and includes:

(1) Building codes;

(2) Plumbing codes;

(3) Electrical wiring codes;

(4) Health or sanitation codes;

(5) Fire prevention codes;

(6) Inflammable liquids codes; and

(7) Any other code which embraces regulations pertinent to a subject which is a proper municipal legislative matter.

B. "Published" means printed or otherwise reproduced.

2. Adoption and amendment of codes by reference. Any ordinance adopted or repealed by a municipality under its home rule authority may incorporate by reference any code or portions of any code, or any amendment of such a code, properly identified as to date and source, without setting forth the provisions of the code in full.

A. At least 3 copies of the code, portion or amendment, which is incorporated or adopted by reference, shall be filed in the office of the municipal clerk and kept there available for public use, inspection and examination. The required copies of the codes, portion or amendment or public record must be filed with the municipal clerk for 30 days before the adoption of the ordinance which incorporates the code, portion or amendment by reference.

B. If such a code, portion or amendment is promulgated by a metropolitan or regional agency, the adopting municipality must be within the territorial boundaries of the agency.

C. The filing requirements for ordinances adopted under Title 38, sections 435 to 447, are deemed to be met if the codes were on file in the clerk's office by July 1, 1974.

3. Posting and publication of adopting ordinance. This section does not relieve any municipality of the requirement of posting or publishing in full the ordinance which adopts a code, portion or amendment by reference. All provisions applicable to that publication shall be fully and completely carried out as if no code, portion or amendment were incorporated in the ordinance.

4. Adoption of penalty clauses. Any ordinance adopting a code, portion or amendment by reference shall state the penalty for violating the code, portion or amendment separately. No part of any such penalty may be incorporated by reference.

§3004. Revision, codification and publication

A municipality may revise, codify and publish from time to time in book or pamphlet form all or part of its ordinances arranged in appropriate classifications excluding the titles, signatures and other formal parts of the enacting legislation for the purpose of producing a complete, accurate code of the ordinances in force.

1. Enactment. The revised code shall be enacted by one ordinance entitled "An ordinance to revise and codify ordinances of the City (or Town) of .....".

2. Repeals; vested rights. The revised code is a repeal of all ordinances in conflict with it, but all ordinances in force before its adoption continue in force for the sole purpose of preserving vested rights acquired under the former provisions.

3. Admissible in evidence; revision. When adopted, the revised code becomes law and is admissible in all courts without further proof as prima facie evidence of its existence and validity.

4. Revision of ordinance. In the process of codifying a municipality's ordinances, an ordinance may be revised only by following the procedure required for its original enactment. This subsection does not require the individual enactment of changes in each ordinance which is to be codified by a municipality except when the enactment procedure to be followed requires it.

§3005. Ordinances available

Every ordinance of a municipality shall be on file with the municipal clerk and shall be accessible to any member of the public. Copies shall be made available to any member of the public, at reasonable cost, at the expense of the person making the request. Notice that the ordinances are available shall be posted.

§3006. Proof of ordinances

The submission to any court or administrative tribunal of a municipal ordinance, bylaw, order or resolve of the legislative body or municipal officers of a municipality, when the ordinance, bylaw, order or resolve has been certified over the signature of the municipal clerk, is prima facie proof of the validity of that ordinance, bylaw, order or resolve.

§3007. Specific ordinance provisions

The power to enact ordinances under section 3001 is subject to the following provisions.

1. Limitation on affecting municipal officials. No change in the composition, mode of election or terms of office of the municipal legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

2. Buildings, structures, mobile homes, travel trailers and equipment. The following provisions apply to

any ordinance enacted by a municipality concerning buildings, structures, mobile homes, travel trailers intended to be used for human habitation or equipment.

A. Any building, structure, mobile home or travel trailer intended to be used for human habitation and travel trailer parking facility or equipment existing in violation of such an ordinance is a nuisance.

3. Falling ice and snow. The following provisions apply to any ordinance enacted by a municipality to protect persons and property from injury by requiring building owners or lessees to install roof guards to prevent the fall of snow and ice from the roofs of their buildings.

A. The municipal officers shall send a written notice to the owner or lessee who fails to comply with such an ordinance.

B. If the owner or lessee does not install effective roof guards within 14 days after notice is sent, the owner or lessee is strictly liable for all injury caused by failure to do so.

C. After the 14-day period expires, the municipal officers may have proper roof guards installed at the municipality's expense, the reasonable charges for which may be recovered from the owner or lessee by special assessment as provided by Title 25, section 2393.

D. Any building existing in violation of such an ordinance is a nuisance.

4. Pension system. The following provisions apply to any ordinance enacted by a municipality to establish and maintain a general system of contributory pensions for the benefit of its officials and employees.

A. Money appropriated by any municipality for the operation of a pension system together with money contributed by any person eligible to participate in the system shall be administered by a board created for that purpose and shall be kept in a separate fund to be invested and disbursed by the board.

B. A municipality which establishes such a system may contract with any insurance company licensed to do business in the State for the payment of pension benefits.

C. Any pension funds held by a municipality or by a board established by it are exempt from attachment or trustee process.

§3008. Cable television ordinances

1. State policy. It is the policy of this State, with respect to cable television:

A. To affirm the importance of municipal control of franchising and regulation in order to ensure that the needs and interests of local citizens are adequately met;

B. That each municipality, when acting to displace competition with regulation in the area of cable television, shall proceed according to the judgment of the municipal officers as to the type and degree of regulatory activity considered to be in the best interests of its citizens; and

C. To provide adequate statutory authority to municipalities to make franchising and regulatory decisions to implement this policy and to avoid the costs and uncertainty of lawsuits challenging that authority.

2. Ordinances. A municipality may enact any ordinances, not contrary to this chapter, governing franchising and regulation of cable television systems using public ways. Systems located in accordance with those ordinances, franchises and regulations are not defects in public ways.

The municipal officers of municipalities have the exclusive power to enact all ordinances authorized by this section. They shall give 7 days' notice of the meeting at which those ordinances are to be proposed in the manner provided for town meetings. Those ordinances take effect immediately.

3. General requirements. The following requirements apply generally to cable television systems governed by this section.

A. Any cable television system must be constructed and operated in accordance with Federal Communications Commission regulations.

B. Notwithstanding any provision in a franchise, no cable television company may abandon service or a portion of that service without having given 6 months' prior written notice to the franchising municipality, if any, and to the municipalities affected by that abandonment. When abandonment of any service is prohibited by a municipal franchise, no cable television company may abandon that service without written consent of the municipal officers. Any cable television company which violates this paragraph commits a civil violation for which a fine of $50 a day for each day that the violation continues may be adjudged.

C. Neither the cable television company whose facilities are used to transmit a program produced by a person other than the cable television company, under Federal Communications Commission regulations or municipal ordinance, nor the officers, directors or employees of any such cable television company are liable for damages arising from any obscene or defamatory statements or actions or invasion of privacy occurring during any program when that company does not originate or produce the program.

D. Notwithstanding any other provisions of this chapter, any permit to provide a cable television system

issued before July 1, 1965, without a fixed termination date, is deemed to expire on September 18, 1996, unless an earlier expiration date is mutually agreed upon by the municipality and the permit holder. These cable television systems, as a condition of franchise, shall be operated in such a manner as to provide a safe, adequate and reliable service to subscribers.

E. A municipality is entitled to injunctive relief in addition to any other remedies available by law to protect any rights conferred upon the municipality by this section or any ordinances enacted under this section.

4. Franchise procedures. Pursuant to subsection 2, a municipality may enact ordinances governing the procedures for granting cable television franchises. These ordinances must be enacted before granting any such franchise or franchises and shall be designed to ensure that the terms and conditions of a franchise will adequately protect the needs and interests of the municipality. The ordinances shall include, but are not limited to, provisions for the following:

A. A mechanism for determining special local needs or interests before issuing a request for proposals, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals;

B. The filing of franchise applications and related documents as public records, with reasonable notice to the public that the records are open to inspection during reasonable hours;

C. A reasonable opportunity for public input before granting franchises; and

D. The assessment of reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the municipality in acting upon applications.

5. Franchise agreements or contracts. The State specifically authorizes municipal officers pursuant to ordinances to contract on such terms and conditions and impose such fees as are in the best interests of the municipality, including the grant of exclusive or nonexclusive franchises for a period not to exceed 15 years, for the placing and maintenance of cable television systems and appurtenances, or parts thereof, along public ways and including contracts with cable television companies which receive the services of television signal transmission offered by any public utilities using public ways for such transmission. No public utility may be required to contract with the municipal officers under this subsection. Each franchise must contain the following provisions:

A. The area or areas to be served;

B. A line extension policy;

C. A provision for renewal, the term of which may not exceed 15 years;

D. Procedures for the investigation and resolution of complaints by the cable television company; and

E. Any other terms and conditions that are in the best interests of the municipality.

6. Current ordinances and agreements. This section shall not be construed to invalidate any ordinance, franchise or agreement in effect or under consideration on July 25, 1984.

§3009. Authority of municipal officers to enact ordinances

1. Exclusive authority. The municipal officers have the exclusive authority to enact all traffic ordinances in the municipality, subject to the following provisions.

A. The municipal officers may regulate pedestrian traffic in the public ways, including, but not limited to, setting off portions of a municipality's public ways for sidewalks and regulating their use; providing for the removal of snow and ice from the sidewalks by the owner, occupant or agent having charge of the abutting property; and establishing crosswalks or safety zones for pedestrians.

(1) The violation of any ordinance authorized by this paragraph is a traffic infraction.

(2) The municipal officers may establish a method by which persons charged with the violation of ordinances governing pedestrian traffic on the public ways may waive all court action by payment of specified fees within stated periods of time.

B. The municipal officers may regulate the operation of all vehicles in the public ways and on publicly owned property.

(1) The violation of any ordinance authorized by this paragraph is a traffic infraction.

C. The municipal officers may regulate the parking of motor vehicles on any public way or public parking area, including, but not limited to, providing for the installation of parking meters, providing the fact that any vehicle is illegally parked or is in a metered space when the time signal on the parking meter for that space indicates no parking permitted without the deposit of a coin or coins is prima facie evidence that the vehicle has been parked illegally by the person in whose name the vehicle is registered, and establishing reasonable charges for metered parking.

(1) Illegal parking of a vehicle in violation of any ordinance authorized by this paragraph is a traffic infraction.

(2) The municipal officers may establish a method by which persons charged with the violation of parking regulations may waive all court action by payment of specified fees within stated periods of time.

(3) The revenue collected from parking meters shall be used:

(a) To purchase, maintain and police the meters;

(b) To construct and maintain public ways;

(c) To acquire, construct, maintain and operate public parking areas; and

(d) For no other purpose.

(4) Any motor vehicle or motorcycle registered by a handicapped person is exempt from any parking meter fare when that vehicle properly displays special designating plates or a placard issued under Title 29, sections 252, 252-A and 252-C, and may park a length of time which does not exceed twice the time limit otherwise applicable.

D. The following provisions apply to any ordinance enacted by the municipal officers providing for the establishment of parking spaces for handicapped persons.

(1) The municipality must post any of the following signs adjacent to and visible from each handicapped parking space:

(a) A sign consisting of a profile view of a wheelchair with an occupant in white on a blue background with a printed inscription. The inscription shall read: "Handicapped Parking: Special Plate Required. Unauthorized vehicles are subject to a fine;" or

(b) A sign consisting of a profile view of a wheelchair with an occupant in white on a blue background which may bear an inscription.

(2) Any new sign erected or any sign replaced after April 11, 1983 must conform to the signs described in subparagraph (1). Any existing posted signs that do not comply with subparagraph (1) and which were erected before April 11, 1983 are valid for enforcement purposes.

(3) Any vehicle or motorcycle parked in a clearly marked parking space designated as a handicapped parking space that does not bear a special registration plate or placard issued under Title 29, sections 252, 252-A and 252-C, or a similar plate issued by another state, shall be cited for a penalty of not less than $50 unless otherwise established by ordinance.

(4) Owners of off-street parking shall arrange for private enforcement or shall enter into agreements with local or county law enforcement agencies for the policing of stalls and spaces dedicated for handicapped persons' vehicles, under which agreements unauthorized vehicles will be tagged. Where service facilities are established on the Maine Turnpike and on the interstate highway system in this State, the State Police shall enforce any handicapped parking restrictions at those facilities. "Clearly marked" includes painted signs on pavement, vertical standing signs or barriers which are visible in existing weather conditions.

Under such agreements, public law enforcement officials may exercise their vested authority to ensure that parking spaces designated for the handicapped are utilized appropriately by handicapped persons, irrespective of whether the designated handicapped parking spaces are located on public or private lots open to the public.

E. The municipal officers may provide for the regulation of motor vehicles as defined in Title 29, section 1, subsection 7, on icebound inland lakes during the hours from sunset to sunrise of the following day. The Maine Land Use Regulation Commission shall regulate motor vehicles on icebound inland lakes which are completely encompassed by unorganized territories. Motor vehicles on icebound inland lakes which are abutted by an unorganized territory and either one or more municipalities, village corporations or plantations, in any combination, shall be regulated by those municipalities, village corporations or plantations, as provided in subparagraphs (1) and (2).

No ordinance authorized by this paragraph is valid unless:

(1) Each municipality abutting a lake has enacted an identical local ordinance, in which case the ordinance of any municipality is in effect on the entire lake and any law enforcement officer from any of those municipalities may enforce the ordinance on any portion of the lake; or

(2) In cases where a lake is divided by an easily identifiable boundary into 2 or more nearly separate bodies, each municipality abutting one of the distinguishable portions of the lake has enacted an identical local ordinance. The ordinance of any municipality is in effect only on that distinguishable portion of the lake and any law enforcement officer from any of those municipalities may enforce the ordinance anywhere on that portion of the lake.

F. The municipal officers may regulate or establish a licensing authority which may regulate rates of fare, routes and standing places of vehicles for hire, except where jurisdiction rests with the Public Utilities Commission and may require an owner or operator of a vehicle for hire to carry a liability insurance policy in amount and form satisfactory to the licensing authority as a condition precedent to the granting of a license to operate.

2. Powers of village corporation. The officers of a village corporation have the same powers and duties as municipal officers under this section.

3. Method of enactment; effective date. When enacting ordinances under this section, the municipal officers shall give 7 days' notice of the meeting at which the ordinances are to be proposed in the manner provided for town meetings. Unless otherwise provided, these ordinances take effect immediately.

## SUBPART 5

## HEALTH, WELFARE AND IMPROVEMENTS

## CHAPTER 151

## HEALTH, WELFARE AND IMPROVEMENTS

### §3101. Eminent domain power

A municipality may acquire real estate or easements for any public purpose by using the condemnation procedure for town ways, as provided in Title 23, chapter 304, subject to the following provisions. The limitations set forth in this section do not apply to any taking authorized by any other law.

1. Owner resides on land. The municipality may not take any land without the consent of the owner if, at the time of the taking, the owner or the owner's family resides in a dwelling house located on the land.

2. Limitations on use. Except as provided in paragraph A, land taken under this section may not be used for any purpose other than the purposes for which it was originally taken.

A. Land in any municipality which is taken for a public park may, by authority of a majority vote of the municipal legislative body, be conveyed to the Federal Government to become part of a national park.

### §3102. Improvement of navigation and prevention of erosion

A municipality may acquire real estate or easements by the condemnation procedure for town ways, as provided in Title 23, chapter 304, and may contract with the State Government and Federal Government to comply with requirements imposed by the Federal Government in authorizing any project which has been approved by the Governor for improving harbor and river navigation or preventing property damage by erosion or flood.

1. Municipalities may act jointly. Two or more municipalities may act jointly in perfoming the operations authorized by this section.

2. Governor's power. With regard to such a project, the Governor may:

A. Designate a state agency to make any investigation considered necessary;

B. Provide for the State's payment of up to 1/2 of the contribution required by the Federal Government, when the Legislature has made an appropriation for it; and

C. Make an agreement with the Federal Government to hold and save it harmless from resulting claims.

### §3103. Natural gas systems

1. Order. To protect the health and safety of the public, municipalities which have natural gas distribution systems may, without hearing, order the gas company or natural gas pipeline company which distributes natural gas to shut down all or part of that system in any emergency. The municipality shall, by ordinance, set the procedure to be followed in ordering the shutdown.

2. Refusal. If the distributing utility refuses to carry out the order given under authority of subsection 1, then the municipal officers may take appropriate action to ensure that the system or any part of the system is shut down. The municipal officers may prescribe criminal penalties for violation of the order.

### §3104. Abatement of nuisances

The municipal officers of a municipality may, in the municipality's name, file a complaint in any court of competent jurisdiction requesting the abatement of any public nuisance within the municipality.

### §3105. Small borrow pits

1. Requirements. The following provisions apply to any borrow pit not otherwise within the jurisdiction of the Department of Environmental Protection, under Title 38, chapter 3, subchapter I, article 6, and which is not subject to a municipal ordinance enacted under subsection 2.

A. All borrow pits subject to this subsection shall comply with the following requirements.

(1) The average slope of any cut bank measured from a point located 10 feet from the boundary of any abutting property to the bottom of the cut bank in the pit shall not exceed a horizontal to vertical ration of 2:1. The owner of the borrow pit is responsible for maintaining this condition.

(2) The top of the cut bank of the borrow pit shall, at no time, be closer than 10 feet from the property boundary of any abutting landowner.

B. Upon request of any owner of land abutting any borrow pit, the municipal officers shall conduct an inspection of the borrow pit to ascertain compliance with this subsection.

(1) The municipal officers may request the Department of Transportation, Bureau of Project Development, Construction Division, to inspect the borrow pit in place of the municipal inspection. The Construction Division shall conduct an inspection of the borrow pit in question when requested to do so by the municipal officers.

C. The person or persons conducting the inspection shall report their findings to the municipal officers, the abutting landowner initiating the request and the owner of the borrow pit. Measurements shall be made from the property line designated by the abutting property owner initiating the request.

D. If the borrow pit is in violation of this subsection, the owner is liable for the cost of the inspection. If the borrow pit is not in violation of this subsection, the abutting landowner who made the request is liable for the cost of the inspection.

E. Upon notification of any violation under this subsection, the owner of the borrow pit shall bring the borrow pit into compliance with this subsection within 60 days. The municipal officers may require a shorter compliance period if they find that the violation poses an imminent danger to public safety or private property.

F. Any owner of a borrow pit who fails to bring the borrow pit into compliance with this subsection is subject to a civil penalty not to exceed $50 per day for every day elapsing after the expiration of the compliance schedule established under paragraph E, payable to the municipality in which the borrow pit is located, to be recovered in a civil action brought by the municipality.

2. Municipal jurisdiction. A municipality may enact ordinances under its home rule authority regulating the siting, construction or operation of borrow pits not within the jurisdiction of the Department of Environmental Protection, under Title 38, chapter 3, subchapter I, article 6. The ordinance must, at a minimum, include the requirements of subsection 1, paragraph A, but may include standards which exceed those requirements.

## CHAPTER 153

## MUNICIPAL FIRE PROTECTION

### §3151. Definitions

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

1. Municipal fire department. "Municipal fire department" means an organized firefighting unit established under municipal charter, ordinance or bylaw to prevent and extinguish fires.

2. Municipal firefighter. "Municipal firefighter" means an active member, whether full-time, part-time or on call, of a municipal fire department, who aids in the extinguishment of fires or an individual who receives compensation from the municipality for aiding in the extinguishment of fires.

3. Volunteer fire association. "Volunteer fire association" means an organized firefighting unit incorporated under Title 13, chapter 81, or Title 13-B, and which is officially recognized by the municipality.

A. Any volunteer fire association incorporated under either Title 13, chapter 81, or Title 13-B, on or after January 1, 1978, shall be considered incorporated for the purposes of this section.

B. The appropriation of money by a municipality toward the support of an organized firefighting unit incorporated under Title 13, chapter 81, or Title 13-B, is prima facie evidence of official recognition.

4. Volunteer firefighter. "Volunteer firefighter" means an active member of a volunteer fire association who receives no compensation from the municipality other than injury and death benefits.

### §3152. Fire protection

1. Methods of protection. A municipality may provide fire protection by:

A. Maintaining a municipal fire department;

B. Supporting a volunteer fire association; or

C. Contracting with other governmental units for fire protection services.

2. Fire protection zones. A municipality may establish administrative areas of the municipality for firefighting and fire protection purposes, to be served by one fire department or volunteer fire association, which shall be called "fire protection zones." Fire protection zones must be established by the vote of the municipal legislative body or by regulations adopted by the municipal officers if the municipal legislative body so provides.

### §3153. Fire chiefs

Notwithstanding the method of fire protection services provided by a municipality, a fire chief shall be appointed in each municipality, unless the municipality provides by vote of its legislative body for the election of a municipal fire chief by the members of the municipal fire department or volunteer association, or provides that the voters of the municipality will elect a municipal fire chief at the regular municipal election or town meeting.

In municipalities served by more than one volunteer association or municipal fire department, the municipality may by vote of its legislative body provide for the

election of a fire chief by the members of each fire department or association of the municipality, but no more than one fire chief may be elected within each fire protection zone. When more than one fire chief is provided for in a municipality, each fire chief shall exercise in the fire chief's fire protection zone all powers and duties of a municipal fire chief and shall control and direct all municipal and volunteer firefighters in the performance of firefighting operations within the fire chief's fire protection zone, except as provided in this chapter.

1. Term; compensation. Unless otherwise provided by contract, charter or ordinance, fire chiefs shall be appointed for an indefinite term. The municipal officers shall determine the compensation of the fire chief.

2. Duties. The fire chief shall:

A. Direct and control all municipal and volunteer firefighters in the performance of firefighting operations within the municipality except as provided in Titles 12 and 25;

B. Provide a training program for firefighters within the municipality in cooperation with appropriate governmental agencies;

C. Provide for the maintenance of all fire equipment owned by the municipality and buildings used by the municipal fire department;

D. Prepare and submit annually to the chief administrative official of the municipality a budget relating to fire protection activities; and

E. Suppress disorder and tumult at the scene of a fire and generally direct all operations to prevent further destruction and damage.

3. Powers. The fire chief may:

A. Unless otherwise provided by charter or ordinance, employ all municipal firefighters, appoint a deputy and other officers in a municipal fire department and remove them for cause after notice and hearing;

B. With the approval of the municipal officers, adopt administrative regulations relating to municipal fire protection, consistent with this chapter and municipal ordinances;

C. Obtain assistance from persons at the scene of a fire to extinguish the fire and protect persons and property from injury; and

D. Pull down and demolish structures and appurtenances if the fire chief judges it necessary to prevent the spread of fire.

§3154. Firefighters

1. Duties. Firefighters are under a duty to extinguish all fires to which they are called, to protect lives and property endangered by fires and to carry out all other related activities as directed by the fire chief.

A. A firefighter may use a reasonable degree of nondeadly force when the firefighter reasonably believes that this force is necessary to carry out the duties under this subsection.

2. Training. All firefighters shall attend training sessions as scheduled by the fire chief.

3. Medical examinations. No person hired after June 28, 1974 may serve as a full-time member of a municipal fire department unless the person has undergone a complete preemployment medical examination; nor may the person serve as a full-time member of a municipal fire department if, in the opinion of competent medical authority after examination, the person is not capable of performing the required duties.

§3155. Municipal liability; demolished buildings

If the pulling down or demolition of any structure or appurtenance, except that in which the fire originated, is used to stop the spread of fire, the owner of that structure or appurtenance may recover reasonable compensation for its destruction from the municipality in a civil action.

§3156. Fire aid to other municipalities

Unless otherwise provided by charter or ordinance, the municipal officers may authorize the municipal fire department to aid in extinguishing fires in other municipalities. Municipal and volunteer firefighters when assisting other municipalities have the same privileges and immunities as when acting in their own municipality. Any municipality may compensate an aiding municipality or volunteer fire association for damage to the aiding department or association's property and to any firefighter or to the firefighter's widow or dependents because of injury or death sustained in the course of rendering aid to that municipality.

§3157. Automotive fire apparatus

All new automotive fire apparatus purchased by municipal fire departments or volunteer fire associations with public money must be constructed and equipped in conformance with the standards set forth in the edition of National Fire Protection, Pamphlet #1901, Standards for Automotive Fire Apparatus, which is in effect on the date of the purchase agreement.

A municipality or volunteer fire association which receives delivery of automotive fire apparatus not in conformance with these standards may, in addition to its other remedies, recover in a civil action a penalty from the seller in an amount equal to 10% of the purchase price of the apparatus.

## CHAPTER 155

## MUNICIPAL FORESTS

### §3201. Municipal forests

Under its home rule authority, a municipality may acquire lands for the purpose of forestation or for reclaiming and planting forest trees on such lands.

### §3202. National forest funds; use for schools and roads

All sums received by the State from the Federal Government on account of the national forests in the State established under the "Weeks Act," Public Law 61-435, and amendments to that Act, shall be distributed as follows.

1. Apportionment and payment. The Treasurer of State shall first apportion these funds among the municipalities and unorganized places in which the national forest is located, in proportion to the area of the national forest in each, as determined by the Forest Service of the United States Department of Agriculture. The Treasurer of State shall pay the apportioned sums, within 60 days of receipt of the funds, to the treasurers of the appropriate municipalities.

2. Expenditure by municipalities. All sums apportioned and paid to municipalities under subsection 1 must be expended for the benefit of the public schools and public roads of the municipality, in addition to the sums required by law to be raised for those purposes, in the manner determined by appropriations made by the municipal legislative body.

3. Expenditures by counties. All sums apportioned paid to unorganized places under subsection 1 must be expended for the benefit of public schools and public roads in the counties in which those places are located, in the manner determined by the Governor.

### §3203. Profits from state-owned land

In municipalities where the State owns land acquired through the use of federal aid funds under the United States Code, Title 16, Chapter 5-B, and upon which natural products are sold or leased, the State shall pay 50% of the net profits which it receives from the sale or lease of such natural products to the municipality in which the land is located.

## CHAPTER 157

## PARKS, TREES AND PLAYGROUNDS

## SUBCHAPTER I

## GENERAL PROVISIONS

### §3252. Preservation of trees along public ways and water

1. Creation of preserved lands. For the purpose of preserving and increasing the growth of trees on land abutting any public way or located on uplands adjoining any river or other body of water, municipalities and municipal officers, acting under section 3101, may set aside and define such land, not exceeding 5 rods in width. Any municipality may appropriate money for the purposes of this section.

2. Regulation of lands. All trees and shrubs growing on the land set aside under subsection 1 shall be held as for park purposes. Except as provided in this section, no owner in fee of this land or any other person may injure, remove or destroy these trees or shrubs. Municipal officers may grant written license to the owner to do cutting and clearing on the land when consistent with the preservation and general improvement of the growth on the land.

Except as provided, this section does not restrict the owner's use and enjoyment of the land or authorize any person to enter on the land, except for municipal officers and conservation commissioners and their agents for the purposes of this section.

3. Proceedings; compensation. All proceedings relating to estimating and awarding damages under this section are governed by section 3101.

4. Public ways, private ways and buildings. Provided the written consent of the municipal officers is obtained first, this section does not:

A. Prevent the taking and clearing of any of the land set aside under subsection 1 that is necessary for public ways; nor

B. Abridge the right of the owner or the owner's tenant to lay out a private way across that land or to clear and improve any of the land that is necessary for actual building purposes.

(1) If the municipal officers refuse to give consent for laying out a private way or for cutting and clearing any of the land that is necessary for immediate building purposes, when requested to do so in writing, that refusal is ground for a further award of damages to the owner as provided in subsection 3.

5. Violation. Whoever violates this section:

A. Commits a civil violation for which a forfeiture of not more than $100 may be adjudged; and

B. Is liable to a civil action, brought by the conservation commissioners or by a taxpayer in the name and for the benefit of the municipality in which the offense is committed, for all damages sustained.

## SUBCHAPTER II

## CONSERVATION COMMISSIONERS

§3261. Conservation commissions

Unless otherwise provided under their home rule authority, municipalities may establish conservation commissions as provided in this section.

1. Appointment of commissioners. The municipal officers may appoint at least 3, but not more than 7, conservation commissioners. Members shall initially be appointed for terms of one, 2 and 3 years, such that the terms of approximately 1/3 of the members will expire each year. Their successors shall be appointed for terms of 3 years each. Members shall serve until the appointment of their successors.

The commission may recommend to the municipal officers that associate members be appointed to assist the commission as the commission requires. Associate members are nonvoting members. Their terms of office shall be for one, 2 or 3 years.

2. Duties of commission. The commission shall:

A. Keep records of its meetings and activities and make an annual report to the municipality;

B. Conduct research, in conjunction with the planning board, if any, into the local land areas;

C. Seek to coordinate the activities of conservation bodies organized for similar purposes; and

D. Keep an index of all open areas within the municipality, whether publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information relating to the proper protection, development or use of those open areas. The commission may recommend to the municipal officers or any municipal body or board, or any body politic or public agency of the State, a program for the better protection, development or use of those areas, which may include the acquisition of conservation easements.

(1) Any body politic or public agency of the State conducting planning operations with respect to open areas within a municipality having a conservation commission shall notify that conservation commission of all plans and planning operations at least 30 days before implementing any action under that plan.

3. Powers of commission. The commission may:

A. Advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it considers necessary;

B. Have the care and superintendence of the public parks and, subject to the approval of the municipal officers, direct the expenditure of all money appropriated for the improvement of those parks;

C. Acquire land in the municipality's name for any of the purposes set forth in this section with the approval of the municipal legislative body; and

D. Receive gifts in the municipality's name for any of the commission's purposes and shall administer the gift for those purposes subject to the terms of the gift.

4. Park commission under previous law. This section does not require a municipality which has previously created a park commission under prior law to establish a conservation commission. Any such park commission previously created may continue to operate as originally established.

§3262. Failure to elect; function of municipal officers

If any municipality fails to appoint a board of conservation commissioners, the municipal officers shall have and exercise all the powers and duties of the commissioners, except as provided in sections 3263 and 3264 and subchapter IV.

§3263. Supervision of shade trees

All public shade trees may be under the care and control of conservation commissioners in municipalities which appoint those commissioners under this subchapter. The conservation commissioners may have the powers and duties of tree wardens in regard to those trees.

§3264. Park commissioners

1. Park commissioners; appointment. Notwithstanding section 3261, municipalities may elect or appoint 5 park commissioners, initially to hold office for one, 2, 3, 4 and 5 years, respectively. Their successors shall be appointed for terms of 5 years each. Members shall serve until the appointment of their successors.

2. Duties. The park commissioners shall:

A. Have the care and superintendence of the public parks; and

B. Subject to the approval of the municipal officers, direct the expenditure of all money appropriated or available for the improvement of those parks.

SUBCHAPTER III

ENERGY COMMISSIONERS

§3271. Energy commissions

Unless otherwise provided under their home rule authority, municipalities may establish energy commissions as provided in this section.

1. Appointment of commissioners. The municipal officers may appoint at least 3, but not more than 7, energy commissioners. Members shall initially be appoint-

terms of one, 2 and 3 years, such that the terms of approximately 1/3 of the members will expire each year. Their successors shall be appointed for terms of 3 years each. Members shall serve until the appointment of their successors.

2. Combination with conservation commission. Notwithstanding sections 3261 to 3264, municipal officials may combine the duties of a municipal energy commission with those of an existing conservation commission to create an entity with responsibilities for a wide range of energy and conservation issues.

§3272. Purpose; activities

1. Purposes. The purposes of the municipal energy commission may include the following:

A. To study and recommend energy policies to the municipal officers, body or board and to the planning board, if any;

B. To reduce energy consumption in the municipality by encouraging energy conservation and better energy management;

C. To promote efforts to increase community energy self-sufficiency through the development of safe, efficient and renewable energy resources;

D. To provide leadership and direction for local energy conservation education;

E. To work with other public and private organizations to secure funding and other resources for local energy projects and employment;

F. To coordinate their efforts with those of other local, regional and state organizations; and

G. To serve other purposes related to energy as specified by the municipality.

2. Activities. The commission may undertake the following activities.

A. The commission may seek technical assistance from the Office of Energy Resources. That office shall notify local energy commissions, in writing, of plans and projects that may affect those commissions, if the commission so requests.

B. In conjunction with the planning board, if any, the commission may promote and conduct research, in furtherance of its purposes, in the following areas:

(1) Public transportation;

(2) Van pools and car pools;

(3) Recycling;

(4) Solar power;

(5) Cogeneration;

(6) Hydro-electric power;

(7) Energy audits;

(8) Energy conservation; and

(9) Other activities that will make the municipality more energy self-sufficient through the use of renewable energy resources.

3. Notice of formation; records; annual report. The commission shall notify the Office of Energy Resources of its formation. The commission shall keep records of its meetings and activities and shall make an annual report to the municipality.

## SUBCHAPTER IV

## PUBLIC SHADE TREES

§3281. Public shade trees

All trees within or upon the limits of any highway are public shade trees.

§3282. Appointment and duties of tree wardens

The municipal officers of municipalities which have not appointed conservation commissioners under subchapter II may annually appoint one or more tree wardens who have the care and control of all public shade trees upon and along the highways and in the parks of the municipality and all streets within any village limits. They shall enforce all laws relating to the preservation of those trees.

§3283. Removal of trees

Public shade trees may be trimmed, cut down or removed by the owner of the land only with the consent of a tree warden or the conservation commission. Public shade trees may be trimmed, cut down or removed by a tree warden or conservation commissioner only with the consent of the landowner.

1. Trimming, cutting or removal authorized. This section does not prevent the trimming, cutting or removal of trees when the trimming, cutting or removal is ordered by proper authority to:

A. Lay out, alter or widen the location of highways;

B. Lessen the danger of travel on highways; or

C. Suppress tree pests or insects.

§3284. Injury or destruction to trees; penalty

Whoever trims, cuts or otherwise damages or destroys a public shade tree commits a civil violation for which a forfeiture of not less than $5 nor more than $25 may be adjudged. The forfeiture shall be paid to the municipality in which the offense is committed and expended by that municipality for the purposes specified in this subchapter and section 3263.

## SUBCHAPTER V

## FUNDS

### §3291. Cutting and removal of trees and brush

1. Initial cutting by municipality. A municipality may each year set aside a portion of the money raised and appropriated for ways and bridges, to be used to cut and remove all trees, shrubs and useless fruit trees, bushes and weeds, except shade trees, timber trees, cared-for fruit trees and ornamental shrubs growing between the road limit and the wrought part of any highway or town way, until all the trees, shrubs and worthless fruit trees, bushes and weeds have been once removed from the limits of the highway or town way.

2. Maintenance of cleared land. After the land has been initially cleared, the owner of the land adjoining the highway or town way shall each year, before the first day of October, remove all bushes, weeds, worthless trees and grass from the roadside adjoining the owner's cultivated or mowing fields. The municipality shall care for all other land, except wild land.

3. Violation. If any owner of land required to be maintained under subsection 2 fails to do so before the first day of October of each year, the municipal officers of the municipality in which the land is located shall have the bushes, weeds, worthless trees and grass cut and removed. The actual expense of this cutting and removal shall be a lien upon the land adjoining the highway or town way and shall be assessed and collected as a tax on that land.

# CHAPTER 159

# PUBLIC DUMPS

### §3351. Acquisition

Any municipality may, by action of its legislative body, direct its municipal officers to take suitable lands for public dumping grounds. When so directed, the municipal officers shall follow the condemnation procedure for town ways, as provided in Title 23, chapter 304.

1. Acceptance. The public dumping ground is not established until it has been accepted, as laid out, by the municipal legislative body.

2. Disposal. Any public dumping ground that ceases to be useable as such may be disposed of in the same manner as other lands owned by the municipality.

3. Application. Public dumping grounds established under this section are subject to Title 12, chapter 807, subchapter IV, article 1.

### §3352. Prohibited dumping

1. Prohibited dumping. Notwithstanding Title 17-A, section 4-A, whoever personally or through the agency of another leaves or deposits any offal, filth or other noisome substance in any public dumping ground, except in the manner prescribed by the local health officer, is guilty of a Class E crime and shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not more than 3 months.

2. Civil action. A municipality may recover any expenses incurred in abating the nuisance caused by the violation in a civil action brought in the name of the municipality against the guilty party. If requested and the violation merits it, the court in its discretion may award double damages in the action.

### §3353. Rat control

Whenever a municipality maintains public dumping grounds, its municipal officers shall have the dumping grounds treated, when needed, with proper rat exterminating agents. These agents must be applied by competent persons properly certified for their use.

At the request of the municipal officers of any municipality, the Board of Pesticides Control shall provide information on the most effective methods and materials for the purpose of carrying out this section.

# CHAPTER 161

# SEWERS AND DRAINS

## SUBCHAPTER I

## GENERAL PROVISIONS

### §3401. Preexisting drains

All drains previously made at a municipality's expense shall be maintained, managed, controlled and entered the same as if made under this chapter and Title 23, section 3251, subject to the rights that private persons have in those drains.

### §3402. Construction of drains; expense and control; notice; damages

1. Construction of sewers and drains. The municipal officers of a municipality, or a committee duly chosen by the municipality, may construct public drains or sewers, sewer systems or sewage disposal systems at the municipality's expense, along or across any public way in the municipality and through or upon any lands of persons when they consider it necessary for public convenience or health. Neither the municipal officers nor such a com-

mittee may construct any public sewer, sewer system or sewage disposal system in the municipality until that sewer is authorized by vote of the municipal legislative body and an appropriation made for the purpose. When constructed, these sewers, sewer systems or sewage disposal systems are under the control of the municipal officers.

2. Taking of land. Before the land is taken for the construction of any sewer, notice shall be given and damages assessed and paid for the land as is provided for the location of town ways under Title 23, chapter 304.

§3403. Proper maintenance of drains required

After a public drain has been constructed and any person has paid for connecting with it, the municipality shall maintain and keep it in repair to afford sufficient and suitable flow for all drainage entitled to pass through it, but its course may be altered or other sufficient and suitable drains may be substituted in its place. If the municipality does not so maintain and keep it in repair, any person entitled to drainage through it may have an action against the municipality for damages sustained by the municipality's neglect.

§3404. Record of proceedings; prosecutions

All proceedings of municipal officers under this chapter must be at their legal meetings. A suitable record shall be made of all permits issued under this chapter, describing the persons and lands to which they apply. The municipal officers have the exclusive direction, on behalf of their municipality, of all prosecutions under this chapter.

§3405. Sewer connections

If required by municipal ordinance, the owner of each lot or parcel of land upon which a building has been constructed which abuts upon a street or public way containing a sewer shall connect that building with the sewer and shall cease using any other method for the disposal of waste water. All such connections must comply with the applicable municipal ordinance, which may provide for a reasonable charge for making the connections.

§3406. Service charges for sewage disposal

The municipal officers may establish a schedule of service charges from time to time upon improved real estate connected with a municipal sewer or disposal system for the use of the system. These service charges shall include reserve fund contributions.

1. Interest. The municipal officers may charge interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes.

2. Lien. There shall be a lien on real estate served or benefited by a municipal sewer or sewer disposal system to secure the payment of service charges and interest on delinquent accounts established under this chapter. This lien takes precedence over all other claims on the real estate, excepting only claims for taxes.

3. Collection. The treasurer of the municipality may collect the service charges and interest on delinquent accounts in the same manner as granted by Title 38, section 1208, to treasurers of sanitary sewer districts with reference to rates established and due under Title 38, section 1202.

§3407. Damage to public drains

Whoever willfully or negligently damages or obstructs a public drain or its outlet, or any street or highway culvert leading into it, is liable to the municipality where it is located in a civil action for double the amount of damages caused by that action, in addition to all other legal penalties for that action.

§3408. Crossing railroad right-of-way

Whenever a public drain or sewer is located and about to be constructed across the right-of-way of any railroad, the Public Utilities Commission shall determine the place, manner and conditions of the crossing upon petition of either party and after notice and hearing, unless the municipal officers or committee of the municipality which located the drain or sewer agrees with the corporation operating the railroad as to the place, manner and conditions of the crossing. All the work within the limits of the railroad location shall be done under the supervision of the officers of the corporation operating the railroad and to the satisfaction of the commission. The municipality in which the drain or sewer is located shall bear the expense of the work. Any additional expense in the construction of that part of the sewer or drain within the limits of the railroad's right-of-way caused by the commission's determination shall be borne by the railroad company or by the municipality in which the drain or sewer is located, or shall be apportioned between the company and the municipality as the commission determines. The commission shall make a report of their decision in the same manner as in the case of highways located across railroads and subject to the same right of appeal.

§3409. Consent for highway opening

Whoever digs up the ground in a highway or street to lay or repair any drain or common sewer without the written consent of the municipal officers commits a civil violation for which a forfeiture of $100 may be adjudged for each offense.

SUBCHAPTER II

PRIVATE DRAINS

§3421. Private drains connected to public drains

1. Acceptance by municipality. This section does not apply to any municipality until it is accepted by the municipality's legislative body.

2. Connection before completion of drain. While a public drain or common sewer is under construction and before it is completed and the assessments made, any person may connect their private drain with the public drain or common sewer after obtaining a written permit from the municipal officers or the sewer board in charge of the construction of the public drain or common sewer.

3. Connection after completion of drain. After the public drain or common sewer is completed and the assessments made, no person may connect their private drain with the public drain or common sewer until that person has paid an assessment and obtained a written permit from the municipal treasurer, by authority of the municipal officers.

4. Permits recorded. The municipal clerk shall record all permits given to connect with any such drain or sewer before issuing the permit.

§3422. Connection of private drains; permits; regulations

1. Connection of private drains; application. Abutters upon the line of a public drain existing in any municipality which has not accepted sections 3421, and 3441 to 3445, and abutters upon the line of a public drain constructed before a municipality accepts those sections, and the owner of contiguous private drains may enter and connect with the public drain on written application to the municipal officers distinctly describing the land to which the application applies and paying a fee determined by the municipal officers.

2. Permit issued. Upon application, the municipal officers shall give the applicant a written permit to enter and connect with the public drain. This permit is available to the owner of the land described in the application, the owner's heirs and assigns, and shall run with the land without any other or subsequent charge or payment.

3. Regulations. The municipal officers shall establish any other regulations and conditions for connecting with public drains that they consider expedient.

§3423. Connection without permit

If any person connects a private drain with a public drain or enters it by a side drain without a permit, the municipal officers may immediately destroy the connection. That person commits a civil violation for which a forfeiture of not more than $200 may be adjudged, to be paid to the municipality where the offense is committed.

§3424. Adjustment of amounts paid for permits

1. Arbitration of permit fee. Any person who is dissatisfied with the fee required to connect with a public drain may, within 10 days after notice of that amount, make a written request to the municipal officers to have the amount of the fee determined by arbitration. The municipal officers shall nominate 6 persons. The applicant shall select 2 of these persons and a 3rd person who was not nominated by the municipal officers to act as arbitrators. These 3 persons may fix the amount of the fee. The arbitrators shall report their findings to the municipal clerk who shall record them with the proceedings of the municipal officers in establishing the drains.

2. Payment of fees. By paying the amount set by the arbitrators and the fees of the arbitrators, the applicant shall receive a permit. The municipal officers may determine the fees of the arbitrators, which shall be paid in advance, if required.

3. Failure to pay for permit. If any person neglects to pay the fee determined by arbitration under subsection 1 and the fees of the arbitrators, within 60 days after notice of that fee, that person shall have no benefit of that determination or of that person's permit.

§3425. Pro rata payments for use of private drain

1. Creation of drain or sewer. When a person pays the expenses of laying a common drain or sewer, all persons who join or connect with it shall pay their proportion of that expense.

2. Repairs. All persons benefited by the drain or sewer shall pay the expense of opening and repairing the drain or sewer.

A. Before a common drain is opened for repairs under this subsection, all interested persons must have 7 days' notice of the repairs, given as the municipal officers direct. If anyone objects and the municipal officers find the objection reasonable, the person objecting is not liable for any expense for the repairs. If the municipal officers find the objection to be unreasonable or if no objection is made within 3 days, the municipal officers may give written permission to proceed.

B. The municipal officers shall determine the amount of the payment under this subsection in each case, subject to appeal to the county commissioners. The municipal officers shall notify each person of the amount to be paid and to whom. If not paid in 10 days, double the amount with cost shall be paid.

§3426. Repair of private drain on owner's neglect

If a private drain becomes so obstructed or out of repair as to damage any street or highway, and the persons using the drain, after notice by the road commissioners, unreasonably neglect to repair the drain and the damage to the street or highway, the municipality shall repair the drain and the damage to the street or highway. The municipality may recover the expense of these

repairs in a civil action against any one or more of the persons using the drain.

§3427. Violation of permit; nuisances

If any person willfully or negligently violates any condition or regulation prescribed in the permit, the municipal officers may immediately disconnect their drain from the public drain and declare the permit forfeited. That person, the person's heirs and assigns may not connect with the public drain again without a new permit. Whoever commits a nuisance by the construction or use of a private drain is liable for that nuisance notwithstanding this chapter.

§3428. Malfunctioning domestic waste water disposal units; abatement of nuisance

Malfunctioning waste water disposal units, including septic tanks, cesspools, cisterns, dry wells, drainage beds, drains, sewer lines and pipes and the like, have become a menace to the health and general welfare of the citizens of this State and are declared to be a nuisance.

1. Abatement procedure. Upon complaint of any person or on their own information, the municipal officers shall serve an order to remedy a malfunctioning waste water disposal unit upon the owner or occupant of any premises within that municipality which has such a malfunctioning unit.

2. Content of order. The order shall be addressed to the owner of the premises and must contain:

A. The date;

B. The fact of the malfunctioning waste water disposal unit;

C. A notice to remedy the nuisance within 10 days of service of the order; and

D. The signatures of the municipal officers.

If service is to be made upon a tenant or occupant in possession, the order must be addressed to that person in addition to the owner.

3. Service and return of service. One of the municipal officers or a law enforcement officer shall serve the order personally upon the owner, tenant or occupant in possession. The server shall make and file a return of service indicating the method used and the person served.

4. Abatement. If the nuisance is not abated within the 10-day period, the municipal officers or their agents may enter the premises and have the malfunction adequately remedied. To recover any actual and direct expenses, including reasonable attorney fees if the municipality is the prevailing party, incurred by the municipality in the abatement of such nuisances, the municipality shall:

A. File a civil action against the owner. The costs, including reasonable attorney fees, to create and prosecute an action to collect expenses following such a civil complaint, shall also be recovered from the owners; or

B. Assess a special tax against the land on which the waste water disposal unit is located for the amount of the expenses. This amount shall be included in the next annual warrant to the tax collector of the municipality for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505, in the year in which the special tax is assessed, shall accrue on all unpaid balances of any special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest shall be added to and become part of the tax.

SUBCHAPTER III

ASSESSMENTS AND FEES

§3441. Applicability of provisions

This subchapter does not apply to any municipality until it is accepted by the municipality's legislative body.

§3442. Expense of construction

1. Sewer district defined. As used in this section, sewer district means a quasi-municipal corporation, as defined in section 2604, subsection 3, established to construct and operate sewer systems to assist in the abatement of the pollution of public streams, lakes and inland and ocean waters.

2. Estimate and assessment of costs; notice. When any municipality or sewer district has constructed and completed a public drain or common sewer, the municipal officers or sewer district trustees shall determine what lots or parcels of land are benefited by the drain or sewer, and shall estimate and assess upon the lots and parcels of land and against the owner of the land or person in possession, or against whom the taxes on the land are assessed, whether the person to whom the assessment is so made is the owner, tenant, lessee or agent and whether the land is occupied or not, the sum not exceeding the benefit they consider just and equitable towards defraying the expenses of constructing and completing the drain or sewer, together with any sewage disposal units and appurtenances that are necessary and in operation after May 31, 1979. The whole of the assessments may not exceed 1/2 the cost of the drain or sewer and sewage disposal units. The municipality or sewer district shall maintain and keep the drain or sewer in repair.

A. Farmland, as defined by Title 36, section 1102, subsection 4, is exempt from assessment under this subsection when no benefits are derived from the common sewer or drain. The owner of the farmland must noti-

fy the municipal officers or sewer district trustees that farmland property may qualify for this exception. The municipal officers or sewer district trustees shall revise the assessments against qualified farmland to exempt it from assessment. Any revision of assessment provided by this paragraph shall be in writing and recorded by the clerk or sewer district trustees.

When the use of the land is changed from farmland, the owner shall within 60 days notify the municipal officers or sewer district trustees in writing of the change. The municipal officers or sewer district trustees shall assess this land in an amount equal to the assessment which would have been due but for this subsection. The municipal officers or sewer district trustees shall notify the owner of the assessment due which the owner shall pay within 60 days of notice or as provided by the municipal officers under their authority in section 3444.

3. Filing of assessments. The municipal officers or sewer district trustees shall file with the municipal clerk:

A. The location of the drain or sewer and sewage disposal unit, with a profile description of the same;

B. A statement of the amount assessed upon each lot or parcel of land assessed under this section; and

C. The name of the owner of the lots or parcels of land or persons against whom the assessment is made.

The municipal clerk and the sewer district trustees shall record the assessment in a book kept for that purpose.

4. Notice of assessment. Within 10 days after filing occurs under subsection 3, each person so assessed shall have notice of the assessment given to that person or left at that person's usual place of abode in the municipality.

A. If the person has no place of abode in the municipality, then the notice shall be given or left at the abode of the tenant or lessee, if any. If there is no tenant or lessee in the municipality, then the notice shall be given by:

(1) Posting it in some conspicuous place in the vicinity of the lot or parcel of land so assessed at least 30 days before the hearing; or

(2) Publishing it for 3 successive weeks in any newspaper of general circulation in the municipality. The first publication must be at least 30 days before the hearing.

B. The notice must contain an authentic copy of the assessment, and an order of notice signed by the municipal clerk or the chairman of the sewer district trustees stating the time and place for a hearing upon the subject matter of the assessments. A return made upon a copy of the notice by any constable in the municipality or the production of the paper containing the notice is conclusive evidence that the notice was given.

5. Hearing; revision of assessments. When the hearing is held, the municipal officers or sewer district trustees may revise, increase or diminish any of these assessments. Any revision, increase or diminution must be in writing and recorded by the municipal clerk and the sewer district trustees.

§3443. Arbitration of assessment

Any person who is dissatisfied with the amount assessed under section 3442 may, within 10 days after hearing under section 3442, subsection 5, make a written request to the municipal clerk to have the assessment upon the lot or parcel of land determined by arbitration.

1. Arbitrators selected. The municipal officers shall nominate 6 persons who are residents of the municipality. The applicant shall select 2 of these persons, and these 2 persons shall select a 3rd person who is a resident of the municipality and who is not one of the 6 persons nominated by the municipal officers.

2. Arbitration procedure. The 3 persons selected under subsection 1 shall fix the amount to be paid by the applicant. Within 30 days from the hearing before the municipal officers under section 3442, the arbitrators shall report their findings to the municipal clerk who shall record them. The arbitrators' report is final and binding on all parties.

§3444. Collection of assessments

Except for service charges established under section 3406 which shall be collected as provided in that section, all assessments and charges made under this chapter shall be certified by the municipal officers and filed with the tax collector for collection. A facsimile of the signatures of the municipal officers imprinted at their direction upon any certification of an assessment or charge under this chapter has the same validity as their signatures.

1. Payment over time. The legislative body of a municipality may enact an ordinance generally authorizing the assessors and the tax collector to assess and collect those assessments and charges over a period of time not exceeding 10 years, including expenses involved in the municipality's abatement of malfunctioning domestic waste water disposal units under section 3428, subsection 4.

A. The assessors and collector may exercise this authority only when the person assessed has agreed to that method of assessment and collection in writing and notice of that fact has been recorded in the appropriate registry of deeds.

B. The municipal officers shall annually file with the

collector a list of installment payments due the municipality which shall be collected with interest at a rate determined by the municipal officers. If, within 30 days after written notice of the total amount of the assessments and charges, or annual installment payment and interest, the person assessed fails, neglects or refuses to pay the municipality the expense incurred, the municipal assessors may assess a special tax, equal to the amount of the total unpaid assessment and charges, upon each lot or parcel of land so assessed and buildings upon the lot or parcel of land. This assessment shall be included in the next annual warrant to the tax collector for collection and shall be collected in the same manner as state, county and municipal taxes are collected.

(1) Interest at the rate of 12% per year on the unpaid portion of assessments and charges due the municipality shall accrue from the 30th day after written notice to the person assessed and shall be added to and become part of the special tax when committed to the tax collector.

2. Action to recover unpaid assessments. If assessments under this section are not paid, and the municipality does not proceed to collect the assessments by a sale of the lots or parcels of land upon which the assessments are made, or does not collect or is in any manner delayed or defeated in collecting the assessments by a sale of the real estate so assessed, then the municipality may maintain a civil action in its name against the party so assessed for the amount of the assessment in any court competent to try the action. In this action, the municipality may recover the amount of the assessment with 12% interest on the assessment from the date of the assessment and costs.

§3445. Lien for payment on lot and building; enforcement

When any assessment made under section 3442 is paid by any person against whom the assessment has been made, who is not the owner of the lot or parcel of land, then the person paying the assessment has a lien upon the lot or parcel of land with the buildings on the land for the amount of the assessment paid by that person, and incidental charges. The lien may be enforced in a civil action, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots under Title 10. The lien shall continue one year after the assessment is paid.

## CHAPTER 163

## TRANSPORTATION

§3501. Definitions

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

1. District. "District" includes:

A. A district created by vote of a single municipality;

B. A district created by vote of a group of municipalities;

C. A municipality voting to provide mass transportation service without the creation of a district; and

D. A regional transportation corporation, except that sections 3510, 3512 and 3517 do not apply to a regional transportation corporation.

2. Regional transportation corporation. "Regional transportation corporation" means any private, nonprofit corporation formed for the express purpose of providing public transportation services to more than one municipality but which is not wholly or partly owned by the municipalities. The corporation must be approved, for the purpose of providing public transportation services, by the municipal officers of each community to receive public transportation services from the corporation. After being approved by the municipal officers of 5 or more communities, such a corporation shall be duly certified as a regional transportation corporation by the Department of Transportation and is subject to all applicable Public Utilities Commission rules governing charter and rates of fare.

§3502. Formation

1. Formation. By vote of its legislative body, any municipality may by itself, or in cooperation with one or more other municipalities, form a transit district for the purposes provided in this chapter.

A. Municipalities not in the same geographic public transportation region must gain approval from the Department of Transportation before forming a transit district under this section.

B. With the consent of the Department of Transportation and of the municipal officers of any municipality not included in a transit district, a transit district may provide transportation services within that municipality.

2. General powers; area of service. The district formed under subsection 1 is a body politic and corporate, and may sue, be sued, plead and be impleaded, adopt a name, adopt and alter a common seal and do all things necessary to furnish motor vehicle mass transportation within that district, including charter service, for public purposes in the interest of the health, safety, comfort and convenience of the inhabitants of the municipality or municipalities comprising the district.

3. Incidental rights. All incidental powers, rights and privileges necessary to accomplish the main objective set forth in this chapter are granted to a district created. Such a district is subject to the jurisdiction of

the Public Utilities Commission only to the extent provided in this chapter.

§3503. Application for membership

Any municipality which is contiguous to any other municipality authorized to provide transportation services under this chapter or contiguous to any municipality which is a member of the transit district may apply to the transit district and the board of directors may accept or refuse the application for membership.

§3504. Management

The affairs of a district formed under section 3502 shall be managed by a board of directors chosen from the inhabitants of the municipality or municipalities comprising the district.

1. Number of directors. Except as provided in subsection 3, each municipality is entitled to one director for each 10,000 inhabitants of the municipality or fraction of that number, as determined by the latest Federal Decennial Census, in accordance with the following schedule:

A. 0 to 10,000—1;

B. 10,001 to 20,000—2;

C. 20,001 to 30,000—3;

D. 30,001 to 40,000—4;

E. 40,001 to 50,000—5;

F. 50,001 to 60,000—6;

G. 60,001 to 70,000—7; and

H. Over 70,001—8.

2. Appointment; terms; quorum. The municipal officers of each municipality shall appoint the directors of a transit district. Initially, the directors' terms of office shall be determined by lot at their first organizational meeting as follows: One-third of those appointed shall serve for 3 years, 1/3 for 2 years and the remaining number for one year. All subsequent appointments are for a term of 3 years. Directors shall serve until their successors have been appointed, with vacancies being filled for the unexpired portion of the respective terms.

A majority of the directors constitutes a quorum for the transaction of business. Action taken by 2/3 of the directors present at any meeting at which a quorum is in attendance is considered to be the action of the full board of directors.

3. Greater Portland Transit District. The board of directors of the Greater Portland Transit District, presently comprised of the Cities of Portland and Westbrook, shall consist of 5 directors appointed from the City of Portland and 3 directors appointed from the City of Westbrook. The Cities of Portland and Westbrook may, by ordinance, provide that their appointees serve at the will of the appointing power or for terms which are shorter than those established in subsection 2.

§3505. Single municipal or regional transportation district

1. Formation of district. If a single municipality votes to create a transit district, its municipal officers shall appoint 5 directors from the inhabitants of the municipality. These directors have the same terms of office, powers, duties and privileges as set forth in this chapter.

2. Operation without forming district. A single municipality, by vote of its legislative body, or a regional transportation corporation, by vote of its board of directors, may be empowered to perform the functions provided in this chapter without creating a district. Thereafter, that single municipality or regional transportation corporation has all of the powers, duties and privileges established applicable to a district, unless specifically excluded. The municipal officers of that municipality or directors of that regional transportation corporation have the same powers, duties and privileges granted under this chapter to the board of directors of a district.

§3506. Officers; meetings; employees

1. Officers; bylaws. The directors shall elect from among their members a president, treasurer, clerk and any other officers that they desire and shall adopt bylaws and regulations for the conduct of the district's affairs.

2. Meetings. The directors shall meet at least 4 times a year or more often if required by the bylaws, and upon the call of the president. The president shall call any other meetings that are requested in writing directed to the president signed by at least 1/3 of the members of the board of directors.

3. District manager; employees. The directors shall appoint and fix the salary of a district manager who may not be a director. The district manager is the chief executive officer of the district. The district manager shall appoint any other employees that are required for district purposes and fix the salaries of those employees. The directors may, by resolution, indicate which appointments by the manager and salaries established by the manager will require confirmation of the board of directors.

§3507. Interest in contracts

No director, officer or employee of the district may be interested directly or indirectly in any contract entered into by or in behalf of a district for work or material, or

the purchase of material, or in any property acquired or to be acquired by the district. All contracts made in violation of this section are void.

§3508. Certificate of organization

After its organization, the district shall file a certificate with the Secretary of State setting forth the following information:

1. Name. Name of the district;

2. Purposes. Its purposes;

3. Municipalities included. Municipalities included within the district;

4. Location. Location of the principal office;

5. Names of directors. Number and names of the directors and their addresses; and

6. Names of officers. Names and addresses of the officers.

This certificate shall be signed by the president and treasurer and a majority of the directors, and the president or treasurer shall swear that the signatures set forth in the certificate are true. From time to time as changes occur, the district shall file an amended certificate with the Secretary of State setting forth those changes.

§3509. Powers of directors

For the purpose of providing mass transportation services wholly or partially within the municipalities comprising the district, the directors of a district may:

1. Powers over property. Take, purchase, hold, maintain, operate, lease, rent, mortgage and convey any real and personal property;

2. Leasing property. Lease or sublease any real and personal property;

3. Private contracts. Enter into contracts with private companies; or

4. Government contracts. Contract with the Federal Government, State Government and municipal governments for donations, loans, grants, gifts or other assistance. The directors may agree in these contracts to be bound by all applicable provisions of federal, state or municipal laws, regulations and rules.

§3510. Eminent domain; appeal

A district may acquire for the public purposes of a district by purchase or by the exercise of the power of eminent domain any and all real property of any person, including the real and personal property and franchise of any person operating a local mass transportation service within any municipality comprising a district.

1. Determination of damages. If the district and the owner are unable to agree on a price within 60 days after the district has notified the owner of its intention to exercise its power of eminent domain, the board of directors of a district may, by resolution, take and acquire all or any part of the real and personal property and franchise of that owner, and shall determine the amount to be paid to the owner for that taking. Upon payment of this amount, or if payment is refused, upon depositing this amount with the treasurer of the district to be held in trust separate and apart from other funds of the district, the district may take and become the owner of the real and personal property and franchise set forth in the resolution.

A. Within 30 days after payment or tender, the board of directors shall have recorded in the registry of deeds in the county where the land and property is located:

(1) A certified copy of the resolution; and

(2) A description of any real property and a plan of the real property, together with a description of any personal property taken under this section.

B. The district shall have a certified copy of the resolution of the board of directors and a certified copy of the filing in the registry of deeds either delivered personally to the owner or the owner's agent or sent by registered mail to the owner.

C. If the district acquires, by eminent domain, real or personal property in connection with a project involving federal participation under the United States Urban Mass Transportation Act of 1964, Public Law 88-365, the district shall, in that acquisition, comply with all of the procedures established under that Act for acquiring real or personal property.

2. Appeal to Superior Court. If the owner is aggrieved at the damages awarded for a taking under this section, the owner may appeal from the award to the Superior Court of the county in which the property lies by filing a complaint in that court and serving the district with a copy of the complaint within 60 days from the date of the recording in the registry of deeds. The complaint must set forth substantially the facts, but shall not state the amount of the damages previously awarded to the owner. The damages may be determined in the Superior Court by a committee of reference if the parties so agree, or by a verdict of its jury. The committee of reference shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. If the damages are increased, the district shall pay the damages and costs; otherwise, the appellant shall pay the costs.

3. Appeal to Law Court. An appeal may be taken

by any party from the Superior Court's judgment to the Supreme Judicial Court as in other cases.

§3511. Exempt from taxation; fuel tax refund

The property, both real and personal, of a district, whether held and operated by itself or leased to a private operator, for the purpose of providing mass transportation as provided in this chapter, is exempt from all registration fees, real, personal, excise, sales and use, and any other taxes which are assessed by the State or any political subdivision of the State. A district, or its lessee, or any person contracting with the district for the purpose of furnishing mass transportation, is entitled to be reimbursed and paid to the extent of the full amount of the tax paid for fuel used in motor vehicles owned and operated by them for that purpose. That district, lessee or person shall present its claim to the State Tax Assessor in the form and with any information that the State Tax Assessor requires, accompanied by original invoices showing the purchases. Applications for refunds as provided must be filed with the State Tax Assessor within 9 months from the date of purchase.

§3512. Notes; securities

1. Securities defined. As used in this section, "securities" means negotiable bonds or notes issued by the district, including temporary notes.

2. Notes and securities authorized. For accomplishing the purposes of this chapter and for paying any indebtedness and any necessary expenses and liabilities incurred for that purpose, including organizational and other necessary expenses, the district by vote of its board of directors may:

A. Borrow money temporarily and issue its negotiable notes for that money; and

B. From time to time, issue securities of the district in one series or in separate series in such amount or amounts, bearing interest at such rate or rates and having such terms and provisions as the board of directors determines. These securities may be issued with or without provision for calling the securities before maturity and, if callable, may be made callable at par or at any premium determined by the board of directors. The board of directors may from time to time issue its securities in one series or in separate series for the purpose of paying, redeeming or refunding outstanding securities.

3. Form of notes and securities. All negotiable notes authorized for temporary borrowing shall be signed on behalf of the district by its treasurer and countersigned by its president. All securities shall have the corporate name of the district inscribed on their face, shall be signed by the treasurer and countersigned by the president and, if coupon bonds are issued, the interest coupons attached to the securities shall bear the facsimile of the treasurer's signature.

4. Legal obligations; investment by banks; tax exempt. All securities issued by the district are legal obligations of the district. The district is deemed to be a quasi-municipal corporation within the meaning of section 2604, subsection 3, and that section applies to the district. All securities issued under this section are legal investments for savings banks in this State and are tax-exempt.

5. Sinking fund. If the securities are to be payable for a specified term of years, the board of directors shall establish a sinking fund for the purpose of paying or redeeming the securities when they become due. The board of directors shall determine annually the sum, with interest, to be paid into the sinking fund by each municipality comprising the district. This sum shall be based on the same formula used in computing the operating deficit payment.

§3513. Collective bargaining; rights of employees

1. Bargaining authorized; contracts. The directors of a district may bargain collectively and enter into written contracts with duly authorized labor organizations representing employees other than executive, administrative or professional personnel. These contracts may provide for wages, salaries, hours, working conditions and benefits, including, but not limited to, provisions pertaining to health and welfare, insurance, vacations, holidays, sick leave, seniority, arbitration, pensions and retirement.

2. Rights of employees. It is declared to be the public policy of this State for the protection of the public health, safety and welfare that employees covered by contracts made under this section shall be accorded all of the rights of labor, except for the right to strike or engage in any work stoppage or slowdown.

3. Employees of acquired transportation system. Whenever a district acquires any local mass transportation system under this chapter and operates that system or leases or contracts for the operation of that system under this chapter, the individual employees of that system shall be retained in positions the same as, or no worse than, their positions before the district's acquisition of the system to the fullest extent possible consistent with sound management and to the extent required by the service to be rendered from time to time by the district, its lessee or contractor. Any such employee not retained or laid off after retention because of lack of work or curtailment of service shall be assured priority of employment or reemployment when a position for which that employee is qualified becomes available.

§3514. Limitation on charter service

Charter service provided by the district must originate or terminate at some point within that district. Charter service provided by a district is in all respects subject to the jurisdiction of the Public Utilities Commission in the same manner and to the same extent as private

companies providing charter service, except that a regional transportation corporation may not provide any charter service other than that specifically provided for under the conditions of any license granted the corporation by the Public Utilities Commission.

§3515. Routes and fares; sinking fund

1. Establishment of routes and fares. Except as provided in paragraphs A and B, the directors of a district shall establish such routes and fix such rates of fare to be charged for the mass transportation service as will, to the extent possible, reasonably ensure sufficient income to meet the cost of the service, including, but not limited to, operating expenses, insurance, taxes, rentals, annual serial bond payments, interest, allocation for a reserve account and an allowance for depreciation.

A. The directors of a district that participates in a regional operations plan that has been approved in accordance with Title 23, section 4209, shall establish routes and fixed fares in accordance with the plan whenever the plan requires.

B. The director of a regional transportation corporation shall not fix any rates of fare to be charged for mass transportation other than that specifically provided for under the conditions of any license granted the corporation by the Department of Transportation.

2. Use of surplus; sinking fund. If, after all such obligations have been met, a surplus remains, the directors may deposit all or any part of the surplus in a reserve account or in the sinking fund created by this chapter. If all or any part of the surplus is deposited in the sinking fund, the amount of the annual commitment to the tax assessors of the municipalities comprising the district covering payments to the sinking fund shall be reduced by the amount of that deposit.

3. Hearing required. The board of directors shall hold a public hearing before making any major changes in routes in the district or in the fare structure of the district.

§3516. Estimate of expenditures; contributions; budget

1. Estimate of expenditures and revenues. By November 1st of each year, the board of directors shall prepare and submit to the municipal officers of the municipalities comprising the district an itemized estimate of expenditures and revenues for the following calendar year, which shall be the fiscal year. This estimate must include the following:

A. An itemized estimate of anticipated revenues during the ensuing fiscal year from each source;

B. An itemized estimate of expenditures for each classification for the ensuing fiscal year, including payments of principal and interest on bonds or notes issued or to be issued by the district;

C. After the first year of operation, an itemized statement of all actual receipts from all sources to, and including September 30th of each previous fiscal year, with estimated receipts from those sources shown for the balance of the year;

D. After the first year of operation, an itemized statement of all actual expenditures, up to and including September 30th of each previous fiscal year, with estimated expenditures shown for the balance of the year; and

E. An estimate of revenue surplus or deficit of the district for the fiscal year for which estimates are being prepared.

2. Determination of municipal contributions. Each year, before submitting the estimates required by subsection 1 to the municipal officers, the board of directors of the district, by a 2/3 vote of its entire membership, shall establish a formula for contributions to be made by each municipality in order to defray any projected deficit. This formula and estimated amount of the contribution required from each municipality shall be shown in the estimates filed with the municipal officers of each municipality.

A. The formula shall be based upon such items as route mileage, profit or loss resulting from the service to the municipality, population and any other factors that the board of directors considers relevant.

B. If the board of directors is unable to establish the formula by a 2/3 vote of its entire membership, it shall, by November 1st:

(1) Petition the Public Utilities Commission; and

(2) Include with its submission of the estimates to the municipal officers of each municipality a statement that a formula has not been established but that a petition has been made to the Public Utilities Commission for findings and a decision with respect to a formula.

C. If a municipality refuses to accept a formula established by the board of directors and submitted to it by November 1st, the municipal officers of the municipality shall, within 30 days after the submission, notify the board of directors of their refusal. The board of directors shall then, by December 15th, petition the Public Utilities Commission as provided in paragraph B. Upon the filing of the district's petition, the Public Utilities Commission, after notice to all the municipalities comprising the district and a hearing, shall consider the formula and make its findings and decision with respect to the formula within 60 days from the filing of the district's petition. The findings and decision of the Public Utilities Commission are binding upon the district and the municipalities. The district or any municipality may appeal from the findings and decision of the Public Utilities Commission in accordance with Title 35-A, section 1320.

3. Budget; payment of allocations. By March 1st of each year, the board of directors shall adopt a final budget for that year which shall be itemized in the same manner as the estimate of expenditures and revenues under subsection 1. This budget shall be submitted immediately to the municipal officers of the municipalities comprising the district and the amounts allocated to each municipality to defray any projected revenue deficit in the budget shall be included in the warrant to the assessors of each municipality as provided in section 3517.

A. If an appeal from any findings and decision of the Public Utilities Commission as provided in subsection 2, paragraph C, is pending on March 1st, the allocations shall be made in accordance with the findings and decision of the Public Utilities Commission from which the appeal was taken. Any adjustments to these allocations required to be made in accordance with the decision upon any such appeal shall be made as follows.

(1) If the allocation to any municipality is increased, the additional payment shall be included in the current assessment or, if the increase is made after April 1st, the additional payment shall be certified to the municipal officers of the municipality who shall appropriate the amount of the increase out of unappropriated surplus, a contingency fund or shall raise that amount by issuing temporary notes which must be payable within one year from their dates.

(2) If the allocation to any municipality is decreased, the amount of the decrease shall be deducted from the current assessment or, if the decrease is made after April 1st, shall be paid by the district to the treasurer of the municipality from funds received from municipalities whose allocation is increased.

§3517. Warrant for taxes

Before April 1st of each year, the directors shall issue their warrant in the same form as the warrant of the Treasurer of State for taxes, with proper changes, to the assessors of the municipalities comprising the district. The warrant shall require the municipalities to assess the sum allocated to each municipality for payment of the operating deficit and the sum allocated to each municipality for payment into the sinking fund, if any, upon the taxable estates within those municipalities and to commit their assessment to the constable or collector of the municipalities. The constable or collector has all the authority and powers to collect these taxes as is vested by law to collect state, county and municipal taxes. Within 30 days after the date fixed by the municipality on which its taxes are due, the treasurer of the municipality shall pay the amount of the tax assessed under this section to the treasurer of the district.

1. Failure to pay. If the treasurer of a municipality fails to pay the sum assessed under this section, or fails to pay any part of the sum by the date set in the year in which the tax is levied, the treasurer of the district may issue a warrant for the amount of the tax, or so much of the tax as remains unpaid, to the sheriff of the appropriate county, requiring the sheriff to levy by distress and sale on real and personal property of any of the inhabitants of the municipality. The sheriff or any of the deputies shall execute the warrant.

§3518. Withdrawal

A municipality may withdraw from the district at the end of a fiscal year provided that it has given the board of directors at least one year's written notice of its intention to do so. The municipality must pay its proportionate share of the current indebtedness of the district before withdrawal and must agree by appropriate written document to pay its proportionate share of any long-term indebtedness of the district as that indebtedness becomes due and payable. During the period of notice, the withdrawing municipality does not become liable for any capital expenditures or borrowings which may be made by the district. The proportionate share of the withdrawing municipality in any current and long-term indebtedness of the district shall be in accordance with the formula then in effect for payment of the current and long-term indebtedness.

§3519. Dissolution

At such time as a district has discharged all of its obligations and paid or provided for the payment of all of its bonded indebtedness, the board of directors may, by 2/3 vote of its membership, dissolve the district and dispose of all of its property, real and personal, in the manner authorized and directed by the board of directors. The treasurer may execute any deeds, bills of sales or any documents required for that purpose. All money, if any, remaining in the hands of the treasurer of the district shall be paid to the municipalities comprising the district as of the date of dissolution in accordance with the formula then in effect for the payment of any operating deficit.

## CHAPTER 165

## LEASING OF AIR RIGHTS

§3551. Utilization of air rights

1. Lease authorized; proceeds. Except as provided in paragraph A, any municipality may lease at one time or from time to time for a term or terms not to exceed 99 years, upon any terms and conditions that the municipal officers consider advisable, air rights over public streets and ways, parking facilities and other public buildings, land and water, in which the public has a right of travel or in which the municipality holds less than a fee interest. These leases may be made for any nonmunicipal purpose which, in the opinion of the municipal officers, will not impair the construction, full use, safety, maintenance or repair of those streets and ways, facilities, buildings, land and water. The proceeds from any lease granted under this chapter shall be paid into the municipal treasury.

A. No lease of air rights may be granted under this chapter with regard to any dedicated park land, including rights for support, access, utilities, light and air.

B. Any lease granted under this chapter for air rights over state and state aid highways must be approved by the Department of Transportation.

2. Assignment, pledge or mortgage; reversionary rights. Any lease granted under this chapter may, with the consent of the municipal officers, be assigned, pledged or mortgaged and the lien of that pledge or mortgage may be foreclosed by appropriate action. Any lease granted under this chapter for air rights over public streets and ways in which the municipalities own an easement, but not a fee interest, does not affect the reversionary rights, if any, of the holder of the fee in the public street or way.

3. Fee interests unaffected. This chapter does not reduce the right of a municipality holding a fee interest in streets, ways, facilities, buildings, land or water from conveying air rights in fee or by lease.

§3552. Applicability of building and other laws

The construction or occupancy of any structure erected or affixed under any lease under this chapter is subject to the building, fire, garage, health and zoning ordinances, bylaws and regulations applicable in the municipality. Any structure erected over or affixed to any public street or way under this chapter is valid and declared a legal structure.

§3553. Taxation

1. Structures taxed. Any structure erected or affixed under any lease granted under this chapter shall be taxed to the lessee or the assigns in the same manner and to the same extent as if the lessee or the assigns were the owners of the land in fee, except that no part of the value of the land may be included in the assessment. The municipality may exercise all remedies provided generally for the collection of taxes. Any such leasehold estate may be sold or taken by the municipality for the nonpayment of any taxes assessed under this section in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes.

2. Payment instead of taxes. The municipality shall include in any lease granted under this chapter a provision in which the lessee agrees, if subsection 1 is determined by a court of competent jurisdiction to be inapplicable, to pay annually to the municipality a sum of money instead of the taxes which would otherwise be assessed on the lease in that year.

§3554. Parties in interest

Each lease made under this chapter must require that the lessee file with the municipality a statement under oath containing the names and addresses of the officers and directors, in the case of a corporation, and, in the case of a partnership or other voluntary association, the names and addresses of all persons having a financial interest in the lease. A copy of all leases granted by the municipality shall be kept on file and shall be open to public inspection.

§3555. Limitations

Municipalities shall not execute any leases which would:

1. Impair use of highway. Impair the use and safety of any highway;

2. Used solely for advertising. Be solely for outdoor advertising structures; or

3. Violate Federal Aviation Agency regulations. Violate any regulations promulgated by the Administrator of the Federal Aviation Agency.

## CHAPTER 167

## MUNICIPAL RENT CONTROL

§3601. Declaration of emergency

If a serious public housing emergency exists in a municipality which would result in a shortage of rental housing accommodations and abnormally high rents and will produce serious threats to the public health, safety and general welfare of the citizens of the community unless residential rents are regulated and controlled, a municipality may accept this chapter, with due regard for the rights and responsibilities of its citizens.

§3602. Acceptance

Rent control legislation takes effect in any municipality on the 30th day following acceptance of its provisions. A municipality which has accepted this chapter may, in the same manner, revoke its acceptance.

§3603. Definitions

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

1. Rent. "Rent" means the consideration, including any bonus, benefits or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease of such rental units.

2. Rental units. "Rental units" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boarding-house units and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of the property, except:

A. Rental units which a governmental unit, agency or authority either:

(1) Owns or operates; or

(2) Finances or subsidizes, if the imposition of rent control would result in the cancellation or withdrawal, by law, of the financing or subsidy;

B. Rental units in cooperatives;

C. Rental units in any public institution or college or school dormitory operated exclusively for charitable or educational purposes;

D. Rental units in any nursing or rest homes, not organized or operated for profit; and

E. The rental unit or units in an owner-occupied, 2-family or 3-family house and rental units, the construction of which was completed on or after the date of acceptance of rent control legislation, may be exempted from the legislation by the administrator or the board.

3. Services. "Services" means repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitorial services, refuse removal, furnishings and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

§3604. Local rent board or administrator

1. Appointment. When rent control legislation is accepted, the municipality shall also determine whether the chapter will be administered by a rent control board or by a rent control administrator. Upon acceptance of rent control legislation and before its effective date, the popularly elected mayor of a city, or the council in a municipality having a council-manager form of government, or the board of selectmen in a town shall appoint a rent control administrator or a rent control board to serve at the will of the appointing authority.

2. Compensation. Members of rent control boards shall receive no compensation for their services, but shall be reimbursed by the municipality for necessary expenses incurred in the performance of their duties.

3. Personnel. Either the rent control board, referred to in this chapter as "the board," or the rent control administrator, referred to in this chapter as "the administrator," is responsible for carrying out this chapter. The board or the administrator shall:

A. With the approval of the appointing official or officials, hire any necessary personnel;

B. Adopt any policies and regulations that will further the provisions of this chapter; and

C. Recommend to the municipality for adoption any ordinances and bylaws that are necessary to carry out the purposes of this chapter.

4. Studies. The board or the administrator may make such studies and investigations, conduct such hearings and obtain such information considered necessary in adopting any regulation or order under this chapter or in administering and enforcing this chapter and regulations and orders adopted under this chapter. Any person who rents or offers for rent or acts as broker or agent for the rental of any controlled rental unit may be required to furnish any information required by the board or administrator and to produce records and other documents and make reports. These persons have the right to be represented by counsel.

5. Regulations. The board or administrator may issue orders and adopt regulations to effectuate the purposes of this chapter.

§3605. Maximum rent adjustment

1. Fair net-operating income. The board or administrator shall make any individual or general adjustments, either upward or downward, of the rent for any rental property that is necessary to ensure that rents are established at levels which yield to landlords a fair net-operating income from the rental units.

2. Determination. The following factors, among other relevant factors, which the board or administrator may define by regulation, shall be considered in determining whether a controlled rental unit yields a fair net-operating income:

A. Increases or decreases in property taxes;

B. Unavoidable increases or any decreases in operating and maintenance expenses;

C. Capital improvement of the housing unit as distinguished from ordinary repair, replacement and maintenance;

D. Increases or decreases in living space, services, furniture, furnishings or equipment;

E. Substantial deterioration of the housing units other than as a result of ordinary wear and tear; and

F. Failure to perform ordinary repair, replacement and maintenance.

3. Schedule of standard rental increases or decreases. For the purpose of adjusting rents under this section, the board or administrator may adopt a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.

4. Denial. The board or administrator may refuse to grant a rent increase under this section, if determined that:

A. The affected rental unit does not comply with the state sanitary code and any applicable municipal codes, ordinances or bylaws; and

B. The lack of compliance is due to the landlord's failure to provide normal and adequate repair and maintenance.

The board or the administrator may refuse to grant a rent decrease under this section, if determined that a tenant is behind in the payment of rent.

5. Termination procedure. The board or administrator may adjust or eliminate rent controls if it is determined that the need for continuing rental levels no longer exists because of sufficient construction of new rental units or because the demand for rental units has been otherwise met. Any maximum rental level removed under this subsection shall be reimposed or adjusted and reimposed upon a finding by the board or administrator that a substantial shortage of rental units exists in the municipality and that the reimposition of rent control is necessary in the public interest. Any action under this subsection is subject to the hearing and notice requirements of section 3606.

§3606. Judicial review

Any person who is aggrieved by any action, regulation or order of the board or administrator may file a complaint against the board or administrator in the District Court having jurisdiction over the area in which the property is located. Upon the filing of the complaint, an order or notice shall be issued by the court and served on the board or administrator as provided in the case of a civil action. The District Court has exclusive original jurisdiction over the proceedings. All orders, judgments and decrees of the District Court may be appealed as is provided in the case of a civil action in the District Court.

## SUBPART 6

## REGULATION, LICENSES AND PERMITS

## CHAPTER 181

## GENERAL PROVISIONS

§3701. Municipal licensing authority

The municipal officers are the licensing authority of a municipality, unless otherwise provided by charter, ordinance or law.

§3702. Fees for licenses or permits

Unless otherwise provided by law, any fee established by a municipality for any license or permit under this subpart must reasonably reflect the municipality's costs associated with the license or permit procedure and enforcement.

## CHAPTER 183

## ECONOMIC REGULATION

## SUBCHAPTER I

## AUTOMOBILE JUNKYARDS

§3751. Purpose

Junkyards and so-called "auto graveyards" have been steadily expanding and frequently encroach upon highways. These junkyards and graveyards have become a nuisance and a menace to safe travel on public ways, often distracting the attention of drivers of motor vehicles because it appears cars are parked on the highway or that an accident has occurred. It is declared that such junkyards and automobile graveyards are a nuisance and are properly subject to regulation and control.

§3752. Definitions

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

1. Automobile graveyard. "Automobile graveyard" means a yard, field or other area used to store 3 or more unserviceable, discarded, worn-out or junked motor vehicles as defined in Title 29, section 1, subsection 7, or parts of such vehicles.

A. "Automobile graveyard" does not include any area used for temporary storage by an establishment or place of business which is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

2. Highway. "Highway" means any public way.

3. Interstate System. "Interstate System" means those portions of the Maine Turnpike and the state highway system incorporated in the National System of Interstate and Defense Highways, as officially designated by the Department of Transportation.

4. Junkyard. "Junkyard" means a yard, field or other area used to store:

A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;

B. Discarded, scrap and junked lumber;

C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and

D. Garbage dumps, waste dumps and sanitary fills.

5. Primary System. "Primary System" means that portion of the state highway system which the Department of Transportation has by official designation incorporated into the Federal-Aid Primary System.

§3753. Permit required

No person may establish, operate or maintain an automobile graveyard or junkyard without first obtaining a nontransferable permit from the municipal officers of the municipality in which the automobile graveyard or junkyard is to be located, or from the county commissioners of the county of any unorganized territory in which the automobile graveyard or junkyard is to be located. Permits issued under this section are valid until the first day of the following year.

§3754. Hearings

Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish, operate or maintain an automobile graveyard or junkyard. They shall post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard or junkyard is to be located. The municipal officers or county commissioners shall give written notice of the application to the Department of Transportation by mailing a copy of the application at least 7 and not more than 14 days before the hearing.

§3755. Limitations on permits

1. Highways; Interstate and Primary Systems. No permit may be granted for an automobile graveyard or junkyard within 1,000 feet of the right-of-way of any highway incorporated in the Interstate and Primary Systems or within 600 feet of the right-of-way of any other highway, except for:

A. Those automobile graveyards or junkyards which are kept entirely screened to ordinary view from the highway at all times by natural objects, plantings or fences;

(1) Screening required by this paragraph must be well constructed and properly maintained at a minimum height of 6 feet and acceptable to the municipal officers or county commissioners. It must comply with the rules adopted by the Department of Transportation. The permit shall specify that compliance with these rules is required; and

B. Those automobile graveyards or junkyards located within areas which have been zoned for industrial use and located more than 600 feet but less than 1,000 feet from the right-of-way of any highway incorporated in the Interstate and Primary Systems.

2. Public facilities. No permit may be granted for an automobile graveyard or junkyard which is:

A. Located within 300 feet of any public park, public playground, public bathing beach, school, church or cemetery; and

B. Within ordinary view from that public facility.

3. Limitation on new permits. No permit may be granted for any automobile graveyard or junkyard established after October 3, 1973, and located within 100 feet of any highway.

4. Rules. No permit may be granted for an automobile graveyard or junkyard that does not comply with the rules adopted under section 3759. Municipal officers or county commissioners as provided for in section 3753 may apply more stringent restrictions, limitations and conditions in considering whether to grant or to deny any permit for an automobile graveyard or junkyard adjacent to any highway.

5. Local ordinances. This subchapter shall not be construed to limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards and junkyards which concern any other standards that the municipality determines reasonable, including, but not limited to:

A. Compliance with state and federal hazardous waste regulations;

B. Fire and traffic safety;

C. Levels of noise which can be heard outside the premises;

D. Distance from existing residential or institutional uses; and

E. The effect on ground water and surface water, provided that municipal ordinances on ground water are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection concerning automobile graveyards and junkyards.

Municipal officers or county commissioners shall consider compliance with these local ordinances in deciding whether to grant or deny a permit for any automobile graveyard or junkyard and in attaching conditions of approval to the grant of a permit.

§3756. Permit fees

The municipal officers or county commissioners shall collect, in advance from the applicant for a permit, a fee in accordance with the following schedule:

1. More than 100 feet from highway. Fifty dollars for each permit for an automobile graveyard or junkyard located more than 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754; and

2. Within 100 feet from highway. Two hundred dollars for each permit for an automobile graveyard or junkyard located within 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754.

§3757. Provisions regarding nuisances unaffected

This subchapter shall not be construed as in any way repealing, invalidating or abrogating Title 17, section 2802, or limiting the right of prosecutions under that section. Violation of this subchapter in the establishment, maintenance or operation of any automobile graveyard or junkyard constitutes prima facie evidence that the yard is a nuisance as defined in Title 17, section 2802.

§3758. Violation

1. Enforcement. The State Police as well as local and county law officers shall enforce this subchapter. Municipal officers or their designee may also enforce this subchapter.

2. Penalties. Whoever violates this subchapter or the rules of the Department of Transportation adopted under section 3759 shall be penalized in accordance with section 4506. Each day that the violation continues constitutes a separate offense.

3. Revocation or suspension of permit. Violation of any condition, restriction or limitation inserted in a permit by the municipal officers or county commissioners is cause for revocation or suspension of the permit by the same authority which issued the permit. No permit may be revoked or suspended without a hearing and notice to the owner or the operator of the automobile graveyard or junkyard. Notice of hearing shall be sent to the owner or operator by registered mail at least 7 but not more than 14 days before the hearing. The notice must state the time and the place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations inserted in the permit.

§3759. Rules

In the interest of uniformity and to establish guidelines for the municipal officers and county commissioners in the matter of adequate screening, the Department of Transportation shall adopt rules establishing minimum standards for screening of automobile graveyards and junkyards.

§3760. Relocation, removal, disposal, compensation and condemnation

1. Acquisition of land. If the Department of Transportation determines that the topography of the land adjacent to any portion of a highway incorporated in the Interstate or Primary Systems will not permit adequate screening, as required in sections 3751 to 3760, or that adequate screening would not be economically feasible, it may acquire by gift, purchase or condemnation any interests in property that are necessary to secure the relocation, removal or disposal of the automobile graveyards or junkyards.

2. Compensation. In the case of such acquisition, just compensation shall be paid to the owner for the relocation, removal or disposal of the following automobile graveyards and junkyards:

A. Those which were operating and in existence on May 11, 1966 and located in areas adjacent to any portion of a highway incorporated in the Interstate or Primary Systems, which exceed federal restrictions and for which federal funds are available to defray the costs;

B. Those in operation along any highway made a part of the Interstate or Primary Systems on or after May 11, 1966; and

C. Those in operation and established on or after May 11, 1966.

3. Procedures. The purchase, condemnation, negotiation, assessment of damage and appeal procedures shall be in accordance with this section and Title 23, sections 153 to 159.

4. Use of federal funds. This section does not prevent the department from participating with the owner when federal funds are available to defray costs of screening junkyards whenever it is determined to be more feasible to screen rather than to be involved in the cost or impact of acquisition and relocation.

SUBCHAPTER II

CLOSING-OUT SALES

§3781. License requirements

No person may offer for sale a stock of goods, wares or merchandise under the designation of "closing-out sale," "going out of business sale," "discontinuance of business sale," "entire stock must go," "must sell to the bare walls" or other designation which states, directly or by implication, an intent of that person to dispose of the entire stock of goods with a view to permanently terminating further business after that disposal is complete, unless the person complies with the following requirements.

1. Inventory license. Before the disposal sale begins, the person must obtain a license to conduct the sale from the municipal officers of the municipality in which the sale will be conducted.

A. The person must apply to the municipal officers for the license under oath. The application must contain a complete inventory of all items to be included in the sale and must be accompanied by the payment

of a license fee set by the municipal officers. The applicant must affirm, in writing and under oath, to the municipal officers that no merchandise will be included in the stock offered for sale unless the merchandise is in or at the place of business where the sale will take place when the sale opens. Any unusual purchases and additions to the stock of goods, wares or merchandise made within 60 days before the filing of an application for a license is prima facie evidence that the purchases and additions were made in contemplation of the sale.

(1) If the applicant has been in the same business for which the sale is being conducted for less than 2 years of continuous operation in the municipality, the applicant must also affirm, in writing and under oath, that none of the merchandise was purchased before the sale opened for the purpose of selling and disposing of that merchandise at the sale.

B. The license is valid for 60 days from the date of issuance, unless revoked under subsection 3. The validity of the license may be extended for 60 additional days if the licensee provides an affidavit to the municipal officers stating that all goods, wares or merchandise listed in the inventory have not been disposed of within the original 60-day period.

2. License issued; records preserved. The municipal officers shall immediately issue the license upon compliance with this section. The municipal officers shall preserve all applications for licenses and other papers filed in connection with an application as a public record in their office for 5 years. They shall endorse the dates of filing and the granting or denial of the license on those papers and shall make an abstract of any other proceedings taken in connection with the application.

3. Revocation; prior violations; suspension. The municipal officers shall revoke any license issued under this subchapter if the licensee is convicted of violating this section. The municipal officers may refuse to issue another license to any applicant who has been convicted of violating this section before the date of application. If any person convicted of any violation of this section appeals the decision or sentence of the trial court, that person's license shall be suspended while the appeal is pending in the appellate court.

§3782. Continuation of business

After the termination date of the sale and any extension granted under section 3781, subsection 1, paragraph B, the person to whom the license was granted may not continue the business under the same or a different name, at the same location or elsewhere in the same municipality, contrary to the designation of the sale.

§3783. Limitations

This subchapter does not apply to:

1. Public auctions. Liquidation sales by public auction of not more than 3 days duration conducted by a licensed auctioneer;

2. Sheriffs' sales. Sales conducted or made by sheriffs, deputy sheriffs, constables, collectors of taxes, executors, administrators, guardians, conservators, receivers, assignees under voluntary assignments for the benefit of creditors or insurers; or

3. Sale of personal property. Sales by any other person required by law to sell personal property.

§3784. Violations and penalties

Notwithstanding Title 17-A, section 4-A, any licensee under section 3781, who fails to comply with that section, or any person who conducts such a disposal sale without first having obtained a license, is guilty of a Class E crime and shall be punished by a fine of not more than $100 or by imprisonment for not more than 30 days, or both. Each day on which a sale is conducted in violation of this subchapter constitutes a separate offense. In addition to the penalties set forth, the Superior Court has jurisdiction, upon the complaint of any person, to enjoin any sale, or other acts, being performed in violation of section 3781.

## SUBCHAPTER III

## INNKEEPERS, VICTUALERS AND LODGING HOUSES

### ARTICLE 1. GENERAL PROVISIONS

§3801. Definitions

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

1. Innkeeper. "Innkeeper" means a person who keeps an inn, hotel or motel to provide lodging to travelers and others for compensation.

2. Licensing board. "Licensing board" means the municipal officers of a municipality, as provided in section 3812.

3. Lodging house. "Lodging house" means a house where lodgings are rented, but does not include:

A. A house where lodgings are rented to fewer than 5 lodgers;

(1) The term "lodger" does not include persons within the 2nd degree of kindred to the person operating the lodging house;

B. The dormitories of charitable, educational or philanthropic institutions; or

C. The emergency use of private dwelling houses at the time of conventions or similar public gatherings.

4. Victualer. "Victualer" means a person who serves food or drink prepared for consumption on the premises by the public.

§3802. Posting of rates; liability for overcharge

1. Maximum rate schedule. Every keeper of a hotel, inn, boardinghouse or lodging house shall post in every bedroom:

A. A schedule of the maximum daily rates for that room for occupancy by one or more persons; and

B. Any requirement for a minimum number of days for which that room must be rented.

2. Overcharge liability. No keeper may charge or collect a sum greater than the rate shown in the posted schedule. Any keeper who charges or collects more than the rate shown in the posted schedule is liable to the person so charged or who paid the bill in an amount equal to 3 times the total amount of the bill collected.

## ARTICLE 2. LICENSES

§3811. License required

No person may be a common innkeeper, victualer or tavernkeeper without a license. A person who violates this section commits a civil violation for which a forfeiture of not more than $50 may be adjudged.

1. Lodging houses; licenses. The municipal officers may enact ordinances requiring lodging houses to be licensed. These licenses may be issued by the licensing board under section 3812 and are subject to the same expiration dates provided in that section.

§3812. Licensing board; granting and revocation of licenses

1. Licensing board. The municipal officers of every municipality shall serve as the licensing board for the issuance of innkeepers', victualers' and tavernkeepers' licenses.

2. Meetings. The licensing board shall meet as provided in this subsection.

A. They shall meet annually during the month of May on a date and at a time and place in the municipality that they determine. At least 7 days before the meeting, they must post notices stating the purpose of the meeting in at least 2 public places in the municipality.

B. The licensing board may meet at any other time at a meeting specially called and with public notice as provided in paragraph A.

3. Issuance and revocation of licenses. At any meeting held under subsection 2, the licensing board may do the following.

A. The board may license as many persons of good moral character to be innkeepers, victualers and tavernkeepers in the municipality as they consider necessary.

(1) The license must specify the building in which the business will be conducted.

(2) The board may issue the license under any restrictions and regulations that they consider necessary.

B. The board may revoke any license previously granted under this section as provided in section 3814.

4. License expiration. All licenses granted under this section expire one year after issuance.

§3813. Fee

Every person licensed as an innkeeper, victualer or tavernkeeper shall pay to the treasurer for the use of the municipality a fee of $1 and any additional amount established by ordinance or bylaw of the municipality.

§3814. Revocation or suspension of license; hearing; appeal

1. Applicability. This section applies to all licenses issued by the licensing authorities authorized under this subchapter and section 3931.

2. Revocation or suspension of license. The licensing authority designated in this subchapter and section 3931 shall enforce this subchapter and section 3931 and shall prosecute all offenders. If the licensing authority is satisfied that the licensee is unfit to hold a license, it may revoke the license at any time. For any cause which it considers satisfactory, the licensing authority may suspend a license for any period of time that it considers proper.

3. Hearing. A license may not be revoked or suspended under subsection 2 until after investigation and hearing. The licensing authority shall serve notice of the hearing on the licensee or leave it at the licensed premises at least 3 days before the time set for hearing. At the hearing, the licensee must be given an opportunity to:

A. Hear the evidence in support of the charge against the licensee and to cross-examine, alone or through counsel, the witnesses; and

B. Be heard in the licensee's own defense.

4. Appeal. Appeal from the decision of the licensing authority to the Superior Court in the county in which

the licensing authority is located may be obtained in the manner provided in the Maine Rules of Civil Procedure. Courts of competent jurisdiction, for due cause shown, may issue temporary orders restraining the enforcement of revocations or suspensions, and after full hearing may vacate those temporary orders or make them permanent.

## ARTICLE 3. REGISTRATION OF GUESTS

### §3821. Register; contents; inspection; penalty

1. Register of guests. Every person conducting any hotel or lodging house shall have a register kept and maintained in the hotel or lodging house at all times. The name of every guest or person renting or occupying a room or rooms in the hotel or lodging house shall be written in the register. The person renting the room or rooms, or someone under that person's direction, shall sign the register. The proprietor of the hotel or lodging house, or the proprietor's agent, shall then write the number of each room assigned to and occupied by each guest, together with the date that room is rented, opposite the name or names so registered.

2. Record of departures. The proprietor or the proprietor's agent shall keep and maintain a record showing the date when the occupant of each room surrenders the room. This record may be made a part of the register.

3. Availability for inspection. Both the register and the record shall be kept for 2 years and be available at all reasonable times to the inspection of any lawful agent of the licensing authority or any full-time law enforcement officer as defined in Title 25, section 2805.

4. Violation and penalty. Notwithstanding Title 17-A, section 4-A, any person who willfully violates this section is guilty of a Class E crime and shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 90 days for each offense, or both.

### §3822. Register of true name

1. Registration required. All persons occupying a room or rooms in a hotel or lodging house must register or have themselves registered in the hotel or lodging house register.

2. True name required. No person may write, or have written by another person in any hotel or lodging house register, any name or designation other than the true name or names ordinarily used by that person. No person in charge of a hotel or lodging house register may knowingly permit any name or designation to be written other than the true name or names in ordinary use of the person registering or being registered by another person.

3. Penalty. Any person who violates this section commits a civil violation for which a forfeiture of not less than $10 nor more than $25 may be adjudged for each offense.

### §3823. Posting of law near register

The licensing authority may require all licensed innkeepers and all licensees under section 3811 to post a notice furnished under this section in a conspicuous place near the register. The licensing authority shall provide this notice which shall contain the text of sections 3821 and 3822, relating to the entry of names in the register, together with the penalties provided in those sections for their violations.

## ARTICLE 4. DUTIES AND OBLIGATIONS

### §3831. Innkeepers

Every innkeeper shall, at all times, be furnished with suitable provisions and lodging for strangers and travelers. The innkeeper shall grant such reasonable accommodations as occasion requires to strangers, travelers and others.

### §3832. Victualers

Every victualer has all the rights and privileges and is subject to all the duties and obligations of an innkeeper, except furnishing lodging for travelers.

### §3833. Gambling prohibited

1. Prohibited games and activities. No innkeeper or victualer may:

A. Have or keep for gambling purposes about the business establishment any dice, cards, bowls, billiards, quoits or other implements used in gambling; or

B. Allow any person resorting to the establishment to use for gambling purposes any of the games under subsection 1, or any other illegal game or sport in the establishment.

2. Penalty. Any person who uses any game or sport prohibited by this section for gambling purposes in any prohibited establishment commits a civil violation for which a forfeiture of $5 may be adjudged.

### §3834. Disorderly conduct prohibited

1. Prohibited conduct. No innkeeper, hotelkeeper, boardinghouse keeper, lodging house keeper, campground operator or keeper or victualer may allow any reveling, riotous or disorderly conduct, drunkenness or excess in the inn, hotel, boardinghouse, lodging house, restaurant, shop or other premises.

2. Penalty. Notwithstanding Title 17-A, section 4-A, whoever refuses or fails to leave any such place when requested to do so by the owner, manager, clerk, agent or servant of the owner or manager is guilty of a Class

D crime and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or both.

§3835. Removal of hotel property

Notwithstanding Title 17-A, section 4-A, any person who removes or attempts to remove from any hotel, inn, boardinghouse, lodging house, campground or restaurant any article of property belonging to or in use in that establishment is guilty of a Class D crime and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or both.

§3836. Damage to hotel property

Notwithstanding Title 17-A, section 4-A, any guest, boarder, occupant or other person in a hotel, inn, boardinghouse, lodging house, campground or restaurant who intentionally destroys or damages any property belonging to or in use in that establishment is guilty of a Class D crime and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or both.

§3837. Ejection of disruptive or destructive persons; damage to property

The owner or manager of an inn, hotel, restaurant, lodging house, camping area or boardinghouse may request that any person on the premises of that establishment who is causing unnecessary disturbance to other persons on the premises or who is damaging or destroying property belonging to or in use by the inn, hotel, restaurant, lodging house, camping area or boardinghouse leave the premises immediately. If any person who is requested to leave the premises under this section fails or refuses to do so, the owner or manager may use a reasonable degree of force against that person to remove that person from the premises.

Any person who is requested to leave the premises of an inn, hotel, restaurant, lodging house, camping area or boardinghouse or is ejected from the premises under this section, in addition to any other liability or penalty, is liable for the value of any property belonging to or in use by the inn, hotel, restaurant, lodging house, camping area or boardinghouse which is damaged or destroyed as a result of conduct while on the premises or which is damaged or destroyed during ejection from the premises under this section.

ARTICLE 5. SAFEKEEPING AND LIABILITY

§3851. Liability for loss where safe provided

Except as provided in subsection 2, no keeper of any inn, hotel or boardinghouse is liable for the loss of or injury to any articles or property of the kind specified in subsection 1 if the following conditions are met.

1. Conditions. The keeper of the inn, hotel or boardinghouse must:

A. Have constantly in his inn, hotel or boardinghouse a metal safe or suitable vault in good condition and fit for the custody of:

(1) Money;

(2) Bank notes;

(3) Jewelry;

(4) Articles of gold or silver manufacture;

(5) Precious stones;

(6) Personal ornaments;

(7) Travel tickets;

(8) Negotiable or valuable papers; and

(9) Bullion;

B. Keep suitable locks or bolts on the doors of, and suitable fastenings on the transoms and windows of, the sleeping rooms used by guests; and

C. Keep a copy of this section printed in distinct type constantly and conspicuously posted in at least 10 conspicuous places in the inn, hotel or boardinghouse.

2. Exceptions. The immunity from liability under subsection 1 does not apply in the following situations.

A. The keeper of the inn, hotel or boardinghouse may be held liable when the guest has offered to deliver articles or property of the kind specified in subsection 1 to the keeper of the inn, hotel or boardinghouse for custody in the safe or vault and the keeper has omitted or refused to take the property and deposit it in the safe or vault for custody and to give the guest a receipt for the goods.

(1) The keeper of any inn, hotel or boardinghouse is not required to receive from any one guest for deposit in the safe or vault any property of the kind specified in subsection 1 which exceeds a total value of $300 The keeper is not liable for any excess of such property, whether received or not.

B. Every keeper of an inn, hotel or boardinghouse is liable for any guest's loss of the articles or property listed in subsection 1 after those articles have been accepted for deposit, if the loss is caused by the theft or negligence of the keeper or any of the servants.

§3852. Special arrangements to receive deposits

Any keeper of an inn, hotel or boardinghouse may, by special arrangement with a guest, receive for deposit in the safe or vault any property upon any terms that they

agree to in writing.

§3853. Check or receipt for property delivered for safekeeping

Every guest and every person intending to be a guest of any hotel, inn or boardinghouse in this State, upon delivering any baggage or other articles of property of the guest to the proprietor of the hotel, inn or boardinghouse or to the servants for safekeeping elsewhere than in the room assigned to that guest, shall demand, and the hotel or inn proprietor shall give, a check or receipt for the baggage or other property to evidence the fact of the delivery. No proprietor is liable for the loss of or injury to the baggage or other property of the guest, unless the guest has actually delivered the baggage or other property to the proprietor or the servants for safekeeping, or unless the loss or injury occurs through the negligence of the proprietor or of the servants or employees in the hotel or inn.

§3854. Nature of liability; limit

The liability of the keeper of any inn, hotel or boardinghouse for loss of or injury to personal property placed by guests under the keeper's care, other than that described in sections 3851 to 3853, shall be that of a depository for hire, except that if the loss or injury is caused by fire not intentionally produced by the keeper or servants, the keeper is not liable.

1. Limit on liability. In no case may liability exceed the sum of $150 for each trunk and its contents; $50 for each piece of luggage and its contents; $10 for each box, bundle or package and its contents, so placed under the keeper's care; and for all other miscellaneous effects, including wearing apparel and personal belongings, $50, unless the keeper of the inn, hotel or boardinghouse has consented in writing with the guest to assume a greater liability.

2. Property held for person not a guest. Whenever any person allows baggage or property to remain in any inn, hotel or boardinghouse after leaving the same as a guest and after the relation of keeper and guest between the guest and the proprietor of the inn, hotel or boardinghouse has ceased, or forwards baggage or property to an inn, hotel or boardinghouse before becoming a guest of that establishment, and the baggage or property is received into the inn, hotel or boardinghouse, the keeper has the option of holding that baggage or property at the owner's risk.

ARTICLE 6. LIENS

§3861. Lien on baggage or other property

The keeper of any inn, hotel or boardinghouse has a lien on the baggage and other property in and about the inn, hotel or boardinghouse belonging to or under the control of guests or boarders, for the proper charges due from those guests or boarders for the accommodation, board and lodging, all money paid for or advanced to them and any other extras that are furnished on request. The innkeeper, hotelkeeper or boardinghouse keeper may detain this baggage and other property until those charges are paid. The baggage and other property is exempt from attachment or execution until the keeper's lien and the cost of satisfying it are satisfied.

§3862. Enforcement of lien; notice of sale; proceeds

1. Sale at auction. The innkeeper, hotelkeeper or boardinghouse keeper shall retain any baggage and other property upon which there has been a lien for 90 days. At the end of the 90-day period, if the lien is not satisfied, the baggage and other property may be sold at public auction.

2. Notice required. The innkeeper, hotelkeeper or boardinghouse keeper must:

A. Give 10 days' notice of the time and place of sale in a newspaper having general circulation in the county where the inn, hotel or boardinghouse is located; and

B. Mail a copy of the notice addressed to the guest or boarder at the registered place of residence in the register of the inn, hotel or boardinghouse.

3. Proceeds. After using the proceeds from the sale to satisfy the lien and any costs that may accrue, the keeper shall dispose of any remainder according to Title 33, chapter 27.

ARTICLE 7. VIOLATIONS AND PENALTIES

§3871. Prosecutions

The licensing board shall prosecute for any violation of sections 3811 to 3813 and 3831 to 3834 that comes to its knowledge, by complaint, indictment or civil action. All penalties recovered shall be paid to the municipality where the offense is committed. Any citizen of the State may prosecute for any violation of sections 3811 to 3813 and 3831 to 3834 in the same manner as the licensing board may prosecute.

§3872. Record of convictions to licensing authority

The clerk of a court in which any person is convicted of a violation of this subchapter shall immediately send a copy of the record of the conviction to the licensing authority in the municipality where the offense occurred.

SUBCHAPTER IV

JUNK DEALERS

§3901. Records; definitions

Every dealer in junk shall keep a record of the name of every person selling junk to that dealer and the registration number of the motor vehicle used by that seller

to deliver the junk. These records shall be open for the inspection of any officer of the law. Whoever fails to make a record as provided by this section commits a civil violation for which a fine of not more than $100 may be adjudged.

As used in this section, the word "junk" means old iron, chains, brass, copper, tin, lead or other base metals, old rope, old bags, rags, waste paper, paper clippings, scraps of woolens, clips, bagging, rubber and glass, and empty bottles of different kinds when less than one gross, and all articles discarded or no longer used as a manufactured article composed of any one or more of the materials mentioned.

## SUBCHAPTER V

## LUNCH WAGONS

### §3931. License; revocation; objections

1. Issuance of licenses. The municipal officers of any municipality may license any reputable person to maintain a vehicle for the sale of food in such part of any public way and during such hours as the licensing authority designates.

2. Conditions. No other license may be required to operate a lunch wagon. The municipal officers may set a license fee which must be paid annually before the license is issued. A license may not be issued if the lunch wagon will inconvenience public travel.

3. Revocation. For reasonable cause, the licensing authority may revoke any license issued under this section as provided in section 3814.

## SUBCHAPTER VI

## PAWNBROKERS

### §3961. License

The municipal officers of any municipality may grant licenses to persons of good moral character to be pawnbrokers in the municipality for one year, unless sooner revoked by the municipal officers for violation of law. Whoever carries on such a business without a license commits a civil violation for which a forfeiture of not more than $100 may be adjudged.

### §3962. Account of business done

1. Account kept in book. Every pawnbroker shall keep a book in which the pawnbroker shall enter:

A. The date, duration, amount and rate of interest of every loan that is made;

B. An accurate account and description of the property pawned; and

C. The name and residence of the pawner.

The pawnbroker shall allow the municipal officers to inspect this book at all reasonable times.

2. Delivery to pawner. At the same time the pawnbroker makes the entry required by subsection 1 for any transaction, the pawnbroker shall deliver to the pawner a signed, written memorandum containing the substance of that entry.

3. List filed with clerk. Before the 15th day of every month, the pawnbroker shall file with the municipal clerk a list of the entries required under subsection 1 that were made during the preceding calendar month. This list shall be available for public inspection.

4. Violation. Any pawnbroker who violates this section commits a civil violation for which a forfeiture of $20 may be adjudged for each offense.

### §3963. Rates of interest

A pawnbroker may not directly or indirectly receive a rate of interest greater than 25% a year on a loan of $25 or less, nor more than 6% on a larger loan made upon property pawned. Any pawnbroker who violates this section commits a civil violation for which a forfeiture of $100 may be adjudged for each offense.

### §3964. Time and manner of selling pawned property; notice

A pawnbroker may not sell any property pawned until it has remained in the pawnbroker's possession for 3 months after the expiration of the time for which it was pawned. All sales of pawned property must be at public auction by a licensed auctioneer after giving notice under subsection 1.

1. Notice of sale. Notice of the sale must be given at least 2 weeks before the sale by publication in a newspaper having general circulation in the municipality where the property is pawned, if any, and, if not, by posting a notice in 2 public places in the municipality. The notice must contain:

A. The time and place of sale;

B. The name of the auctioneer; and

C. A description of the property to be sold.

2. Violation. Sales of property made in violation of this section are void. Any pawnbroker who violates this section commits a civil violation for which a forfeiture of $20 may be adjudged for each offense.

### §3965. Disposal of proceeds of sale

After deducting from the proceeds of any sale under section 3964 the amount of the loan, the interest then

due and the proportional part of the expenses of the sale, the pawnbroker shall pay the balance to the person who would have been entitled to redeem the property if no sale had been made. If not so paid on demand, the broker forfeits double the amount so retained, 1/2 to the pawner and 1/2 to the State.

## CHAPTER 185

## REGULATION OF CONSTRUCTION AND IMPROVEMENTS

## SUBCHAPTER I

## REGULATION OF BUILDINGS

### §4101. Permits for buildings

This subchapter applies to any municipal ordinance requiring a permit in connection with:

1. Construction, demolition and alteration. The construction, demolition, improvement or alteration of any building;

2. Building maintenance and facilities. The maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of any building;

3. Sanitation and parking facilities for mobile homes and travel trailers. The sanitation and parking facilities for mobile homes, travel trailers intended to be used for human habitation and travel trailer parking facilities;

4. Building equipment. The installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; and

5. Buildings used for public assembly. The operation of a building which is used occasionally or regularly for public assembly.

A. As used in this subsection, "building used for public assembly" means a room or space in or on any structure which is used for the gathering of 100 or more persons for any purpose, and includes any connecting room or space on the same level, above or below, which has a common entrance.

### §4102. Nuisance

Any building, structure, travel trailer parking facility or equipment existing in violation of an ordinance subject to this subchapter is a nuisance.

### §4103. Permits

The provisions of this section apply to any ordinance described in section 4101.

1. Applicability. The provisions of the ordinance which pertain to buildings apply equally to all structures, including wharves, piers and pilings and parts of them.

2. Licensing authority. The building inspector is the licensing authority unless otherwise provided by the municipality.

3. Application; issuance of permit. An application for a permit must be in writing and shall be signed by the applicant and directed to the licensing authority. The failure of the licensing authority to issue a written notice of its decision, directed to the applicant, within 30 days from the date when the application is filed, constitutes a refusal of the permit.

A. The licensing authority may not issue any permit for a building or use for which the applicant is required to obtain a license under Title 38, section 413 until the applicant has obtained that license.

B. The licensing authority may not issue any permit for a building or use within a land subdivision, as defined in section 4551, unless that subdivision has been approved in accordance with that section.

4. Powers and duties of enforcement officers. Ordinances defining the duties of the building inspector and other enforcement officers, not contrary to Title 25, chapter 313, may be enacted under a municipality's home rule authority. All enforcement officers designated by ordinance shall be given free access at reasonable hours to all parts of buildings regulated by ordinance.

5. Appeal to municipal officers or board of appeals. An appeal may be taken from any order issued by the building inspector, or from the licensing authority's refusal to grant a permit, to the municipal officers or to a board of appeals established under section 2691. If a municipality has by ordinance required that all such appeals be taken to a board of appeals, the procedure shall be the same as in appeals directed to the municipal officers, unless the municipality has provided otherwise.

A. On an appeal in writing to the municipal officers, they shall at their next meeting affirm, modify or set aside the decision of the building inspector or licensing authority according to the terms of the pertinent ordinance.

(1) The municipal officers may permit a variance from the terms of an ordinance when necessary to avoid undue hardship, provided there is no substantial departure from the intent of the ordinance.

(2) The municipal officers may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the municipality.

B. The failure of the municipal officers to issue a written notice of their decision, directed to the appellant, within 30 days after the appeal is filed, constitutes a denial of the appeal.

6. Appeal to Superior Court. A further appeal may, within 30 days, be taken by any party to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. The hearing before the Superior Court shall be a trial de novo without a jury.

§4104. Public building violation; liability

1. Written order sent. The building inspector shall send a written order to the owner or lessee of a building used for public assembly requiring any conditions which exist in violation of an ordinance to be corrected within 30 days after the order is sent.

2. Liability. After the expiration of the 30-day period, the owner or lessee is strictly liable for all injury caused by failure to correct any conditions cited in the order under subsection 1, and the building inspector shall order the building vacated.

## SUBCHAPTER II

## REGULATION AND INSPECTION OF ELECTRICAL INSTALLATIONS

### ARTICLE 1. GENERAL PROVISIONS

§4151. Definitions

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

1. Electrical equipment. "Electrical equipment" means all electrical conductors, fittings, devices and fixtures.

2. Reasonably safe to persons and property. "Reasonably safe to persons and property," as applied to electrical installations and electrical equipment, means reasonably safe to use in the service for which the installation or equipment is intended without unnecessary hazard to life, limb or property.

§4152. Applicability of provisions

This subchapter applies to all installations of electrical equipment, made after August 6, 1949, within or on public and private buildings and premises, including mobile homes, with the following general exceptions which apply to all of this subchapter:

1. Under jurisdiction of certain commissions. Any person under the jurisdiction of the Public Utilities Commission of the State or of the Federal Communications Commission;

2. Utility corporations. The electrical work and equipment employed in connection with the construction, installation, operation, repair or maintenance of any utility by a utility corporation in providing its authorized service, or in any way incidental to providing that service;

3. Industrial or manufacturing plants. Any electrical equipment and work, including construction, installation, operation, maintenance and repair in or about industrial or manufacturing plants;

4. Other property of industrial or manufacturing plants. Any electrical equipment and work, including construction, installation, operation, maintenance and repair in, on or about other properties, equipment or buildings, residential or of any other kind, owned or controlled by the operators of industrial or manufacturing plants, if the work is done under the supervision of an electrical engineer employed by the operator;

5. Mines, transportation and sound equipment. The electrical work and equipment in mines, pipe line systems, ships, railway rolling stock or automotive equipment, or the operation of portable sound equipment;

6. Electrical equipment in manufacturer's plant. Any electrical installations or equipment involved in the manufacture, test or repair of electrical equipment in the manufacturer's plant; and

7. Certain laboratories. Installations in suitable laboratories of exposed electrical wiring for experimental purposes only.

§4153. Effect on bylaws or ordinances

Any bylaw or ordinance in effect in any municipality on August 6, 1949 is not affected in any way by this subchapter.

§4154. Penalties

Any person who violates this subchapter commits a civil violation for which a forfeiture of not less than $25 nor more than $1,000 for each offense may be adjudged.

### ARTICLE 2. STANDARDS

§4161. Standards; installation

All installations of electrical equipment must be reasonably safe to persons and property and must comply with the applicable laws of the State and all applicable ordinances, orders and regulations of any municipality, not in conflict with this subchapter.

Conformity of installations of electrical equipment with applicable regulations set forth in the National Electrical Code, National Electrical Safety Code or electrical provisions of other safety codes which have been approved by the American Standards Association is prima facie evidence that the installations are reasonably safe to persons and property.

1. Tests of special wiring. The Commissioner of

Public Safety may authorize installations of special wiring to obtain field experience under controlled conditions in territory where electrical inspection is provided.

§4162. Standards; equipment

All electrical equipment installed or used must be reasonably safe to persons and property and must comply with the applicable laws of the State.

Conformity of electrical equipment with applicable standards of Underwriters' Laboratories, Inc. is prima facie evidence that the equipment is reasonably safe to persons and property.

1. Tests of special wiring. The Commissioner of Public Safety may authorize installations of special wiring to obtain field experience under controlled conditions in territory where electrical inspection is provided.

§4163. Standards of equipment in mobile homes

No person engaged in the business of selling mobile homes may sell any mobile home which contains electrical equipment that does not conform to the standards of the National Electrical Code and of the Underwriters' Laboratories, Inc.

ARTICLE 3. INSPECTIONS AND PERMITS

§4171. Local inspectors

A municipality may provide by resolution or ordinance under its home rule authority for the inspection of electrical installations within the municipality and may appoint an electrical inspector who shall enforce this subchapter and any applicable resolution or ordinance within the inspector's jurisdiction. Any municipality may join with one or more other municipalities in paying for the services of an electrical inspector, provided the municipalities have authorized the appointment of the inspector. Any ordinance or resolution must state whether the electrical inspection in the municipality applies to all or any of the following:

1. Original installations. Original installations of electrical equipment;

2. Alterations or additions. Alteration or addition to existing electrical equipment; and

3. Area of municipality. All the territory of the municipality, or only the section or sections of the municipality that are described in the ordinance or resolution.

§4172. Inspections

The electrical inspectors shall examine and issue certificates of acceptance of electrical installations at the request or complaint of any owner, lessee, tenant or municipal officer. An electrical inspector may enter any building with the permission of any person having control of that building or may apply to a court for process to do so. If an electrical inspector finds any hazardous electrical installation, the inspector shall order the person having charge of that installation to have it corrected immediately. If that person refuses or neglects to do so, the inspector may apply to an appropriate court for injunctive relief.

§4173. Permits

A municipality which has provided for electrical inspections under this subchapter may require that no electrical equipment may be installed within or on any publicly or privately owned building, structure or premises, nor may any alteration or addition be made in any such existing equipment without first obtaining a permit for that installation or alteration from the electrical inspector.

1. Minor repair work excluded. This section does not apply to minor repair work, including, but not limited to:

A. The replacement of fuses;

B. The installation of additional outlets;

C. The replacement of existing switches, sockets and lamps;

D. Repairs to entrance service equipment; and

E. Repairs or installation of radio and low voltage equipment.

2. Application for permit. The person performing the work must apply to the electrical inspector in writing for a permit. A general description of the electrical work to be done must be included with the application. If required by the electrical inspector, the applicant must file any plans, specifications and schedules that are necessary to determine whether the installation, as described, will comply with this subchapter.

3. Issuance of permit. The electrical inspector shall issue the permit if the applicant has:

A. Complied with this subchapter; and

B. Paid any fee established by a municipality for electrical inspections under this subchapter.

4. Deviation from installation described in permit. No major deviation may be made from the installation described in the permit without the written approval of the electrical inspector.

5. Where permit is not required. The installation or alteration of electrical equipment in municipalities which do not require a permit and in the unorganized territories is governed by Title 32, section 1102-B.

§4174. Inspection and certificates of approval

When the installation of any electrical equipment under a permit is completed, the person making the installation shall notify the electrical inspector having jurisdiction. The electrical inspector shall inspect the work within a reasonable time.

1. Approval of installation. If, upon inspection, the inspector finds that the installation complies with this subchapter, and all applicable local ordinances and regulations, the inspector shall issue a certificate of approval to the person making the installation.

2. Notice of defects. If, upon inspection, the inspector finds that the installation does not comply with this subchapter, and all applicable local ordinances and regulations, the inspector shall immediately send a written notice to the person making the installation stating the defects which were found to exist.

## SUBCHAPTER III

## REGULATION AND INSPECTION OF PLUMBING

### ARTICLE 1. GENERAL PROVISIONS

#### §4201. Definitions

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

1. Commissioner. "Commissioner" means the Commissioner of Human Services.

2. Department. "Department" means the Department of Human Services.

3. Plumbing. "Plumbing" means the installation, alteration or replacement of pipes, fixtures and other apparatus for bringing in potable water, removing waste water and the piping connections to heating systems using water. Except for the initial connection to a potable water supply and the final connection that discharges indirectly into a public sewer or waste water disposal system, the following are excluded from this definition:

A. All piping, equipment or material used exclusively for manufacturing or industrial processes;

B. The installation or alteration of automatic sprinkler systems used for fire protection and standpipes connected to automatic sprinkler systems or overhead;

C. Building drains outside the foundation wall or structure;

D. The replacement of fixtures with similar fixtures at the same location without any alteration of pipes; or

E. The sealing of leaks within an existing line.

4. Seasonal dwelling. "Seasonal dwelling" means a dwelling which existed on December 31, 1981, and which was not used as a principal or year-round residence during the period from 1977 to 1981. Evidence of use as a principal or year-round residence includes, but is not limited to:

A. The listing of that dwelling as an occupant's legal residence for the purpose of:

(1) Voting;

(2) Filing a state tax return; or

(3) Automobile registration; or

B. The occupancy of that dwelling for a period exceeding 7 months in any calendar year.

5. Subsurface waste water disposal system. "Subsurface waste water disposal system" means:

A. Any system for the disposal of waste or waste water on or beneath the surface of the earth including, but not limited to:

(1) Septic tanks;

(2) Drainage fields;

(3) Grandfathered cesspools;

(4) Holding tanks; or

(5) Any other fixture, mechanism or apparatus used for those purposes; but

B. Does not include:

(1) Any discharge system licensed under Title 38, section 414;

(2) Any surface waste water disposal system; or

(3) Any municipal or quasi-municipal sewer or waste water treatment system.

### ARTICLE 2. REGULATIONS AND PERMITS

#### §4211. Plumbing regulations

1. Municipal ordinances. Municipalities may enact ordinances under their home rule authority which are more restrictive than rules governing plumbing or subsurface waste water disposal systems adopted by the department. The department may provide technical assistance to municipalities in the development of ordinances under this subchapter. The municipality shall enforce any such ordinance.

2. State rules. No municipal ordinance may be less restrictive than the rules of the department relating to plumbing or subsurface waste water disposal systems

as adopted under Title 22, section 42. The department shall establish minimum permit fees by rule. The rules of the department relating to all plumbing or subsurface waste water disposal systems have full force and effect, provided that, to the extent that a municipality has enacted more restrictive ordinances, the provisions of those ordinances prevail.

3. Subsurface waste water disposal system. No person may erect a structure that requires a subsurface waste water disposal system until documentation has been provided to the municipal officers that the disposal system can be constructed in compliance with rules adopted under Title 22, section 42, and this section.

A. For the purposes of this section, "expansion" means the enlargement or change in use of a structure using an existing subsurface waste water disposal system that brings the total structure into a classification that requires larger subsurface waste water disposal system components under rules adopted pursuant to Title 22, section 42, and this section.

B. No person may expand a structure using a subsurface waste water disposal system until documentation is provided to the municipal officers and a notice of the documentation is recorded in the appropriate registry of deeds that, in the event of a future malfunction of the system, the disposal system can be replaced and enlarged to comply with the rules adopted under Title 22, section 42, and any municipal ordinances governing subsurface waste water disposal systems. No requirement of these rules and ordinances may be waived for an expanded structure.

(1) The department shall prescribe the form of the notice to be recorded in the registry of deeds. The notice shall include a site plan showing:

(a) The exact location of the replacement system;

(b) The approximate location of lot lines; and

(c) The exact location of existing wells serving the lot on which the replacement system will be located and those located on abutting lots.

(2) The person seeking to expand a structure shall send copies of the notice by certified mail, return receipt requested, to all owners of abutting lots.

(3) After the notice required by this paragraph is recorded, no abutting landowner may install a well on that landowner's property in a location which would prevent the installation of the replacement septic system. The owner of the lot on which the replacement system will be installed may not erect any structure on the proposed site of the replacement system or conduct any other activity which would prevent the use of the designated site for the replacement system.

4. Enforcement and penalty. Any person who violates this section shall be penalized in accordance with section 4506. The municipality or the department may seek to enjoin violations of this section.

§4212. Department of Human Services; responsibilities

1. Administration of rules. The department is responsible for ensuring the proper administration of the plumbing and subsurface waste water disposal rules by municipalities. The department shall assist municipalities in complying with this subchapter and with section 3428.

2. Review. The department shall review the administration of plumbing and subsurface waste water disposal rules and laws in each municipality for compliance with this subchapter and with section 3428. This review shall be made on a regular basis and may be made in response to a written complaint from any person as necessary. The department shall inspect the municipality's records and discuss the administration of the program with the local plumbing inspector. The local plumbing inspector shall be available during the department's review and shall cooperate in providing all necessary information. The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice shall set forth the department's findings of whether the municipality is in compliance with this subchapter and section 3428.

3. Violation; penalty. If after review the department finds any violation of this subchapter or section 3428, it shall notify the municipality that it has 30 days in which to take enforcement action and shall specify what action must be taken in order to achieve compliance. The municipality shall file a plan acceptable to the department setting forth how it will attain compliance. The department shall notify the municipality that it will review the municipality for compliance within 60 days of accepting the plan and shall conduct that review. Any municipality which fails to file an acceptable plan with the department or which remains in violation at the expiration of the 60-day period is subject to a civil penalty of at least $500. The department shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality remains in violation after review and notification constitutes a separate offense.

§4213. Right of entry on inspection

The department and any duly designated representative or employee of the department, including the local plumbing inspector, may enter any property at reasonable hours, enter any building with the consent of the property owner, occupant or agent, inspect the property or structure for compliance with the applicable rules or investigate alleged conditions which do not comply with the rules. Upon the request of the occupant of the premises, the department's representative or the local plumbing inspector shall present proper credentials be-

fore entering the premises.

If entry is denied, entry shall not be attempted until after obtaining an order of the court.

§4214. Legislative intent

It is the intent of the Legislature that local jurisdictions have primary responsibility for enforcing rules adopted by the department governing the installation and inspection of plumbing and subsurface waste water disposal systems. The adoption of rules by the department does not deny municipal authority under section 3001 to adopt more restrictive ordinances.

§4215. Permits

1. Permit required. A permit is required for the following activities and is valid for work commenced within 24 months after the permit is issued:

A. The installation of plumbing into a building;

B. The installation of a subsurface waste water disposal system or components; or

C. The conversion of a seasonal dwelling as provided in subsection 2. This paragraph may not be construed to require a permit for any dwelling which:

(1) Will be occupied seasonally;

(2) Is not the principal dwelling place of the occupant; or

(3) Has the disposal system located outside the shoreland zoned area.

2. Permit for seasonal conversion. Before converting a seasonal dwelling which is located in the shoreland zoning area, as defined in Title 38, section 435, to a year-round or principal dwelling, a conversion permit must be obtained from the local plumbing inspector. The inspector shall issue a permit for conversion of a seasonal dwelling to a year-round or principal dwelling if one of the following conditions is met:

A. A subsurface water disposal application, completed after July 1, 1974, exists indicating that the dwelling's waste water disposal system substantially complies with departmental rules and applicable municipal ordinances, provided that the disposal system was installed with the required permit and certificate of approval;

B. A replacement for an existing waste water disposal system has been constructed so that it substantially complies with departmental rules and applicable municipal ordinances;

C. The dwelling unit's waste water is connected to an approved sanitary sewer system; or

D. A variance has been granted under this paragraph. The owner of a seasonal dwelling, upon application, shall be granted a variance from the requirements of this subsection if, based upon the site evaluation, the plumbing inspector finds that in the event of a malfunction of the existing system a replacement subsurface waste water system can be installed which will be in substantial compliance with departmental rules and applicable municipal ordinances and that the new system will not be likely to endanger the quality of the adjacent water bodies or of adjacent private water supplies.

(1) The applicant for a variance shall have a notice documenting the finding of the plumbing inspector recorded in the appropriate registry of deeds and shall send a copy of that notice by certified mail, return receipt requested, to each owner of an abutting lot. The department shall prescribe the form of the notice to be used. The notice shall include a site plan showing:

(a) The exact location of the replacement system;

(b) The approximate location of lot lines; and

(c) The exact location of existing wells serving the lot on which the replacement system will be located and those located on abutting lots.

(2) After the notice required by subparagraph (1) is recorded, an abutting landowner may not install a well on property in a location which would prevent the installation of the replacement septic system. The owner of the lot on which the replacement system would be installed may not erect any structure on the proposed site of the replacement system or conduct any other activity which would prevent the use of the designated site for the replacement system.

(3) In the event of a malfunction of a system for which a variance has been granted, the owner of the converted seasonal dwelling shall obtain a permit and repair or replace the existing subsurface disposal system to bring the system into substantial compliance with departmental rules and applicable municipal ordinances and ensure that the system will not endanger the quality of adjacent water bodies or adjacent private water supplies. No variance for a new, expanded or replacement subsurface disposal system may be approved within the shoreland zoning area which is less restrictive than the requirements of this paragraph or rules adopted to carry out this paragraph. A seasonal conversion permit shall not be approved if a holding tank is used as a means of waste water disposal or storage.

3. Penalties. Any person who installs or orders the installation of any plumbing or subsurface waste water disposal system without the permit required by this section or who otherwise violates this section shall be penal-

ized in accordance with section 4506. The municipality or the department may seek to enjoin violations of this section.

4. Fees. The plumbing inspector shall issue any permit under this section upon receipt and approval of a completed application form as prescribed by the commissioner and payment by the applicant of the fee established by the municipality. The fee must be at least the minimum amount determined by rule of the department. One-quarter of the amount of the minimum fee shall be paid through the department to the Treasurer of State to be maintained as a permanent fund and used by the department to implement its plumbing and subsurface waste water disposal rules and to train and certify local plumbing inspectors. The remainder of the fee shall be paid to the treasurer of the municipality.

§4216. Transfers of shoreland property

1. Statement and documentation required. Any person transferring property on which a subsurface waste water disposal system is located within a shoreland area, as defined in Title 38, section 435, shall provide the transferee with a sworn statement at the time of transfer certifying with any necessary written documentation that:

A. The disposal system has been inspected within the preceding 180 days by a person licensed under Title 22, section 42, who shall report any findings and provide any documentation as required by rules adopted by the Department of Human Services; and

B. At least one of the following conditions has been met:

(1) The disposal system has received a permit and certificate of approval from an individual licensed under section 4221;

(2) The subsurface waste water disposal system has been replaced by a connection to an approved sanitary sewer; or

(3) The transferor provides documentation of an application and any necessary departmental approval as specified in the Maine State Plumbing Code that, in the event of a future malfunction of the existing system, a replacement subsurface waste water disposal system can be installed to serve the existing level of use.

2. Rulemaking. The Department of Human Services shall adopt rules to implement this section on or before June 1, 1988. The rules shall govern the scope of the inspection necessary for compliance, the findings necessary and the content and distribution of the documentation required. At a minimum, the rules shall provide for inspections sufficient to determine whether or not the system is in compliance with the Maine State Plumbing Code. The department shall send copies of the proposed rules to all persons licensed under Title 22, section 42.

3. Application. The requirements of this section for transfers of property in the shoreland area apply to transfers on or after June 1, 1988.

ARTICLE 3. LOCAL PLUMBING INSPECTORS

§4221. Plumbing inspectors

1. Appointment, compensation, removal. In every municipality, the municipal officers shall appoint one or more inspectors of plumbing, who need not be residents of the municipality for which they are appointed. Plumbing inspectors shall be appointed under section 2526, subsection 9 for a term of one year. An individual properly appointed as plumbing inspector and satisfactorily performing the duties may continue in that capacity after the term has expired until replaced. The municipal officers shall notify the department of the appointment of a plumbing inspector in writing within 30 days of the appointment.

Compensation of plumbing inspectors shall be determined by the municipal officers and shall be paid by the respective municipalities.

The municipal officers may remove a plumbing inspector for cause, after notice and hearing.

2. Certification requirements. A person may not hold the office of plumbing inspector unless currently certified as qualified by the commissioner. The commissioner shall establish the certification standards for plumbing inspectors. Certification is effective for a period of 3 years unless sooner revoked or suspended by the Administrative Court upon complaint by the commissioner on grounds of fraud, negligence, misconduct or incompetence in the performance of duties. The commissioner may grant temporary certification for a period not to exceed 6 months.

A. The commissioner shall also establish certification standards and a program to certify familiarity with court procedures for:

(1) Plumbing inspectors appointed under this section;

(2) Code enforcement officers, as set forth in section 4506 and in Title 38, section 441; and

(3) Department of Environmental Protection employees, as set forth in Title 38, section 342, subsection 7.

Certification under this paragraph is effective for a period of 3 years unless sooner revoked or suspended by the Administrative Court upon complaint by the commissioner on grounds of fraud, negligence, misconduct or incompetence in the performance of duties. After being certified by the commissioner under this paragraph, a plumbing inspector may serve civil process on persons who violate the plumbing and sub-

surface waste water disposal rules of the department. The municipal officers may also authorize the inspector to represent the municipality in District Court under section 4506.

3. Duties. Plumbing inspectors shall:

A. Inspect all plumbing for which permits are granted, within their respective municipalities, to ensure compliance with state rules and municipal ordinances and investigate all construction or work covered by those rules and ordinances;

B. Condemn and reject all work done or being done or material used or being used which does not comply with state rules and municipal ordinances, and order changes necessary to obtain compliance;

C. Issue a certificate of approval for any work that the inspector has approved;

D. Keep an accurate account of all fees collected and transfer those fees to the municipal treasurer;

E. Keep a complete record of all essential transactions of the office;

F. Perform other duties as provided by municipal ordinance; and

G. Investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate action as specified by the department by rule in the State of Maine Enforcement Manual, Procedures for Correcting Violations to the Subsurface Waste Water Disposal and Plumbing Rules.

§4222. Approving own work forbidden

No inspector of plumbing may inspect or approve any plumbing work, site evaluation or installation of a subsurface disposal system, done by that inspector, or by any person by whom the inspector is employed, or who is employed by or with the inspector.

§4223. Annual reports

Inspectors of plumbing shall annually, before February 1st, make a full report in detail to their respective municipalities and to the department of all their proceedings during the previous calendar year under this subchapter.

## SUBPART 7

## PLANNING AND ZONING

## CHAPTER 191

## PLANNING AND ZONING

### SUBCHAPTER I

### GENERAL PROVISIONS

§4501. Definitions

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

1. Conditional zoning. "Conditional zoning" means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

2. Contract zoning. "Contract zoning" means the process by which the property owner, in consideration of the rezoning of that owner's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

3. Municipal reviewing authority. The "municipal reviewing authority" means the municipal planning board, agency or office or, if none, the municipal officers.

4. Zoning. "Zoning" means the division of a municipality into districts and the prescription and reasonable application of different regulations in each district.

§4502. Comprehensive plan

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

A. "Comprehensive plan" means a compilation of policy statements, goals, standards, maps and pertinent data concerning the past, present and future trends of the municipality with respect to its population, housing, economics, social patterns, land use, water resources and their use, transportation facilities and public facilities prepared by the municipal planning board, agency or office.

(1) The comprehensive plan, being as much a process as a document capable of distribution, may at successive stages consist of:

(a) Data collected;

(b) Preliminary plans;

(c) Alternative action proposals; and

(d) A comprehensive plan to be adopted.

(2) In its final stages, it may consist of a series of subsidiary but interrelated plans, such as, but not limited to:

(a) A water and sewerage system plan;

(b) A land use plan;

(c) A shoreland management plan that considers functionally water-dependent uses and public access to and use of the shoreline;

(d) A community facilities plan;

(e) A transportation plan;

(f) An urban renewal or rehabilitation plan;

(g) An air or water pollution control plan; and

(h) A park and open space plan.

(3) The comprehensive plan shall include recommendations for plan execution and implementation, such as, but not limited to:

(a) A capital improvements program;

(b) Renewal and rehabilitation programs;

(c) Land use control ordinances; and

(d) Building, safety and housing codes.

(4) The comprehensive plan shall include mechanisms which will ensure:

(a) Continual data collection;

(b) Reevaluation in light of new alternatives; and

(c) Revision.

(5) The comprehensive plan may include planning techniques, such as, but not limited to:

(a) Planned unit development;

(b) Site plan approval;

(c) Open space zoning;

(d) Clustered development;

(e) Conditional zoning;

(f) Contract zoning; and

(g) Zoning to protect access to direct sunlight for solar energy use.

B. "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal waters and which cannot be located away from these waters. These uses include, but are not limited to:

(1) Commercial and recreational fishing and boating facilities;

(2) Finfish and shellfish processing, storage and retail and wholesale marketing facilities;

(3) Dock and port facilities;

(4) Shipyards and boat building facilities;

(5) Marinas, navigation aids, basins and channels;

(6) Industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site; and

(7) Uses which primarily provide general public access to marine or tidal waters.

2. Public participation. The public shall be given an adequate opportunity to be heard in the preparation of a comprehensive plan.

§4503. Zoning ordinances

Any zoning ordinance adopted under a municipality's home rule authority is subject to the following provisions.

1. Public participation required. The public shall be given an adequate opportunity to be heard in the preparation of any zoning ordinance.

2. Relation to comprehensive plan. A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.

3. Zoning map required. A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated in the ordinance. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

4. Exemption for public service corporations. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only when on petition, notice and public hearing the Public Utilities Commission has determined that the exemption is reasonably necessary for public welfare and convenience.

5. Effect on local governments. County and municipal governments and districts are subject to the provisions of any zoning ordinance.

6. Effect on State. Any zoning ordinance is advisory with respect to the State.

7. Violation declared nuisance. Any property or use existing in violation of any zoning ordinance is a nuisance.

8. Petition for rezoning; bond. Any zoning ordinance may provide that, when a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

9. Conditional and contract zoning. Any zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

A. Be consistent with the municipal comprehensive plan;

B. Establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and

C. Only include conditions and restrictions which relate to the physical development or operation of the property.

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing shall be posted in the municipal office at least 14 days before the public hearing. Notice shall also be published in a newspaper having general circulation in the municipality at least 2 times; the date of the first publication must be at least 7 days before the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

§4504. Zoning adjustment

1. Establishment. A board of appeals is established in any municipality which adopts a zoning ordinance. The board of appeals shall hear appeals from actions or failure to act of the official or board responsible for enforcing the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. The board of appeals is governed by section 2691, except that section 2691, subsection 2 does not apply to boards existing on September 23, 1971.

2. Powers. In deciding any appeal, the board may:

A. Interpret the provisions of the ordinance which are called into question;

B. Approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance; and provided that, if the municipality has authorized the planning board, agency or office to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and

C. Grant a variance in strict compliance with subsection 3.

3. Variance. The board may grant a variance only where strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question cannot yield a reasonable return unless a variance is granted;

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

C. The granting of a variance will not alter the essential character of the locality; and

D. The hardship is not the result of action taken by the applicant or a prior owner.

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may only be granted for a use permitted in a particular zone.

4. Parties. The board shall reasonably notify the petitioner, the planning board, agency or office and the municipal officers of any hearing. These persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

5. Variance recorded. If the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting shall be prepared in recordable form. The variance recipient must record this certificate in the local registry of deeds within 30 days of final approval of the variance or the variance is invalid. No rights may accrue to the variance recipient or the recipient's heirs, successors or assigns unless and until the recording is made within 30 days.

§4505. Savings provisions

Any planning board or district established and any ordinance, comprehensive plan or map adopted under a prior and repealed law shall remain in effect until abolished, amended or repealed. Any property or use existing in violation of such an ordinance is a nuisance. Planning boards established under repealed Title 30, section 4952, subsection 1, shall continue to be governed by those provisions until they are superseded by municipal charter or ordinance. Unless a municipal charter otherwise pro-

vides, the municipal officers may pay board members a set amount, not to exceed $10, for each meeting attended.

§4506. Enforcement of land use laws and ordinances

1. Enforcement. A municipal official, such as a municipal code enforcement officer, local plumbing inspector or building inspector, who is designated by ordinance or law with the responsibility to enforce a particular law or ordinance set forth in subsection 5, may:

A. With the consent of the property owner, occupant or agent, enter any property or building at reasonable hours to inspect the property or structure for compliance with the laws or ordinances set forth in subsection 5;

B. Issue a summons to any person who violates a law or ordinance which the official is empowered to enforce; and

C. When specifically authorized by the municipal officers, represent the municipality in District Court in the prosecution of alleged violations of ordinances or laws which the official is empowered to enforce.

2. Liability for violations. Any person, including, but not limited to, a landowner, the landowner's agent or a contractor who violates any of the laws or ordinances set forth in subsection 5 is liable for the penalties set forth in subsection 3.

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. All monetary penalties are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is $100, and the maximum penalty is $2,500.

B. The minimum penalty for a specific violation is $100, and the maximum penalty is $2,500.

C. The violator may be ordered to correct or abate the violations. Where the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction will:

(1) Result in a threat or hazard to public health or safety;

(2) Result in substantial environmental damage; or

(3) Result in a substantial injustice.

D. If the municipality is the prevailing party, it shall be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.

E. In setting a penalty, the court shall consider, but is not limited to, the following:

(1) Prior violations by the same party;

(2) The degree of environmental damage that cannot be abated or corrected;

(3) The extent to which the violation continued following a municipal order to stop; and

(4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action.

F. The maximum penalty may exceed $2,500, but may not exceed $25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance.

G. The penalties for violations of waste discharge licenses issued by the municipality pursuant to Title 38, section 413, subsection 8, is as prescribed in Title 38, section 349.

4. Proceedings brought for benefit of municipality. All proceedings arising under locally administered laws and ordinances shall be brought in the name of the municipality. All fines resulting from those proceedings shall be paid to the municipality.

5. Application. The provisions of this section apply to enforcement of land use laws and ordinances or rules which are administered and enforced primarily at the local level, including:

A. The plumbing and subsurface waste water disposal rules adopted by the Department of Human Services pursuant to Title 22, section 42, including the land area of the State which is subject to the jurisdiction of the Maine Land Use Regulation Commission;

B. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;

C. Local ordinances adopted pursuant to Title 22, section 2642;

D. Laws administered by local health officers pursuant to Title 22, chapters 153 and 263;

E. Laws pertaining to fire prevention and protection, which require enforcement by local officers pursuant to Title 25, chapter 313;

F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 25, chapter 331;

G. Local land use ordinances adopted pursuant to section 3001;

H. Local building codes adopted pursuant to sections 3001 and 3007;

I. Local housing codes adopted pursuant to sections 3001 and 3007;

J. Local ordinances regarding automobile junkyards pursuant to chapter 183, subchapter I;

K. Local ordinances regarding electrical installations pursuant to chapter 185, subchapter II;

L. Local ordinances regarding regulation and inspection of plumbing pursuant to chapter 185, subchapter III;

M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428;

N. The subdivision law and local subdivision ordinances adopted pursuant to section 3001 and subdivision regulations adopted pursuant to section 4551;

O. Local zoning ordinances adopted pursuant to section 3001 and in accordance with section 4503;

P. Waste water discharge licenses issued pursuant to Title 38, section 413, subsection 8; and

Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those which were state-imposed.

## SUBCHAPTER II

## SPECIFIC SUBJECTS OF REGULATION

### §4551. Land subdivisions

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

A. "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

B. "Principal structure" means any building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

C. "Subdivision" means the division of a tract or parcel of land into 3 or more lots of less than 40 acres each within any 5-year period that begins after September 22, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise, except that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of that gift is to avoid the objectives of this section, or a division accomplished by the transfer of any interest in land to the owner of abutting land, does not create a lot or lots for the purposes of this definition. The division of a tract or parcel into 3 or more lots and upon all of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

(1) In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(a) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single family residence for a period of at least 5 years before the 2nd dividing occurs; or

(b) The division of the tract or parcel is otherwise exempt under this section.

(2) If lots of 40 or more acres are located wholly or partly within any shoreland zone, municipal review may be required by the municipality, provided that the average lot depth to shore frontage ratio is greater than 5 to one.

D. "Tract or parcel of land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

E. In accordance with Title 12, section 402, outstanding river segments include:

(1) The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.;

(2) The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

(3) The Crooked River from its inlet into Sebago Lake to the Waterford and Albany Township town line;

(4) The Damariscotta River from the Route 1 bridge in Damariscotta to the dam at Damariscotta Mills;

(5) The Dennys River from the Route 1 bridge to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

(6) The East Machias River, including the Maine River, from 1/4 of a mile above the Route 1 bridge to the East Machias and T.18, E.D., B.P.P. town line, from the T.19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake, and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;

(7) The Fish River from the bridge at Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line, and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

(8) The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;

(9) The Kennebec River from Thorns Head Narrows in North Bath to the Edwards Dam in Augusta, excluding Perkins Township, and from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;

(10) The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line;

(11) The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line, and from the Reed Plantation and Bancroft town line to the East Branch in Haynesville;

(12) The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town lines, excluding Beddington Lake;

(13) The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

(14) The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line;

(15) The Pleasant River from the bridge in Addison to the Columbia and T.18, M.D., B.P.P. town line, and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake;

(16) The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

(17) The Saco River from the Little Ossipee River to the New Hampshire border;

(18) The St. Croix River from the Route 1 bridge in Calais to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line, and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

(19) The St. George River from the Route 1 bridge in Thomaston to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

(20) The St. John River from the Van Buren and Hamlin Plantation town line to the Fort Kent and St. John Plantation town line, and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

(21) The Sandy River from the Kennebec River to the Madrid and Township E town line;

(22) The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

(23) The West Branch Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line; and

(24) The West Branch Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

2. Municipal review and regulation. The municipal reviewing authority shall review all requests for subdivision approval. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence. The municipal reviewing authority may, after a public hearing, adopt additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of this hearing.

A. When an application is received, the municipal reviewing authority shall give a dated receipt to the applicant. Within 30 days after receiving an application, the municipal reviewing authority shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application. After the municipal reviewing authority has deter-

mined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.

B. If the municipal reviewing authority decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within 30 days of its receipt of a completed application. The municipal reviewing authority shall have notice of the date, time and place of the hearing:

(1) Given to the applicant; and

(2) Published, at least 2 times, in a newspaper having general circulation in the municipality in which the subdivision is proposed to be located. The date of the first publication must be at least 7 days before the hearing.

C. The municipal reviewing authority shall, within 30 days of a public hearing or, if no hearing is held, within 60 days of receiving a completed application or within any other time limit that is otherwise mutually agreed to, issue an order:

(1) Denying the proposed subdivision;

(2) Granting approval of the proposed subdivision; or

(3) Granting approval upon any terms and conditions that it considers advisable to:

(a) Satisfy the criteria listed in subsection 3;

(b) Satisfy any other regulations adopted by the reviewing authority; and

(c) Protect and preserve the public's health, safety and general welfare.

D. In all instances, the burden of proof is upon the persons proposing the subdivisions. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the criteria described in paragraph C. In addition, whenever the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance from any of the applicable subdivision approval standards, that fact shall be expressly noted on the face of the subdivision plan to be recorded in the local registry of deeds or, in the case of an amendment if no amended plan is to be recorded, a certificate indicating the name of the current property owner, identifying the property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting shall be prepared in recordable form and shall be recorded in the local registry of deeds within 30 days of the final subdivision approval or the variance shall be invalid. No rights may accrue to the variance recipient or the recipient's heirs, successors or assigns unless the recording is made within the 30 days.

3. Guidelines. When adopting any subdivision regulations and when reviewing any subdivision for approval, the municipal reviewing authority shall consider the following criteria and, before granting approval, must determine that:

A. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

(1) The elevation of the land above sea level and its relation to the flood plains;

(2) The nature of soils and subsoils and their ability to adequately support waste disposal;

(3) The slope of the land and its effect on effluents;

(4) The availability of streams for disposal of effluents; and

(5) The applicable state and local health and water resource rules and regulations;

B. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

C. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

D. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

E. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;

F. The proposed subdivision will provide for adequate sewage waste disposal;

G. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste and sewage, if municipal services are to be used;

H. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

I. The proposed subdivision complies with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any;

J. The subdivider has adequate financial and technical capacity to meet the standards of this subsection;

K. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Furthermore, when lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet. To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

(1) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, section 442, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of subsection 1 on September 23, 1983;

L. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water; and

M. The subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plat approval requiring that principal structures on lots in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

4. Access to direct sunlight. The municipal reviewing authority may, to protect and ensure access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive covenants, height restrictions, side yard and set-back requirements or other permissible forms of land use controls.

5. Enforcement; prohibited activities. The Attorney General, the municipality or the planning board of any municipality may institute proceedings to enjoin the violation of this section.

A. No person may sell, lease, develop, build upon or convey for consideration, or offer or agree to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and recorded in the proper registry of deeds.

(1) No register of deeds may record any subdivision plat or plan which has not been approved under this section. Approval for the purpose of recording must appear in writing on the plat or plan. All subdivision plats and plans required by this section must contain the name and address of the person under whose responsibility the subdivision plat or plan was prepared.

(2) No building inspector may issue any permit for a building or use within a land subdivision unless the subdivision has been approved under this section.

(3) Any person who sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved under this section shall be penalized in accordance with section 4506.

B. No person may sell or convey any land in an approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term "permanent marker" includes, but is not limited to, the following:

(1) A granite monument;

(2) A concrete monument;

(3) An iron pin; or

(4) A drill hole in ledge.

C. No public utility, water district, sanitary district or any utility company of any kind may install services to any lot in a subdivision, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials indicating that installation has been completed.

6. Exemptions. This section does not apply in the following instances.

A. This section does not apply to:

(1) Proposed subdivisions approved by the planning board or the municipal officials before September 23, 1971 in accordance with laws then in effect;

(2) Subdivisions in actual existence on September 23, 1971 that did not require approval under prior law; or

(3) A subdivision, a plan of which had been legally recorded in the proper registry of deeds before September 23, 1971.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this section, do not become subject to this section by the subsequent dividing of that tract or parcel of land or any portion of that parcel or lot. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

7. Revisions to existing plat or plan. Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended.

A. If a subdivision plat or plan is presented for recording to a register of deeds and that plat or plan is a revision or amendment to an existing plat or plan, the register shall:

(1) Indicate on the index for the original plat or plan that it has been superseded by another plat or plan;

(2) Reference the book and page or cabinet and sheet on which the new plat or plan is recorded; and

(3) Ensure that the book and page or cabinet and sheet on which the original plat or plan is recorded is referenced on the new plat or plan.

8. Lots of 40 or more acres. Where 3 or more lots of 40 or more acres are developed, a plan must be filed with the registry of deeds and the municipal authority responsible for reviewing subdivisions.

§4552. Community living arrangements

1. Legislative intent. It is the intent of the Legislature that persons seeking to establish a community living facility in a single-family residential zone shall not be prohibited on the basis of the disability served. It is also the intent of the Legislature that community living facilities for mentally handicapped and developmentally disabled persons shall not be prohibited from single-family residential zones in a municipality. Municipal ordinances or actions which have the effect of preventing or prohibiting these community living facilities from single-family residential zones, particularly by establishing criteria for single-family residential zones in excess of the criteria in subsections 4 and 5, are a violation of legislative intent.

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

A. "Board of appeals" means the board of appeals or any other board established by a municipality with the authority to hear appeals related to enforcement of the zoning ordinances.

B. "Community living facility" means a housing facility for 8 or fewer mentally handicapped or developmentally disabled persons which is approved, authorized, certified or licensed by the State. A community living facility may include a group home, foster home or intermediate care facility.

C. "Single-family residential zone" means a residential zone designated by a municipality for single-family housing, except as provided in this section. If there are no residential zones designated or considered by a municipality as single-family residential zones, all residential zones in the municipality in which community living facilities are not a permitted use shall be deemed single-family residential zones.

3. Permitted or conditional community living use; definition. In order to implement the policy of this State that mentally handicapped or developmentally disabled persons shall not be excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living facility shall be considered a permitted or conditional single-family residential use of property for the purposes of zoning.

4. Hearing. The municipality shall hold a public hearing within 60 days of an application to establish a community living use within a single-family residential zone, unless a community living use is a permitted use within the single-family zone. The failure to hold the public hearing required by this subsection within the 60-day period constitutes approval of the application, unless the time period is extended by mutual agreement of the parties.

A. The public hearing shall be conducted by the board of appeals, and interested parties shall be notified. The notice period and procedure for zoning appeals, as established by the municipality, must meet the notice requirements of this section.

B. The board of appeals shall receive public comment on the proposed community living facility. The board may modify or disapprove the application only upon a finding of one or more of the following:

(1) The proposed use would create or aggravate a traffic hazard;

(2) The proposed use would hamper pedestrian circulation;

(3) The proposed use would not permit convenient access to commercial shopping facilities, medical facilities, public transportation, fire protection or police protection;

(4) The proposed use would not comply with applicable building, housing, plumbing and other safety codes, including municipal minimum lot size and building set-back requirements for new construction; or

(5) The proposed use would not comply with the density requirements of subsection 5.

5. Density. Density regulation of community living uses is intended to permit the location of these uses within a municipality while ensuring that they will not become overly concentrated in neighborhoods to the detriment of either the neighborhoods or those residing in the uses.

No state agency may approve, authorize, certify or license a community living use, nor may the board of appeals, pursuant to an authorized public hearing, approve an application for a community living use, if:

A. A proposed community living use would be located within 1,500 feet of an existing community living use; or

B. A proposed community living use would result in the excessive concentration of these uses within the zone or municipality.

The board of appeals may waive density regulations for adjacent community living uses providing essential components of a single program.

6. Appeals. Any decision by the board of appeals under this section may be appealed in accordance with section 2691, subsection 3, paragraph G.

7. Applicability. Except for the density requirements of subsection 5, this section does not apply to:

A. Community living uses authorized, certified or licensed before July 13, 1982;

B. Community living uses for which an application was made before July 13, 1982; or

C. Facilities licensed by the Department of Human Services under Title 22, section 8101, subsections 1 to 3, subsection 4, paragraph A and subsection 5.

8. Repeal of designation. If a municipality repeals the designation of single-family residential zones, community living facilities located in the other residential zones prior to the effective date of this subsection shall not be required to meet the criteria of subsections 4 and 5.

§4553. Regulation of manufactured housing

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

A. "Manufactured housing" means a structural unit or units designed for occupancy, and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, 2 types of manufactured housing are included. They are:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes," which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures, transportable in one or more sections, which, in the traveling mode, are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning or electrical systems contained in the unit;

(a) This term also includes any structure which meets all the requirements of this subparagraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

(2) Those units commonly called "modular homes," which the manufacturer certifies are constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 and rules, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

B. "Mobile home park" means a parcel of land under unified ownership approved by the municipality for the placement of manufactured housing.

C. "Mobile home subdivision or development" means a parcel of land approved by the municipal reviewing authority under section 4551, for the placement of manufactured houses on individually owned lots.

D. "Permanent foundation" means all of the following:

(1) A full, poured concrete or masonry foundation;

(2) A poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor;

(3) A reinforced, floating concrete pad for which the municipality may require an engineer's certification if it is to be placed on soil with high frost susceptibility; and

(4) Any foundation which, pursuant to the building code of the municipality, is permitted for other types of single-family dwellings.

E. "Pitched, shingled roof" means a roof with a pitch of 2 or more vertical units for every 12 horizontal units of measurement and which is covered with asphalt or fiberglass composition shingles or other materials, but specifically excludes corrugated metal roofing material.

2. Location of manufactured housing. Municipalities shall permit manufactured housing to be placed or erected on individual house lots in a number of locations on undeveloped lots where single-family dwellings are allowed, subject to the same requirements as single-family dwellings, except as otherwise provided in this section.

A. For the locations required by this section, municipal ordinances may not require that manufactured housing on individual lots be greater than 14 feet in width, although municipalities may establish design criteria, including, but not limited to, a pitched, shingled roof; a permanent foundation; and exterior siding that is residential in appearance, provided that the requirements do not have the effect of circumventing the purposes of this section.

B. Providing one or more zones or locations where mobile home parks or mobile home subdivisions or developments are allowed does not constitute compliance with this section.

C. This section does not prohibit municipalities from establishing controls on manufactured housing which are less restrictive than are permitted by this section.

3. Certification of payment of sales tax. No municipality may allow the construction or location of any manufactured housing within the municipality without:

A. Certification of payment of sales tax in accordance with Title 36, section 1760, subsection 40; and Title 36, section 1952-B; and

B. A valid bill of sale indicating the name and address of the firm, corporation or person who sold or provided the manufactured housing to the buyer siting the housing in the municipality.

In municipalities which require any type of permit for manufactured housing, the permit is deemed to be not approved or valid until payment of the sales tax has been certified.

§4554. State policy relating to municipal commercial landfill facilities moratoria

It is the policy of this State, with respect to commercial landfill facilities:

1. State and municipal control. To affirm the importance of state and municipal control over the establishment of new commercial landfill facilities and over the substantial expansion of existing commercial landfill facilities; and

2. Recognition of home rule authority. To recognize that any municipality may, under its home rule authority, enact a moratorium on the issuance or processing of any municipal permit for a new commercial landfill facility.

## CHAPTER 193

## RIVER CORRIDOR COMMISSIONS

§4601. River corridor commissions encouraged

1. Findings. The Legislature finds that:

A. The effectiveness of local governments in implementing their responsibilities under shoreland zoning can be enhanced by coordination and cooperation among municipalities;

B. River corridor commissions have proven their effectiveness as one mechanism to bring about such coordination and cooperation;

C. Additional river corridor commissions are not likely to be formed without state encouragement and incentives; and

D. Such cooperation serves state interests as stated in Title 12, section 402 and Title 38, chapter 3, subchapter I, article 2-B.

2. Purpose. It is the policy of the State to encourage the formation of river corridor commissions. The purpose of this law is to:

A. Clarify the procedures for forming river corridor commissions;

B. Delegate authority to the Commissioner of Conservation to approve acceptable proposals to form the river corridor commissions;

C. Grant additional powers to those river corridor commissions beyond those provided for in chapter 115; and

D. Provide a portion of the funding for the operation of the river corridor commissions.

§4602. Definitions

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

1. Commission. "Commission" means a river corridor commission granted approval by the commissioner under section 4603 and authorized by Title 5, chapter 379, or as established under Title 38, chapter 6.

2. Commissioner. "Commissioner" means the Commissioner of Conservation.

3. Department. "Department" means the Department of Conservation.

§4603. Approval of river corridor commissions

The commissioner may grant commission status and all the privileges and powers enjoyed by the commissions, as specified in this chapter, when the commissioner finds that:

1. Occupation of shoreland by 2 or more municipalities. Two or more municipalities, which collectively occupy enough of the shoreland on a river segment to be effective in managing the shorelands of the river, have entered into an agreement under chapter 115, which satisfies the requirements of section 4604;

2. Comprehensive plan. The same municipalities have prepared a comprehensive plan which satisfies the requirements of section 4605;

3. Ordinance. The same municipalities have prepared an ordinance to implement the comprehensive plan which satisfies the requirements of section 4606; and

4. Other commissions. No other commission exists on the same river, or the distance between the proposed and existing commissions makes the formation of one larger commission impractical.

§4604. Interlocal agreement

In addition to the requirements of section 2203, the interlocal agreement must be consistent with rules adopted by the commissioner under the Maine Administrative Procedure Act, Title 5, chapter 375. These rules may include, but are not limited to:

1. Minimum duration. The minimum duration of the agreement;

2. Members; appointment. How members may be appointed;

3. Municipal responsibilities for financing. What the municipalities' responsibilities for financing the commission are; and

4. Withdrawal. How and under what circumstances municipalities may withdraw from the commission.

§4605. Comprehensive plan

The comprehensive plan must be consistent with rules adopted by the commissioner under the Maine Administrative Procedure Act, Title 5, chapter 375. These rules may include, but are not limited to:

1. Resources; problems. What resources or problems the plan must address;

2. Information; analyses. Information and analyses the plan must contain; and

3. Specificity; clarity. The degree of specificity and clarity sought in the plan.

§4606. Ordinance

The ordinance to implement the plan must be at least as restrictive as the State's guidelines for municipal shoreland zoning ordinances and shall supersede existing shoreland zoning ordinances. The ordinance must contain adequate procedures for processing permit requests and for considering appeals of a decision made by the commission.

§4607. Powers of a river corridor commission

Notwithstanding section 2203, subsection 8, an approved commission may:

1. Amendment to comprehensive plan. Amend the comprehensive plan, after notice and hearing on the proposed amendment in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375;

2. Adoption of rules or ordinances. Adopt and amend rules or ordinances covering an area up to 500 feet from the normal high-water mark necessary to implement the comprehensive plan, after notice and hearing on the proposed amendment or adoption, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375;

3. Issuance of permits. Issue permits, subject to reasonable conditions for activities requiring permits, or may deny permits under ordinances and rules adopted by the commission;

4. Fees. Assess fees for permit or variance applications, or for any publications of the commission;

5. Suit. Sue and be sued; and

6. Enforcement. Enforce the rules or ordinances of the commission by instituting any lawful action, injunction or other proceeding to prevent, restrain, correct or abate any violation of its rules or ordinances, and may impose fines as permitted under Title 38, chapter 3, subchapter I, article 2-A.

§4608. Commission budget; financing; staff

The commission shall prepare and submit to the commissioner a biennial budget sufficient to cover its operating and other expenses. Provided the commission continues to satisfy the requirements of section 4603, the commissioner shall request funds to match the funds raised by the commission. In no event may the state contribution exceed $25,000 for any one commission in any year. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make any agreements with respect to the administration of those funds, not inconsistent with the purpose of this law, that are required as conditions precedent to receiving the funds, federal or otherwise. Staff of the commission are not considered employees of the State.

§4609. Appeals to Superior Court

Except where otherwise specified by law, any party or person aggrieved by any order or decision of the commission may, within 30 days after notice of the filing of that order or decision, appeal to the Superior Court by filing a notice of appeal stating the grounds for appeal. The appeal shall be taken under Title 5, section 11001.

SUBPART 8

DEVELOPMENT

CHAPTER 201

HOUSING AUTHORITY

SUBCHAPTER I

GENERAL PROVISIONS

§4701. Title

This chapter shall be known and may be cited as the "Maine Housing Authorities Act."

§4702. Definitions

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

1. Area of operation. "Area of operation" of a housing authority of a town includes all of the town for which it is created. Except as provided in paragraphs A and B, the "area of operation" of a housing authority of a city includes the city and the area within 10 miles outside its territorial boundaries. The "area of operation" of the Maine State Housing Authority is the entire State.

A. No authority may operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating in that area.

B. The area of operation of the housing authority of a city does not include any area which lies within the territorial boundaries of any other city nor does it include any portion of a town for which a housing authority has been organized, without the consent by resolution of the legislative body of the other city or the selectmen of the town.

C. The Maine State Housing Authority may not operate in any area in which a municipal authority already established under this chapter is operating without the consent by resolution of that authority.

(1) In the case of the Maine State Housing Authority, the requirements of coordination and local approval specified in sections 4741, subsection 10 and 4771 may be complied with by the local municipal legislative body's passage of the following resolution:

"The Maine State Housing Authority is authorized to seek and may contract for financial assistance from the Federal Government for the purpose of providing housing for low-income persons and families in (Name of Municipality)."

Passage of this resolution is conclusive evidence of compliance with sections 4741, subsection 10, and 4771. The local municipal legislative body may repeal the resolution, provided that:

(a) Any contract for federal assistance entered into between the Maine State Housing Authority and any person in or with respect to the municipality in question after the original resolution is passed and before it is repealed is not affected by the repeal; and

(b) The security of the authority's mortgage interest or the obligation or repayment of debt to bondholders is not affected by the repeal.

D. The authority shall meet and discuss with the local municipal legislative body concerning permissible and preferred developers, housing management entities and sites in anticipation of a preliminary designation of a proposed project. When the authority has received a proposed project for consideration, it shall so notify the municipality in question. When the authority has made a preliminary designation of a proposed project, it shall so notify the municipality within 30 days. If the municipal legislative body disapproves of the preliminary designation, it shall notify the authority of its disapproval within 45 days after the authority's notice of selection. The notice of disapproval has the effect of repealing the consent resolution for that proposed project.

2. Authority or housing authority. "Authority" or "housing authority" means any of the public corporations created or authorized to be created by this chapter.

3. Bonds. "Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by an authority under this chapter.

4. Construction loan. "Construction loan" means a loan:

A. For the purpose of developing, constructing, reconstructing or rehabilitating a housing unit or housing project; and

B. Which is secured in the same manner as a mortgage loan is secured.

5. Conventional mortgage. "Conventional mortgage" means an interest-bearing obligation secured by a mortgage and note which are a first lien on land and improvements constituting one-family to 4-family housing units, which obligations are not insured or guaranteed in any manner, in part or in full, by the Federal Government, or by this State or any instrumentality of the State.

6. Elderly. "Elderly" means a person or family as defined in the United States Housing Act of 1937, Public Law 412, 50 Stat 888, as amended.

7. Financial institution. "Financial institution" means any bank or trust company, savings bank, savings and loan association, industrial bank, national banking association, federal savings and loan association, mortgage banker, credit union or other such institution authorized to do business in the State, or a government agency which customarily provides service or otherwise aids in the financing of mortgage loans.

8. Home improvement note. "Home improvement note" means an interest bearing obligation, secured in whole or in part by a mortgage, insurance or otherwise as may be agreed upon by the Maine State Housing Authority from time to time, made to improve or rehabilitate single-family or multi-unit residential housing in the State.

9. Manufactured housing. "Manufactured housing" has the same meaning as found in Title 10, section 9002, subsection 7.

10. Mortgage loan. "Mortgage loan" or "mortgage" means:

A. An interest-bearing obligation secured by a mortgage constituting a first lien on single-family or multi-unit residential housing, including any mortgage loan made for the purpose of developing, constructing or reconstructing single-family or multi-unit residential housing;

B. An interest-bearing obligation which is fully insured under the Housing Mortgage Insurance Law, if the single-family or multi-unit residential housing is located on either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

C. A home improvement note;

D. An interest-bearing obligation secured by an interest in manufactured housing;

E. An interest-bearing obligation secured by a mortgage, pledge or collateral assignment of a lease of real property or a lease of air rights, provided that:

(1) The security includes a first lien upon the lease; and

(2) Except for mortgage loans secured by manufactured housing located on leased real property or air rights, the real property or air rights are not subject to any prior lien;

F. A participation interest in a mortgage loan; or

G. An interest-bearing obligation secured by a pledge or collateral assignment of a tenant-shareholder's interest in a consumer cooperative organized for housing purposes under Title 13, chapter 85.

This definition does not preclude the requirement of security in addition to that specified in this subsection for any mortgage loan.

11. Obligee of the authority or obligee. "Obligee of the authority" or "obligee" includes:

A. Any bondholder, agents or trustees for any bondholders;

B. Any lessor demising to the authority property used in connection with a project, or any assignee or assignees of the lessor's interest or any part of that interest; or

C. The Federal Government when it is a party to any contract with the authority.

12. Persons of low income. "Persons of low income" means persons or families, elderly or otherwise, who lack the income which is necessary, as determined by a housing authority, to enable them, without financial assistance, to live in or purchase decent, safe and sanitary dwellings, without overcrowding. Financial assistance includes, but is not limited to, the following kinds of assistance:

A. Mortgage insurance;

B. Interest subsidies;

C. Rent subsidies;

D. Public assistance payment or services; or

E. Any other assistance that may be provided by the Maine State Housing Authority through the sale of bonds.

13. Privately insured mortgage. "Privately insured mortgage" means an interest-bearing obligation secured

by a mortgage and note which are a first lien on land and improvements constituting one-family to 4-family units, which obligations are insured or guaranteed by a private mortgage insurer which is an "authorized insurer," as defined in Title 24-A, section 8, and qualified to provide insurance on mortgages purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

14. Project or housing project. "Project", "housing project" or "single-family or multi-unit residential housing" means any work or undertaking:

A. To demolish, clear or remove buildings from any slum area;

B. To provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low income. A project may include dwellings, apartments or accommodations occupied by persons other than persons of low income, provided that in the opinion of the responsible authority, a reasonable number of the dwellings, apartments or accommodations in the project are reserved for occupancy by persons of low income. The work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances including private commercial activity subject to the restriction in subparagraph (1), streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community, health, recreational, welfare or other purposes;

(1) The work or undertaking may include private commercial activity compatible with residential use as determined by an authority, provided that development costs related to that activity do not exceed 40% of the amount of debt financing provided by an authority; or

C. To accomplish a combination of the work or undertaking under paragraphs A and B.

The terms "project" or "housing project" may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection with these activities. The term includes all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

15. Selectmen. "Selectmen" means the board of selectmen of the town or, if the town has no selectmen, the officers charged with the duties customarily imposed on the board of selectmen of a town.

16. State public body. "State public body" means any city, town, district or other political subdivision of the State.

§4703. Declaration of necessity

1. Housing conditions. It is declared that:

A. There exists in urban and rural areas in the State unsuitable, unsafe and overcrowded dwelling accommodations;

B. In these urban and rural areas within the State, there is a shortage of suitable dwelling accommodations available at rents, prices or financing terms which many residents of the State can afford and that the shortage forces some residents of the State to occupy unsuitable, unsafe and overcrowded dwelling accommodations;

C. These conditions, and the existence of areas in need of revitalization and redevelopment, impair economic values and tax revenues;

D. These conditions contribute to the poor health of the residents of these areas, cause an increase in and spread of crime and constitute a menace to the health, safety and welfare of the residents of the State;

E. These conditions require excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities;

F. These areas in the State cannot be cleared, nor can the shortage of suitable dwellings available at affordable rents, prices or financing terms be relieved solely through the operation of private enterprise, and that the construction, rehabilitation or improvement of dwelling accommodations would therefore not be competitive with private enterprise;

G. The construction, rehabilitation or improvement of dwelling accommodations would make housing available for veterans who are unable to provide themselves with decent housing on the basis of the benefits made available to them through certain government guarantees of loans to veterans for the purchase of residential property;

H. The clearance, planning and preparation for rebuilding of these areas, the prevention or the reduction of the underutilization and abandonment of established commercial areas and existing dwelling accommodations within the State, and the providing of affordable, safe and suitable dwelling accommodations for residents of the State are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;

I. Residential construction activity is closely correlated with general economic activity and that the undertakings authorized by this chapter to aid the production of better housing and more desirable neighbor-

hood and community development at lower costs will make possible a more stable and larger volume of residential construction which will assist materially in achieving and maintaining full employment;

J. Federal programs to assist housing have repeatedly changed and, in the early 1980's, the Federal Government substantially reduced its housing programs and other forms of housing assistance;

K. By providing housing assistance to persons other than persons of low income, provision of housing assistance to persons of low income will be facilitated; and

L. It is in the public interest that advance preparations for these activities and for facilitating mortgage lending on affordable terms be made now, and that the necessity in the public interest for the provisions enacted is declared as a matter of legislative determination.

2. Intent. It is further declared that:

A. There are serious problems relating to the occupants of existing substandard housing in the State in both urban and rural areas and much of the existing housing in the State is in immediate need of major repair or replacement;

B. This chapter is intended to encourage all existing local, state and federal agencies, public and private agencies, to recognize the needs for rehabilitation and new housing and to adopt such action and practices as to promote a concerted effort to upgrade housing conditions and standards within the State; and

C. This chapter is intended to relieve those conditions which now exist and it is the policy of the State to assist in planning, coordinating and carrying out all existing programs that will encourage further participation by private investment, private enterprise and individual effort.

3. Shortage of funds. It is further declared that:

A. In private banking channels there have been recurrent, cyclical shortages of funds available for loans to finance dwelling accommodations;

B. These shortages have been exacerbated more recently by changes in the business of financial institutions, by the high cost of funds needed for loans for dwelling accommodations and by the related lack of liquidity of existing and new loans for dwelling accommodations;

C. These shortages have contributed to the reduction of construction of new dwelling accommodations and have hampered the rehabilitation, improvement and purchase and sale of existing dwelling accommodations;

D. These shortages can be expected to recur from time to time in varying degrees of severity with the adverse consequences described in this section; and

E. The powers and duties set forth in this chapter are to be carried out to assist in redressing these shortages.

4. Objectives. It is further declared that it is the policy of the State to assist its residents in securing equal opportunity for the full enjoyment of the following objectives:

A. To reside in or purchase housing which is decent, safe, independently selected, designed and located with reference to their particular needs and available at costs which they can afford;

B. To have available to them a wide range of privately planned, constructed and operated housing;

C. To have available to them such additional publicly planned, constructed and operated housing as is needed to achieve the purposes of paragraph A;

D. To have available from financial institutions, in addition to their usually loanable resources for home construction, mortgages and notes, additional resources and assistance as may be provided by the Maine State Housing Authority; and

E. To have available information and educational programs, and to conduct demonstrations of housing programs and techniques.

§4704. Planning, zoning and building laws

All projects of an authority are subject to the plan ning, zoning, sanitary and building laws, ordinances and regulations applicable to the area in which the project is located. In the planning and location of any project, an authority shall conform to any larger or long-range program for the development of the area in which the project is located.

§4705. Exemption of property from execution sale

All real property of an authority is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against the authority's real property nor may any judgment against an authority be a charge or lien upon its real property.

1. Exceptions. This section does not apply to or limit:

A. The right of obligees to foreclose or otherwise enforce any mortgage or other security of an authority;

B. The right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues; or

C. The right of the Federal Government to pursue any remedies conferred upon it under this chapter.

§4706. Records confidential

1. Confidential information. Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing; and

B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for a mortgage or mortgage insurance.

2. Wrongful disclosure prohibited. No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

A. An authority may make such full and complete reports concerning its administration of federal housing programs as required by the Federal Government;

B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is accomplished in a manner which preserves confidentiality;

C. An authority may comply with a subpoena, request for production of documents, warrant or court order which appears on its face to have been issued or made upon lawful authority; and

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information which is deemed confidential and which is within the control or custody of the authority.

3. Waiver. This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection.

4. Penalty. A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than $200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure.

SUBCHAPTER II

ESTABLISHMENT AND ORGANIZATION

§4721. Creation of municipal authorities

1. Creation of housing authorities. In each municipality there is created a public body corporate and politic to be known as the "Housing Authority" of the municipality. This authority may not transact any business or exercise its powers unless the municipal legislative body declares by resolution that there is a need for an authority to function in that municipality.

A. Any housing authority created and existing under Public Law 1943, chapter 260, shall, notwithstanding the expiration of that chapter, continue in existence for the purposes of this chapter and have the powers granted by this chapter, if the legislative body of the municipality for which the housing authority was created declares by resolution that there is a need for that housing authority to exercise the powers granted by this chapter.

2. Procedure. The municipal legislative body shall consider the need for an authority on its own motion or upon the filing of a petition with the mayor of the city or the selectmen of the town. This petition must be signed by 25 voters of the city or town and assert that there is a need for an authority to function in the municipality and request that the municipal legislative body declare that need.

3. Standard. The municipal legislative body shall adopt a resolution declaring that there is a need for an authority in the municipality if it finds that:

A. Insanitary or unsafe inhabited dwelling accommodations or blighted areas exist in the municipality; or

B. There is a shortage of safe or sanitary dwelling accommodations in the municipality available to persons of low income at rentals or prices that they can afford.

4. Appointment of commissioners. Upon the adoption of a resolution by the municipal legislative body, the mayor of the city or the selectmen of the town shall appoint the commissioners of the authority under section 4723, subsection 1.

§4722. Maine State Housing Authority established; powers, duties and restrictions

The Maine State Housing Authority is established and is a public body corporate and politic and an instrumentality of the State.

1. Powers and duties. In addition to the powers granted by section 4741, the Maine State Housing Authority shall have the powers and duties to:

A. Gather information and statistics on housing and housing-related socioeconomic conditions, using existing sources and data to the fullest extent possible and request reports and obtain information from all state departments, agencies, boards, commissions, authorities and instrumentalities about their respective expenditures for housing and housing-related services and facilities, and about their respective functions and activities related to the financing, construction, leasing or regulation of housing and housing-related services and facilities;

B. Develop plans, finance, conduct and encourage in cooperation with other public and private national, state, regional and local agencies, research and demonstration of model housing programs, dealing with, but not limited to, planning, styles of land use, types of building design, techniques of construction, finance techniques, municipal regulations and management procedures;

C. Provide or coordinate technical assistance and consultation about housing and housing-related activities for or on the behalf of the municipalities, private industry, municipal housing authorities, nonprofit housing corporations, state departments, agencies, boards, commissions, authorities and instrumentalities, the Judicial Department, other organizations and individuals; administer or operate housing or housing-related programs for or on the behalf of municipalities, municipal housing authorities, nonprofit housing corporations, state departments, agencies, boards, commissions, authorities, instrumentalities and the judicial branch and in so doing comply with the programmatic, regulatory or statutory standards as required by that entity, which may take precedence over the authority's eligibility requirements;

D. Prepare, publish and disseminate educational materials dealing with, but not limited to, the topics listed in paragraph B;

E. Encourage and coordinate effective use of existing and new resources and available services for housing;

F. Act as the public agency of the State for the purpose of accepting federal funds or other assistance, or funds or other assistance from any other source, in relation to housing activity in those areas and for those projects authorized under section 4741, subsection 2 and other relevant provisions of this chapter;

G. Carry out renewal projects and all other powers and duties of an authority under chapter 203;

H. Issue revenue bonds as provided in this chapter. The authority for the issuance of bonds in any subchapter of this chapter constitutes a complete, additional and alternative method for the issuance of bonds authorized by that subchapter. Any limitation or restriction as to the use of proceeds, total authorized amount of obligations or interest rate, or any other limitation or restriction, applies solely to bonds issued under the subchapter in which the limitation or restriction appears;

I. Purchase, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal in, acquire or transfer, on any terms and conditions that the Maine State Housing Authority specifies, any mortgage loan, any mortgage pass-through certificate, any pledge including any pledge or mortgage revenue, any mortgage participation certificate or any other mortgage-backed or mortgage-related security. In connection with the purchase or sale of a mortgage loan or of a beneficial interest or participation in a mortgage loan, the Maine State Housing Authority may enter into one or more agreements providing for the custody, control and administration of the mortgage loan. Any such agreement may provide that:

(1) The Maine State Housing Authority or a financial institution will act as trustor, trustee or custodian under the agreement; and

(2) With respect to mortgage loans governed by the agreement, title to a mortgage loan, or to a beneficial interest or participation in a mortgage loan, is deemed to have been transferred on terms and to the extent specified in that agreement and that the effect of a sale of a beneficial interest or participation in a mortgage loan is the same as a sale of a mortgage loan;

J. Adopt bylaws for the regulation of its affairs and the conduct of its business;

K. Perform other functions necessary to the powers and duties expressly stated in this chapter;

L. Contract with any financial institution to make mortgage loans on behalf of the Maine State Housing Authority. The mortgage loans shall be made under one or more mortgage loan programs governed by standards established in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The Maine State Housing Authority may, without contracting with a financial institution, make mortgage loans only with respect to the following:

(1) To protect the security or likelihood of repayment of any mortgage loan held by the Maine State Housing Authority when such a loan is not made within 10 business days of application through the originating financial institution on terms and conditions comparable to terms and conditions available from the Maine State Housing Authority; or

(2) In one or more areas of the State, to the extent that no financial institution, after both initial and such successive reasonable opportunities as the Maine State Housing Authority may provide, has contracted with the Maine State Housing Authority to participate in a mortgage loan program.

Any mortgage loan made under this paragraph does not pledge the faith and credit of the State. Any bonds issued by the Maine State Housing Authority to finance mortgage loans authorized by this paragraph are subject to the limitations of sections 4905 and 4907;

M. Formulate proposed affirmative housing action plans for submission to regional planning commissions and local planning boards for their consideration;

N. With respect to any bonds which the Maine State Housing Authority is authorized to issue in accordance with the limitations and restrictions of this chapter, covenant and consent that the interest on the bonds will be includable, under the United States Internal Revenue Code of 1954, Title 26, Section 7701(a)(29), or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The powers conferred by this paragraph are not subject to any limitations or restrictions of any law which may limit the Maine State Housing Authority's power to so covenant and consent.

(1) Notwithstanding any other provision of this chapter, proceeds of bonds issued under this subsection may be used for persons other than persons of low income.

(2) The income on any bonds issued by the Maine State Housing Authority shall be included in gross income under the Maine Income Tax Law if the income on those bonds is includable in the gross income of the holders of the bonds under the United States Internal Revenue Code of 1954, Title 26, Section 7701(a)(29), or any subsequent corresponding revenue law of the United States;

O. Issue or cause to be issued certificates or other instruments evidencing the holder's fractional undivided interest in a pool of mortgage loans. Whether or not the certificates or instruments are of such form or character as to be negotiable instruments under Title 11, article 8, the certificates or instruments are deemed negotiable instruments within the meaning of and for all the purposes of Title 11, article 8, subject only to any registration requirements that the Maine State Housing Authority may establish;

P. In accordance with the limitations and restrictions of this chapter, cause any of its powers or duties to be carried out by one or more nonprofit corporations organized and operated under Title 13-B;

Q. Modify or waive the requirements of section 4902, subsections 1 and 2, and section 4903;

R. Guarantee or ensure the timely payment in whole or part of principal on, premium on or interest of any bond or of any instrument or security identified in paragraph I or O;

S. Purchase, sell, service, pledge, invest in, hold, trade, accept as collateral, administer or otherwise deal in, acquire or transfer, contract for benefits to recipients on behalf of the Federal Government or otherwise and do those things necessary to issue or cause to be issued federal mortgage credit certificates as authorized and created by the Federal Tax Reform Act of 1984, Public Law 98-369, Section 612(a); and

T. Approve or disapprove, in accordance with rules adopted under the Maine Administrative Procedure Act, Title 5, chapter 375, a project which is multi-family or single-family residential property, when authorized or required by Title 10, chapter 110, subchapter IV.

2. Restrictions. Notwithstanding any other provision of this chapter, the Maine State Housing Authority may not provide funds for, finance, purchase the mortgage on or otherwise assist in the construction or management of:

A. Any housing owned, sponsored or assisted by an institution of higher education in the State;

B. Any housing, the mortgage on which is insured by any federal or state program of mortgage insurance, the primary purpose of which is to assist student housing; or

C. Any nursing home or related institution licensed or subject to license by the Department of Human Services under Title 22, section 1817, except intermediate care facility group homes for the mentally retarded and persons with related conditions or the construction, substantial rehabilitation or improvement of homeless shelter facilities that may be related to an institution licensed or subject to license by the Department of Human Services under Title 22, section 1817.

§4723. Appointment, qualifications, tenure and meetings of advisory board members, commissioners and directors

1. Municipality. The following provisions apply to municipal housing authorities.

A. Each authority shall have 6 commissioners appointed. No commissioner may be appointed until the authority is authorized to function as provided in section 4721. In the case of a city having a mayor-council form of government, the mayor shall appoint the commissioners with the advice and consent of the council. In the case of a city having a manager-council form of government, the council shall appoint the commissioners. In the case of a town, the selectmen shall appoint the commissioners.

Any person who resides within the authority's boundaries or area, and who is otherwise eligible for appointment under this chapter, may be appointed as a commissioner of the authority. This section does not prevent a commissioner from concurrently serving as a commissioner on a renewal authority established by any city with a population of 20,000 or more.

The commissioners who are initially appointed under this section shall be designated to serve for terms of one, 2, 3, 4 and 5 years, respectively, from the date of their appointment. Thereafter, the commissioners shall be appointed for a term of 5 years, except that all vacancies shall be filled for the unexpired terms. All subsequent appointments and appointments to fill a vacancy shall be made as provided in this subsection.

(1) In a municipality with housing which is subsidized or assisted by programs of the United States Department of Housing and Urban Development, one of the commissioners must be a resident of that housing. Where tenant associations exist in the housing, the appointing authority shall give priority consideration to nominations made by the associations. The first commissioner appointed to an authority, who is a resident of subsidized or assisted housing, shall be designated to serve for a 4-year term from the date of appointment. Thereafter, the commissioner shall be appointed as provided in this subsection.

(2) A certificate of the appointment or reappointment of any commissioner shall be filed with the authority. This certificate is conclusive evidence of the due and proper appointment of the commissioner.

B. A commissioner shall receive no compensation for services but is entitled to any necessary expenses, including travel expenses, incurred in the discharge of duties. Each commissioner shall hold office until a successor has been appointed and has qualified.

C. Each authority shall elect a chairman and vice-chairman from among the commissioners. An authority may employ a secretary, who shall be executive director, and technical experts and any other officers, agents and employees that it requires and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. It may delegate to its agents or employees any powers or duties that it considers proper.

D. The powers of an authority are vested in its commissioners. Meetings of the commissioners may be held anywhere within the area of operation of the authority or within any additional area where the authority is authorized to undertake a project. Four commissioners constitute a quorum of an authority for the purpose of conducting its business, exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. The authority may take action upon the vote of a majority of the commissioners present, unless its bylaws require a larger number.

2. State. The following provisions apply to the state housing authority.

A. The Maine State Housing Authority shall have a 21-person advisory board, as authorized by Title 5, chapter 379, to be appointed by the Governor representing the several aspects of the housing industry. The advisory board at all times must have members who represent each of the following: Municipal officials, financial institutions, builders, architects, labor, sponsors of housing programs, administrators of local public and local private housing corporations, elderly residents of housing projects, low-income residents of housing projects and licensed real estate brokers. There must be 3 representatives of municipal officials.

(1) The members shall elect a president and vice-president of the advisory board from among the advisory board members. The president of the advisory board may call such meetings of the board as the president considers necessary. The president of the advisory board shall call at least one meeting of the board each year at a time which will allow the board to meet jointly with the commissioners of the Maine State Housing Authority.

(2) Seven advisory board members of the Maine State Housing Authority constitute a quorum for the purpose of conducting business of the board and exercising its powers, notwithstanding the existence of any vacancies. The advisory board may take action upon a vote of a majority of the members present, unless its bylaws require a larger number.

(3) The advisory board shall advise and counsel the director and commissioners of the Maine State Housing Authority on the policies concerning the powers and duties of the Maine State Housing Authority.

B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, shall have 7 commissioners, 5 of whom shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development, and to confirmation by the Legislature. The 6th commissioner is the Treasurer of State who shall serve ex officio. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 7th commissioner is the director of the Maine State Housing Authority who shall serve ex officio, and who is chairman of the commissioners. The 5 gubernatorial appointments must include, but are not limited to, representatives of bankers and of low-income or elderly people. One commissioner must be a resident of housing which is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In

making this appointment, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State.

The commissioners shall elect a vice-chairman of the commissioners from among their number. The commissioners of the Maine State Housing Authority shall establish and revise from time to time policies of the Maine State Housing Authority relating to the following particular matters:

(1) Standards of issuing, servicing and redeeming bonds;

(2) Purchase, sale or commitment to purchase mortgages or notes;

(3) Initiating project construction and accepting properly completed facilities;

(4) Setting and establishing selection and evaluation standards, criteria and procedures under which it will purchase, sell or agree to purchase loans, notes or obligations, having regard among other things to:

(a) Property values;

(b) Local economic conditions and expectancy;

(c) Credit and employment; and

(d) Local housing conditions and needs and the availability of credit resources to meet those needs relative to similar or competing conditions and needs in other localities in the State;

(5) Setting and establishing procedures for the servicing of loans, notes and obligations acquired by it, including the allowance of servicing fees to participating lenders to whom the Maine State Housing Authority may entrust such servicing;

(6) Setting and establishing procedures for the collection of money due from persons liable for payment, as to any loan, note or obligation held by the Maine State Housing Authority, by subrogation or otherwise, and to initiate and maintain any action at law or in equity, including foreclosure proceedings, to enforce payment;

(7) Setting and establishing procedures for the orderly liquidation and disposition of any property acquired by the Maine State Housing Authority through foreclosure or otherwise in full or partial satisfaction of any debt or obligation held by it; and

(8) Establishing and maintaining out of income or otherwise any reserves that the Maine State Housing Authority from time to time determines to be necessary and prudent in addition to those specifically required.

Following reasonable notice to each commissioner, 4 commissioners of the Maine State Housing Authority constitute a quorum for the purpose of conducting its business, exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. Action may be taken by the commissioners upon a vote of a majority of the commissioners present, unless its bylaws require a larger number.

C. The Maine State Housing Authority shall have a director, who must be a person qualified by training and experience to perform the duties of the office. The Governor shall appoint the director of the Maine State Housing Authority, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development, and to confirmation by the Legislature.

(1) The director of the Maine State Housing Authority shall serve on a full-time basis for a 4-year term of office, and until a successor has been appointed and qualified. The Governor shall establish the rate and amount of compensation of the director.

(2) The powers and duties of the Maine State Housing Authority, except those listed in paragraph B, are vested solely in the director of the Maine State Housing Authority. The director of the Maine State Housing Authority or a representative shall attend all meetings of the advisory board or of the commissioners.

(3) The director of the Maine State Housing Authority may act in all personnel matters and may employ technical or legal experts and any other officers, agents and employees that the director requires, and shall determine their qualifications, duties and compensation. The director may delegate to the employees and agents any powers and duties that the director considers proper.

D. Any person may serve as a member of the advisory board, and any person who, at the time of appointment, is a resident of the State, may serve as a commissioner, except that the director need not be a resident of the State before being appointed.

(1) Each commissioner, except for the director and the Treasurer of State, and each advisory board member shall serve a 4-year term beginning with the expiration of the term of the predecessor, except that a vacancy occurring in such a position before the normal expiration of the appointment shall be filled as soon as practicable by a new gubernatorial appointee who shall serve for the remainder of the unexpired term. Each advisory board member and commissioner shall continue to hold office after the term expires until a successor is appointed. In any instance in which more than one commissioner or advisory board member is serving beyond the original term, any new appointee is deemed to succeed the commissioner or advisory board member whose

term expired first.

(2) The Secretary of State shall prepare a certificate evidencing the appointment of each advisory board member and commissioner. An original of this certificate shall be provided to the appointee. One authenticated copy shall be retained by the Maine State Housing Authority and one by the Secretary of State. An authenticated certificate of appointment is conclusive evidence of the appointment.

E. The director is a full-time employee of the authority, but may receive fees or honoraria for services provided to others not in conflict with full-time duties and not performed during time for which the director is receiving compensation from the Maine State Housing Authority. In addition to any authorized compensation, the director is entitled to any employee benefits that are available to other employees of the Maine State Housing Authority, including, but not limited to, authority contributions to any retirement plan, insurance plan, deferred compensation plan or other similar benefits. Each commissioner and advisory board member shall be compensated according to the provisions of Title 5, chapter 379.

§4724. Conflict of interest

The provisions of this section are in addition to the limitations of Title 5, section 18. Any violation of this section is a Class E crime.

1. Present employee or commissioner; participation in decision. No employee or commissioner of the Maine State Housing Authority may participate in any decision on any contract or project entered into by the Maine State Housing Authority if that employee or commissioner has any interest, direct or indirect, in any firm, corporation, partnership, or association which may be party to the contract or financially interested in any such project.

2. Acquisition of interest in project; accepting employment. No employee or commissioner of any authority may, within 2 years of that service, voluntarily acquire any interest, direct or indirect, in any contract, project or property included or planned to be included in any project of that housing authority over which the employee or commissioner has exercised responsibility, control or decisions during tenure with the authority. Nor may any employee or commissioner of any authority, if employment is accepted with any person who has an interest in any contract, property or project included or planned to be included in any project of that authority, work directly on that contract, project or property for that person if the employee or commissioner has exercised responsibility, control or decisions over that contract, project or property.

A. This subsection does not prohibit a manufactured housing inspector employed by the Maine State Housing Authority from accepting employment by a person to work on manufactured housing which is manufactured after the date employment with the Maine State Housing Authority has terminated.

3. Limitation on application of section. This section does not apply to:

A. The acquisition of any interest in notes or bonds of the Maine State Housing Authority issued in connection with any project or otherwise;

B. The execution of agreements by banking institutions for the deposit or handling of funds in connection with any project or to act as trustees under any trust indenture; or

C. Utility services, the rates for which are fixed or controlled by a governmental agency.

§4725. Removal of commissioners or director

A commissioner or director may be removed from office for inefficiency, neglect of duty or misconduct in office after hearing by the legislative body of a city, the selectmen of a town, or the Governor, in the case of the Maine State Housing Authority. The commissioner or director must be given a copy of the charges at least 10 days before the hearing and must be given an opportunity to be heard in person or to be represented by counsel. If a commissioner or a director is removed, a record of the proceedings, together with the charges and the findings on the charges, shall be filed in the office of the clerk or, in the case of the Maine State Housing Authority, in the office of the Secretary of State.

SUBCHAPTER III

POWERS AND DUTIES

§4741. Powers generally

An authority constitutes a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary to carry out and effectuate the purposes and provisions of this chapter, but not the power to levy and collect taxes or special assessments, including the following powers in addition to others granted:

1. General. To sue; to be sued on its written contracts or in accordance with the Maine Tort Claims Act, the Maine Administrative Procedure Act, Title 5, chapter 375, in the case of the Maine State Housing Authority, the Maine Rules of Civil Procedure, Rule 80B, or any successor rule of the Maine Rules of Civil Procedure in the case of a municipal authority or Title 1, section 409; to have a seal and alter it at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the authority's powers; and to make and from time to time amend and repeal bylaws, rules and regulations not in-

consistent with this chapter, to carry into effect the powers and purposes of the authority;

2. Housing projects. Within its area of operation: To prepare, carry out, acquire, lease, manage, maintain or operate housing projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any housing project or any part of a housing project. An authority may perform any of these listed functions singly or in combination with other functions with respect to any individual housing project, and may perform these functions full-time, part-time or in combination with other private persons, corporations or government agencies or other appropriate body;

3. Housing needs. To undertake and carry out studies and analyses of the housing needs within its area of operation and of the meeting of those needs, including data with respect to population and family groups, and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and the meeting of those needs, and to make the results of these studies and analyses available to the public and the building, housing and supply industries; and to engage in research and disseminate information on housing;

4. Contract for services, other uses; wages and hours of labor. To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants of a housing project; and, notwithstanding anything to the contrary in this chapter or in any other provision of law, to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the Federal Government has attached to its financial aid of the project;

5. Leasing or renting; eminent domain; insurance. To lease or rent any dwellings, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges for those rentals; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest in real or personal property; to acquire, by the exercise of the power of eminent domain, any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of government insurance or guarantees of the payment of any bonds or parts of any bonds issued by an authority, including the power to pay premiums on any such insurance;

6. Investment of funds. To invest any funds held in reserves of sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; to redeem its bonds at the redemption price established for the bonds or to purchase its bonds at less than that redemption price, all bonds so redeemed or purchased to be canceled;

7. Slum clearance. Within its area of operation: To determine where slum areas exist or where there is a shortage of safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas and the problem of providing dwelling accommodations for persons of low income; and to cooperate with the municipality, the county, the State or any political subdivision of the State in action taken in connection with such problems;

8. Investigations and examinations. Acting through one or more commissioners or other persons designated by the authority: To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the State or unable to attend before the authority or excused from attendance; to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or similar conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare;

9. Powers granted. To exercise all or any part or combination of powers granted;

10. Coordination with legislative body. The commissioners of a municipal authority or the director of the Maine State Housing Authority shall establish procedures by which the legislative body of a municipality may review proposed projects and plans for financing proposed projects;

11. Mortgage credits. The Maine State Housing Authority may acquire from banks, life insurance companies, savings and loan associations, pension or retirement funds, any fiduciaries, the Federal Government and other financial institutions, persons or governmental or business entities mortgage loans and notes anywhere in

the State, the restriction as to the area of operation in section 4702 notwithstanding, and may sell mortgages and notes to insurance companies, other financial institutions, persons or governmental or business entities and the Federal Government or any fiduciaries or pension or retirement funds;

12. Mortgage assistance payments. Pursuant to the purposes of this Act to provide housing for persons of low income, the Maine State Housing Authority may make payments and binding commitments, subject to the authority's receipt of sufficient funds to honor these commitments from periodic appropriations from appropriate sources, to continue these payments if necessary over the life of the mortgage to mortgagors or to mortgagees on behalf of low-income persons to reduce interest costs on market rate mortgages to as low as 1%;

A. No commitment made by the authority under this subsection may be construed to commit the faith and credit of this State;

B. Persons benefiting from these mortgage assistance payments shall, according to guidelines to be included in the mortgage agreements, be required to pay a larger interest payment as their ability to pay increases;

13. Allocation of federal ceilings. By rulemaking under Title 5, chapter 375, subchapter II, the Maine State Housing Authority shall have the power to establish a process that is different from the federal formula for allocating that portion of the ceiling on the issuance of certain tax-exempt bonds established by the United States Code, Title 26, which has been allocated to the Maine State Housing Authority under Title 10, section 363, and may also limit the types of projects which are eligible to receive allocations or carryforward designations from the Maine State Housing Authority; and

14. State housing credit agency. The Maine State Housing Authority is designated the housing credit agency for the State and shall have the power to receive and allocate, according to a process established by rulemaking pursuant to Title 5, chapter 375, subchapter II, the annual state housing credit ceiling for the low-income housing credit established by the United States Code, Title 26.

§4742. Operation of housing not for profit

It is declared to be the policy of this State that each authority shall manage and operate its housing projects in an efficient manner to enable it to fix the rentals or payments for dwelling accommodations at low rates consistent with its providing decent, safe and sanitary dwelling accommodations for persons of low income. No authority may construct or operate any housing project for profit, or as a source of revenue to the municipality or the State. To this end, an authority shall fix the rentals or payments for dwellings in its projects at no higher rates than it finds necessary to produce revenues which, together with all other available money, revenues, income and receipts of the authority from whatever sources derived, will be sufficient:

1. Bond principal and interest. To pay, as the sums become due, the principal and interest on the bonds of the authority;

2. Reserves. To create and maintain such reserves as are required to ensure the payment of principal and interest as it becomes due on its bonds;

3. Cost and operating projects. To meet the cost of and to provide for maintaining and operating the projects, including necessary reserves for that purpose and the cost of any insurance, and the administrative expenses of the authority;

4. Payments in lieu of taxes. To make such payments in lieu of taxes as it determines are consistent with the maintenance of the low-rent character of projects;

5. Property declared to be public property. The property of an authority is declared to be public property used for essential public and governmental purposes. This property is exempt from all taxes and from betterments and special assessments of the municipality, the county, the State or any political subdivision of the State. In lieu of taxes on its property, an authority may agree to make such payments to the municipality, the county, the State or any political subdivision of the State as it finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this chapter.

§4743. Housing rentals and tenant admissions; veteran preference

In the operation or management of housing projects, an authority shall at all times observe the following duties with respect to rentals and tenant admissions.

1. Rent to persons of low income. It shall rent or lease at least 20% of the dwelling units in any project only to persons or families of low income and at rentals within the financial reach of persons or families of low income.

2. Number of rooms. It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, which it considers necessary to provide safe and sanitary accommodations to the proposed occupants of the rooms without overcrowding.

3. Preferences. In the selection of tenants for housing projects, as among low-income families which are eligible applicants for occupancy in dwellings of given sizes and at specified rents, a housing authority shall extend the following preferences:

A. First, to families which are to be displaced by any low-rent housing project or by any public slum-

clearance or redevelopment project initiated after January 1, 1947, or which were so displaced within 3 years before applying to the public housing agency for admission to any low-rent housing. Among these families:

(1) First preference shall be given to families of disabled veterans whose disabilities have been determined by the United States Veterans Administration to be service-connected;

(2) Second preference shall be given to families of deceased veterans and servicemen whose deaths have been determined by the United States Veterans Administration to be service-connected;

(3) Third preference shall be given to families of other veterans and servicemen;

B. Second, to families of other veterans and servicemen. Among these families:

(1) First preference shall be given to families of disabled veterans whose disabilities have been determined by the United States Veterans Administration to be service-connected; and

(2) Second preference shall be given to families of deceased veterans and servicemen whose deaths have been determined by the United States Veterans Administration to be service-connected.

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

(1) The term "veteran" means a person who has served in the active military or naval service of the United States at any time on or after April 6, 1917 and before November 11, 1918, or at any time on or after September 16, 1940 and before July 26, 1947, or at any time on or after June 27, 1950 and before February 1, 1955, or at any time on or after August 5, 1964 and before May 7, 1975, and who has been discharged or released from the service under conditions other than dishonorable.

(2) The term "serviceman" means a person in the active military or naval service of the United States who has served in that service on or after April 6, 1917 and before November 11, 1918, or at any time on or after September 16, 1940 and before July 26, 1947, or at any time on or after June 27, 1950 and before February 1, 1955, or at any time on or after August 5, 1964 and before May 7, 1975.

Notwithstanding any provisions of this section, an authority may agree to conditions as to tenant eligibility or preference required by the Federal Government under federal law in any contract for financial assistance with the authority.

Nothing in this section or section 4742 may be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a project or cause the appointment of a receiver of the project, free from all the restrictions imposed by this section or section 4742.

§4744. Dwellings for disaster victims and defense workers

Notwithstanding the provisions of this chapter or any other law relating to rentals of, preferences or eligibility for admission to, or occupancy in housing projects, during the period when an authority determines that there is an acute need in its area of operation for housing to ensure the availability of dwellings for persons engaged in national defense activities or for victims of a major disaster, an authority may undertake the development and administration of housing projects for the Federal Government, and dwellings in any housing project under the jurisdiction of the authority may be made available to persons engaged in national defense activities or to victims of a major disaster. An authority may contract with the Federal Government or the State or a state public body for advance payment or reimbursement for the furnishing of housing to victims of a major disaster, including the furnishing of the housing free of charge to needy disaster victims during any period covered by a determination of acute need by the authority as provided.

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

A. The term "major disaster" means any flood, drought, fire, hurricane, earthquake, storm or other catastrophe which, in the determination of the governing body, is of sufficient severity and magnitude to warrant the use of available resources of the Federal Government, State Government and local governments to alleviate the damage, hardship or suffering caused by the disaster.

B. The term "persons engaged in national defense activities" means persons in the Armed Forces of the United States, employees of the Department of Defense and workers engaged or to be engaged in activities connected with national defense. The term includes the families of the persons, employees and workers who reside with them.

§4745. Cooperation between authorities

Any 2 or more authorities may join or cooperate in the exercise of any or all of the powers conferred for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more of the authorities.

§4746. Eminent domain

An authority may acquire by the exercise of eminent domain any real property which it considers necessary for its purposes under this chapter. The authority must first adopt a resolution declaring that the acquisition of the real property described in the resolution is necessary for those purposes. An authority shall exercise the power of eminent domain in the manner provided in section 5108, but references in section 5108 to an urban renewal project and a renewal project area and the like do not apply.

§4747. Cooperation in undertaking projects

Any state public body, upon such terms, with or without consideration, as it may determine may:

1. Interest in property; rights and privileges. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges in property to a housing authority;

2. Facilities furnished. Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with any project;

3. Roads, streets, ways. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, in or adjacent to any project;

4. Plans and zoning. Plan or replan, zone or rezone any part of the state public body; make exceptions from building regulations and ordinances; any city may change its map;

5. Services. Cause services to be furnished to the housing authority of the character which the state public body is otherwise empowered to furnish;

6. Agreements as to buildings. Enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, closing or demolition of unsafe, insanitary or unfit buildings;

7. Sums in lieu of taxes. Agree with the housing authority with respect to the housing authority's payment of such sums in lieu of taxes as the authority determines to be consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this chapter;

8. Aid and cooperation. Do anything necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such projects; and

9. Agreements concerning action of the state public body. Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a housing authority concerning action to be taken by the state public body under any of the powers granted by this chapter. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized to engage in the development or administration of low-rent housing or slum-clearance projects, including the Federal Government, the provisions of these agreements shall inure to the benefit of and may be enforced by the public body or governmental agency. A state public body may make any sale, conveyance, lease or agreement provided for in this section without public notice, advertisement or public bidding, notwithstanding any other laws to the contrary.

## SUBCHAPTER IV

## FUNDS

§4771. Federal aid

1. Purpose; contractual conditions. It is the purpose and intent of this chapter to authorize every authority to do all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any project by an authority and in the authority's exercise of the other powers granted to the authority in this chapter. To accomplish this purpose, an authority, notwithstanding any other law, may include in any contract with the Federal Government for financial assistance any conditions which the Federal Government attaches to its financial aid of a project, not inconsistent with the purposes of this chapter.

2. Additional powers. In addition to the powers conferred upon an authority by other provisions of this chapter, an authority may:

A. Borrow money or accept contributions, grants or other financial assistance from the Federal Government for or in aid of any project within its area of operation;

B. Take over or lease or manage any project or undertaking constructed or owned by the Federal Government; and

C. For the purposes of paragraphs A and B, comply with any conditions and enter into any mortgages, trusts, indentures, leases or agreements that are necessary, convenient or desirable.

3. Contracts for annual contributions. In any contract with the Federal Government for annual contributions to the authority, the authority may obligate itself, notwithstanding any other laws, to convey to the Federal Government the project to which the contract relates, upon the occurrence of a substantial default, as defined in the contract, with respect to the covenants or conditions to which the authority is subject. This obligation is specifically enforceable and does not constitute a mortgage. The contract may further provide that, in case of such conveyance, the Federal Government

may complete, operate, manage, lease, convey or otherwise deal with the project in accordance with the terms of the contract, provided the contract requires that, as soon as practicable after the Federal Government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal Government will reconvey the project as then constituted to the authority.

4. Approval of municipality necessary; exceptions. Except as provided in paragraph A, no authority may enter into any contract for loans, grants, contributions or other financial assistance with the Federal Government for any project until the legislative body of the municipality where the project is to be located approves the authority's entering into the contract by resolution duly adopted.

A. No resolution is required where the contract with the Federal Government involves financial assistance with respect to existing housing units or moderately rehabilitated housing units within the municipality. The requirements of section 4702, subsection 1 do not apply to the Maine State Housing Authority with respect to any such units. With respect to a contract for any moderately rehabilitated housing units, compliance by the Maine State Housing Authority with the procedures set forth in subparagraph 1 satisfies the requirements of section 4741, subsection 10.

(1) The Maine State Housing Authority shall, by certified mail, return receipt requested, give written notice of its intention to solicit proposals from owners of the units located in the municipality to the city's legislative body or the town selectmen. The notice shall state the reasons for the authority's intention to make the solicitation. The Maine State Housing Authority shall mail the notice at least 15 business days before making any such solicitation and request comments from the municipality. Within 10 business days after receiving the notice, the legislative body or the selectmen may provide the Maine State Housing Authority with written comments pertaining to the notice.

§4772. Municipal advances to housing authorities

The municipality for which a housing authority is created may lend or donate money to the authority. When such a loan is made to a housing authority to aid its initial organization or its planning and preparation for projects, the loan may be made upon the condition that the housing authority will repay the loan out of any money which becomes available to it for the construction of the projects involved.

SUBCHAPTER V

LOANS TO FINANCIAL INSTITUTIONS

§4801. Findings and purpose

The Legislature finds that economic conditions have, from time to time since the original enactment of the Maine Housing Authorities Act, created circumstances in which Maine residents have been unable to support financing costs for the purchase of new or substantially rehabilitated homes or for the purchase of existing housing. To provide mortgage funds to allow Maine citizens who are persons of low income to enjoy the benefits of home ownership or residency in privately owned apartments, the expansion of the financial capacity of the Maine State Housing Authority as a source of additional loan money for housing in Maine is undertaken in this subchapter. It is further declared that the purposes of this subchapter are public purposes and uses for which public funds may be borrowed, loaned, advanced or expended.

§4802. Institutional loans

1. Loans authorized. The Maine State Housing Authority may make loans to financial institutions for the purpose of providing mortgage funds for the financing of housing units or housing projects for persons or families of low income. These loans are referred to in this subchapter as "institutional loans." Financial institutions receiving or to receive such loans are referred to in this subchapter as "participating financial institutions." A participating financial institution which does not maintain a regular place of business in the State must contract for the origination of mortgage loans with a financial institution with a regular place of business in the State.

2. Eligible mortgage loans. Eligible mortgage loans under this subchapter are mortgage loans for the purpose of:

A. Acquiring one-family or multi-family housing units, housing projects and improvements located on an Indian reservation in the State;

B. Rehabilitating housing units or housing projects or to promote the conservation of energy resources;

C. Constructing, reconstructing or developing housing units or housing projects; and

D. Purchasing manufactured housing.

§4803. Issuance of bonds; rules

The Maine State Housing Authority may issue bonds for the purpose of making institutional loans to participating financial institutions. The participating financial institutions shall invest the proceeds of these institutional loans in mortgage loans for the financing of housing units or housing projects for persons of low income.

1. Rules. Before making any institutional loan under this section, the Maine State Housing Authority shall establish rules concerning:

A. The interest rate and terms of institutional loans to be made to participating financial institutions;

B. The time within which participating financial institutions must make commitments and disbursements for mortgage loans;

C. The type and amount of collateral security to be pledged by participating financial institutions to ensure repayment of institutional loans from the Maine State Housing Authority as provided in section 4806;

D. Standards as to the construction or rehabilitation for the housing units or housing projects to be financed;

E. Procedures for the submission of requests or the invitation of proposals for institutional loans;

F. Schedules of fees and other charges to be made by the Maine State Housing Authority or the participating financial institution, or both, in accepting, acting upon or renewing applications for institutional loans or mortgage loans under this section;

G. Limiting the rate of return on mortgage loans made by participating financial institutions;

H. Establishing the time within which participating financial institutions will invest the proceeds of the institutional loans in mortgage loans; and

I. Any other matters related to institutional loans or mortgage loans that the Maine State Housing Authority considers necessary.

§4804. Bonds; use of proceeds

Institutional loans made and rules established under this subchapter shall be designed to:

1. Expand mortgage funds. Expand the supply of funds available in the State for residential mortgage loans;

2. Improve housing for low-income persons. Provide funds to alleviate the shortage of decent, safe and sanitary living accommodations in the State for persons of low income; and

3. Improve energy conservation. In the case of rehabilitated housing units or housing projects, improve and promote conservation of energy resources or otherwise improve the quality of existing housing.

§4805. Provisions of bonds

The indebtedness created by an institutional loan to a participating financial institution is a general obligation of that participating financial institution and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such bond, note or other certificate of indebtedness, may be subject to prepayment with or without penalty, and shall contain any other provisions consistent with this section and with the rules established under this section by the Maine State Housing Authority that the Maine State Housing Authority considers necessary.

§4806. Bonds; collateral

The Maine State Housing Authority shall require that institutional loans be secured as to payment of both principal and interest by a pledge of and lien upon qualified collateral security.

The Maine State Housing Authority may establish any requirements that it considers necessary with respect to the pledging, assigning, setting aside or holding of this collateral and the making of substitutions for or additions to the collateral and the disposition of income and receipts from the collateral.

Notwithstanding any other provision of law, participating financial institutions may do any acts required by this subchapter.

§4807. Separability

In accordance with section 4722, subsection 1, paragraph H, the authority to issue bonds granted by this subchapter and the terms, conditions, purposes and uses of those bonds are separate from, and not limited or restricted by, the authority to issue bonds granted in the several separate subchapters of this chapter. The provisions of all other subchapters of this chapter apply to this subchapter except sections 4901 to 4907.

§4808. Bond rating category

Bonds issued under this subchapter must be rated at or before issuance of the bonds in a rating category of A or its equivalent or better by a nationally recognized rating agency.

## SUBCHAPTER VI

## CONSTRUCTION LOANS

§4831. Findings and purpose

The Legislature finds that:

1. Shortage exists. A shortage of decent housing accommodations for persons or families of low income exists in the State;

2. Shortage of funds. A cause of the lack of new construction in the State has been the recurrent shortage of funds from private sources;

3. Hardship. The reduction in this construction has caused substantial unemployment and underemployment in the construction industry which results in hardship, wastes human resources, impedes the economic and phys-

ical development of the State, causes a shortage of housing for persons of low income and adversely affects the welfare and prosperity of the State;

4. Encourage construction. A stable supply of construction loan funds will encourage new housing construction;

5. Public funds. The availability of public funds will create inducements and opportunities for public and private investment in new housing construction; and

6. Public use. Providing these funds is necessary for the public benefit and welfare and is a public use for which funds may be borrowed, advanced, loaned or expended.

§4832. Construction loans

The Maine State Housing Authority may participate with financial institutions in the State in the making of construction loans for the purpose of land development and the construction of housing units or housing projects for persons of low income, under any terms and conditions that the Maine State Housing Authority may establish by rule.

1. Participation requirements. The Maine State Housing Authority may not participate in the making of construction loans unless a financial institution in the State agrees to participate in the loan at least to the extent of 15% of the principal amount of the loan. Notwithstanding any other provisions of law, financial institutions in the State may act as required by this subchapter.

2. Rules. The Maine State Housing Authority shall establish rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, governing, without limitation, the following subjects and procedures for participating in the making of construction loans:

A. The submission, review and acceptance of requests from borrowers for construction loans under this section;

B. Qualifications of borrowers;

C. Limitation on and standards for location and construction of housing units or housing projects;

D. Schedules of fees and other charges made by the authority and the financial institution to the borrower in accepting, reviewing and acting upon applications for construction loans under this subchapter; and

E. Restrictions on the interest rates charged by the financial institutions and the authority on the construction loans or the return on those loans to be realized by the financial institution.

§4833. Bonds; issuance, separability of provisions

The Maine State Housing Authority may issue bonds from time to time to carry out the purposes of this subchapter. These bonds shall be secured in such manner as the Maine State Housing Authority by resolution may provide. The bonds shall be known as construction loan bonds. The authority to issue construction loan bonds under this subchapter constitutes a complete, additional and alternative method for the issuance of bonds from that provided in any other subchapter in this chapter. No limitation or restriction as to use of proceeds or total authorized amount of obligations outstanding stated in this subchapter applies to bonds issued under any other subchapter in this chapter, nor do such restrictions or limitations recited in other subchapters apply to bonds issued under this subchapter. Sections 4901 to 4907 do not apply to bonds issued under this subchapter. The provision in section 4832 restricting construction loans to housing projects for persons of low income is considered satisfied if at least a reasonable number of the families or individuals who will occupy the mortgaged premises are persons of low income. All other provisions of this chapter apply to bonds issued under this subchapter.

The Maine State Housing Authority may not at any time have an aggregate principal amount of construction loan bonds outstanding in excess of $25,000,000. In computing the total amount of construction loan bonds of the Maine State Housing Authority which is outstanding at any time, the amount of the outstanding bonds refunded or to be refunded from the proceeds of the sale of new bonds or by exchange of new bonds shall be excluded.

SUBCHAPTER VII

HOUSING OPPORTUNITIES FOR MAINE PROGRAM

§4851. Legislative findings and determinations

1. Findings. The Legislature finds that:

A. Economic conditions within the State and the United States have resulted in a significant reduction in the construction of new housing units in the State and in a significant reduction of the availability of mortgages made by financial institutions in the State;

B. The Federal Government has significantly reduced the types and amounts of housing assistance to citizens of the State and the United States;

C. A substantial number of Maine's citizens cannot afford housing which is decent, safe and sound;

D. A significant number of housing units in the State require repairs or improvements necessary to eliminate dangers to the health or safety of the occupants of those units or to ensure that those units are energy-efficient;

E. The demand for housing is increasing more quickly than the supply of housing;

F. The United States Mortgage Subsidy Bond Tax Act of 1980, Public Law 96-499, Title XI, Subtitle A; 94 Stat. 2660-2681, and conditions in national financial markets have prevented the Maine State Housing Authority from selling bonds to provide funds for affordable mortgage loans on certain owner-occupied housing; and

G. The adverse impact of the problems found by the Legislature cannot be effectively lessened without financial assistance for housing provided by the State through the Maine State Housing Authority.

2. Determination. The Legislature determines that:

A. From time to time the Legislature should appropriate money from the General Fund in order to carry out the program established under this subchapter; and

B. Upon adoption of any such appropriations act, the Maine State Housing Authority shall use the money to carry out the program established under this subchapter.

§4852. Housing Opportunities for Maine Program

1. Operator of program. Upon a General Fund appropriation of money for the Housing Opportunities for Maine Fund created by section 4853, subsection 1, the Maine State Housing Authority shall operate the Housing Opportunities for Maine Program. This program may be operated in conjunction with or as part of one or more other programs of the Maine State Housing Authority.

2. Use of money. Money in the Housing Opportunities for Maine Fund shall be applied:

A. To reduce the rate of interest on or the principal amount of such mortgage loans as the Maine State Housing Authority determines, to reduce payments by persons of low income for the rental of single-family or multi-unit residential housing or otherwise to make the costs of single-family or multi-unit residential housing affordable by persons of low income; or

B. To fund reserve funds for, to pay capitalized interest on, to pay costs of issuance of, to purchase mortgage loans or otherwise to secure and to facilitate the sale of the Maine State Housing Authority's bonds issued under this chapter.

If any money in the Housing Opportunities for Maine Fund is used in conjunction with or as part of the issuance of any mortgage purchase bonds and the proceeds of the bonds are allocated by the Maine State Housing Authority to assist in the acquisition of housing, the Maine State Housing Authority shall require that the purchaser of the housing make a down payment of at least 5% of the price paid for the housing; except that this requirement does not apply to mortgage loans insured or guaranteed by the United States Veterans Administration, the Federal Housing Administration or any other agency of the Federal Government that allows for a lesser down payment. The Maine State Housing Authority may not limit the maximum down payment that may be required.

3. Availability requirement. For at least 3 months after the date on which any appropriation is first available for expenditure, at least 50% of the proceeds of mortgage purchase bonds assisted under subsection 2 and allocated by the Maine State Housing Authority for the purchase of home improvement notes for owner-occupied residential housing shall be made available for persons of low income whose adjusted income does not exceed 100% of the median family income for the State, as developed by the Maine State Housing Authority from available data or publications.

§4853. Fund created

1. Creation. There is created and established under the jurisdiction and control of the Maine State Housing Authority the Housing Opportunities for Maine Fund.

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the term "fund" means the Housing Opportunities for Maine Fund created by subsection 1.

§4854. Sources of fund

There shall be paid into the fund:

1. Appropriations. All money appropriated from the General Fund for inclusion in the fund;

2. Repayment of advances. Subject to any pledge, contract or other obligation under section 4855, any money which the Maine State Housing Authority receives in repayment of advances from the fund;

3. Gains from investments. Subject to any pledge, contract or other obligation under this section, all interest, dividends and pecuniary gains from the investment of money of the fund; and

4. Other money. Any other money available to the Maine State Housing Authority and directed by the Maine State Housing Authority to be paid into the fund.

§4855. Application of fund

1. Application to bonds of Maine State Housing Authority. Money in the fund may, in whole or in part, be pledged or transferred and deposited as security for and applied in payment of principal of, interest on or redemption premiums on bonds of the Maine State Housing Authority issued after April 1, 1982, in accordance with section 4852.

2. Application on behalf of low-income persons.

Pursuant to any contract with or on behalf of persons of low income, the Maine State Housing Authority may, in whole or in part, apply money in the fund in accordance with section 4852.

§4856. Accounts within fund

The Maine State Housing Authority may divide the fund into any separate accounts that it finds necessary to accomplish the purposes of this subchapter.

§4857. Recovery of money applied from fund

To the extent permitted by law and to the extent it is economically and socially reasonable, the Maine State Housing Authority may recover amounts from any person on whose behalf money from the fund has been applied to carry out this subchapter and may charge interest on those amounts at a rate determined by the Maine State Housing Authority.

1. Recovery deferred. The recovery may be deferred until:

A. The sale or refinancing of the housing;

B. The end of the term of the mortgage loan; or

C. Any other time determined by the Maine State Housing Authority.

2. Limitation of recovery. Recourse for the recovery is limited to property subject to the mortgage, except in cases of fraud.

§4858. Revolving fund

The fund is a revolving fund. The Maine State Housing Authority shall continuously apply all money in the fund to carry out this subchapter.

SUBCHAPTER VIII

BONDS

§4871. Issuance and conditions

An authority may issue bonds from time to time in its discretion for any of its corporate purposes. An authority may issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.

1. Methods of repayment; security. An authority may issue such types of bonds as it may determine, including, but not limited to, bonds on which the principal and interest are payable:

A. Exclusively from the income and revenues of the project financed with the proceeds of those bonds;

B. Exclusively from the income and revenue of certain designated projects whether or not they are financed in whole or in part with the proceeds of those bonds;

C. From its revenues generally or exclusively from the proceeds of mortgages, bonds, or notes or other securities held by the authority; or

D. From money appropriated by the State or otherwise authorized in this chapter to be applied for the payment of principal, redemption price and interest on the bonds.

Any such bonds may be additionally secured by a pledge of any grant or contributions from the Federal Government or other source, or a pledge of any income or revenues of the authority or a mortgage of any project, projects or other property of the authority. These bonds may also be secured by one or more Capital Reserve Funds established under section 4906.

2. Negotiable instruments. Whether or not the bonds are of such form and character as to be negotiable instruments under the Uniform Commercial Code, Title 11, article 8, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Title 11, article 8, subject only to the provisions of the bonds for registration.

The bonds may be sold at public or private sale. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter shall be fully negotiable.

3. Municipal authorities. In the case of a municipal authority, no bonds may be issued, the principal and interest of which are to be payable from the proceeds of mortgages and notes held by the authority under subchapter IX, unless:

A. The bonds are rated in a rating category of A, its equivalent or better, by a nationally recognized rating agency;

B. The authority has received consent to issue these bonds from the legislative body of the municipality in which the authority is established; and

C. In the case of a city authority, the authority has also received the consent of the legislative body of any towns within the area of operation of the authority in which money from the issuance of the bonds may be made available.

Municipal authorities, considered together, may not at any time have, in the aggregate principal amount of the bonds outstanding, bonds described in this subsection in excess of $50,000,000.

4. Authorization; sale; details of bond. Bonds of an authority shall be authorized by resolution and may be issued in one or more series. Bonds of an authority shall bear such date or dates, mature at such time or times,

bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, as such resolution, its trust indenture or mortage may provide.

5. Signatures on bonds or coupons. If any commissioner or officer of the authority whose signature appears on any bonds or coupons ceases to be a commissioner or officer before the bonds are delivered, the signature is nevertheless valid for all purposes, the same as if the commissioner or officer had remained in office until the delivery.

6. No liability on bonds. Neither the commissioners of an authority nor any person executing the bonds may be personally liable on the bonds by reason of the issuance of the bonds. The bonds and other obligations of an authority shall not be a debt of the municipality, the State or any political subdivision of the State and neither the municipality nor the State or any political subdivision of the State may be liable on those bonds; the bonds and obligations shall so state on their face. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. In no event may these bonds or obligations be payable out of any funds or properties other than those of the authority. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest on and income from those bonds, are exempt from taxes.

7. Presumption of validity. In any civil action or proceedings involving the validity or enforceability of any bond of an authority or the security for that bond, any bond reciting in substance that it has been issued by the authority to aid in financing the activities of the authority is deemed to have been issued for that purpose, and those activities are deemed to have been planned, located and carried out in accordance with the purposes and provisions of this chapter.

§4872. Provisions of bonds, trust indentures and mortgages

In order to secure the payment of its bonds, an authority in addition to its other powers may:

1. Pledge of assets. Pledge all or any part of its gross or net rents, fees or revenues, including any grants or contributions from the Federal Government or other source, to which its right then exists or may thereafter come into existence, except the proceeds described in sections 4905 and 4906, which shall be applied as described in those sections;

2. Mortgage property. Mortgage all or any part of its real or personal property then owned or thereafter acquired;

3. Covenants against pledging, mortgaging, disposal or debts. Covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on those revenues or property; it may covenant with respect to its right to sell, lease or otherwise dispose of any housing project or any part of a housing project; and it may covenant as to what other or additional debts or obligations may be incurred by it;

4. Covenants against extending bond payments and redemption. Covenant against extending the time for the payment of its bonds or interest on the bonds, and may covenant for the redemption of the bonds and may provide the terms and conditions of redemption;

5. Procedure to amend contracts with bondholders. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to that amendment and the manner in which that consent may be given;

6. Breach of covenant. Covenant as to the rights, liabilities, powers and duties arising upon the authority's breach of any covenant, condition or obligation; and it may covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations will become or may be declared due before maturity, and as to the terms and conditions upon which that declaration and its consequences may be waived; and

7. General powers. Exercise all or any part or combination of the powers granted; it may make any other covenants and do any acts and things that are necessary or desirable in order to secure its bonds or, in the absolute discretion of the authority, that will tend to make the bonds more marketable, notwithstanding that those covenants, acts or things are not enumerated.

It is the intention of this section that any pledge made by the Maine State Housing Authority concerning such bonds or notes is valid and binding from the time when the pledge is made; that the money or property so pledged and thereafter received by the Maine State Housing Authority is immediately subject to the lien of that pledge without any physical delivery thereof or further act; and that the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Maine State Housing Authority irrespective of whether those parties have notice of that lien.

Neither the resolution, trust indenture nor any other instrument by which a pledge is created need be recorded.

§4873. Remedies of an obligee

An obligee of an authority has the right in addition to all other rights which may be conferred on the obligee, subject only to any contractual restrictions binding upon the obligee:

1. Compel performance. By mandamus, civil action or proceeding to:

A. Compel the authority and its commissioners, officers, agents or employees to perform every term, provision and covenant contained in any contract of the authority with or for the benefit of the obligee; and

B. Require the carrying out of any or all the covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this chapter; and

2. Enjoin. By civil action or proceeding to:

A. Enjoin any unlawful acts or things; or

B. Enjoin the violation of any of the rights of the obligee of the authority.

§4874. Additional remedies conferrable by authority

An authority may by its resolution, trust indenture, mortgage, lease or other contract confer upon any obligee holding or representing a specified amount in bonds, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in the resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

1. Cause possession of project to be surrendered. Cause possession of any project or any part of a project to be surrendered to any such obligee;

2. Obtain appointment of receiver. Obtain the appointment of a receiver of any project of the authority or any part of a project and of the rents and profits from the project; and

3. Require accounting. Require the authority and the commissioners of the authority to account as if it and they were the trustees of an express trust.

§4875. Bonds as legal investments and security

1. Purpose; application. It is the purpose of this section to authorize any of the persons or entities referred to in subsection 2 to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any bonds or obligations described in subsection 2. This section applies notwithstanding any restrictions on investments contained in other laws.

2. Qualifications of bonds. The State and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks, commercial banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations and other persons carrying on a banking or insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority created by or under this chapter or issued by any public housing authority or agency in the United States, Puerto Rico, Guam or the Virgin Islands, when those bonds or other obligations are secured by:

A. A pledge of annual contributions or other financial assistance to be paid by the Federal Government; or

B. An agreement between the Federal Government and the public housing authority in which the Federal Government agrees to lend to the public housing authority, before the bonds or other obligations mature, money in an amount which, together with any other money irrevocably committed to the payment of interest on the bonds or other obligations, will suffice to pay the principal of the bonds or other obligations with interest to maturity, which money under the terms of the agreement is required to be used for that purpose.

3. Authorized security; negotiability. Bonds and other obligations described in subsection 2 are authorized security for all public deposits and are fully negotiable.

4. Duty of reasonable care not abrogated. Nothing in this section may be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

SUBCHAPTER IX

MORTGAGE CREDIT

§4901. Purchase and sale of mortgage loans

An authority may purchase or make commitments to purchase mortgage loans from any financial institution, pension or retirement fund, any fiduciary or any other person or governmental or business entity. An authority may also sell or make commitments to sell mortgage loans to any pension or retirement fund, any fiduciary or any other person, governmental or business entity or financial institution. An authority may exercise all rights and powers of a holder of any such mortgage loan.

§4902. Lenders certification

A mortgage loan is not eligible for purchase or commitment to purchase by an authority under this subchap-

ter unless at or before the time of transfer of the loan to the authority, the originating bank, life insurance company, savings and loan association, other financial institution or the Federal Government certifies that:

1. Loan a prudent investment. In its judgment the mortgage loan would in all respects be a prudent investment for its own account; and

2. Reinvestment of sale proceeds. When the mortgage loan so sold is secured by land and improvements constituting a one-family to 4-family housing unit or has been held by the originator for more than one year since the completion of the construction of the securing structure, the proceeds of sale or its equivalent will be reinvested in residential mortgages or notes within the State, or invested in short term obligations pending the purchase of such residential mortgages or notes. For purposes of this section and section 4903, the term "residential mortgages or notes" includes, but is not limited to, mortgage loans.

§4903. Authority not obligated

1. Authority may decline to purchase. The authority may at any time decline to purchase or decline to make commitments to purchase any mortgage loan or obligation offered or submitted to it.

2. Reinvestment required. An authority may not purchase from a seller who has previously sold to the authority mortgage loans or obligations secured by land and improvements constituting one-family to 4-family housing units, any new mortgage loan or obligation secured by land and improvements constituting a one-family to 4-family housing unit until that seller has completed the reinvestment in residential mortgages or notes or the purchase of those residential mortgages or notes contemplated in section 4902 and so informed the authority in writing, provided that if the seller had entered into a contract with the authority which provided for reinvestment of the proceeds of the sale of mortgages or obligations with certain restrictions within a certain time period, compliance with the terms of that contract constitutes compliance with this subsection. Any seller who is performing within the terms of the contract is deemed to have completed the reinvestment requirements within the meaning of this subsection with respect to mortgages or obligations subject to that contract.

§4904. Consideration for mortgage loans purchased

An authority shall pay for each mortgage loan or obligation purchased an amount not in excess of the outstanding principal balance; discount from the principal balance may be employed to effect a fair rate of return, as determined by the rate of return on comparable investment under market conditions existing at the time of purchase. In addition to this payment of outstanding principal balance, the authority shall pay the accrued interest due on the date the mortgage loan or obligation is delivered to the authority against payment therefor.

§4905. Bonds; use of proceeds

1. Issuance authorized. An authority may authorize the issuance of its revenue bonds as provided in section 4871 for any of its authorized purposes including the purchase of mortgage loans or evidences of mortgage loans, for residential housing or a housing project in the State in accordance with section 4901. These loans may include, but are not limited to, loans which are insured, guaranteed or assisted by the Federal Government or for which there is a commitment by the Federal Government to insure, guaranty or assist the loan.

2. Restrictions on use. The loan must be for persons and families:

A. Deemed by the authority to require the assistance made available by this chapter because of low personal or family income, taking into consideration:

(1) The amount of the total income of the persons and families available for housing needs;

(2) The size of the family;

(3) The eligibility of the persons and families for federal housing assistance of any type predicated upon a low-income basis; and

(4) The ability of the persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing; and

B. Deemed by the authority therefor to be eligible to occupy residential housing constructed and financed, wholly or in part, with insured construction loans or insured mortgages, or with other public or private assistance.

3. Occupancy by persons of low income required. An authority may not purchase a mortgage loan or evidence of a loan unless at least a reasonable number of the families or individuals who occupy or will occupy the mortgaged premises are persons of low income. The authority shall ensure that the mortgaged premises is continued in use for the originally planned purpose as long as that use is economically and socially reasonable.

§4906. Application of receipts; special reserve fund

1. Housing Reserve Fund. The Maine State Housing Authority shall establish and maintain a special fund called the "Housing Reserve Fund" which consists of:

A. All money appropriated by the State for inclusion in the fund;

B. All proceeds of the sale of bonds, required to be deposited in the fund by the terms of the resolution authorizing the sale of the bonds; and

C. Any other money available to the Maine State Housing Authority which it determines to use for this purpose.

All money held in the Housing Reserve Fund shall be used only to retire bonds of the Maine State Housing Authority issued to purchase mortgage loans or notes, or to maintain the Housing Reserve Fund at an amount equal to the minimum reserve established by the Maine State Housing Authority. Any proceeds beyond the amount necessary to this function may be used to replace matured mortgage loans or notes or to purchase mortgage loans or notes, or to pay any or all expenses of the Maine State Housing Authority up to 1/2 of 1% of the bond value outstanding each year. The minimum amount of this Housing Reserve Fund shall be the minimum amount of money sufficient to meet the maximum payment required in the following calendar year for payment of principal and interest falling due on all other outstanding bonds and retiring all other bonds required by their terms to be retired. These amounts are referred to in this subchapter as the required "minimum reserve."

2. Capital Reserve Fund. The Maine State Housing Authority may establish and maintain one or more special funds called the "Capital Reserve Fund" which consists of:

A. All money appropriated by the State for inclusion in that fund;

B. All proceeds of the sale of bonds, required to be deposited in the fund by the terms of the resolution authorizing the sale of those bonds;

C. All other money available to the Maine State Housing Authority which it determines to use for this purpose.

All money held in any Capital Reserve Fund shall be used only to retire those bonds of the Maine State Housing Authority issued to purchase mortgage loans or notes or home improvement notes under the resolution establishing a Capital Reserve Fund, or to maintain a Capital Reserve Fund at an amount equal to the minimum reserve established by the Maine State Housing Authority. Any proceeds beyond the amount necessary to this function may be used to replace matured mortgage loans or notes or home improvement notes or to purchase mortgage loans or notes or home improvement notes or to pay any expenses of the Maine State Housing Authority up to 1/2 of 1% of the bond value outstanding each year under the resolution creating a Capital Reserve Fund. The minimum amount of any Capital Reserve Fund shall be equal to the amounts required under the resolutions pursuant to which the bonds secured by the Capital Reserve Fund are issued. These amounts are referred to in this subchapter as the required "minimum reserve."

3. Required minimum reserve. Notwithstanding any other provision of this chapter, no bonds may be issued by the Maine State Housing Authority unless there is in the Housing Reserve Fund or Capital Reserve Fund which will secure those bonds the required minimum reserve for all the bonds issued and to be issued which will be secured by the Housing Reserve Fund or Capital Reserve Fund. The Maine State Housing Authority may satisfy this requirement by depositing so much of the proceeds of the bonds being issued, upon their issuance, as is needed for the fund to achieve the required minimum reserve.

A. In order to ensure the maintenance of the required minimum reserve in the Housing Reserve Fund and in any Capital Reserve Fund to which this paragraph is stated to apply in the resolution establishing the Capital Reserve Fund, there shall be annually appropriated and paid to the Maine State Housing Authority for deposits in those funds, the sum, if any, that is certified by the director of the Maine State Housing Authority to the Governor as necessary to restore any such fund to an amount equal to its required minimum reserve. The director shall annually, by December 1st, make and deliver to the Governor a certificate stating the sum, if any, required to restore any such fund to an amount equal to its required minimum reserve, and the sum or sums so certified shall be appropriated and paid to the Maine State Housing Authority during the then current state fiscal year.

(1) For purposes of valuation of the Housing Reserve Fund or Capital Reserve Fund to which this paragraph applies, securities acquired as an investment for any such fund shall be valued at par or actual cost to the Maine State Housing Authority, whichever value is less.

B. For any Capital Reserve Fund to which paragraph A is not stated to apply in the resolution establishing the Capital Reserve Fund, there shall be no certification by the director to the Governor or appropriation and payment by the Legislature for deposit in the fund to restore the fund to an amount equal to its required minimum reserve.

§4907. Limitations

1. Limitations on amount of outstanding principal. The Maine State Housing Authority may not at any time have an aggregate principal amount outstanding, in excess of $635,000,000 of mortgage purchase bonds secured by the Housing Reserve Fund or a Capital Reserve Fund to which section 4906, subsection 3, paragraph A applies. Mortgage purchase bonds of the Maine State Housing Authority secured by capital reserve funds to which section 4906, subsection 3, paragraph A does not apply, bond or mortgage insurance, direct or indirect contract with the United States, purchase or repurchase agreement of guaranty with a banking or other financial organization or other credit arrangements securing the bonds may be issued up to $100,000,000 per calendar year in an aggregate principal amount not to exceed $300,000,000.

2. Bond rating. Mortgage purchase bonds must be rated at or before issuance of the bonds in a rating category of A or its equivalent or better by a nationally recognized rating agency. A rating is not necessary for any issue of mortgage purchase bonds which:

A. Is not subject to section 4906, subsection 3, paragraph A; and

B. Is sold in its entirety to one or more financial institutions, insurance companies or similar finance entities for its own account and not with the present intention of resale.

§4908. Determination of outstanding obligations

In computing the total amount of obligations of the Maine State Housing Authority which may at any time be outstanding for any purpose under this chapter:

1. Amounts to be refunded excluded. The amount of the outstanding obligations refunded or to be refunded from the proceeds of the sale of new obligations or by the exchange of new obligations shall be excluded; and

2. Amounts valued at current value. The amount of the outstanding obligations that have been issued as capital appreciation bonds or as similar instruments shall be valued as of any date of calculation at their then current accreted value rather than their face value.

§4909. Mortgages eligible for investment

All mortgages, bonds and obligations of the Maine State Housing Authority are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, pension or retirement funds.

§4910. Annual report

The director of the Maine State Housing Authority shall prepare and submit to the Governor and the bank superintendent annually a complete report and a complete financial report duly audited and certified by the Department of Audit to be distributed in the same way as state departmental reports.

§4911. Operating expenses

1. Funds available. All expenses incurred by the Maine State Housing Authority to pay for the operation and administration of any mortgage purchase program authorized under this subchapter are payable from any money available to the Maine State Housing Authority from any source contemplated by this chapter, including, but not limited to:

A. The money authorized to be applied by section 4906;

B. Money appropriated by the State;

C. Contributions, grants and other financial assistance from the Federal Government or other sources;

D. Proceeds of the sale of bonds and notes;

E. Income, rents and revenues of projects financed with the proceeds of the bonds or notes;

F. Interest on any investments of the Maine State Housing Authority;

G. Fees related to the mortgage purchase program;

H. Insurance premiums; and

I. Proceeds of mortgages or other interest-bearing obligations purchased under section 4901.

2. Budget; preparation and approval; limitation. No later than January 1st in each year, the Maine State Housing Authority shall prepare and file in the office of the Bureau of the Budget a budget of its expenses of operation and administration for any mortgage purchase program for the fiscal year then commencing. This budget shall also set forth service fees relating to mortgages purchased. The budget may be amended at any time, and the amended budget shall also be filed with the office of the Bureau of the Budget. The commissioners must approve the budget and any amendments to it before it is filed in the office of the Bureau of the Budget.

The expenses of operation and administration set forth in each budget under this subsection may not exceed the amount of money available and estimated to be available from the sources listed in subsection 1, after deducting from that money the aggregate amount of principal and interest accrued and to accrue during the fiscal year on all bonds outstanding issued to finance the program authorized by this subchapter, all as set forth in each budget. The Maine State Housing Authority may not incur expenses of operation and administration for the program in excess of the amounts provided for those expenses in the budget.

3. Limitation on proceeds. No amount from the proceeds of the sale of bonds or income derived from bond proceeds in excess of 1/2 of 1% of the bond value outstanding each year may be used:

A. To pay for the expenses of operation and administration for the mortgage purchase program; or

B. For other programs of the Maine State Housing Authority.

4. Limitations. For the purposes of this section:

A. Proceeds of the sale of bonds or income derived from bond proceeds does not include:

(1) The principal of the Housing Reserve Fund or any Capital Reserve Fund established under this subchapter;

(2) Income earned in the Housing Reserve Fund or any Capital Reserve Fund; or

(3) The scheduled amortization payments of principal and interest called for by mortgages or mortgage loans purchased under this subchapter; and

B. Expenses of operation and administration of a program do not include:

(1) The cost of issuance of bonds; or

(2) Fees paid to any financial institution by the Maine State Housing Authority for the purpose of servicing mortgage loans.

5. Other limitations unaffected. The separate limitations imposed by section 4906 on the use of money deposited in the Housing Reserve Fund or any Capital Reserve Fund are not affected by this section.

§4912. Eligible conservation projects

The Maine State Housing Authority in consultation with the Office of Energy Resources shall develop guidelines defining energy improvements which may be made with proceeds of home improvement notes.

1. Affidavit required. The Maine State Housing Authority shall require an affidavit in conjunction with an application for a residential energy loan home improvement note to ensure that the proceeds are used for purposes authorized under this chapter.

§4913. Penalties

Anyone using the proceeds of a home improvement note for other than authorized purposes is subject to a civil penalty not to exceed $5,000, payable to the State, to be recovered in a civil action.

## SUBCHAPTER IX-A

## NATURAL DISASTER HOME ASSISTANCE PROGRAM

§4921. Natural Disaster Home Assistance Fund

1. Creation. The Natural Disaster Home Assistance Fund is established under the jurisdiction of the Maine State Housing Authority. For the purposes of this subchapter, "state authority" means the Maine State Housing Authority.

2. Sources of fund. The following shall be paid into the fund:

A. All money appropriated for inclusion in the fund;

B. Subject to any pledge, contract or other obligation, any money which the state authority receives in repayment of loans or advances from the fund;

C. Subject to any pledge, contract or other obligation, all interest, dividends or other income from investment of the fund; and

D. Any other money, including federal money, deposited in the fund to implement the provisions of this subchapter.

3. Application of fund. The state authority may apply money in the fund for purposes authorized by this subchapter. Money in the fund not needed currently for purposes of this subchapter may be deposited with the state authority to the credit of the fund or may be invested in such a manner as is provided by law.

4. Accounts within fund. The state authority may divide funds into such separate accounts as it determines necessary or convenient for carrying out this subchapter.

5. Revolving fund. The fund shall be a nonlapsing revolving fund. All money in the fund shall be continuously applied by the state authority to carry out this subchapter.

§4922. Maine Natural Disaster Home Assistance Program

The Maine Natural Disaster Home Assistance Program shall provide assistance to homeowners who are victims of natural disasters which have caused the State or portions of the State to be declared disaster areas by the President of the United States or the President's authorized representative.

1. Operation. The state authority shall administer the Maine Natural Disaster Home Assistance Program which may be operated in conjunction with other programs of the state authority. Other programs of the state authority may be used to supplement or be used in conjunction with the Maine Natural Disaster Home Assistance Program to achieve the purpose of this subchapter.

A. Money in the fund may be used as security for or be applied in payment of principal, interest, fees and other charges due on loans made or insured under this program.

B. Money in the fund may be used as grants to assist homeowners who qualify for grant assistance under this program.

C. Money in the fund may be matched with federal money and money of political subdivisions of the State to obtain federal natural disaster relief and assistance.

2. Provisions governing use of money. The fund shall be administered subject to the provisions in this

section. Priority shall be given to homeowners who are not adequately assisted by federal or other disaster funds and who do not have access to adequate capital or credit to recover from the effects of the disaster. For purposes of this subchapter, homeowner includes the owner of a mobile home or manufactured housing unit and the owner of rental housing.

A. The state authority, by rules adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, shall establish priorities of assistance to homeowners. These priorities shall be based on the assets of the homeowner; availability of credit or assistance or income from other sources, including financial institutions, federal relief programs, investments, trust funds and other similar sources; the degree of damage incurred; the immediacy of the need for assistance; and any other variables deemed important by the state authority.

B. Grants may be provided to a homeowner if:

(1) The grant is essential to providing housing to the homeowner;

(2) The income of the homeowner is insufficient to repay any loan or portion of a loan; and

(3) Grants shall not exceed $20,000 per homeowner household.

C. Loans from the fund shall not exceed $45,000 per homeowner household at rates of interest not to exceed 8% per year.

D. Loans from the fund may be made for periods of up to 30 years. In the event that a homeowner cannot repay a loan in full within the 30-year period, the state authority may extend the repayment period if the state authority determines that the loan can be repaid during the extension period. The state authority may waive the payment of interest on any loan or portion of a loan for which the interest payment will be an undue hardship on a household.

E. Money in the fund may be used to reduce interest rates on loans provided by financial institutions located in this State to homeowners who are victims of natural disasters.

F. The program shall be directed primarily at households without access to adequate capital or credit and which have experienced significant damage to or loss of their housing.

G. Homeowners living in a designated flood plain shall not be eligible for assistance under the program unless they obtain flood insurance.

H. Applications for assistance under the program by victims of the April 1987 flood must be received by the state authority on or before September 30, 1987, in order for such individuals to be eligible for assistance.

3. Loan insurance. The state authority may insure payments due under a loan or lease and may pledge money in the fund as security for such loan or lease, which may be in addition to or in lieu of insurance provided under other provisions of this chapter. Loans or leases shall not constitute any debt or liability on the part of the state authority or the State, except to the extent specifically provided by contract executed by the state authority.

4. Use of loans and grants. Loans and grants provided in this subchapter may be used for refinancing mortgages, payment of interest or portion of interest on loans, home construction and home improvements.

5. Procedures. The state authority may adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, by which the program shall be implemented.

## SUBCHAPTER X

## HOUSING MORTGAGE INSURANCE LAW

### §4931. Short title

This subchapter shall be known and may be cited as the "Housing Mortgage Insurance Law."

### §4932. Declaration of purpose

The Constitution of Maine, Article IX, Section 14-C, provides for insuring payment of mortgage loans for Indian housing for the purpose of "fostering and encouraging the acquisition, construction, repair and remodeling of houses owned or to be owned by members of the 2 tribes on the several Indian reservations." It is the purpose of this subchapter to designate the Maine State Housing Authority as the state agency responsible for implementing the powers provided for in the Constitution of Maine, Article IX, Section 14-C.

Whereas the power of the Maine State Housing Authority to insure mortgages on housing, other than Indian housing, needs clarification, and whereas the Maine State Housing Authority is the appropriate agency of the State to administer a state housing mortgage insurance program and could administer it in conjunction with the Indian Housing Mortgage Insurance Program, it is the further purpose of this subchapter to provide that clarification.

### §4933. Definitions

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

1. Housing. "Housing" includes, but is not limited to, any "project" or "housing project," as defined in sec-

tion 4702, subsection 14.

2. Housing Mortgage Insurance Fund. "Housing Mortgage Insurance Fund" means any fund established by the Maine State Housing Authority for the purpose of providing insurance for the payment of mortgage loans for housing in the State.

3. Indian Housing Mortgage Insurance Fund. "Indian Housing Mortgage Insurance Fund" means any Housing Mortgage Insurance Fund established by the Maine State Housing Authority in cooperation with the Indian Housing Authority for the purpose of providing insurance for the payment of mortgage loans for housing on the Indian reservations.

4. Indian Housing Authority. "Indian Housing Authority" means any housing authority created by the Maine Indian Housing law.

5. Indian Housing Mortgage Insurance Committee. "Indian Housing Mortgage Insurance Committee" means a committee consisting of:

A. The Treasurer of State;

B. The director of the Maine State Housing Authority;

C. The Commissioner of Finance; and

D. One person from the Passamaquoddy Tribe and one person from the Penobscot Nation to be chosen by the respective tribe or nation.

§4934. Insurance policies

1. Contracts. The Maine State Housing Authority may:

A. Establish housing mortgage insurance contracts;

B. Charge and collect premiums;

C. Make appropriate payments; and

D. Do all other things necessary and proper to administer a state housing mortgage insurance program.

2. Procedure. When providing mortgage insurance on Indian housing, the Maine State Housing Authority shall develop the various contracts and other aspects of the program in cooperation with the Indian Housing Authority and shall deal with insurance purchases exclusively through the agency of the Indian Housing Authority or a person acceptable to the Indian Housing Authority.

3. Limitation. Notwithstanding this section, the Maine State Housing Authority shall not make any contract or commitment of mortgage insurance without the approval of a majority of the Indian Housing Mortgage Insurance Committee.

§4935. General obligation bonds for Indian housing mortgage insurance

The Maine State Housing Authority may request the Treasurer of State to issue up to $1,000,000 in state general obligation bonds for the purpose of providing funds to pay any necessary and proper costs or charges arising for any reason, including the default of any policy issued under section 4934, subsection 2, and incurred as a result of its insuring or undertaking to insure the payment of mortgages for Indian housing on an Indian reservation. Upon this request from the authority, the Treasurer of State shall issue the bonds as promptly as possible, but in any event not later than the next regularly scheduled bond issue of the State, unless prior to the issuance of the bonds, the amount so requested is provided to the Maine State Housing Authority by appropriation of the Legislature, by transfer from the State Contingency Account or otherwise.

1. Use of proceeds. Proceeds from the bond issuance may not be used as collateral, payment or in any other way to assist any insurance of mortgages on other than Indian housing on Indian reservations. Administrative funds used to assist in the management of an Indian Housing Mortgage Insurance Fund or program may be commingled with administrative funding for any Housing Mortgage Insurance Fund or program operated or to be operated by the Maine State Housing Authority.

2. Accounting of proceeds. Proceeds from the bond issuance shall be accounted for separately from the general assets of any other housing insurance fund and separately from any other funds operated at any time by the Maine State Housing Authority, its successors, assigns or trustees. This separate accounting shall be maintained even if funds are commingled for investment purposes by the authority or by a trustee of any fund operated by or for the authority.

§4936. Rulemaking

In order to implement and administer the Housing Mortgage Insurance Law, the Maine State Housing Authority may enact, amend or repeal rules under the Maine Administrative Procedure Act, Title 5, chapter 375.

## SUBCHAPTER XI

## STATE-OWNED LAND FOR HOUSING

§4951. State-owned land for construction of housing

1. Study of the inventory of state-owned land. The Maine State Housing Authority, following completion of the inventory of state-owned land pursuant to Title 5, section 1742, subsection 23, shall determine sites that will be suitable for the construction of affordable housing to meet the needs of the State, particularly housing for low-income persons.

2. Develop plan. The authority shall develop a plan by which the purposes in subsection 1 can be met.

3. Report to Legislature. The authority shall report the results of its study and the plan, including any necessary implementing legislation, to the joint standing committee of the Legislature having jurisdiction over economic development by January 6, 1989.

## CHAPTER 203

## URBAN RENEWAL

### §5101. Definitions

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

1. Authority or Urban Renewal Authority. "Authority" or "Urban Renewal Authority" means a public body corporate, and politic, created under this chapter.

2. Blighted area. "Blighted area" means:

A. An area in which there is a predominance of buildings or improvements which are conducive to ill health, the transmission of disease, infant mortality or juvenile delinquency and crime and are detrimental to the public health, safety, morals or welfare because of:

(1) Dilapidation, deterioration, age or obsolescence;

(2) Inadequate provision for ventilation, light, air, sanitation or open spaces;

(3) High density of population and overcrowding;

(4) The existence of conditions which endanger life or property by fire and other causes; or

(5) Any combination of these factors;

B. An area which is a menace to the public health, safety, morals or welfare in its present condition and use because of:

(1) The predominance of inadequate street layout;

(2) Insanitary or unsafe conditions;

(3) Tax or special assessment delinquency exceeding the fair value of the land;

(4) The existence of conditions which endanger life or property by fire and other causes; or

(5) Any combination of these factors;

C. Undeveloped vacant land as provided in section 5109; or

D. Any disaster area as provided in section 5109.

3. Bonds. "Bonds" means any bonds, including refunding bonds, notes, interim certificates, debentures or other obligations under this chapter.

4. Obligee. "Obligee" means:

A. Any bondholder or an agent or trustee for any bondholders;

B. Any lessor who demises property used in connection with an urban renewal project to the authority, or any assignee of all or part of the lessor's interest; and

C. The Federal Government when it is a party to any contract with the authority.

5. Owner. "Owner" means a person having an estate, interest or easement in real property or a lien, charge or encumbrance on that property.

6. Public body. "Public body" means the State, or any agency or instrumentality of the State, or any board, commission, authority or district within the territorial boundaries of the municipality.

7. Real property. "Real property" means:

A. All lands, including improvements and fixtures on the land;

B. Property of any nature appurtenant to the land or used in connection with the land; and

C. Every estate, interest and right, legal or equitable, in the land. This includes terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by those liens.

8. Redeveloper. "Redeveloper" means any person that enters or proposes to enter into a redevelopment contract.

9. Redevelopment contract. "Redevelopment contract" means a contract entered into between the authority and a redeveloper for the redevelopment of an area in conformity with an urban renewal plan.

10. Slum area. "Slum area" means a blighted area in an extreme state of deterioration and decay.

11. Urban renewal plan or renewal plan. "Urban renewal plan" or "renewal plan" means a plan, as it exists from time to time, for an urban renewal project. Except as provided in section 5109, this plan must conform to the comprehensive plan as set forth in sections 4502, 4503 and 4551. It must be sufficiently complete to indicate:

A. Any land acquisition, demolition and removal of

structures, redevelopment, improvements and rehabilitation that is proposed to be carried out in the urban renewal area;

B. Zoning and planning changes, if any, land uses, maximum densities, building requirements; and

C. The plan's relationship to definite local objectives concerning appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements.

12. Urban renewal project or renewal project. "Urban renewal project" or "renewal project" means the undertakings and activities of the authority in an urban renewal area for the elimination and prevention of the development or spread of slums and blight. The undertaking and activities may involve slum clearance and redevelopment, rehabilitation or conservation, or any combination of these activities in all or part of an urban renewal area in accordance with an urban renewal plan. These undertakings and activities may include:

A. Acquisition of a slum area or a blighted area or portion of such an area;

B. Demolition and removal of buildings and improvements;

C. Installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out in the urban renewal area the objectives of this chapter in accordance with the urban renewal plan;

D. Disposition of any property acquired in the urban renewal area at its fair value for uses in accordance with the urban renewal plan, including the sale, initial leasing or retention of property by the municipality;

E. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; and

F. Acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

§5102. Creation of authority

A municipality may create an Urban Renewal Authority under this chapter as follows.

1. Resolution. No municipality may exercise the authority conferred upon municipalities by this chapter until its municipal officers have adopted a resolution finding that:

A. One or more slums or blighted areas exist in the municipality; and

B. The rehabilitation, conservation, redevelopment, or a combination of these activities, of the area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of the municipality.

2. Question for voters. After making this finding, the municipal officers may submit the following question to the voters at any regular or special election or town meeting in accordance with the municipal charter or section 2528:

"Shall the municipality adopt the provisions of the urban renewal law, Maine Revised Statutes, Title 30-A, chapter 203, and authorize the establishment of an Urban Renewal Authority?"

3. Favorable vote. If a majority of the ballots cast on this question favor acceptance, this law becomes effective immediately upon declaration of the vote by the municipal officers, provided the total number of votes cast for and against the acceptance of the Act equals or exceeds 20% of the total votes cast in the municipality for all candidates for Governor at the last gubernatorial election.

4. Certificate of result; failure and resubmission of question. The municipal officers shall declare the result of this election. The municipal clerk shall file a certificate of the result with the Secretary of State.

A. Failure of approval does not prevent the municipal officers from again submitting the question to the voters of the municipality in the manner provided.

§5103. Organization

There is created in each municipality that adopts section 4802 a public body corporate and politic to be known as the "Urban Renewal Authority" of the municipality.

1. Board of trustees. The municipal officers shall appoint a board of 5 trustees of the Urban Renewal Authority. The term of office of a trustee is 5 years, but initial appointments shall be made for one, 2, 3, 4 and 5 years respectively. Any person may be appointed as trustee if that person resides within the municipality and is otherwise eligible for appointment under this chapter.

2. Expenses; term of office. A trustee shall receive no compensation for services but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties. Each trustee shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any trustee shall be filed with the municipal clerk. This certificate is conclusive evidence of the due and proper appointment of the trustee.

3. Quorum; powers. The trustees of the authority shall exercise the powers of the Urban Renewal Authority. A majority of the trustees constitutes a quorum for the purpose of conducting business, exercising the powers of the authority and for all other purposes. The authority may take action upon a vote of a majority of the trustees present.

4. Officers; employees. The trustees shall elect a chairman and vice-chairman from among their number. The authority may employ an executive director, technical experts and any other agents and employees, permanent and temporary, that it requires and determine their qualifications, duties and compensation. For any legal service that it requires, the authority may employ or retain its own counsel and legal staff.

5. Annual report. An authority authorized to transact business and exercise powers under this chapter shall file, with the municipal legislative body, by January 31st of each year, a report of its activities for the preceding calendar year. This report must include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of the calendar year. When the report is filed, the authority shall publish in a newspaper having general circulation in the municipality a notice that the report has been filed with the municipality and that the report is available for inspection during business hours in the office of the municipal clerk.

6. Removal from office; hearing. The municipal officers may, after a hearing, remove a trustee from office for inefficiency, neglect of duty or misconduct in office. The trustee must be given a copy of the charges at least 10 days before the hearing and an opportunity to be heard in person or to be represented by counsel at the hearing.

§5104. Powers

The authority shall exercise public and essential governmental functions, and have all the powers necessary to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

1. General powers. The authority shall have the following general powers:

A. To sue and to be sued;

B. To have and alter a seal at pleasure;

C. To have perpetual succession;

D. To make and execute contracts and other instruments necessary or convenient to the exercise of the authority's powers; and

E. To make and from time to time amend and repeal bylaws and regulations not inconsistent with this chapter, to carry out this chapter;

2. Plans and projects; issue bonds. To undertake and carry out urban renewal plans and urban renewal projects, including the authority to acquire and dispose of property, to issue bonds and other obligations, to borrow and accept grants from the Federal Government or other source and to exercise the other powers which this chapter confers on an authority with respect to urban renewal projects;

A. In connection with the planning and undertaking of any urban renewal plan or urban renewal project, the authority, the municipality and all public and private officers, agencies and bodies have all the rights, powers, privileges and immunities which they have with respect to a redevelopment plan or redevelopment project, in the same manner as though all of the provisions of this chapter applicable to a redevelopment plan or redevelopment project also applied to an urban renewal plan or urban renewal project.

B. In addition to the surveys and plans which the authority is otherwise authorized to make, the authority is specifically authorized to prepare:

(1) Plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements;

(2) Urban renewal plans and preliminary plans outlining urban renewal activities for neighborhoods to embrace 2 or more urban renewal areas;

(3) Plans for the enforcement of laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements; and

(4) Plans for the relocation of persons, including families, business concerns and others, displaced by an urban renewal project, and to make relocation payments to or with respect to those persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of those payments financed by the Federal Government;

3. Slums and urban blight. To develop, test and report methods and techniques and carry out demonstrations and other activities for the prevention and elimination of slums and urban blight;

4. Borrow money; assistance. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the Federal Government, the State, the municipality or other public body, or from any sources, public or private, for the purposes of this chapter, to give any security that is required and to enter into and carry out contracts in connection with that financial assistance;

A. The authority may include in any contract for

financial assistance with the Federal Government, for an urban renewal project, any conditions imposed under federal law that the authority considers reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

5. Surveys, appraisals, studies and plans. Within its area of operation, to make or have made by the planning board or other agency, public or private, all surveys, appraisals, studies and plans, including the preparation of a community renewal program for the municipality, necessary to carry out the purposes of this chapter, and to contract or cooperate with all persons or agencies, public or private, in the making and carrying out of these surveys, appraisals, studies and plans;

6. Acquisition. With the approval of the legislative body of the municipality, before an urban renewal plan is approved, or before any modifications of the plan are approved, to acquire real property, in an urban renewal area, demolish and remove any structures on the property and pay all costs related to the acquisition, demolition or removal, including any administrative or relocation expenses;

7. Relocation of families. To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban renewal project area to permit the carrying out of the urban renewal project, to the extent essential for acquiring possession of, rehabilitating and clearing the urban renewal project area or parts of that area; and

8. Expenditures. To make any expenditures that are necessary to carry out the purposes of this chapter and to make expenditures from funds obtained from the Federal Government, except insofar as conditions are prescribed for this purpose by the municipal officers.

§5105. Workable program

1. Goals of program. For the purposes of this chapter, the authority may formulate for the municipality a workable program for using appropriate private and public resources to:

A. Eliminate and prevent the development or spread of slums and urban blight;

B. Encourage needed urban rehabilitation;

C. Provide for the redevelopment of slum and blighted areas; or

D. Undertake any of these activities or other feasible municipal activities that are suitably employed to achieve the objectives of the workable program.

2. Provisions of program. The workable program may provide for, but is not limited to:

A. The prevention of the spread of blight into areas of the municipality which are free from blight through the diligent enforcement of housing, zoning and occupancy controls and standards;

B. The clearance and redevelopment of slum and blighted areas or portions of those areas; and

C. The rehabilitation or conservation of slum and blighted areas or portions of those areas by:

(1) Replanning, removing congestion, providing parks, playgrounds and other public improvements;

(2) Encouraging voluntary rehabilitation; and

(3) Compelling the repair and rehabilitation of deteriorated or deteriorating structures.

§5106. Preparation and approval of renewal plans

The authority may not acquire real property for a renewal project unless the municipal officers of the municipality have approved the renewal plan by resolution, as prescribed in this section.

1. Comprehensive plan. The authority shall not recommend an urban renewal plan to the municipal officers until a comprehensive plan in substance for the development of the municipality has been prepared under chapter 191.

2. Urban renewal plan. The authority may prepare or have prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the authority. An urban renewal plan must be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the urban renewal area, and must include, but is not limited to:

A. The boundaries of the urban renewal area, with a map showing the existing uses and conditions of the real property in the urban renewal area;

B. A land use plan showing proposed uses of the area;

C. Information showing the standards of population densities, land coverage and building intensities in the area after renewal;

D. A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;

E. A site plan of the area; and

F. A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

3. Recommendations by planning board. Before recommending an urban renewal plan to the municipal officers for approval, if the plan has not been prepared by the planning board, the authority shall submit the plan to the planning board for review and recommendations as to its conformity with the comprehensive plan. The planning board shall submit its written recommendations with respect to the proposed renewal plan to the authority within 45 days after receiving the plan for review.

The authority may recommend the renewal plan to the municipal officers for approval upon receipt of the recommendations. If no recommendations are received within the 45-day period allowed in this subsection, the authority may recommend the renewal plan to the municipal officers for approval without the planning board's recommendations.

4. Whether plan accomplishes certain purposes. Before recommending an urban renewal plan to the municipal officers for approval, the authority shall consider whether the proposed land uses and building requirements in the renewal project area are designed with the general purpose of accomplishing, in conformity with the comprehensive plan, a coordinated, adjusted and harmonious development of the municipality which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for:

A. Traffic and vehicular parking;

B. The promotion of safety from fire, panic and other dangers;

C. Light and air;

D. The promotion of the healthful and convenient distribution of population;

E. Transportation, water, sewerage and other public utilities;

F. Schools, parks, recreational and community facilities and other public requirements;

G. The promotion of sound design and arrangement;

H. The wise and efficient expenditure of public funds;

I. The prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums or conditions of blight; and

J. Adequate, safe and sanitary dwelling accommodations.

5. Recommendation by authority accompanied by recommendation of planning board. The recommendation of an urban renewal plan by the authority to the municipal officers shall be accompanied by:

A. The recommendations, if any, of the planning board concerning the renewal plan;

B. A statement of the proposed method and estimated cost of the acquisition and preparation for redevelopment of the renewal project area and the estimated proceeds or revenues from its disposal to redevelopers;

C. A statement of the proposed method of financing the urban renewal project; and

D. A statement of a feasible method proposed for the relocation of families to be displaced from the urban renewal area.

6. Public hearing; notice. The municipal officers shall hold a public hearing on an urban renewal plan after reasonable public notice, but not less than 7 days, by publication in a newspaper having general circulation in the area of operation of the municipality. The notice must:

A. Describe the time, date, place and purpose of the hearing;

B. Generally identify the renewal area covered by the plan; and

C. Outline the general scope of the urban renewal project under consideration.

7. Approval of renewal plan; disapproval. Following the hearing under subsection 6, the municipal officers may approve by resolution a renewal plan if they find that the plan is feasible and in conformity with the comprehensive plan. If the planning board disapproves any renewal plan, the plan must be approved by a 2/3 vote of the municipal officers. A renewal plan which was not approved by the municipal officers when recommended by the authority may again be recommended to them with any modifications considered advisable.

8. Modification of renewal plan. The authority may modify an urban renewal plan at any time, provided that, if modified after the lease or sale of real property in the redevelopment project area, the modification is consented to by the redeveloper or redevelopers of that real property or their successor or successors in interest affected by the proposed modification. Where the proposed modification will substantially change the urban renewal plan as previously approved by the municipal officers, the modification must similarly be approved by the municipal officers under subsection 7.

§5107. General neighborhood renewal plans

Any authority authorized to perform planning work may prepare a general neighborhood renewal plan for urban renewal areas which are of such scope that urban renewal activities may have to be carried out in stages. A general neighborhood renewal plan must con-

form to the comprehensive plan and the workable program of the municipality.

1. Contents of plan. The plan may include, but is not limited to, a preliminary plan which:

A. Outlines the urban renewal activities proposed for the area involved;

B. Provides a framework for the preparation of urban renewal plans; and

C. Indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area contemplated for clearance and redevelopment.

§5108. Eminent domain

The authority may acquire all or any part of the real property within the renewal project area by the exercise of the power of eminent domain whenever the authority determines that the acquisition of the real property is in the public interest or necessary for the public use.

1. Resolution; documents filed; damages determined. The necessity for this acquisition is conclusively presumed upon the authority's adoption of a resolution declaring that the acquisition of the real property described in the resolution is in the public interest and necessary for the public use and that the real property is included in an approved urban renewal project under this chapter.

A. Within 3 months after this resolution is adopted, the authority shall have filed in the county registry of deeds:

(1) A copy of the authority's resolution;

(2) A plat of the real property described; and

(3) A statement, signed by the chairman of the authority, that the real property is taken under this chapter.

B. When these materials are filed, the authority shall determine the damages for the real property taken in the same manner as provided for land taken for highway purposes under Title 23, chapter 3, and shall file a statement of this determination in the Superior Court of the county.

2. Title vests in authority; bonds deposited. Title to the real property shall vest in the authority in fee simple absolute and the authority may take possession of the real property when:

A. The copy of the resolution, plat and statement is filed in the registry of deeds;

B. The statement is filed in the Superior Court; and

C. Bonds, to the use of persons entitled to them, are deposited in the Superior Court with surety satisfactory to the clerk of the court in the amounts that the court determines to be sufficient to satisfy the claims of all persons interested in the real property. The court may, in its discretion, take evidence on the question to determine the amounts of the bonds to be deposited.

3. Service on owners; nonresidents; unknown owners. After the copy, plat and statement are filed, a sheriff or the sheriff's deputies shall serve notice of the taking of the real property upon the owners of the real property by leaving a true and attested copy of the description and statement with each of these persons personally or at their last and usual place of abode in the State or with some person living there.

A. If any of these persons are not residents of the State, a true and attested copy of the notice shall be sent by registered mail, return receipt requested, to those persons at their last known addresses.

B. If the ownership of the real property cannot be ascertained after due and diligent search, an award shall be made to persons unknown for the value of the property and bonds for that amount running to the treasurer of the county for the use of persons entitled to the bonds shall be deposited in the Superior Court. If, within 2 years after the bonds are deposited, no person has been able to prove ownership of the real property, the Superior Court shall order these bonds to be cancelled and delivered up to the authority.

4. Notice published. After the resolution, plat and statement are filed, the authority shall have a copy of the resolution and statement published in a newspaper having general circulation in the county, at least once a week for 3 successive weeks. The statement must set forth the names of the owners of the real property to be taken and the amount awarded to them.

5. Agreement and cancellation of bonds. When any person agrees with the authority on the price of the real property taken under this section and the sum agreed upon is paid by the authority, the court shall order the bond deposited under subsection 2, paragraph C to be cancelled and delivered up to the authority.

6. Complaint to Superior Court; trial. Any owner of any real property taken under this section, who cannot agree with the authority on the price of the real property in which the owner is interested, within 3 months after personal notice of the taking or, if the owner has no personal notice, may within one year from the first publication of the copy of the resolution and statement under subsection 4, apply by complaint to the Superior Court in the county, setting forth the taking of the real property and praying for an assessment of damages by a jury or, by agreement of the parties, a referee or referees appointed by the court.

A. When this complaint is filed, the court shall have 20 days' notice of the pendency of the action given to the authority by serving the chairman of the authority with a certified copy of the complaint. The court may proceed after this notice to the trial of the action. This trial shall determine all questions of fact relating to the value and the amount of the real property and judgment shall be entered upon the verdict of the jury. Execution shall be issued for that judgment against the money deposited in the court under subsection 2, paragraph C.

7. Conflicting ownership. If the authority is in doubt as to conflicting ownership or interest, the authority may file a complaint in the Superior Court for a determination of the various rights and amounts due. If 2 or more conflicting plaintiffs claim the same real property or different interests in the same parcel of real property, the court, upon motion, shall consolidate their several complaints for trial at the same time by the same jury, and may frame all necessary issues for the trial of that action.

8. Appeal. Appeal from the decision of the Superior Court may be made in the same manner as provided for appeals in civil cases.

9. Property of infants or incapable persons. If any real property, in which any infant or other person not capable in law to act in their own behalf is interested, is taken by an authority under this chapter, the Superior Court, upon the filing of any complaint by or in behalf of any infant or other person, may appoint a guardian ad litem for the infant or other person. This guardian may appear and be heard on behalf of the infant or other person and may, with the advice and consent of the Superior Court and upon any terms that the Superior Court prescribes, release to the authority all claims for damages for the real property of the infant or other person. Any lawfully appointed, qualified and acting guardian or other fiduciary of the estate of any such infant or other person, with the approval of the Probate Court having jurisdiction to authorize the sale of real property within the State of any such infant or other person, may, before the filing of any such complaint, agree with the authority upon the amount of damages suffered by the infant or other person by any taking of real property and may, upon receiving that amount, release to the authority all claims for damages of the infant or other person for the taking.

10. Expediting proceedings; taking public property. In any proceedings for the assessment of compensation and damages for real property taken or to be taken by eminent domain by the authority, the following provisions apply.

A. At any time during the pendency of the action or proceedings, the authority or an owner may apply to the court for an order directing an owner or the authority to show cause why further proceedings should not be expedited. Upon this application, the court may order that the hearings proceed and that any other steps be taken with all possible expedition.

B. If any of the real property included within the project is devoted to a public use, it may nevertheless be acquired, and the taking is effective, provided that no real property belonging to the municipality or to any government may be acquired without its consent and that no real property belonging to a public utility corporation may be acquired without the approval of the Public Utilities Commission or other officer or tribunal having regulatory power over that corporation.

C. Any real property already acquired by the authority may nevertheless be included within this taking for the purpose of acquiring any outstanding interests in the real property.

§5109. Acquisition and development of land

1. Acquisition of undeveloped land. If the municipal officers determine by resolution that the acquisition and development of undeveloped vacant land, not within a slum or blighted area, is essential to the proper clearance or redevelopment of slum or blighted areas or a necessary part of the general slum-clearance program of the municipality, the acquisition, planning, preparation for development or disposal of that land constitutes an urban renewal project which may be undertaken by the authority, provided that the area may not be so acquired unless:

A. If the undeveloped vacant land is to be developed for residential uses, the municipal officers shall determine that:

(1) A shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality;

(2) The need for housing accommodations has been or will be increased because of the clearance of slums in other areas, including other portions of the urban renewal area;

(3) The conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals or welfare; and

(4) The acquisition of the area for residential uses is an integral part of and essential to the program of the municipality; or

B. If the undeveloped vacant land is to be developed for nonresidential uses, the municipal officers shall determine that:

(1) The nonresidential uses are necessary and appropriate to facilitate the proper growth and de-

velopment of the community in accordance with sound planning standards and local community objectives; and

(2) The acquisition of the land may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of these factors or other conditions which retard development of the area.

2. Disaster areas. Notwithstanding any other provisions of this chapter, where the municipal officers certify that an area requires redevelopment or rehabilitation because of a flood, fire, hurricane, earthquake, storm or other catastrophe concerning which the Governor has certified the need for disaster assistance under federal law, the municipal officers may approve an urban renewal plan and an urban renewal project with respect to that area without regard to section 5108 and the sections requiring a general plan for the municipality and a public hearing on the urban renewal project.

§5110. Authorization to issue bonds

The authority may issue bonds to finance any undertakings authorized by this chapter under the following conditions.

1. Hearing held. The municipal officers must certify that the hearing required by section 5106 has been held.

2. Approval of renewal plan granted. The municipal officers must certify that approval of the renewal plan as required by section 5106 has been granted.

3. Copies of certificates filed. Copies of these certificates must be filed with the authority and with the municipal clerk.

4. Reconsideration if no approval. Failure of approval does not prevent the municipal officers from again considering the renewal plan in the manner provided.

§5111. Bond issues

The authority may issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this chapter, including, but not limited to, the payment of principal and interest upon any advances for surveys and plans, and may issue refunding bonds for the payment or retirement of bonds previously issued by it. The bonds must be made payable, as to both principal and interest, solely from the income, proceeds, revenues and funds of the authority derived from or held in connection with its undertaking and carrying out of urban renewal projects under this chapter, provided that payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the Federal Government or other source, in aid of any urban renewal projects of the municipality under this chapter, and by a mortgage of any urban renewal projects, or any part of a project, title to which is in the municipality.

1. Not municipal indebtedness; not taxable. Bonds issued under this section do not constitute a municipal indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not subject to any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest on and income from the bonds, are exempt from all taxes.

2. General characteristics. Bonds authorized under this section may be issued in one or more series. The resolution, trust indenture or mortgage under which the bonds are issued may make the following provisions:

A. The date or dates borne by the bonds;

B. Whether the bonds are payable upon demand or mature at a certain time or times;

C. The interest rate or rates of the bonds, not exceeding 6% per year;

D. The denomination or denominations of the bonds;

E. The form of the bonds, whether coupon or registered;

F. The conversion or registration privileges carried by the bonds;

G. The rank or priority of the bonds;

H. The manner of execution of the bonds;

I. The medium and place or places of payment;

J. The terms of redemption of the bonds, with or without premium;

K. The manner secured; and

L. Any other characteristics of the bonds.

3. Price sold. The bonds may be:

A. Sold at not less than par at public sales held after notice published in a newspaper having general circulation in the area of operation and in any other medium of publication that the authority determines;

B. Exchanged for other bonds on the basis of par; or

C. Sold to the Federal Government at private sale at not less than par.

(1) If less than all of the authorized principal amount of the bonds is sold to the Federal Government, the balance may be sold at private sale at not less than par at an interest cost to the municipality which does not exceed the interest cost to the municipality of the portion of the bonds sold to the Federal Government.

4. Signatures of outgoing officers; negotiability. If any of the officials of the authority whose signatures appear on any bonds or coupons issued under this chapter ceases to be an official before the bonds are delivered, those signatures are, nevertheless, valid for all purposes, the same as if the official had remained in office until the delivery. Notwithstanding any contrary provision of any law, any bonds issued under this chapter are fully negotiable.

5. Bond recitation; conclusive presumptions. In any action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security for that bond, any such bond reciting in substance that it has been issued by the authority in connection with an urban renewal project is conclusively deemed to have been issued for that purpose and the urban renewal project is conclusively deemed to have been planned, located and carried out in accordance with this chapter.

6. No personal liability; not debt of State or municipality. Neither the trustees of the authority nor any person executing the bonds may be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the authority are not a debt of the municipality nor the State, and neither the municipality nor the State may be liable on the bonds. The bonds and obligations shall so state on their face. The bonds or obligations may not, in any case, be payable out of any funds or properties other than those of the authority acquired for the purposes of this chapter.

§5112. Conveyance to Federal Government on default

In any contract for financial assistance with the Federal Government, the authority may obligate itself to convey to the Federal Government possession of or title to the urban renewal project and land in the project to which the contract relates which is owned by the authority, upon the occurrence of a substantial default, as defined in the contract, with respect to the covenants or conditions to which the authority is subject. This obligation is specifically enforceable and does not constitute a mortgage. The contracts may provide that, in case of such a conveyance, the Federal Government may complete, operate, manage, lease, convey or otherwise deal with the urban renewal project in accordance with the terms of the contract, provided that the contract requires that, as soon as practicable after the Federal Government is satisfied that all defaults with respect to the renewal project have been cured and that the urban renewal project will thereafter be operated in accordance with the terms of the contract, the Federal Government will reconvey to the authority the urban renewal project as then constituted.

§5113. Bonds as legal investments

All public officers, municipal corporations, political subdivisions and public bodies, all banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, curators, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or other obligations issued by the authority under this chapter. These bonds and other obligations are authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing in this section with regard to legal investments may be construed as relieving any person of any duty or of exercising reasonable care in selecting securities.

§5114. Exemption from taxes and execution

1. Property exempt from execution. All property, including funds of the authority, is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against the authority's property nor may judgment against the authority be a charge or lien upon its property.

2. Property exempt from taxation. The property of the authority is declared to be public property used for essential public and governmental purposes and that property and the authority are exempt from all taxes of the municipality, the State or any political subdivision of the State, provided that, with respect to any property in a renewal project, the tax exemption provided in this section shall terminate when the authority sells, leases or otherwise disposes of the property to a redeveloper for redevelopment.

3. Construction; limitation of application. Nothing in this section may be construed to:

A. Prohibit the authority from making payments in lieu of taxes to the municipality; or

B. Apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the authority or the right of any obligee to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees, grant or revenue.

§5115. Transfer, sale or lease of real property in urban renewal area

1. Sale or lease of property. The authority, for the purpose of this chapter, may sell or lease for such sums as may be agreed upon all or any part of a renewal area to the redeveloper or, if the property is to be used for public purposes, to any appropriate public agency.

A. The authority shall determine the consideration paid for the sale or lease of the property, and the municipality may appropriate and authorize the expenditure of money to compensate for any portion of the difference between the acquisition cost of the property and the sale or lease price of the property at a lesser consideration to the redeveloper.

(1) A sale or lease price may not be lower than the use value of the property, unless the sale or lease is to a public agency to be used for public purposes.

B. Each contract for sale or lease to a redeveloper must provide, among other things, that:

(1) The property transferred will be developed and used in accordance with the renewal plan or that plan as modified with the authority's approval;

(2) The building of the improvements will be begun within a period of time which the authority fixes as reasonable; and

(3) All transfers of properties by the redeveloper will be subject to the consent of the authority until construction or improvements are completed.

C. The municipal officers must approve any contract for sale or lease before its final approval by the authority.

2. Temporary operation by authority. The authority may temporarily operate and maintain real property in a renewal project area pending the disposition of the property for renewal, without regard to subsection 1, for any uses and purposes that are considered desirable even though not in conformity with the renewal plan.

3. Federally designated development areas. Notwithstanding any other provisions of this chapter, where the municipality is located in an area designated as a redevelopment area under the United States Area Redevelopment Act, Public Law 87-27, the public body or corporation for redevelopment may, in accordance with the urban renewal plan, dispose of land in an urban renewal project area designated under the urban renewal plan for industrial or commercial uses to any public body or nonprofit corporation for subsequent disposition as promptly as practicable. Only the purchaser from or lessee of the public body or corporation, and their assignees, is required to assume the obligation of beginning the construction of improvements within a reasonable time. Any disposition of land to a public body or corporation under this subsection must be made at its fair value for uses in accordance with the urban renewal plan.

4. Contracts; federal conditions. The authority may arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a renewal project. The authority may agree to any conditions that it considers reasonable and appropriate attached to federal financial assistance and imposed under federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a renewal project, and may include in any contract let in connection with such a project provisions to fulfill any of these conditions that it considers reasonable and appropriate.

5. Powers; contractual provisions. Within its area of operation, the authority may:

A. Purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property, or any interest in property, together with any improvements on the property, necessary or incidental to a renewal project;

B. Hold, improve, clear or prepare for urban renewal any property obtained under subsection 1;

C. Sell, lease, exchange, transfer, assign, subdivide, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest in property;

D. Enter into contracts with redevelopers of property containing:

(1) Covenants, restrictions and conditions regarding the use of the property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the renewal plan; and

(2) Any other covenants, restrictions and conditions that the authority considers necessary to prevent a recurrence of slum or blighted areas or to accomplish the purposes of this chapter;

E. Make any of the covenants, restrictions or conditions of the foregoing contracts or covenants running with the land, and may provide appropriate remedies for any breach of these covenants or conditions, including the authority's right to terminate the contracts and any interest in the property created under the contracts;

F. Insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards, including the power to pay premiums on any such insurance; and

G. Enter into any contracts necessary to accomplish the purposes of this chapter.

6. General authority. The authority may exercise all or any part or combination of powers granted.

§5116. Investment of funds; redemption of bonds

The authority may:

1. Invest funds. Invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which saving banks may legally invest funds subject to their control; and

2. Redeem or purchase bonds. Redeem its bonds at the redemption price established in the bonds or may purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled.

§5117. Investigatory powers

Acting through one or more trustees or other persons designated by the authority, examinations and investigations may be conducted to:

1. Take testimony at hearings. Hear testimony and take proof under oath at public or private hearings on any matter material for its information;

2. Examination of unavailable witnesses. Administer oaths and issue commission for the examination of witnesses who are outside of the State or unable to appear before the authority, or who are excused from attendance; and

3. Make information available. Make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or similar conditions or of demolishing unsafe or insanitary structures or eliminating slums or conditions of blight within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, safety, morals or welfare.

§5118. Cooperation by public bodies

For the purpose of aiding and cooperating in the planning, undertaking or carrying out of an urban renewal project, the municipality or any other public body, upon any terms that it may determine, with or without consideration, may:

1. Property; use or disposal. Dedicate, sell, convey or lease any of its interests in any property, or grant easements, licenses or any rights or privileges in that property to the authority;

2. Public works. Cause public buildings and public facilities, parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished or repaired in connection with a redevelopment project;

3. Streets and walks. Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places which it is otherwise empowered to undertake;

4. Losses. Assume the responsibility to bear any loss that may arise as the result of the exercise of authority under section 5104, subsection 6, in the event that the real property is not made part of the urban renewal project;

5. Administrative or other services. Cause administrative and other services to be furnished to the authority of the character which the municipality or other public body is otherwise empowered to undertake or furnish for the same or other purposes;

6. Expenses. Incur the entire expense of any public improvement made by the municipality or other public body in exercising the powers granted in this section;

7. Aid and cooperate. Do any things necessary to aid and cooperate in the planning or carrying out of an urban renewal plan;

8. Funds. Lend, grant or contribute funds to the authority;

9. Bonds or other obligations. Employ any funds belonging to or within the control of the municipality or other public body, including funds derived from the sale or furnishing of property, service or facilities to the authority, to purchase the authority's bonds or other obligations and, as the holder of those bonds or other obligations, exercise the rights of a bondholder; and

10. Agreements. Enter into agreements, which may extend over any period, with the authority concerning action to be taken by the municipality or any such public body under any of the powers granted by this chapter. If at any time title to, or possession of, any renewal project is held by any public body or governmental agency, other than the authority authorized by law to engage in the undertaking, carrying out administration of urban renewal projects, including the Federal Government, these agreements shall inure to the benefit of and may be enforced by that public body or governmental agency.

Any sale, conveyance, lease or agreement provided for in this section may be made by the municipality or other public body without appraisal, public notice, advertisement or public bidding.

§5119. Encouragement of private enterprise

The authority, to the greatest extent it determines to be feasible in carrying out this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise. The authority shall consider this objective in exercising its powers under this chapter, including the

formulation of a workable program, the approval of urban renewal plans, the exercise of its zoning powers, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

§5120. Grant of funds by municipality

The municipality may grant funds to the authority for the purpose of aiding the authority in carrying out any of its powers and functions under this chapter. To obtain funds for this purpose, the municipality may levy taxes and may issue and sell its bonds. Any bonds issued by the municipality under this section shall be issued in the manner and within the limitations, except as otherwise provided, prescribed by the laws of the State for the issuance and authorization of bonds by the municipality for a public purpose.

§5121. Title of purchaser

Any instrument executed by the authority and purporting to convey any right, title or interest in any property under this chapter is conclusive evidence of compliance with this chapter insofar as title or other interest of any bona fide purchasers, lessees or transferees of the property is concerned.

§5122. Interest of public officials, trustees or employees

1. Acquisition of interest. No public official or employee of a municipality, or board or commission of a municipality, and no trustee or employee of an authority which has been vested by a municipality with urban renewal project powers under this chapter may voluntarily acquire any personal interest, direct or indirect, in any:

A. Urban renewal project;

B. Property included or planned to be included in any urban renewal project of the municipality; or

C. Contract or proposed contract in connection with an urban renewal project.

When this acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the municipal officers and the disclosure shall be entered upon their minutes.

2. Present or past interest in property. If any official, trustee or employee as described in subsection 1 presently owns or controls, or owned or controlled within the preceding 2 years, any interest, direct or indirect, in any property known to be included or planned to be included in an urban renewal project, the official, trustee or employee shall immediately disclose this fact in writing to the municipal officers, and this disclosure shall be entered upon their minutes. Any such official, trustee or employee may not participate in any action by the authority affecting that property.

3. Disclosure to authority. Any disclosure required to be made under this section to the municipal officers shall concurrently be made to the authority which has been vested with urban renewal project powers by the municipality under this chapter.

4. Incompatible offices. No trustee or other officer of the authority exercising powers under this chapter may hold any other public office in the municipality other than the office with respect to the authority.

5. Violation. Any violation of this section constitutes misconduct in office.

## CHAPTER 205

## COMMUNITY DEVELOPMENT

§5201. Findings and declaration of necessity

The Legislature finds and declares that:

1. Existence of depressed areas. There exists in the municipalities of the State deteriorating, dilapidated, slum and blighted areas, dangerous buildings and incompatible uses of property, which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the State;

2. Expense to public. The existence of these areas, buildings and uses contribute substantially and increasingly to the spread of disease and crime, requiring excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities;

3. Effect on municipalities. These areas, buildings and uses constitute an economic and social liability and substantially impair or arrest the sound growth of municipalities;

4. Not remediable by regulation or private enterprise. These menaces are beyond remedy and control solely by regulatory process in the exercise of police power and cannot be dealt with effectively by the ordinary operation of private enterprise without the aids provided in this chapter;

5. Public purpose. The elimination of these areas, buildings and uses, the acquisition and preparation of land in or necessary to the redevelopment and rehabilitation of the areas, buildings and uses, and its sale or lease in accordance with community development programs adopted by municipalities, any assistance which may be given by any state or federal public bodies or agencies and any money raised or appropriated by municipalities in connection with that activity, are public uses required by the public exigencies and are purposes for

which public money may be expended and private property acquired; and

6. Legislative determination. The necessity of the public interest for this chapter is hereby declared as a matter of legislative determination.

§5202. Definitions

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

1. Blighted area. "Blighted area" means:

A. An area in which there is a predominance of buildings or improvements which are conducive to ill health, the transmission of disease, infant mortality, juvenile delinquency or crime and are detrimental to the public health, safety, morals or welfare because of:

(1) Dilapidation, deterioration, age or obsolescence;

(2) Inadequate provision for ventilation, light, air, sanitation or open spaces;

(3) High density of population and overcrowding;

(4) The existence of conditions which endanger life or property by fire and other causes; or

(5) Any combination of these factors; or

B. An area which is a menace to the public health, safety, morals or welfare in its present condition and use because of:

(1) The predominance of inadequate street layout, insanitary or unsafe conditions;

(2) Tax or special assessment delinquency exceeding the fair value of the land;

(3) The existence of conditions which endanger life or property by fire and other causes; or

(4) Any combination of these factors.

2. Community development program. "Community development program" means a program adopted by a municipality under this chapter which has as its primary objective the development of a viable community by providing decent housing principally for persons of low and moderate incomes, or by expanding economic opportunity by providing public facilities. This program must conform to the municipality's comprehensive plan. The program may include the following specific objectives:

A. The identification and elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities important to the welfare of the community and principally to persons of low and moderate income;

B. The elimination of conditions which are detrimental to health, safety and public welfare through code enforcement, demolition, interim rehabilitation assistance and related activities;

C. The conservation and expansion of housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

D. The expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

E. A more rational use of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational and other needed activity centers;

F. The reduction of the isolation of income groups within the community and surrounding geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods in order to attract persons of higher income; and

G. The restoration and preservation of properties of special value for historic, architectural or aesthetic reasons.

3. Disposition. "Disposition" includes the sale or lease of the property to persons not necessarily the original owners, or the municipality's retention of the property after acquisition or after acquisition and rehabilitation or demolition.

4. Owner. "Owner" means any person having an estate, interest or easement in the property to be acquired, or having a lien, charge, mortgage or encumbrance on the property.

5. Slum area. "Slum area" means a blighted area in an extreme state of deterioration and decay.

§5203. Municipal powers

1. Appropriations. A municipality may raise or appropriate money and may accept and appropriate state or federal grants to provide decent housing and a suitable living environment and to expand economic opportunities under a duly approved and adopted community development program.

2. Community development program. The municipal officers of a municipality may prepare or have

prepared a community development program. Before recommending a community development program to the municipal legislative body for approval, if the program has not been prepared by the planning board, the municipal officers shall submit the program to the municipal planning board for review and recommendations as to its conformity with the comprehensive plan and any applicable zoning ordinances. The planning board shall submit its written recommendations to the municipal officers within 45 days after receiving the program for review. The municipal officers shall, after 10 days' notice, hold public hearings on the plan upon receipt of those recommendations or, if no recommendations are received within the 45-day period, then without the recommendations. After the hearings are completed, the municipal officers shall submit the program and any recommendations of the planning board to the municipal legislative body for their approval and adoption.

A. Notwithstanding any other provision of this subsection, any community development program approved by a municipal legislative body before July 1, 1975, is deemed approved and adopted under this section if the program conforms with the municipality's comprehensive plan.

3. Development powers. Except as provided, the municipal officers of a municipality may exercise, pursuant to a duly approved and adopted community development program, all appropriate and necessary powers to implement and complete the program, including, but not limited to:

A. Acquisition by purchase or by eminent domain of any vacant or undeveloped land and of any developed land and structures, buildings and improvements existing on the land located in designated slum or blighted areas for the purposes of the demolition and removal or rehabilitation and repair or redevelopment of property so acquired;

B. Loaning or granting of money or the guaranteeing of loans to encourage owners of property to voluntarily rehabilitate and repair their properties to comply with all zoning, housing, building, plumbing, electrical and other structural and constructional ordinances, regulations and standards of the municipality or State or to voluntarily demolish their properties;

C. Installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out the objectives of the community development program;

D. Contracting with, delegating of powers to or loaning or granting of money to any other political subdivision of the State, quasi-municipal corporation or agency of the State or its political subdivisions as may be required to implement and complete all or any portion of the community development program; and

E. The disposition of acquired property, provided that the municipality may not, within 10 years of the date of acquisition, sell undeveloped or unrehabilitated property, in whole or in part, that was acquired by eminent domain without first offering it to the prior owner, owners or their heirs, except as provided in subparagraph (1). This offer must be kept open for at least 60 days and must be at a price no more than the sum of the compensation and damages given in the eminent domain proceedings, any relocation payments or benefits and the costs of the municipality for any improvements. The offer may be limited by requiring use of the property in accordance with the community development program.

(1) When the property to be sold is one of 3 or more contiguous or abutting parcels or lots that are to be redeveloped or rehabilitated as a unit, the property may be sold without first offering it to the prior owner, owners or their heirs.

(2) Any disposition of acquired property, other than to the prior owner, owners or their heirs, must require use of the property in accordance with the community development program.

4. Tax increment revenues from rehabilitated or developed property. The legislative body of a municipality may provide that tax increment revenues from property rehabilitated or developed and subsequently sold by the municipality will be set aside annually and deposited to the credit of a sinking fund, which is pledged to and charged with the payment of the interest and principal as they fall due, and the necessary charges of paying agents for paying interest and principal of any notes, bonds or other evidences of indebtedness that were issued to fund or refund the rehabilitation or development of the property.

A. Tax increment revenues from property rehabilitated or developed shall be the real property tax revenues received, based on the amount of valuation that exceeds the valuation of the property on the April 1st immediately preceding the adoption of the municipal community development plan.

B. The sinking fund is a fund for the benefit of the notes, bonds or other evidences of indebtedness issued to fund or refund the rehabilitation or development of the property, and any money deposited in this fund shall be held and applied solely for that purpose.

§5204. Eminent domain

The following provisions govern the exercise of eminent domain powers by the municipal officers.

1. Adoption of resolution of condemnation. The municipal officers shall adopt a resolution of condemnation. This resolution must:

A. Specifically describe the property, or interest in the property to be acquired, and its location by metes and bounds;

B. Specify the name or names of the owner or owners;

C. Set forth the amount of damages determined by the municipal officers to be just compensation for the property or interest in the property taken; and

D. Declare that the acquisition is pursuant to a duly adopted community development program.

The resolution shall be served on the owners either personally or by registered mail, and then shall be submitted to the municipal legislative body for approval or disapproval. The municipal legislative body may not amend the resolution to decrease the amount of damages to be paid.

2. Filing, bonds and notice. Within 3 months after the municipality approves the resolution:

A. The municipal officers shall have a copy of the resolution filed in the registry of deeds of the county in which the property is located. After this copy is filed, the municipal officers shall have filed in the Superior Court of the county in which the property is located:

(1) A copy of the resolution; and

(2) A statement of the sum of money approved by the municipality as just compensation for the property taken;

B. After the copy of the resolution has been filed in the registry and the statement of estimated just compensation has been filed in the Superior Court, the municipal officers shall have bonds deposited in the Superior Court with surety satisfactory to the clerk of the court, in the amounts that the court determines to be sufficient to satisfy the claims of all persons interested in the property. These bonds shall be deposited for the use of persons entitled to them. The court may, in its discretion, take evidence on the question to determine:

(1) The amounts of the bonds to be deposited;

(2) Title to the property; or

(3) Interest in the property; and

C. After the copy of the resolution has been filed in the registry and the statement of just compensation has been filed in the Superior Court, the municipal officers shall have notice of the taking of the property or interest in the property served upon the owners of the property by a sheriff or deputies. Service shall be made by leaving a true and attested copy of the resolution and the statement of estimated just compensation with each owner personally or at the last known address in the State or with some person living at that address.

(1) If any owner is not a resident of the State, a true and attested copy of the resolution and statement shall be sent by registered mail, return receipt requested, to the owner at the last known address.

(2) In addition, municipal officers shall have a copy of the resolution together with the names of the owners of the property and the amount to be awarded to each of them, published in a newspaper having general circulation in the county, at least once a week for 3 consecutive weeks; and

After the bonds are deposited in the Superior Court, and notice is given, title to the property vests in the municipality in fee simple absolute and the municipality may take possession of the property.

3. Unknown ownership. If ownership of the property cannot be ascertained after due and diligent search, an award shall be made to persons unknown for the value of the property, and bonds for that amount running to the treasurer of the county for the use of the persons entitled to them, shall be deposited in the Superior Court. If no person has been able to prove ownership of the property within 2 years after the bonds are deposited, the Superior Court shall order those bonds to be cancelled and delivered up to the municipality.

4. Agreement and cancellation of bonds. When any person entitled to the bonds agrees with the municipality for the price of the property or interest in the property so taken and the sum agreed upon is paid by the municipality, the court shall order the bond deposited under this section to be cancelled and delivered up to the municipality.

5. Complaint to Superior Court; trial. Any owner of the property taken under this section, who cannot agree with the municipality on the price of the property or interest in the property in which the owner is interested, may apply by complaint to the Superior Court in the county where the property is located.

A. The complaint must be made within 3 months after personal notice of the taking or, if the owner has no personal notice, within one year from the first publication of the copy of the resolution and description required in subsection 2, paragraph C. It must set forth the taking of the property or interest in property, and pray for the assessment of damages by jury or, by agreement of the parties, by a referee or referees appointed by the court.

B. When the complaint is filed, the Superior Court shall have 20 days' notice of the pendency of the action given to the municipality by serving the municipal clerk with a certified copy of the complaint. The court may proceed after this notice to obtain a trial of the action.

C. The trial shall determine all questions of fact relating to the value of the property or interest in the property and the amount of that interest. Judgment

shall be entered upon the verdict of the jury and execution shall be issued for that judgment against the money deposited in the court.

6. Conflicting ownership. If the municipal officers are in doubt as to conflicting ownership or interest, the municipality may file a complaint in the Superior Court for the county in which the property is located for a determination of the various rights and amounts due. If 2 or more plaintiffs make claims to the real property, or to any interest in the property, or to different interests in the same property, the Superior Court, upon motion, shall consolidate their several complaints for trial at the same time by the same jury and may frame all necessary issues for the trial of those actions.

7. Appeal. An appeal from the decision of the Superior Court may be made in the manner provided for appeals in civil cases.

8. Guardian ad litem. If a municipality takes any real property or interest in property in which any minor or other person not capable in law to act in the minor's or other person's own behalf is interested, the appropriate Superior Court may, upon the filing of a complaint under subsection 5 by or on behalf of the minor or other person, appoint a guardian ad litem for the minor or other person. This guardian may appear and be heard on behalf of the minor or other person and may, with the advice and consent of the Superior Court and upon such terms as the Superior Court prescribes, release to the municipality all claims for damages for the property of the minor or other person or for any interest in the property.

Any lawfully appointed, qualified and acting guardian or other fiduciary of the estate of any such minor or other person, with the approval of the Probate Court having jurisdiction to authorize the sale of real property within this State, may, before filing any complaint under this section, agree with the municipality on the amount of damages suffered by the minor or other person by any taking of property or of interest in the property and may, upon receiving that amount, release to the municipality all claims for damages of the minor or other person for the taking.

9. Expedited proceedings; property devoted to public use. In any proceedings for assessment of compensation and damages for property or interest in the property taken or to be taken by eminent domain by the municipality, the following provisions apply.

A. At any time during the pendency of the action or proceedings, the municipality or an owner may apply to the court for an order directing the owner or the municipality, as the case may be, to show cause why further proceedings should not be expedited. Upon this application the court may make an order requiring that the hearings proceed and that any other steps be taken with all possible expedition.

B. If any property or interest in property is devoted to a public use, it may nevertheless be acquired and the taking is effective, provided that:

(1) No property or interest in property belonging to any governmental agency may be acquired without its consent; and

(2) No property or interest in property belonging to a public utility corporation may be acquired without the approval of the Public Utilities Commission or other officer or tribunal having regulatory power over the corporation.

C. Any property or interest in property previously deeded to or acquired by the municipality may be included within the taking for the purpose of acquiring any outstanding interests in the property.

## CHAPTER 207

## MUNICIPAL DEVELOPMENT DISTRICTS

### §5251. Findings and declaration of necessity

1. Legislative finding. The Legislature finds that there is a need for new development in areas of municipalities to:

A. Provide new employment opportunities;

B. Improve and broaden the tax base; and

C. Improve the general economy of the State.

2. Authorization. For the reasons set out in subsection 1, municipalities may develop a program for improving a district of the municipality:

A. To provide impetus for industrial or commercial development, or both;

B. To increase employment; and

C. To provide the facilities outlined in the development program adopted by the legislative body of the municipality.

3. Declaration of public purpose. It is declared that the actions required to assist the implementation of these development programs are a public purpose and that the execution and financing of these programs are a public purpose.

### §5252. Definitions

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

1. Amenities. "Amenities" means those items of street furniture, signs and landscaping including, but not

limited to, plantings, benches, trash receptacles, street signs, sidewalks and pedestrian malls.

2. Captured assessed value. "Captured assessed value" means the valuation amount by which the current assessed value of a tax increment financing district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original there is no captured assessed value.

3. Development district. "Development district" means a specified area within the corporate limits of a municipality which has been designated and separately numbered as provided under section 5253, and which is to be developed by the municipality under a development program.

4. Development program. "Development program" means a statement of means and objectives designed to improve the quality of life, the physical facilities and structures and the quality of pedestrian and vehicular traffic control and transportation within the development district. The statement must include:

A. A financial plan;

B. A complete list of public facilities to be constructed;

C. The uses of private property within the district;

D. Plans for the relocation of persons displaced by the development activities;

E. The proposed regulations and facilities to improve transportation;

F. The environmental controls to be applied; and

G. The proposed operation of the district after the planned capital improvements are completed.

5. Financial plan. "Financial plan" means a statement of the costs and sources of revenue required to accomplish the development program.

A. The statement must include:

(1) Cost estimates for the development program;

(2) The amount of bonded indebtedness to be incurred;

(3) Sources of anticipated revenues; and

(4) The duration of the program.

B. For a development program for a tax increment financing district, the statement must also include:

(1) Estimates of captured assessed values of the district;

(2) The portion of the captured assessed values to be applied to the development program and resulting tax increments in each year of the program; and

(3) A statement of the estimated impact of tax increments financing on all taxing jurisdictions in which the district is located.

6. Maintenance and operation. "Maintenance and operation" means all activities necessary to maintain facilities after they have been developed and all activities necessary to operate the facilities, including, but not limited to, informational, promotional and educational programs, and safety and surveillance activities.

7. Original assessed value. "Original assessed value" means the assessed value of the district as of March 31st of the preceding tax year.

8. Project costs. "Project costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the municipality which are listed in a project plan as costs of improvements, including public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to commercial or industrial users, within a development district plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the municipality in connection with the implementation of this plan.

A. The term "project costs" does not include the cost of buildings, or portions of buildings, used predominantly for the general conduct of government. These buildings include, but are not limited to, city halls and other headquarters of government where the governing body meets regularly, courthouses, jails, police stations and other State Government and local government office buildings.

B. The term "project costs" includes, but is not limited to:

(1) Capital costs, including, but not limited to:

(a) The actual costs of the construction of public works or improvements, new buildings, structures and fixtures;

(b) The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures;

(c) The acquisition of equipment; and

(d) The clearing and grading of land;

(2) Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premi-

um paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;

(3) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the municipality of real or personal property within a development district for consideration which is less than its cost to the municipality;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering and legal advice and services;

(5) Administrative costs, including, but not limited to, reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation;

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public about the creation of development districts and the implementation of project plans;

(8) Payments made, in the discretion of the local legislative body, which are found to be necessary or convenient to the creation of development districts or the implementation of project plans;

(9) That portion of the costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines or amenities on streets or the rebuilding or expansion of which is required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development district; and

(10) Training costs, including, but not limited to, those costs associated with providing skills development and training for employees of businesses within the development district. These costs may not exceed 20% of the total project costs and must be designated as training funds within 3 years of the designation of the district.

9. Tax increment. "Tax increment" means that portion of all real and personal property taxes assessed by a municipality, in excess of any state, county or special district tax, upon the captured assessed value of property in the development district.

10. Tax increment financing district. "Tax increment financing district" means a type of development district, or portion of a district, which uses tax increment financing under section 5254.

§5253. Development districts; development programs and ordinances

1. Districts. The municipal legislative body may designate development districts within the boundaries of the municipality. Before designating a district, the municipal legislative body shall consult with the municipal planning agency or department and with an advisory board, if established under section 5260, and shall also hold at least one public hearing. Notice of the hearing shall be published at least 10 days before the hearing in a newspaper of general circulation within the municipality.

A. At least 25%, by area, of the real property within a development district must meet at least one of the following criteria:

(1) Is a blighted area;

(2) Is in need of rehabilitation, redevelopment or conservation work; or

(3) Is suitable for industrial sites.

B. The total area of a single development district may not exceed 2% of the total acreage of the municipality. All development districts may not exceed 5% of the total acreage of the municipality. The boundaries of a district may be altered only after meeting the requirements for adoption under this subsection.

C. The aggregate value of equalized taxable property of a tax increment financing district, plus all existing tax increment financing districts, may not exceed 5% of the total value of equalized taxable property within the municipality.

D. The aggregate value of indebtedness financed by the proceeds from tax increment financing districts within any county may not exceed $50,000,000.

E. The designation of captured assessed value of property within a tax increment financing district is subject to the following limitations.

(1) The increase in captured assessed value of property within tax increment financing districts within any county may not exceed the lesser of 1% of the total annual value of equalized taxable property within the county annually or $20,000,000 within a 24-month period. If 1% of a county's equalized taxable value is less than $5,000,000, the annual limit for that county is $5,000,000.

(2) The Commissioner of Economic and Community Development shall adopt any rules necessary to allocate or apportion the designation of captured assessed value of property within tax increment financing districts in accordance with these limitations.

(3) Fifteen percent of the project costs for the de-

velopment program must be incurred within 9 months of the designation of the tax increment financing district by the Commissioner of Economic and Community Development. The development program must be completed within 5 years of the designation of the tax increment financing district by the Commissioner of Economic and Community Development.

F. Before final designation of a tax increment financing district, the Commissioner of Economic and Community Development shall review the proposal to ensure that it complies with statutory requirements and shall identify tax shifts within the county where the district will exist. A designation under this subsection is effective upon approval by the municipal legislative body and, for tax increment financing districts, the Commissioner of Economic and Community Development. If the municipality has a charter, the designation shall be done in accordance with the provisions of the charter.

2. Program. The legislative body of a municipality shall adopt a development program for each development district. The program shall be adopted at the same time as the district, as part of the district adoption proceedings, or if at a different time, in the same manner as adoption of the district, with the same notice, hearing and consultation requirements of subsection 1. Once approved, the program may be altered or amended only after meeting the requirements for adoption under this subsection.

3. Powers. Within development districts, and consistent with the development program, the municipality may acquire, construct, reconstruct, improve, preserve, alter, extend, operate, maintain or promote development intended to meet the objectives of the development program. Pursuant to the development program, the municipality may acquire property, land or easements through negotiation, or by using eminent domain powers in the manner authorized for community development programs under section 5204. The municipality's legislative body may adopt ordinances regulating traffic in and access to any facilities constructed within the development district. The municipality may install public improvements.

§5254. Tax increment financing

1. Captured assessed value. The municipality may retain all or part of the tax increment of a tax increment financing district for the purpose of financing the development program. The amount of tax increment to be retained shall be determined by designating the amount of captured assessed value to be retained. When a development program for a tax increment financing district is adopted, the municipal legislative body shall adopt a statement of the percentage of captured assessed value to be retained in accordance with the development program. Once adopted, the percentage may only be decreased in subsequent years, unless a new development program is adopted, or the present plan is amended or altered under section 5253. The municipal assessor shall certify the amount of the captured assessed value to the municipality each year.

A. For purposes of calculating state aid for education under Title 20-A, effective for districts designated after December 31, 1986, only 75% of the captured assessed value within the tax increment financing district is excepted from the equalized just valuation of a municipality as defined in Title 36, section 305, subsection 1.

2. Original assessed value. Upon or after formation of a tax increment financing district, the assessor of the municipality in which it is located shall, on request of the municipal legislative body, certify the original assessed value of the taxable real property within the boundaries of the tax increment financing district. Each year thereafter the municipal assessor shall certify the amount by which the assessed value has increased or decreased from the original value.

3. Development sinking fund; tax increment revenues. If a municipality has elected to retain all or a percentage of the retained captured assessed value under subsection 1, it shall:

A. Establish a development sinking fund which is pledged to and charged with the payment of the interest and principal as they fall due, and the necessary charges of paying agents for paying interest and principal on any notes, bonds or other evidences of indebtedness that were issued to fund or refund the rehabilitation or development under this chapter; and

B. Annually set aside all tax increment revenues on retained captured assessed values payable to the municipality for public purposes and deposit them to the credit of the development sinking fund.

4. Limitations. The following limitations apply.

A. Nothing in this section allows or sanctions unequal apportionment or assessment of the taxes to be paid on real property in the State. All real property within the tax increment financing district shall pay real property taxes apportioned equally with property taxes paid elsewhere in the municipality.

B. The municipality shall expend the tax increments received for any development program only in accordance with the financing plan. These revenues shall not be used to circumvent existing tax laws.

§5255. Assessments

1. Assessments. The municipality may estimate and assess the following assessments:

A. A development assessment upon lots or property within the development district. The assessment

shall be made upon lots or property that have been benefited by improvements constructed or created under the development program and may not exceed a just and equitable proportionate share of the cost of the improvement. All revenues from assessments under this paragraph shall be paid into the development sinking fund;

B. A maintenance assessment upon all lots or property within the development district. The assessment must be assessed equally and uniformly on all lots or property receiving benefits from the development program and the continued operation of the public facilities. The total maintenance assessments may not exceed the cost of maintenance and operation of the public facilities within the district. The cost of maintenance and operation must be in addition to the cost of maintenance and operation already being performed by the municipality within the district when the development district was adopted; and

C. An implementation assessment upon all lots or property within the development district. The assessment must be assessed equally and uniformly on all lots or property receiving benefits from the development program. The implementation assessments may be used to fund activities which, in the opinion of the municipal legislative body, are reasonably necessary to achieve the purposes of the development program. The activities funded by implementation assessments must be in addition to those already conducted within the district by the municipality when the development district was adopted.

2. Notice and hearing. Before estimating and assessing an assessment under subsection 1, the municipality must give notice and hold a hearing. Notice of the hearing must be published at least 10 days before the hearing in a newspaper of general circulation within the municipality. The notice must include:

A. The date, time and place of hearing;

B. The boundaries of the development district by legal description;

C. A statement that all interested persons owning real estate or taxable property located within the district will be given an opportunity to be heard at the hearing and an opportunity to file objections to the amount of the assessment;

D. The maximum rate of assessments to be extended in any one year, and may include a maximum number of years the assessments will be levied; and

E. A proposed list of properties to be assessed and the estimated assessments against those properties.

3. Apportionment formula. A municipality may adopt ordinances apportioning the value of improvements within a development district according to a formula that reflects actual benefits which accrue to the various properties because of the development and maintenance.

4. Increase of assessments and extension of time limits. Assessments may be increased or the period specified may be extended after notice and hearing as required under subsection 2.

5. Collection. Assessments assessed under this section shall be collected in the same manner as municipal taxes. The constable or municipal tax collector has all the authority and powers by law to collect the assessments.

If any property owner fails to pay any assessment or part of an assessment on or before the dates required, the municipality has all the authority and powers to collect the delinquent assessments as are vested in the municipality by law to collect delinquent municipal taxes.

§5256. Grants

A municipality may receive grants or gifts for any of the purposes of this chapter. The tax increment within a development district may be used as the local match for certain grant programs.

§5257. Financing

The legislative body of a municipality may authorize, issue and sell bonds, including, but not limited to, general obligation or revenue bonds or notes, which mature within 20 years from the date of issue, to finance all project costs needed to carry out the development program within the development district. All revenues derived under section 5254 or under section 5255, subsection 1, received by the municipality shall be pledged for the payment of the incurred indebtedness and used to reduce or cancel the taxes, which may otherwise be required to be expended for that purpose. The notes, bonds or other forms of financing shall not be included when computing the municipality's net debt. Nothing in this section restricts the ability of the municipality to raise revenue for the payment of project costs in any manner otherwise authorized by law.

§5258. Tax exemption

All publicly owned parking structures and pedestrian skyway systems are exempt from taxation by the municipality, county and State. This section does not exempt any lessee or person in possession from taxes or assessments payable under Title 36, section 551.

§5259. Administration

The legislative body of a municipality may create a department, designate an existing department, office, agency, municipal housing or redevelopment authority, or enter into a contractual arrangement with a private entity to administer activities authorized under this chapter.

§5260. Advisory board

The legislative body of a municipality may create an advisory board, a majority of whose members must be owners or occupants of real property located in or adjacent to the development district which they serve. The advisory board shall advise the legislative body and the designated administrative entity on the planning, construction and implementation of the development program and maintenance and operation of the district after the program has been completed.

## CHAPTER 209

## RELOCATION OF UTILITY FACILITIES

§5301. Definitions

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

1. Administering authority. "Administering authority" means an urban renewal authority, municipal officers or any other persons or organizations empowered by the provisions of chapters 203, 205 and 207 to implement an urban renewal plan, community development program or municipal development district plan.

2. Development plan. "Development plan" means an urban renewal plan, community development program or municipal development district plan as defined and described in chapters 203, 205 and 207.

§5302. Payment of costs of relocating utility facilities underground in an urban renewal area

Any public utility, as defined in Title 35-A, section 102, subsection 13, that is required to move or relocate its facilities from or in any traveled way because of the requirements of a development plan which is approved after February 23, 1978, under the procedures established for the approval of development plans, may not be required to install the relocated or any new facilities underground at its own expense, but shall be reimbursed from federal funds provided to implement these plans for the costs of placing utility facilities underground. The relocation costs subject to reimbursement may not exceed the cost of underground installation less the cost of providing the same service with the same capacity through a new overhead system.

1. Determination of cost. In determining the amount of reimbursement, in the first instance, the public utility shall itemize for the administering authority of the development plan, the components of the utility's relocation costs and the cost of providing the same service with the same capacity through a new overhead system. If there is disagreement with respect to the reimbursement, the disagreement shall be submitted to the Public Utilities Commission which, after notice and hearings, shall determine the amount of the reimbursement.

2. Federal reimbursement; lack of federal funds. The difference in costs, if any, between the underground and new overhead construction, qualifies for reimbursement to the administering authority from the Federal Government to the fullest extent allowed by law. If federal money is not available to refund a public utility for relocating its facilities as described in this section, the relocation costs shall be considered ordinary costs of business for rate-making purposes.

## CHAPTER 211

## FEDERAL AID FOR URBAN RENEWAL PROJECTS

§5351. Purpose

The purpose of this chapter is to assist municipalities and their urban renewal authorities to obtain the additional federal capital grants for urban renewal projects which are available under the United States Housing Act of 1949, Public Law 81-171, Title I, as amended. The additional federal capital grants, as local grants-in-aid for federally assisted urban renewal projects being or to be undertaken by municipalities or their urban renewal authorities, establish the aggregate amount of expenditures made by an educational institution of higher learning or hospital directly or through a private redevelopment corporation, for land, buildings and structures located in areas adjacent to or in the immediate vicinity of federally assisted urban renewal projects if the land, buildings or structures are to be redeveloped or rehabilitated by the institution for educational or hospital uses in accordance with a development plan approved under state or local law after public hearing and found acceptable by the Housing and Home Finance Administrator after considering the standards specified in the United States Housing Act of 1949, Public Law 81-171, Title I, Section 110(b), as amended. The additional federal capital grants are available in an amount equal to 2 or 3 times the aggregate amount of such expenditures.

§5352. Definitions

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

1. Development plan. "Development plan" means a plan proposed by an educational institution of higher learning or a private redevelopment corporation for the redevelopment and renewal of a project area. This plan must conform to:

A. The municipality's comprehensive plan; and

B. The requirements of chapter 203 with respect to the content of redevelopment or renewal plans.

2. Educational institution of higher learning. "Educational institution of higher learning" means an educational institution, no part of the net earnings of which inures to the benefit of any private shareholder or in-

dividual, which provides an educational program for which it awards a baccalaureate or more advanced degree, or provides for not less than a 2-year program which is acceptable for full credit towards such a degree. The institution must be accredited by a national accrediting agency or association or, if not so accredited, its credits must be accepted, on transfer, by at least 3 accredited educational institutions for credit on the same basis as if transferred from an educational institution that is accredited.

3. Hospital. "Hospital" means any public or private hospital licensed by the State, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

4. Hospital uses. "Hospital uses" means uses related to the functions of a hospital in providing care and treatment of the ill or injured, including the housing, feeding and care of resident interns, physicians and nurses.

5. Municipality. "Municipality" means any municipality which is authorized under chapter 203, directly or through its urban renewal authority, to undertake and carry out redevelopment or renewal projects.

6. Private redevelopment corporation. "Private redevelopment corporation" means any corporation which is wholly owned or controlled by one or more educational institutions of higher learning or a corporation which operates on behalf of an educational institution on a nonprofit basis.

7. Project area. "Project area" means a slum area or a blighted, deteriorated or deteriorating area.

§5353. Preparation and approval of development plans

The legislative body of any municipality may approve, after a public hearing, a development plan proposed by any educational institution of higher learning or hospital located in the municipality, or by a private redevelopment corporation, for the redevelopment and renewal of a project area, adjacent to or in the immediate vicinity of the location of principal buildings of the institution or hospital, or a major branch of the institution or hospital, where teaching or research is done or where students or faculty live, and the area of an urban renewal project, assisted under the United States Housing Act of 1949, Public Law 81-171, Title I, as amended, which is being undertaken by the municipality or its urban renewal authority. Any state educational institution of higher learning, hospital or private redevelopment corporation may prepare these development plans. Any city may authorize any educational institution of higher learning or hospital established and maintained by the city to prepare development plans.

§5354. Public hearing

Before approving any development plan under section 5353, the municipal legislative body or the municipality's urban renewal authority shall hold a public hearing on the development plan. This public hearing must be held not less than 7 nor more than 14 days after notice of the time, place and purpose of the hearing has been published in a newspaper having general circulation in the municipality.

§5355. Cooperation in carrying out approved development plan

If the municipal legislative body approves a development plan for a project area, the municipality and its urban renewal authority may cooperate with the educational institution of higher learning, hospital or private redevelopment corporation in carrying out the approved development plan and, for that purpose, may contract with the educational institution, hospital or private redevelopment corporation for the exercise of any of the powers of the municipality and its urban renewal authority. Any municipality or its urban renewal authority, any state educational institution of higher learning and, when authorized by a city, any educational institution of higher learning or hospital established and maintained by any city may do all things and may take any actions that are necessary or desirable to ensure that it obtains credit as a local grant-in-aid for the aggregate amount of expenditures made by any such educational institution, hospital or redevelopment corporation which would be eligible under the United States Housing Act of 1949, Title I, as amended.

## CHAPTER 213

## REVENUE PRODUCING MUNICIPAL FACILITIES ACT

§5401. Definitions

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

1. Airport. "Airport" means:

A. Any area of land or interest in land, structures or portions and improvements of structures, or water which is used, intended for use or useful in connection with any public airport, heliport or other location for the landing or taking off of aircraft;

B. Facilities incident to the operation of such properties including, but not limited to, runways, hangars, parking areas for aircraft or vehicles, access roads, wharfs, control towers, communication equipment, weather stations, safety equipment, terminal facilities for aircraft and land vehicles, facilities for servicing aircraft and for the sale of oil, gasoline, other fuels and other accessories, waiting rooms, lockers, space for concessions, offices; and

C. All facilities appurtenant to and all property

rights, air rights, easements and interests relating thereto considered necessary for the construction or operation of the airport.

2. Cost. "Cost," as applied to a revenue-producing municipal facility, includes:

A. The purchase price of any such facility;

B. The cost of construction;

C. The cost of all labor, materials, machinery and equipment;

D. The cost of improvements;

E. The cost of all lands, property, rights, easements and franchises acquired;

F. Financing charges;

G. Interest before and during construction and, if the municipal officers consider it desirable, for one year after construction is completed;

H. The cost of plans and specifications, surveys and estimates of cost and of revenues;

I. The cost of engineering and legal services; and

J. All other expenses necessary or incident to determining the feasibility or practicability of construction, administrative expense and any other expenses necessary or incident to the financing authorized in this chapter.

Any obligation or expenses incurred by the municipality in connection with any of the items of cost, including the payment in whole or in part of indebtedness incurred to pay such obligations or expenses and interest on those obligations or expenses, may be regarded as a part of that cost and reimbursed to the municipality out of the proceeds of revenue bonds issued under this chapter and Title 10, chapter 110, subchapter IV.

3. Energy facility. "Energy facility" means:

A. An "energy distribution system project," as defined in Title 10, section 963-A, subsection 12;

B. An "energy generating system project," as defined in Title 10, section 963-A, subsection 13; or

C. A hydroelectric power facility.

This term also includes any combination or part of these facilities or any equipment and structures designed to distribute or transmit energy either from or to these facilities.

4. Improvements. "Improvements" means those repairs, replacements, additions, extensions and betterments of and to a revenue-producing municipal facility that the municipal officers consider necessary to place or maintain the revenue-producing municipal facility in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the municipality and for which no existing service is being provided.

5. Parking facility. "Parking facility" means any land or any interest in land, structure or portions of structures, and improvements on land or structures intended for the off-street parking of motor vehicles by the public for a fee. Any such structure may be either single or multi-level and either at, above or below the surface. This term also includes:

A. Facilities incident to the operation of those properties for the parking of motor vehicles, including, without limitation, ancillary waiting rooms, lockers, space for concessions, stores and offices, terminal facilities for trucks and buses, facilities for servicing motor vehicles and for the sale of gasoline, oil and other accessories, and all facilities appurtenant to these incident operations; and

B. All property, rights, easements and interests relating to the facility that are considered necessary for the construction or operation of the facility.

6. Parking system. "Parking system" means any parking facility, together with any public way or public parking area designated by the municipal officers as constituting part of that system on which parking meters have been or may be installed or from which fees or charges have been or may be collected for the parking of vehicles.

7. Revenue-producing municipal facility. "Revenue-producing municipal facility" means:

A. A parking facility within the corporate limits of the municipality; or

B. Any of the following within or outside, or partly within and partly outside the corporate limits of the municipality:

(1) A water system or part of that system;

(2) A sewer system or part of that system;

(3) An airport or part of an airport;

(4) A telecommunications system or part of that system; or

(5) An energy facility or part of that facility.

8. Sewage disposal system. "Sewage disposal system" means any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification

or disposal of sewage, including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources. This term also includes:

A. Any integral part of such a facility, including, but not limited to, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment; and

B. All property, rights, easements and franchises relating to the facility that the municipal officers consider necessary or convenient for the operation of the system.

9. Water system. "Water system" means all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water. This term also includes:

A. Any integral part of such a facility, including, but not limited to, water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and all necessary appurtenances and equipment; and

B. All property, rights, easements and franchises relating to the facility that the municipal officers consider necessary or convenient for the operation of the system.

§5402. Declaration of public necessity

The Legislature finds that:

1. Need for water and sewer systems. The maintenance of safe and pure water supplies and the control of water pollution are necessary to the health, safety and general welfare of the public, and the people of the State require new and improved water and sewer systems in order to avoid the menace to public health and damage to the economy created by impure water and untreated sewage;

2. Need for free traffic circulation. The free circulation of traffic of all kinds through the streets of the municipalities of the State is necessary for the rapid and effective fighting of fires and disposition of police forces in those municipalities for the health, safety and general welfare of the public, whether residing in those municipalities or traveling to, through or from the municipalities;

3. Need for parking facilities. In recent years, the parking of motor vehicles of all kinds has so substantially impeded the free circulation of traffic as to constitute a public nuisance endangering the health, safety and welfare of the general public, as well as endangering the economic life of the municipalities; and this traffic congestion cannot be adequately abated except by provisions for sufficient off-street parking facilities;

4. Need for airports. The establishment and improvement of municipal airports are necessary for the health, safety and general welfare of the public; and the people of the State require new and improved public airports and related facilities in order to avoid and reduce the hazards of air transportation and damage to the economy created by inadequate, unsafe and obsolete airports and airport facilities; and

5. Public necessity. The enactment of laws to carry out the intent and purpose of this section is therefore a public necessity.

§5403. General grant of powers

A municipality may:

1. Revenue-producing municipal facilities. Acquire, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any revenue-producing municipal facility;

2. Bonds. Issue revenue bonds of the municipality as provided to pay the cost of acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

3. Revenue-refunding bonds. Issue revenue-refunding bonds of the municipality as provided to refund any revenue bonds then outstanding which were issued under this chapter;

4. Rates and fees. Fix and revise from time to time and collect rates, fees and other charges for the use of or for the services and facilities furnished by any revenue-producing municipal facility;

5. Pledge of revenues. Pledge the revenues derived from any revenue-producing municipal facility to the payment of revenue or revenue-refunding bonds issued with respect to that revenue-producing municipal facility.

A. This subsection applies to any parking facility or system notwithstanding section 3009, subsection 1, paragraph C, subparagraph (3);

6. Acquisition of land or personalty. Acquire in the municipality's name either by gift, purchase, lease, or the exercise of the right of eminent domain land, rights in land or water or air rights in connection with the construction, reconstruction, improvement, extension, enlargement or operation of revenue-producing municipal facilities; acquire any personal property, that it considers necessary in connection with those activities; and hold and dispose of all real and personal property under its control;

7. Contracts; employment of specialists. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execu-

tion of its powers under this chapter, including a trust agreement or trust agreements securing any revenue bonds issued under this chapter; employ any consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and any other employees and agents that it considers necessary; and fix their compensation, provided that all such expenses are payable solely from funds made available under this chapter;

8. Jurisdiction and control. Exercise jurisdiction, control and supervision over any revenue-producing municipal facility owned, operated or maintained by the municipality, make and enforce any regulations for the maintenance and operation of any such system that are, in the judgment of the municipal officers, necessary or desirable for the efficient operation of any such system and for accomplishing the purposes of this chapter;

9. Right of entry; surveys. Enter on any lands, water or premises located within or outside the municipality to make surveys, borings, soundings or examinations for the purposes of this chapter;

10. Use of streets and highways. Enter upon, use, occupy and dig up any street, alley, road, highway or other public places necessary to be entered upon, used or occupied in connection with the acquisition, construction, reconstruction, improvement, maintenance or operation of any revenue-producing municipal facility.

A. When highways maintained by the State are affected, the municipality is subject to the same statutory provisions applicable to those corporations authorized to lay their pipes and conduits in the public ways;

11. Contracts. Enter into contracts with the Federal Government, with the State or any agency or instrumentality of the State, or with any other municipality, district, private corporation, copartnership, association or individual providing for or relating to the revenue-producing municipal facility;

12. Loans and grants. Accept from any authorized agency of the Federal Government or the State loans or grants for the planning, construction or acquisition of any revenue-producing municipal facility or part of a revenue-producing municipal facility; enter into agreements with that agency concerning any such loans or grants; and receive and accept aid and contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants and contributions may be made; and

13. General powers. Do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

§5404. Issuance of revenue bonds

1. Balloting for bonds. Subject to the restriction set forth in paragraph A, the municipal officers of any municipality with a population of 1,000 or more according to the most recent Federal Decennial Census may provide by resolution, at one time or from time to time, for the issuance of revenue bonds of the municipality to pay the cost of acquiring, constructing, reconstructing, improving, extending, enlarging or equipping any revenue-producing municipal facility.

A. No revenue bonds of a town, as distinguished from a city, may be issued until the general purpose for which the bonds are to be issued and the maximum principal amount of the bonds to be authorized have been approved by ballot by a majority of the votes cast on the question. The total number of votes cast must be equal to at least 20% of the total vote for all candidates for Governor cast in the municipality at the last gubernatorial election. The ballot submitted to the voters of a town to authorize the issuance of revenue bonds shall state the general purpose for which the proposed bonds are to be issued and the maximum principal amount of the proposed bonds authorized to be issued. The voting at meetings held in towns shall be held and conducted in accordance with sections 2528 to 2531, even if the town has not accepted the provisions of section 2528.

2. Maturity; interest. The bonds of each issue of revenue bonds shall:

A. Be dated; and

B. Mature at the time or times, not exceeding 30 years from their date or dates of issuance, and bear interest at a rate or rates determined by the municipal officers.

The bonds may be made redeemable before maturity, at the municipality's option, at the price or prices and under terms and conditions fixed by the municipal officers before the bonds are issued.

Revenue bonds issued under this chapter do not constitute a debt or liability of the municipality or a pledge of the faith or credit of the municipality. The bonds are payable solely from the funds provided for that purpose. A statement to that effect shall be recited upon the face of the bonds.

3. Form; execution. The municipal officers shall determine the form of the bonds, including any interest coupons to be attached to the bonds, and the manner of execution of the bonds. They shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. The place of payment may be at any bank or trust company within or outside the State. The municipal officers may issue the bonds in coupon or registered form, or both, as they determine. They may provide for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and

interest. Notwithstanding any other provision of this chapter or any recitals in any bond issued under this chapter, all bonds issued under this chapter are deemed to be negotiable instruments issued under the laws of the State.

A. Revenue bonds shall be executed in the name of the municipality by the manual or facsimile signature of the official or officials authorized in the resolution to execute the bonds, but at least one signature on each bond must be a manual signature. Coupons, if any attached to the bonds, shall be executed with the facsimile signature of the officer or officers of the municipality designated in the resolution.

(1) If any officer whose signature or a facsimile of whose signature will appear on any bonds or coupons ceases to be an officer before the bonds are delivered, that signature or facsimile is valid for all purposes the same as if that officer had remained in office until the delivery.

4. Sale; use of proceeds; additional bonds. The municipal officers may sell the bonds in such manner, either at public or private sale, and for such price, as they determine to be for the best interests of the municipality. The proceeds shall be disbursed in any manner and under any restrictions, if any, that the municipal officers provide in the resolution authorizing the issuance of the bonds or in the trust agreement under section 5408 securing the bonds.

A. If the proceeds of the bonds, by error of estimates or otherwise, are less than the cost of the facility, additional bonds may be issued in like manner to provide the amount of the deficit, provided the aggregate principal amount of revenue bonds of a town may not exceed the amount approved by the voters under subsection 1, paragraph A. Unless otherwise provided in the authorizing resolution or in the trust agreement securing the bonds, these additional bonds are deemed to be of the same issue and are entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. The resolution providing for the issuance of revenue bonds, and any trust agreement securing the bonds, may contain any limitations upon the issuance of additional revenue bonds that the municipal officers consider proper. Any additional bonds shall be issued under the restrictions and limitations prescribed by the resolution or trust agreement.

5. Temporary bonds; replacement bonds. Before the preparation of definitive bonds, the municipal officers may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and available for delivery. The municipal officers may provide for the replacement of any bonds which are mutilated, destroyed or lost.

6. Agency approval; additional conditions. Bonds, except bonds for water system purposes, may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of the municipality, and without any other proceeding or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

§5405. Revenues

1. General. The municipal officers shall fix the schedule of rates, fees and other charges for the use of, and for the services furnished or to be furnished by any revenue-producing municipal facility. The municipal officers may revise this schedule of rates, fees and charges from time to time. These rates, fees and charges, except rates, fees and charges for water system purposes, are not subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the State. The municipality shall charge and collect the rates, fees and charges so fixed or revised. Except as otherwise provided, these rates, fees and charges, including, in the case of parking facility rates, fees and charges for parking on the public ways or in the public parking areas included in the parking system designated by the municipal officers of which the parking facility is a part, shall be fixed and revised to provide funds which, together with all other funds available for the purpose, will be sufficient at all times to pay the cost of maintaining, repairing and operating the revenue-producing municipal facility and parking system, including reserves for those purposes, and to pay the principal of and interest on the revenue bonds, as the same becomes due and payable, and reserves for that purpose. The rates, fees and charges must be reasonable, just and equitable.

2. Water and sewer system rates. The following provisions govern water and sewer system rates.

A. In the case of a water system or a sewer system, rates, fees and charges may be based or computed upon:

(1) The quantity of water used;

(2) The number and size of water or sewer connections;

(3) The number and kind of plumbing fixtures in use in the premises connected to the system;

(4) The number or average number of persons residing in or working in or otherwise connected with the premises;

(5) The type or character of the premises;

(6) Any other factor affecting the use of the facilities furnished; or

(7) Any combination of these factors.

B. In cases where the character of the sewage from any industrial or manufacturing plant, building or premises is such that it imposes an unreasonable burden upon the sewer system, the municipal officers may:

(1) Impose an additional charge for that sewage; or

(2) Require the industrial or manufacturing plant, building or premises to treat the sewage in a manner specified by the municipal officers before discharging the sewage into the sewers owned or maintained by the municipality.

C. If it is determined to compute sewer charges on the basis of the quantity of water used, any water district or water company subject to supervision or regulation by the Public Utilities Commission shall provide the municipality with any information or data that the municipality requests for those purposes. The water district or water company is not liable to any person for releasing to the municipality any information or data that the municipality requests.

(1) Any charges for sewer services, including sewer services to manufacturing and industrial plants obtaining all or a part of their water supply from sources other than the municipal water system, may be determined by gauging or metering or in any other manner approved by the municipal officers.

D. There shall be a lien on real estate served or benefitted by a water system, sewer system or water and sewer system to secure the payment of rates, fees or charges established under this chapter. This lien takes precedence over all other claims on the real estate, excepting only claims for taxes. The treasurer of the municipality may collect these rates, fees and charges in the same manner as provided in Title 38, section 1208 for treasurers of sanitary sewer districts with respect to rates established and due under Title 38, section 1202.

3. Parking system rates. In the case of a parking facility and a public way or parking area, whether or not included within the parking system designated by the municipal officers, the rates, fees or charges fixed or revised by the municipal officers need not be uniform throughout the system or in all parts of the municipality, but shall take into account the primary purpose of relieving traffic congestion and encouraging free circulation throughout the municipality. In fixing or revising reasonable, just and equitable rates, fees and charges under subsection 1 or under section 3009, subsection 1, paragraph C, when adequate parking facilities for the accommodation of traffic have been provided and paid for, the rates, fees and charges shall be adjusted to provide funds for maintenance and operation only.

4. Airport rates. In the case of an airport or part of an airport, the rates, fees and charges may be based or computed upon square footage, gross receipts, landings or other basis which is reasonably related to the use of or service furnished by the revenue-producing facility.

5. Telecommunication system rates. In the case of a telecommunications system or part of such a system, the rates, fees and charges must be adequate, just, reasonable, nondiscriminatory and uniform throughout the corporate limits of the municipality. They shall be based upon the extent and quality of service, number of channels, hours of operation, variety of programs, local coverage, safety measures, installation costs and other basis which are reasonably related to the use of or service furnished by the telecommunications system revenue-producing facility.

§5406. Collection of revenue-producing facilities' charges

Any resolution providing for the issuance of revenue bonds for a revenue-producing municipal facility under this chapter, or the trust agreement securing the bonds, may include any or all of the following provisions and may require the municipal officers to adopt any resolutions or take any other lawful action that is necessary to effectuate these provisions that:

1. Deposits. The municipality may require the owner, tenant or occupant of each lot or parcel of land who is obligated to pay rates, fees or charges for the use of or for the services furnished by any revenue-producing municipal facility owned or operated by the municipality to make a reasonable deposit with the municipality in advance to ensure the payment of the rates, fees or charges and to be subject to application to the payment of those rates, fees or charges if and when delinquent; and

2. Procedure for collection. If the rates, fees or charges for the use of or for the services furnished by any sewer system owned or operated by the municipality by or in connection with any premises not served by a water system owned or operated by the municipality are not paid, those rates, fees and charges will be collected in accordance with sections 3444, 3445 and 5405.

§5407. Application of revenues; annual report

1. Use of revenues. The resolution authorizing the issuance of revenue bonds under this chapter, or any trust agreement securing the bonds, may provide that all or a sufficient amount of the revenues derived from the revenue-producing municipal facility, including any portion of the facility financed with revenue bonds issued under this chapter, after providing for the payment of the cost of repair, maintenance and operation and reserves for those purposes as may be provided in the resolution or trust agreement, shall be set aside at such regular intervals as may be provided in the resolution or trust agreement and deposited to the credit of a sinking fund to pay the interest on and the principal of revenue bonds issued under this chapter as they become due, and the redemption price or purchase price of bonds retired by call or purchase.

A. The use and disposition of money to the credit of the sinking fund is subject to any regulations provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. Unless otherwise provided in the resolution or trust agreement, the sinking fund is a fund for the benefit of all bonds without distinction or priority of one over another.

2. Annual report. At least once each year, the municipality shall have a comprehensive report made of the operations of the revenue-producing municipal facility, including all matters relating to rates, revenues, expense of repair, maintenance and operation and of renewals and replacements, principal and interest requirements and the status of all funds. Copies of the annual report shall be filed with the municipal clerk. These copies are open to the inspection of all interested persons.

§5408. Pledges and covenants; trust agreement

In the discretion of the municipal officers of any municipality, any issue of revenue bonds may be secured by a trust agreement by and between the municipality and a corporate trustee, which may be any trust company within or outside the State. All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation.

1. Pledge of revenues; conveyance or mortgage prohibited. The resolution authorizing the issuance of the bonds or the trust agreement may pledge the revenues to be received from the revenue-producing municipal facility, including that portion of the revenue-producing municipal facility financed with revenue bonds issued under this chapter, but may not convey or mortgage any revenue-producing municipal facility or a portion of a revenue-producing municipal facility financed with revenue bonds issued under this chapter. All pledges of revenue under this chapter are valid and binding from the time when the pledge is made. All revenues received by a municipality after being pledged are immediately subject to the lien of those pledges without any physical delivery thereof or further action under the Uniform Commercial Code or otherwise. The lien of these pledges is valid and binding against all parties having claims of any kind in tort, contract or otherwise against the municipality, whether or not those parties have notice of the lien.

2. Rights and remedies of bondholders. The resolution may also contain any provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipality and the municipal officers in relation to:

A. The acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of any revenue-producing municipal facility or related system or systems;

B. The fixing and revising of rates, fees and charges;

C. The custody, safeguarding and application of all money; and

D. The employment of consulting engineers in connection with the acquisition, construction, reconstruction or operation.

The resolution or trust agreement may contain any other provisions that the municipal officers consider reasonable and proper for the security of the bondholders. The resolution or trust agreement may set forth the rights and remedies of the bondholder and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations.

3. Payment of proceeds and revenues. Except as provided otherwise in this chapter, the municipal officers may provide:

A. For the payment of the proceeds of the sale of the bonds and the revenues of any revenue-producing municipal facility or part of any revenue-producing municipal facility to any officer, board or depositary that they designate for the custody of the proceeds and revenues; and

B. For the method of disbursement of the proceeds and revenues, with any safeguards and restrictions that they determine.

§5409. Trust funds

Notwithstanding any other law, all money received under the authority of this chapter is deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that any officer to whom, or bank, trust company or other fiscal agent to which, this money is paid, act as trustee of the money and hold and apply the money for the purposes of this chapter, subject to any regulations provided in the resolution or trust agreement or required by this chapter.

§5410. Remedies

Except to the extent that rights given are restricted by the resolution authorizing the issuance of the bonds or the trust agreement, any holder of revenue bonds issued under this chapter or of any of the coupons appertaining to those bonds and the trustee under any trust agreement may by suit, action, mandamus or other proceeding, either at law or in equity, protect and enforce any and all rights under the laws of the State or granted under this chapter or under the resolution or trust agreement. The holder or trustee may enforce and compel the performance of all duties required by this chapter or by the resolution or trust agreement to be performed by the municipality, the municipal officers or

any municipal official, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the revenue-producing municipal facility.

§5411. Revenue-refunding bonds

1. Issuance of refunding bonds; purposes. The municipal officers may provide by resolution for the issuance of revenue-refunding bonds of the municipality for the purpose of:

A. Refunding any revenue bonds then outstanding which were issued under this chapter, including the payment of any redemption premium on those bonds and any interest accrued or to accrue to the date of redemption of those bonds; and

B. If considered advisable by the municipal officers, constructing improvements, extensions or enlargements of the revenue-producing municipal facility in connection with which the bonds to be refunded were issued.

2. Issuance of revenue bonds; purposes. The municipal officers may provide by resolution for the issuance of revenue bonds of the municipality for the combined purpose of:

A. Refunding any revenue bonds or revenue-refunding bonds then outstanding which were issued under this chapter, including the payment of any redemption premium on those bonds and any interest accrued or to accrue to the date of redemption of those bonds; and

B. Paying all or any part of the cost of acquiring or constructing any additional revenue-producing municipal facility or part thereof, or any improvements, extensions or enlargements of any revenue-producing municipal facility.

3. Applicability of other sections. The issuance of the bonds, the maturities and other details of the bonds, the rights and remedies of the holders of bonds and the rights, powers, privileges, duties and obligations of the municipality and the municipal officers with respect to the bonds, are governed by sections 5401 to 5410, as applicable.

§5412. Authorizing resolution

Notwithstanding any other law or any charter or charter amendment previously adopted by a municipality, or any ordinance, resolution, bylaw or regulation of a municipality, it is not necessary to publish any resolution adopted under this chapter, either before or after its final passage.

§5413. Exemption from taxation

As proper revenue-producing municipal facilities are essential for the health and safety of the inhabitants of the municipalities, and as the exercise of the powers conferred to effect these purposes constitute the performance of essential governmental functions, and as municipal facilities acquired or constructed under this chapter constitute public property and are used for municipal purposes, no municipality may be required to pay any taxes or assessments upon any parking facility or system, water or sewer system or telecommunications system revenue-producing municipal facility, or any part of such a system, whether located within or outside the corporate limits of the municipality, or upon the income from those facilities. Any bonds issued under this chapter, and their transfer and the income from the bonds, including any profit made on the sale of the bonds, shall at all times be free from taxation within the State, provided that nothing in this section exempts any lessee or person in possession of a parking facility or part of a parking facility or the property so leased or possessed from taxes or assessments payable under Title 36, section 551.

§5414. Alternative method

This chapter shall not be construed to limit a municipality's home rule authority. Sections 5401 to 5413 shall be deemed to provide an additional and alternative method for the doing of the things described and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local, provided that the issuance of revenue bonds or revenue-refunding bonds under these sections need not comply with the requirements of any other general or special law applicable to the issuance of bonds.

§5415. Liberal construction

This chapter, being necessary for the welfare of municipalities and their inhabitants, shall be liberally construed to effect its purposes.

SUBPART 9

FISCAL MATTERS

CHAPTER 221

MUNICIPAL TREASURER

§5601. Bond

Before assuming the duties of office, the treasurer must give a surety bond to the municipality subject to the following provisions.

1. Condition. The bond shall be conditioned on the treasurer's faithful discharge of all the duties of office.

2. Type. The bond may be a corporate surety bond or an individual surety bond.

A. If the bond is an individual surety bond, the surety shall provide the municipal officers with a detailed sworn statement of the surety's personal financial ability.

3. Amount. The bond need not be for more than twice the amount of taxes to be collected during the municipal year.

4. How paid. The municipality shall pay for the bond.

5. Sufficiency. The municipal officers are the sole judges of the sufficiency of the bond and sureties.

6. Recorded. After the municipal officers approve the bond, the clerk shall record the bond.

A. This record is prima facie evidence of the contents of the bond.

B. Failure to record the bond is not a defense to an action on it.

§5602. Notice of choice of treasurer

When a treasurer is qualified and chosen, the clerk shall send the name of the treasurer to the Treasurer of State. The Treasurer of State shall not send money to any municipality until receiving the name of its treasurer.

§5603. Powers and duties

The treasurer has the following powers and duties.

1. Powers. The treasurer may:

A. Make deductions from the salary of a municipal employee and pay the money deducted to the proper payee, when the employee gives the written authority to do so. The treasurer's authority to make a deduction continues until:

(1) The employee revokes the authorization in writing; or

(2) The treasurer knows that the reason for the deduction no longer exists.

2. Duties. The treasurer shall:

A. Disburse money only on the authority of a warrant drawn for the purpose by the municipal officers;

B. Upon request, provide an account of the finances of the municipality and exhibit the official records to the municipal officers or to any committee appointed by them to examine the accounts. The municipal officers shall examine the treasurer's accounts at least once every 3 months; and

C. Maintain a bank account in the municipality's name for the deposit of cash receipts. The treasurer shall deposit the cash balance in the bank within 10 days when it exceeds $100.

§5604. Payment out of treasury

The treasurer of any municipality shall not pay out any funds for an account or claim against the municipality unless the account or claim is itemized and declared to be a public record. Notwithstanding Title 17-A, section 4-A, violation of this section is a Class E crime, punishable by a fine of not more than $300 or by imprisonment for not more than 30 days, or both.

## CHAPTER 223

## MUNICIPAL FINANCES

## SUBCHAPTER I

## GENERAL PROVISIONS

§5651. Determination of municipal year; change

The municipal officers shall determine the municipal fiscal year.

A municipality or plantation may raise one or 2 taxes during a single valuation if the taxes raised are based on appropriations made for a municipal fiscal year that does not exceed 18 months. A municipal or plantation fiscal year may extend beyond the end of the current tax year and the municipal officers or assessors of a plantation, when changing the municipality's or plantation's fiscal year, may, for transition purposes, adopt one or more fiscal years not longer than 18 months each.

§5652. Donation of money

The municipal officers may accept a donation of money to the municipality to supplement a specific appropriation already made, to reduce the tax assessment or to reduce the permanent debt.

1. Reducing the tax assessment. If the assessors receive written notice from the municipal officers that a sum has been paid to the municipality for the purpose of reducing the tax assessment, they shall reduce it in that amount before establishing the tax rate. If the tax rate has already been established, the treasurer shall deposit the money in a bank, trust company or national bank in the State, and withdraw it at the proper time to reduce the tax assessment for the following taxable year.

§5653. Gifts of money or property in trust

This section governs a municipality's receipt of money or other property in trust for any specified public purpose. The municipal officers shall serve as trustees unless otherwise specified in the trust instrument.

1. Acceptance or rejection. When the municipal officers receive written notice from a prospective donor or a representative of a proposed trust, they shall submit the matter at the next meeting of the municipal legislative body. Within 10 days after the meeting, the municipal officers shall send written notice of its acceptance or rejection to the donor or the donor's representative.

2. Deposited or invested. Unless otherwise specified by the terms of the trust, the municipal officers shall either deposit or invest trust funds according to subchapter III-A.

A. Unless the instrument or order creating the trust prohibits, the municipal officers may treat any 2 or more trust funds as a single fund solely for the purpose of investment.

B. After deducting management expenses, the municipal officers shall prorate any interest earned or capital gains realized among the various trust funds.

C. The municipal officers shall retain any property or securities included in the corpus of a trust fund where the trust instrument so provides.

D. Unless otherwise specified in the trust instrument, the municipal officers may spend only the annual income from the trust fund.

3. Reversion to donor. If the municipality fails to comply with the terms of the trust instrument, the trust fund reverts to the donor or the donor's heirs.

§5654. Conditional gifts

This section governs a municipality's receipt of a conditional gift for any specified public purpose.

1. Acceptance or rejection. When the municipal officers receive written notice from a prospective donor or a representative of the proposed gift, they shall submit the matter at the next meeting of the municipal legislative body. Within 10 days after the meeting, the municipal officers shall send written notice of their acceptance or rejection to the donor or the donor's representative.

2. Perpetually comply with conditions. When the donor or the donor's representative has completed the donor's part of the agreement concerning the execution of a conditional gift, the municipality shall perpetually comply with, and may raise money to carry into effect, the conditions upon which the agreement was made.

3. Deposited or invested. Unless otherwise specified by its terms, a conditional gift of money may be deposited or invested according to subchapter III-A.

§5655. Unconditional gifts

A gift without conditions, of any type of property, offered to a municipality shall be accepted or rejected by its legislative body.

SUBCHAPTER II

STATE FUNDS

§5681. State-municipal revenue sharing

1. Findings and purpose. The Legislature finds that:

A. The principal problem of financing municipal services is the burden on the property tax; and

B. To stabilize the municipal property tax burden and to aid in financing all municipal services, it is necessary to provide funds from the broad-based taxes of State Government.

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

A. "Population" means the population as determined by the latest Federal Decennial Census or the population as determined and certified by the Department of Human Services, whichever is later. For the purposes of this section, the Department of Human Services shall determine the population of each municipality at least once every 2 years.

B. "Property tax burden" means the total real and personal property taxes assessed in the most recently completed municipal fiscal year, except the taxes assessed on captured value within a tax increment financing district, divided by the latest state valuation certified to the Secretary of State.

3. Local Government Fund. To strengthen the state-municipal fiscal relationship pursuant to the findings and objectives of subsection 1, there is established the Local Government Fund.

4. Sharing the Local Government Fund. Money credited to the Local Government Fund shall be distributed on the basis of a formula which provides a varying amount of per capita revenue sharing aid to communities based upon the comparative tax burden of each municipality. Those municipalities having a greater property tax burden would receive a larger per capita revenue-sharing distribution.

The portion of the Local Government Fund to be distributed to each municipality shall be in proportion to the product of the population of the municipality multiplied by the property tax burden of the municipality.

5. Treasurer of State. An amount equal to 5.1% of the receipts from the taxes imposed under Title 36, Parts 3 and 8, and credited to the General Fund, plus an amount equal to $237,000 of the receipts from the tax imposed

under Title 36, Part 3, shall be transferred by the Treasurer of State to the Local Government Fund on the first day of each month.

The Treasurer of State shall distribute the balance in the Local Government Fund on the 20th day of each month.

6. Plantations and unorganized territory. For purposes of state-municipal revenue sharing, plantations and the unorganized territory shall be treated as if they were municipalities.

## SUBCHAPTER III

## MUNICIPAL DEBT

### §5701. Debt liability

The personal property of the residents and the real estate within the boundaries of a municipality, village corporation or other quasi-municipal corporation may be taken to pay any debt due from the body corporate. The owner of property taken under this section may recover from the municipality or quasi-municipal corporation under Title 14, section 4953.

### §5702. Limitation

No municipality may incur debt which would cause its total debt outstanding at any time, exclusive of debt incurred for school purposes, for storm or sanitary sewer purposes, for energy facility purposes or for municipal airport purposes to exceed 7 1/2% of its last full state valuation. A municipality may incur debt for school purposes to an amount outstanding at any time not exceeding 10% of its last full state valuation, for storm or sanitary sewer purposes to an amount outstanding at any time not exceeding 7 1/2% of its last full state valuation, and for municipal airport and special district purposes to an amount outstanding at any time not exceeding 3% of its last full state valuation; provided, however, that in no event may any municipality incur debt which would cause its total debt outstanding at any time to exceed 15% of its last full state valuation.

For the purposes of this section, full state valuation shall mean the state valuation most recently certified by the State Tax Assessor pursuant to Title 36, section 381, adjusted to 100%.

If a particular loan is or has been incurred by a municipality for school, storm or sanitary sewer, municipal airport, water and other purposes, or any combination thereof, the treasurer of the municipality shall make and maintain records showing the proportion, if any, of such loan incurred for school purposes, for storm or sanitary sewer purposes, for municipal airport purposes, for water purposes and for other purposes and the same proportions shall be applied to each maturity of such loan.

### §5703. Exclusion

The limitations on municipal debt in section 5061 shall not be construed as applying to any funds received in trust by any municipality, any loan which has been funded or refunded, notes issued in anticipation of federal or state aid or revenue sharing money, tax anticipation loans, notes maturing in the current municipal year, indebtedness of entities other than municipalities, indebtedness of any municipality to the Maine School Building Authority, debt issued under chapter 235 and Title 10, chapter 110, subchapter IV, obligations payable from revenues of the current municipal year or from other revenues previously appropriated by or committed to the municipality, and the state reimbursable portion of school debt. The limitations on municipal debt set forth in section 5061 do not apply to obligations incurred by one or more municipalities pursuant to Title 38, section 1304-B, with respect to solid waste facilities, which obligations are regulated in the manner set forth in Title 38, section 1304-B.

For the purpose of this section, the state reimbursable portion of school debt with respect to any municipality shall be the sum of the amounts determined by multiplying: The outstanding amount of each issue of debt incurred for school purposes by the municipality in connection with a project which qualifies for state school construction aid; and the percentage of the capital outlay costs of such project which was applicable to determine the amount of state school construction aid therefor pursuant to Title 20, at the time such project was approved for such state school construction aid. The certificate of the Commissioner of Educational and Cultural Services that a project qualifies for state school construction aid and as to the percentage of such aid to which a municipality was so entitled shall be conclusive evidence of the facts stated therein.

### §5704. Reporting by special districts

Each special district in the State, whether or not its boundaries are coterminous with the boundaries of a municipality, including districts established for the purposes of providing water, sewer, electric, educational, health, transportation, solid waste management, parking or recreation services, or any other public purpose, shall file an annual report of its total outstanding debt.

1. Content. These reports shall include debts by:

A. Amount;

B. Purpose;

C. Creditors;

D. Date incurred;

E. Interest rate;

F. Amortization period;

G. Amount of annual principal payments and annual interest payments; and

H. Assessments and contributions received from municipalities in the district to service the debts.

2. Filing; public records. The reports shall be filed within 45 days of the end date of each fiscal year. The reports shall be filed with the Maine Municipal Bond Bank upon forms provided by it. Information reported under this section is a public record.

## SUBCHAPTER III-A

## MUNICIPAL INVESTMENTS

### ARTICLE 1

### GENERAL INVESTMENTS

#### §5706. Deposit or investment of funds

As directed by the municipal officers, the treasurer shall invest all municipal funds, including reserve funds and trust funds, to the extent that the terms of the instrument, order or article creating the fund do not prohibit the investment, as follows:

1. Financial institutions. In accounts or deposits of institutions insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund or the successors to these federal agencies.

A. Accounts and deposits exceeding an amount equal to 25% of the capital, surplus and undivided profits of any trust company or national bank or a sum exceeding an amount equal to 25% of the reserve fund and undivided profit account of a mutual savings bank or state or federal savings and loan association on deposit at any one time shall be secured by the pledge of certain securities as collateral, or fully covered by insurance.

(1) The collateral shall be in an amount equal to the excess deposit. The municipal officers shall determine the value of the pledged securities on the basis of market value and shall review the value of the pledged securities on the first business day of January and July of each year.

(2) The collateral shall only consist of securities in which municipalities may invest, as provided in article 2. The securities shall be held in a depository institution approved by the municipal officers and pledged to indemnify the municipalities against any loss. The depository institution shall notify the municipal officers of the pledging when the securities are deposited and shall mail a copy of the notice to the Department of Audit;

2. Repurchase agreements. In repurchase agreements secured by obligations of the Federal Government, provided that the market value of the underlying obligation is equal to or greater than the amount of the municipality's investment and that the municipality's security interest is perfected under the terms of Title 11, article 9;

3. Mutual funds. In the shares of an investment company registered under the United States Investment Company Act of 1940, Public Law 76-768, whose shares are registered under the United States Securities Act of 1933, Public Law 73-22, provided that the investments of the fund are limited to obligations of the Federal Government, or repurchase agreements secured by obligations of the Federal Government; or

4. Safekeeping and investment management agreements. The municipal officers may enter into an agreement with any financial institution with trust powers authorized to do business in the State for the safekeeping and investment of the reserve funds or trust funds of the municipality. Services shall consist of the safekeeping and investment management of the funds, collection of interest and dividends, periodic review of the portfolio investments and any other fiscal service which is normally covered in a safekeeping and investment agreement. In performing services under any contract or agreement, the contracting bank has all the powers and duties prescribed for trust companies by Title 9-B, section 623, and the authority to invest funds on behalf of the municipality under the rule of prudence, Title 18-A, section 7-302. The contracting bank shall give assurance of proper safeguards, which are usual to these contracts, and shall furnish insurance protection satisfactory to both parties.

### ARTICLE 2

### INVESTMENTS IN SECURITIES

#### §5711. Investments in general

Municipalities may hereafter invest their funds in securities in accordance with this article, subject to the conditions and limitations set forth in this article or the terms of the instrument, order or article creating the fund being invested. Limitations set forth in this article concerning the maximum amount which may be invested in a security or type of security shall apply only to an investment in that security or type of security which exceeds $20,000. Investments made under this article shall be made by the treasurer upon direction of the municipal officers.

#### §5712. Government unit bonds

Municipalities may invest in:

1. United States and instrumentalities. The bonds and other obligations of the United States, or the bonds and other obligations or participation certificates issued by any agency, association, authority or instrumentality created by the United States Congress or any executive order;

2. States. The bonds and other obligations issued or guaranteed by any state or by any instrumentality or agency of any state, or by any political subdivision of any state, provided that the securities are rated within the 3 highest grades by any rating service approved by the Superintendent of Banking;

3. Maine. The bonds and other obligations issued or guaranteed by this State, or issued by any instrumentality or agency of this State, or any political subdivision of the State which is not in default on any of its outstanding funded obligations; and

4. Canada. The bonds and other obligations issued or guaranteed by the Dominion of Canada, or issued or guaranteed by any province, or political subdivision of a province, provided that the securities are rated within the 3 highest grades by any rating service approved by the Superintendent of Banking and are payable in United States funds.

§5713. Corporate securities

Municipalities may invest in:

1. Corporate bonds. The bonds and other obligations of any United States or Canadian corporation, provided that the securities are rated within the 3 highest grades by any rating service approved by the Superintendent of Banking and are payable in United States funds. Not more than 2% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in the securities of any one such corporation;

2. Maine corporate bonds. The bonds and other obligations of any Maine corporation, actually conducting in this State the business for which that corporation was created, which, for a period of 3 successive fiscal years or for a period of 3 years immediately preceding the investment, has earned or received an average net income of not less than 2 times the interest on the obligations in question and all prior liens or, in the case of water companies subject to the jurisdiction of the Public Utilities Commission, an average net income of not less than 1 1/2 times the interest on the obligations in question and all prior liens. Not more than 20% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in these securities of Maine corporations and not more than 2% of that fund in the securities of any single corporation; and

3. Maine corporate stocks. Maine corporate stocks which have the following characteristics.

A. The stock of any Maine corporation, other than stock of a financial institution, actually conducting in this State the business for which that corporation was created, provided that the corporation has, for a period of 3 years immediately preceding the investment, earned and received an average net income after taxes equivalent to at least 6% upon the entire outstanding issue of the stock in question.

B. Not more than 10% of the deposits of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested under this section in stocks of Maine corporations and not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be so invested in the stock of any single corporation. The fund shall be invested in no more than 20% of the capital stock of any corporation.

§5714. Financial institution stock and other obligations

1. Municipalities may invest in:

A. The debentures of any financial institution authorized to do business within this State, incorporated under the laws of this State or the United States and of any financial institution holding company, provided that the holding company is registered under the United States Bank Holding Company Act of 1956, as amended, or the National Housing Act, Section 408, as amended;

B. The capital stock, preferred stock, debentures and acceptances of any insured bank not having an office in this State which has total capital and reserves of at least $50,000,000 and of any bank holding company whose subsidiary banks have total capital and reserves of at least $50,000,000, provided that the holding company is registered under the United States Bank Holding Company Act of 1956;

C. Capital notes or debentures issued by any municipalities chartered under the laws of any state, or of the United States, or of the Commonwealth of Puerto Rico, notwithstanding the fact that these notes or debentures may be subordinate to the claims of depositors or other creditors of the issuing institution. Not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be so invested; and

D. Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development or the Inter-American Development Bank or the African Development Bank.

2. Limitations. A municipality shall not acquire or hold stock and obligations described in subsection 1 in excess of 30% of the total assets of the reserve fund, permanent trust fund or other permanent fund being invested; nor shall it acquire or hold stock and obligations of any one bank or holding company not operating in this State in excess of 5% of the total assets of the reserve fund, permanent trust fund or other permanent fund being invested; nor shall any such fund be invested in that stock in excess of 10% of the capital stock of any one bank or holding company.

§5715. Other stock investments

Municipalities may invest in:

1. Preferred stock of public utilities. The preferred stock of any public corporation if all of the publicly issued bonds of the corporation qualify as legal investments under section 5713, subsection 1 or 2. Not more than 10% of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in preferred stocks of public utilities, and not more than 1% of any such fund may be invested in the preferred stocks of any one corporation;

2. Bonds of nonprofit organizations. The bonds or other interest-bearing obligations of any religious, charitable, educational or fraternal association or corporation. Not more than 10% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in securities coming within the coverage of this subsection, and not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in securities of any one such association or corporation;

3. Small business investment companies. The stock of small business investment companies licensed under the United States Small Business Investment Act of 1958, as amended, and commercially domiciled in Maine and doing business primarily in Maine. Not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in the stock of small business investment companies and any such fund shall not be invested in more than 10% of the stock of any one small business investment company; and

4. Maine Capital Corporation. The stock of the Maine Capital Corporation, established under Title 10, chapter 108, in an amount not to exceed 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested.

§5716. Other prudent securities

Municipalities may invest in such securities as the municipal officers consider to be sound, prudent investments, the making of which would not otherwise be legal but for this section. Not more than 10% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in securities within the coverage of this section and investments in the stock of the State's financial institutions shall not be considered within this section. This section does not limit the authority of municipalities to invest in securities specifically regulated by this article; rather, this section gives additional authority to invest 10% in any type of prudent security.

§5717. Retention of unauthorized securities

Municipalities may acquire and hold securities not authorized by law, but which have been acquired in settlements, reorganizations, recapitalizations, mergers, consolidations, by receipt of stock dividends or the exercise of rights applicable to securities held by the municipalities and may continue to hold these securities at the discretion of the municipal officers. Municipalities may continue to hold at the discretion of the municipal officers securities under authorization of law.

## SUBCHAPTER IV

## EXPENDITURES

§5721. General authority

A municipality may raise or appropriate money for any public purpose, including, but not limited to, the purposes specified in sections 5722 to 5728.

§5722. Operating expenses

A municipality may raise or appropriate money to:

1. Operation. Provide for the operation of its municipal government;

2. Pensions. Establish a contributory pension system for its officials and employees, or participate in an existing system;

3. Fire and police protection. Provide for fire and police protection;

4. Volunteer fire department. Support an incorporated volunteer fire department.

A. If the amount appropriated for an incorporated volunteer fire department is $1,000 or less, the municipal officers may issue their warrant to the municipal treasurer, without itemizing the purposes for which the appropriation will be spent, requiring the municipal treasurer to pay the amount of the appropriation to the treasurer of the volunteer fire department;

5. Insurance for use of vehicles. Insure its officials, employees and volunteer workers against public liability and property damage resulting from their negligent operation of any vehicle owned or leased by the municipality while being used for municipal business;

6. Insurance for performance of duties. Insure its officers, officials and employees against any personal liability which they may incur out of and in the course of their acting by, for or on behalf of the municipality while performing their duties as public officers, officials and employees;

7. Revaluation. Provide for the revaluation of taxable property.

A. Any revaluation is under the jurisdiction of the

municipal assessors whose judgment, as opposed to that of any hired appraiser, is final;

8. Municipal services. Provide for a supply of water, gas and electricity for municipal use for a period of years or for an energy facility, as defined in section 5401, subsection 3;

9. Advisory organizations. Obtain the services of municipal advisory organizations. The Legislature recognizes the Maine Municipal Association as a nonprofit advisory organization and declares it to be an instrumentality of its member municipal and quasi-municipal corporations with its assets upon its dissolution to be delivered to the Secretary of State to be held in custody for the municipalities of the State. A municipal advisory organization may receive federal grants or contributions for its activities with respect to the solution of local problems; and

10. Water system. Provide for the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance and operation of a water or sewer system or part of such a system, within or outside, or partly within and partly outside, the corporate limits of the municipality.

§5723. Public works

A municipality may raise or appropriate money to:

1. Parks and construction projects. Provide for public buildings, ways, bridges, parks, parking places, sewers and drains;

2. Dumps. Provide for public dumps either within or outside its boundaries;

3. Cemeteries. Provide for public cemeteries; maintain private cemeteries established before 1880; care for graves of veterans and maintain fences around cemeteries in which veterans are buried;

4. Flood control. Provide for projects which have been approved by the Governor for improving navigation or preventing property damage by erosion or flood;

5. Fuel yard. Provide a fuel yard for the purpose of selling fuel to its residents without financial profit to itself; and

6. Water or sewer districts. Provide financial assistance to a water or sewer district which is a quasi-municipal corporation, within or outside, or partly within or outside, the corporate limits of the municipality to the extent that the assisted district serves the municipality providing assistance.

§5724. Schools and libraries

A municipality may raise or appropriate money to:

1. Public schools. Provide for public schools and libraries, including construction, extensions, enlargements, repairs, improvements or maintenance to buildings for which a municipality has a contract, lease or agreement with the Maine School Building Authority under Title 20-A, sections 15701 to 15718;

2. School activities. Provide for school bands and other organized activities conducted under the supervision of the school committee;

3. Physical education. Provide for physical fitness programs in the schools;

4. Construction and maintenance. Provide for the construction, repairs and maintenance of buildings and equipment for educational institutions with which a municipality has a contract as provided in Title 20-A, section 2703;

5. Transportation. Provide for the transportation of school children to and from schools other than public schools, except those schools that are operated for profit in whole or in part;

6. Textbooks. Provide for the purchase of those secular textbooks which have been approved by the school committee or board of directors for use in public schools in the municipality or district and to loan those textbooks to pupils or to the parents of pupils attending nonpublic elementary and secondary schools. The loans shall be based upon individual requests submitted by the nonpublic school pupils or parents. The requests shall be submitted to the school committee or board of directors of the administrative district in which the student resides. The request for the loan of textbooks shall, for administrative convenience, be submitted by the nonpublic school student or parent to the nonpublic school which shall prepare and submit collective summaries of the individual requests to the school committee or board of directors. As used in this section, "textbook" means any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school the pupil regularly attends;

7. Physician, nursing, dental and optometric services. Provide physician, nursing, dental and optometric services to pupils attending nonpublic elementary and secondary schools within a district or municipality. These services may be provided in the school attended by the nonpublic school pupil receiving the services;

8. Tests and scoring services. Provide for the use by pupils attending nonpublic elementary and secondary schools within the municipality or a district the standardized tests and scoring services which are in use in the public schools serving that municipality or district; and

9. Advisory organizations. Obtain the services of educational advisory organizations. The Legislature recognizes the Maine School Management Association

and the Maine School Boards Association as nonprofit advisory organizations and declares these associations to be instrumentalities of their member school administrative units, municipal and quasi-municipal corporations with their assets upon their dissolution to be delivered to the Secretary of State to be held in custody for the municipalities of the State. An educational advisory organization may receive federal grants or contributions for their activities with respect to the solution of local problems.

A municipality may provide health or remedial services to nonpublic school pupils as authorized by this section only if those services are available to pupils attending the public school serving the municipality.

Health and remedial services and instructional materials and equipment provided for the benefit of nonpublic school pupils under this section and the admission of pupils to the nonpublic schools must be provided without distinction as to race, creed, color, the national origin of the pupils or of their teachers. No instructional materials or instructional equipment may be loaned to pupils in nonpublic schools or their parents unless similar instructional material or instructional equipment is available for pupils in a public school served by a municipality.

A municipality may not provide services, materials or equipment for use in religious courses, devotional exercises, religious training or any other religious activity.

§5725. Health and welfare

A municipality may raise or appropriate money to:

1. Poor. Support the poor;

2. Hospital. Construct, maintain, operate and support a hospital serving its residents;

3. Community health facility. Construct, maintain, operate and support a community health facility which may be used in any manner that will improve health services in the community, including the leasing of space at fair market rates to physicians and other medical personnel;

4. Public health. Employ a public health nurse and conduct a public health program;

5. Blood service. Support a blood service program;

6. Dental hygienist. Employ a dental hygienist;

7. Physician. Subsidize physicians to induce them to settle in the municipality;

8. Pest control. Provide for the extermination and control of insect pests;

9. Ambulance. Provide for a public ambulance and garage for it, or support an ambulance service serving its residents;

10. Veteran rehabilitation. Provide for a local program with or without state coordination for rehabilitating veterans honorably discharged from the Armed Forces of the United States;

11. Dutch elm disease. Determine the presence of the Dutch elm disease and carry out measures for the prevention or control of that disease on public or private grounds;

12. Youth commission. Provide for a local youth commission; and

13. Anti-poverty community action program. Assist and contribute to a community action program organized under the Federal Anti-Poverty Program.

§5726. Development

A municipality may raise or appropriate money to:

1. Board of trade. Support and guarantee obligations of a chamber of commerce or board of trade or a local development corporation, or a chamber of commerce and a local development corporation, or a board of trade and a local development corporation;

2. Advertising. Advertise its resources and attractions or those of the State;

3. Real estate. Purchase real estate and personal property from the Federal Government for municipal purposes;

4. Athletic facilities and recreation. Provide real estate and personal property for recreational purposes and supporting a recreational program or for building, maintaining and operating an athletic facility;

5. Fish. Propagate and protect fish in public waters located wholly or partially within its boundaries.

A. The money appropriated shall be spent by the municipal officers or a person appointed by them; and

B. The person authorized to spend the money shall submit a written report of the expenditure to the municipal legislative body within one year of the date of appropriation;

6. Historical society. Assist a local historical society;

7. History. Write and publish its history;

8. Conventions. Assist conventions;

9. Lands. Provide for and acquire open areas, including marshlands, swamps or wetlands;

10. Mass bus transportation. Aid private companies or public agencies furnishing mass bus transportation services within the municipality;

11. Relocation assistance. Provide funds for relocation assistance services and payments to individuals, families and businesses displaced as a result of the acquisition of real property for a public purpose; and

12. District Court. Construct, equip and furnish a district courthouse within the municipality. The municipality may negotiate a lease with the Chief Judge of the District Court for the use of such a courthouse.

§5727. Celebrations and commemorations

A municipality may raise or appropriate money to:

1. Anniversary. Celebrate any anniversary of its settlement or incorporation and publish the proceedings of the celebration;

2. Holidays. Observe Memorial Day, Veterans Day and any other day set apart for commemoration;

3. Christmas. Decorate for Christmas;

4. Music. Support an organization to provide music for municipal functions and public celebrations; and

5. Memorials for veterans. Provide for monuments and memorials, and real estate suitable for their erection, to honor the veterans of the Armed Forces of the United States who sacrificed their lives in defense of their country.

§5728. General duties and operations

A municipality may raise or appropriate money to:

1. Duties. Perform any of the duties required of it by law; and

2. Authorized by law. Provide for any operations authorized by law which, by their nature, require the expenditure of money.

§5729. Federal and state grants

A municipality's acceptance of grants is governed by this section.

1. Federal. Municipalities may apply for, accept and appropriate federal grants for any purpose for which federal grants are made available to municipalities either directly or through the State.

2. State. Municipalities may apply for, accept and appropriate state grants for any purpose for which state grants are made available to municipalities either directly or through a state agency.

SUBCHAPTER V

TAX BASE SHARING

§5751. Purpose

It is the purpose of this subchapter to increase the likelihood of orderly development and to provide an incentive for coordinated multi-community economic development by permitting 2 or more communities to share their tax base.

§5752. Tax base sharing agreement

1. Agreement. Any 2 or more municipalities may, by a vote of their legislative bodies, enter into an agreement to share all or a specific part of the commercial, industrial or residential assessed valuation located within their respective communities.

2. Specifications. Any such agreement must specify:

A. A duration which must be at least 5 years;

B. A description of the tax base that is to be shared, expressed in terms of type of property or location of property;

C. The formula for sharing the property taxes generated through taxation of the valuation that is to be shared; and

D. Any other necessary and proper matters.

3. Administration. The shared valuation shall be assessed in the municipality in which the property is located. It shall be taxed at the rate applicable in that municipality. The tax so assessed shall be collected by the municipality in which the property is located and the share of that tax, as specified in the tax base sharing agreement, shall be remitted within 15 days after collection to the other municipality or municipalities on the basis of the terms of the agreement to which they are parties.

§5753. Filing of agreement

Before becoming effective, any agreement made under this subchapter must be filed with the clerk of each municipality and with the Secretary of State.

SUBCHAPTER VI

BORROWING

§5771. Revenue anticipation notes; fiscal year

A municipality by vote of its municipal officers may in any municipal year borrow money temporarily and issue notes in anticipation of taxes, and state and federal revenue-sharing money.

1. Amount. The amount borrowed in anticipation of taxes shall not exceed the total tax levy of the preceding municipal year or of the 2 preceding municipal years if together they do not extend beyond a period of 18

months. The amount borrowed in anticipation of state or federal revenue sharing shall not exceed the amount of revenue-sharing entitlements projected by the paying units of government for the current period of entitlement.

2. When paid. The tax anticipation notes shall be paid in the municipal year in which they were made, except during a transition to a new municipal year the notes shall be paid within 18 months of the first day of the municipal year in which they were made. The notes issued in anticipation of taxes shall be paid out of money raised by taxation. The notes issued in anticipation of revenue-sharing money shall be paid out of money received as a result of revenue sharing.

§5772. General obligation securities

A municipality may issue general obligation securities for funding or refunding all or part of its debt and for any purpose for which it may raise money.

1. Anticipatory borrowing. The municipal officers authorized to issue securities may borrow money in anticipation of their sale by issuing temporary notes and renewal notes.

A. The total face amount of temporary notes and renewal notes issued under this subsection may not exceed at any one time outstanding the authorized amount of the securities.

B. The period of anticipatory borrowing under this subsection shall not exceed 3 years and the time within which these securities are to become due shall not be extended by anticipatory borrowing beyond:

(1) The time fixed in the vote authorizing their issue; or

(2) If no term is specified in that vote, beyond the term permitted by law.

2. Invalidity in original borrowing. A security authorized and issued for the purpose of funding or refunding a debt is not invalid because of any invalidity in the original borrowing.

3. Annual installments. Securities may be in serial form payable in annual installments, which need not be equal, the total amount of which shall extinguish the entire issue at maturity. The first such installment must be payable within 5 years and the last such installment must be payable within 30 years after the date the securities are issued.

4. Discretion in municipal officers. In the absence of a contrary provision in the vote authorizing the issuance of securities, the discretion to fix the date, maturities, denomination, interest rate, place of payment, form and other details of the securities and of providing for the sale of the securities is deemed to have been delegated to the municipal officers.

5. Term securities. Term securities may be issued for a period not to exceed 10 years.

6. Call for redemption. Securities may be issued which are subject to call for redemption with or without premium at the election of the municipality before the date fixed for final payment of the securities, provided:

A. Specific authority to issue callable securities is contained in the vote authorizing their issue; and

B. The securities when issued contain provisions setting forth:

(1) The method by which the option to call may be exercised;

(2) The procedure for payment in the event of call; and

(3) The legal effect of making the call.

7. Signatures. Securities issued by a municipality shall, in the absence of a contrary provision in a special Act of the Legislature or in the vote authorizing the securities, be signed by the treasurer and countersigned by a majority of the municipal officers.

8. At least one manual signature; validity. Securities issued by a municipality and coupons, if any, attached to those securities shall be executed in the name of the municipality by the manual or facsimile signatures of the official or officials who are authorized to execute the securities, but at least one signature on each bond or note must be a manual signature. These securities and coupons, if properly executed by the municipal officers who are in office on the date the securities are actually executed, are valid and binding according to their terms, notwithstanding that before the securities are delivered and paid for, any or all such officers have ceased to hold office.

§5773. Borrowing in anticipation of federal or state aid

1. Acceptance of aid. The municipal officers of a municipality may contract for and accept an offer or a grant of federal or state aid, or both, for any purpose for which a municipality may raise or expend money.

2. Borrowing in anticipation. Notwithstanding any provisions in a charter or special Act of the Legislature, but subject to the constitutional limit on indebtedness, any municipality which has contracted for and accepted an offer or a grant of federal or state aid, or both, for a particular project, may by vote of its municipal officers incur indebtedness in anticipation of the receipt of that aid for the particular project by issuing its general obligation notes payable within one year. These notes may be renewed from time to time by the issue of other notes, provided that no notes may be issued or renewed in an amount which at the time of the issuance or renewal exceeds the unpaid amount of the federal or state aid in anticipation of which the notes are issued or renewed.

A. To any extent that the federal or state aid in anticipation of which the notes were issued when received exceeds the amount of the aid remaining to be paid under contract or accepted offer, plus the amount of any outstanding notes issued in anticipation of the aid, it shall be kept in a separate account and used solely for the payment of any outstanding note.

B. Any municipal charter provision requiring the publication of an ordinance, vote, order or resolution of the municipal officers, the holding of a public hearing on those matters or subjecting an ordinance, vote, order or resolution to a referendum does not apply to any borrowing authorized under this section.

3. Funds for educational purposes. The municipal officers of any municipality may borrow in anticipation of any funds or reimbursements that the Legislature has authorized to be paid to municipalities for educational purposes during the municipal year. The notes shall be paid from those funds received for educational purposes from state agencies during the municipal year.

## SUBCHAPTER VII

## RESERVE FUND

### §5801. Establishment

A municipality may establish a reserve fund, consisting of one or more accounts, by appropriating money or by authorizing the transfer of unencumbered surplus funds at the end of any fiscal year for the following purposes:

1. Capital improvement account. Financing the acquisition or reconstruction of a specific, or a type of, capital improvement;

2. Capital equipment account. Financing the acquisition of a specific item or type of capital equipment;

3. Credit reserve account. Providing a reserve which may be applied in periods of financial emergency to assist in continuing its normal operation without increasing the tax rate.

A. The annual appropriation for this purpose may not exceed 5% of the current tax commitment.

B. When the municipal legislative body determines that a financial emergency exists, it may order the withdrawal of the necessary amount from the account; and

4. Sinking fund account. Paying a funded debt.

A. Any assets remaining in a sinking fund account, other than its own bonds, shall be withdrawn from the account when the debt for the payment of which it was established has been refunded. The legislative body may pledge the assets for payment of the new debt or may order them transferred to another account.

### §5802. Trustees

The municipal officers are trustees of the municipal reserve fund.

1. Fund deposited or invested. They shall deposit or invest the fund according to subchapter III-A.

A. Any interest earned or capital gains realized shall accrue to and become part of the fund. Unless otherwise ordered by the municipal legislative body, interest and capital gains shall be prorated among the various accounts.

2. Purpose of expenditure. An expenditure from any account of the fund may be made only for the specific purpose for which the account was established.

3. Transfer of balance. The balance of any account of a reserve fund may be transferred to another reserve account or to surplus when the purpose for which it was established has been accomplished or abandoned.

4. Use of fund for purpose not provided for. Notwithstanding Title 17-A, section 4-A, any municipal official who uses the assets of any account of the reserve fund in any manner or for any purpose other than that provided by the municipality is guilty of a Class C crime and shall be punished by a fine of not more than $2,000 or by imprisonment for not more than 2 years.

## SUBCHAPTER VIII

## ACCOUNTS AND AUDITS

### §5821. Uniform accounting system

Each municipality and each quasi-municipal corporation, including, but not limited to, various types of districts or corporations embracing a portion of a municipality, a single municipality or several municipalities not under the jurisdiction of the Public Utilities Commission, shall:

1. Accounting records. Keep its accounting records in conformity with generally accepted principles of municipal accounting; and

2. Uniform classification. Use a uniform classification for revenue, expenditures and balance sheet accounts.

### §5822. Investigation of accounting and auditing system

The State Auditor may inquire into the accounting and auditing system of any municipality or any quasi-municipal corporation not under the jurisdiction of the Public Utilities Commission. The officers of that municipality or quasi-municipal corporation shall furnish information pertaining to the system in the form prescribed by the State Auditor.

§5823. Annual postaudit

Each municipality and quasi-municipal corporation shall have an annual postaudit made of its accounts covering the last complete fiscal year by the Department of Audit or by a qualified public accountant elected by ballot or engaged by its officers. The officers shall notify the State Auditor of the name and address of the auditor within 30 days after the auditor is elected or engaged. The postaudit shall be conducted on the basis of auditing standards and procedures prescribed by the State Auditor.

1. New postaudit. If the voters of a municipality or quasi-municipal corporation are dissatisfied with the postaudit made by a public accountant, they may obtain a new postaudit by filing a petition with the State Auditor. The petition must be signed by:

A. At least 10% of the voters of a municipality or quasi-municipal corporation with a population under 10,000; or

B. At least 1,000 voters in a municipality or quasi-municipal corporation with a population of 10,000 or over.

Upon the filing of a valid petition, the State Auditor shall order a new postaudit to be made by the Department of Audit. The municipality or quasi-municipal corporation shall pay the expense of this postaudit.

2. Records available to auditor. Whenever a postaudit is being made, all necessary records shall be made available to the auditor.

3. Report. After the postaudit has been completed, the auditor shall submit a report to the officers of the municipality or quasi-municipal corporation.

A. The report shall contain the following items:

(1) A letter of transmittal;

(2) The auditor's comments and suggestions for improving the financial administration;

(3) A comparative balance sheet;

(4) An analysis of surplus;

(5) A statement of departmental operations;

(6) A statement of cash receipts and disbursements, and a bank reconciliation of cash balance;

(7) A statement of property valuation, assessment and collection of taxes; and

(8) A statement of public debt.

B. Within 30 days after the postaudit is completed, the auditor shall send to the State Auditor:

(1) A certified copy of the postaudit report; and

(2) A certified copy of the audit procedural form prescribed by the State Auditor for governmental audits.

C. Any auditor who fails to file the copies required by paragraph B commits a civil violation for which a forfeiture of not more than $100 may be adjudged.

4. Expense. Each municipality and quasi-municipal corporation shall pay the expense of its postaudit.

A. The State Auditor shall certify to the Treasurer of State for collection any unpaid balance due the Department of Audit after a 90-day period from the date of billing has elapsed.

5. Report kept. The complete report of the postaudit shall be kept in the office of the municipality or quasi-municipal corporation.

§5824. Witnesses and records

The State Auditor may subpoena witnesses and records and may examine witnesses under oath in all matters arising under sections 5821 to 5823.

§5825. State Auditor's report on financial matters

The State Auditor shall annually publish statistics and other information relating to the financial affairs of municipalities and quasi-municipal corporations. This information may be printed and distributed as a document separate from the annual fiscal report.

§5826. Penalties

A public official who neglects or refuses to perform any duty imposed by sections 5821 to 5823:

1. Civil violation. Commits a civil violation for which a forfeiture of not more than $100 may be adjudged; and

2. Forfeiture of office. Forfeits his office.

## CHAPTER 225

## MAINE MUNICIPAL BOND BANK

### SUBCHAPTER I

### GENERAL PROVISIONS

§5901. Title

This chapter shall be known and may be cited as the "Maine Municipal Bond Bank Act."

§5902. Declaration of necessity

1. Declaration of purpose. It is declared to be in the public interest and to be the policy of the State:

A. To foster and promote by all reasonable means the provision of adequate capital markets and facilities for borrowing money by counties, municipalities, School Administrative Districts, community school districts, quasi-municipal corporations and for the financing of their respective public improvements and other municipal purposes within the State from proceeds of bonds or notes issued by those governmental units;

B. To assist those governmental units in fulfilling their needs for such purposes by use of creation of indebtedness;

C. To the extent possible, to reduce the costs of indebtedness to taxpayers and residents of the State and to encourage continued investor interest in the purchase of bonds or notes of those governmental units as sound and preferred securities for investment; and

D. To encourage its governmental units to continue their independent undertakings of public improvements and other municipal purposes and the financing thereof and to assist them in those activities by making funds available at reduced interest costs for orderly financing of those purposes, especially during periods of restricted credit or money supply, particularly for those governmental units not otherwise able to borrow for those purposes.

2. Declaration of necessity. It is further declared that current credit and municipal bond market conditions require the exercise of state powers in the interest of its governmental units to further and implement these policies by:

A. Authorizing a state instrumentality to be created as a body corporate and politic to have full powers to borrow money and to issue its bonds and notes to make funds available through the facilities of the instrumentality at reduced rates and on more favorable terms for borrowing by such governmental units through the instrumentality's purchase of the bonds or notes of the governmental units in fully marketable form; and

B. Granting broad powers to the instrumentality to accomplish and to carry out these policies of the State which are in the public interest of the State and of its taxpayers and residents.

§5903. Definitions

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

1. Bank or bond bank. "Bank" or "bond bank" means the Maine Municipal Bond Bank created by section 5951.

2. Bondholder or holder or noteholder. "Bondholder" or "holder" or "noteholder" or any similar term when used with reference to a bond or note of the bank means any person who is the bearer of any outstanding bond or note of the bank registered to bearer or not registered, or the registered owner of any outstanding bond or note of the bank which at the time is registered other than to bearer.

3. Bonds. "Bonds" means bonds of the bank issued under this chapter.

4. Fully marketable form. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a bond counsel of recognized standing in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, provided that the municipal security so executed need not be printed or lithographed nor be in more than one denomination.

5. General fund. "General fund" means the fund created or established as provided in section 6007.

6. Governmental unit. "Governmental unit" means any county, municipality, School Administrative District, community school district or other quasi-municipal corporation within the State.

7. Municipal security. "Municipal security" means a bond or note or evidence of debt issued by a governmental unit and payable from taxes or from rates, charges or assessments, but does not include any bond or note or evidence of debt issued under chapter 213 or Title 10, chapter 110, subchapter IV.

8. Notes. "Notes" means any notes of the bank issued under this chapter.

9. Required debt service reserve. "Required debt service reserve" means the amount required to be on deposit in the reserve fund as prescribed by section 6006.

10. Reserve fund. "Reserve fund" means the Maine Municipal Bond Bank Reserve Fund created or established as provided in section 6006.

11. Revenues. "Revenues" means all fees, charges, money, profits, payments of principal of or interest on municipal securities and other investments, gifts, grants, contributions, appropriations and all other income derived or to be derived by the bank under this chapter.

§5904. Liberal construction of chapter

This chapter shall be construed liberally to effectuate the legislative intent and the purposes of this chapter as complete and independent authority for the performance of each and every act and thing authorized in this chapter and all powers granted in this chapter shall be broadly interpreted to effectuate that intent and purposes and not as a limitation of powers.

SUBCHAPTER II

ESTABLISHMENT AND POWERS

§5951. Creation of bank and membership

1. Bank established. There is established a public body corporate and politic to be known as the "Maine Municipal Bond Bank" in accordance with Title 5, chapter 379. The bank is constituted as an instrumentality of the State exercising public and essential governmental functions. The bank's exercise of the powers conferred by this chapter shall be deemed and held to be an essential governmental function of the State.

2. Board of commissioners; oath. The bank shall consist of a board of 5 commissioners, including:

A. The Treasurer of State who serves as a commissioner ex officio;

(1) The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State;

B. The Superintendent of Banking, who also serves as a commissioner ex officio; and

C. Three commissioners, who must be residents of the State, appointed by the Governor for terms of 3 years.

Before entering upon their duties all commissioners shall take and subscribe to an oath to perform the duties of office faithfully, impartially and justly to the best of their abilities. A record of these oaths shall be filed in the office of the Secretary of State.

3. Terms; vacancy; removal. Each commissioner shall hold office for the term of appointment and until a successor has been appointed and has qualified. A commissioner may be reappointed. Any vacancy occurring other than by the expiration of a term shall be filled by appointment for the unexpired term. The Governor may remove a commissioner from office for cause after a public hearing. The Governor may suspend a commissioner pending the completion of this hearing.

4. Officers of board; exercise of powers. The board of commissioners shall elect one of its members as chairman, one as vice-chairman and shall appoint an executive director who shall also serve as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank constitutes a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

5. Surety bonds required. Before issuing any bonds or notes under this chapter, each commissioner of the bank must execute a surety bond in the penal sum of $25,000 and the executive director of the bank must execute a surety bond in the penal sum of $50,000. The surety bonds must be:

A. Conditioned upon the faithful performance of the duties of the office of the commissioner or executive director;

B. Executed by a surety company authorized to transact business in the State as surety;

C. Approved by the Attorney General; and

D. Filed in the office of the Secretary of State.

At all times after the bank issues any bonds or notes, each commissioner of the bank and the executive director shall maintain the surety bonds in full force and effect. The bank shall bear all the costs of these surety bonds.

6. Compensation. Each public member of the board of commissioners shall be compensated according to Title 5, chapter 379. All commissioners shall be reimbursed for their reasonable expenses incurred in carrying out their duties under this chapter. Notwithstanding any other law, no officer or employee of the State may be deemed to have forfeited or may forfeit their office or employment or any benefits or emoluments of their office or employment due to accepting the office of commissioner of the bank or performing services in that office.

7. Employees. The executive director may employ, upon approval of the board of commissioners, a general counsel, architects, engineers, accountants, attorneys, financial advisors or experts and any other officers, agents and employees who are required and determine their qualifications, terms of office, duties and compensation. The board of commissioners shall fix the duties and compensation of the executive director.

§5952. Conflict of interest

No commissioner of the bank may participate in any decision on any contract entered into by the bank, if the commissioner has any pecuniary interest, direct or indirect in any firm, partnership, corporation or association which is or may be a party to the contract.

Contracts or agreements obtained through properly advertised bid procedures, or the ownership of stock or other interest in any firm, partnership, corporation or association in which the commissioner does not actively participate in day-to-day management shall not be interpreted as a direct or indirect pecuniary interest in violation of this chapter.

§5953. Lending and borrowing powers generally

1. Powers. For the purposes authorized by this chapter, the bank may:

A. Lend money to governmental units through the bank's purchase of municipal securities of governmental units in fully marketable form;

B. Authorize and issue its bonds and notes payable solely from the revenues or funds available to the bank for that purpose; and

C. Otherwise assist governmental units as provided in this chapter.

2. Payment; state not liable. Bonds and notes of the bank issued under this chapter are not in any way a debt or liability of the State and do not constitute a loan of the credit of the State or create any debt or debts, liability or liabilities on behalf of the State or constitute a pledge of the faith and credit of the State. All bonds and notes of the bank issued under this chapter, unless funded or refunded by bonds or notes of the bank, are payable solely from revenues or funds pledged or available for their payment as authorized in this chapter. Each bond and note shall contain on its face a statement to the effect that the bank is obligated to pay the principal or interest and redemption premium, if any, and that neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal of or the interest on the bonds or notes.

3. Expenses. All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided under this chapter. Nothing in this chapter may be construed to authorize the bank to incur any indebtedness or liability on behalf of or payable by the State.

§5954. Corporate powers

1. Powers. The bank is constituted a public body corporate and politic and an instrumentality of the State and shall have perpetual succession. For carrying out the purposes of this chapter, the bank may:

A. Sue and be sued;

B. Adopt and have an official seal and alter the seal at pleasure;

C. Make and enforce bylaws and rules for the conduct of its affairs and business and for the use of its services and facilities;

D. Maintain an office at any place or places within the State that it determines;

E. Acquire, hold, use and dispose of its income, revenue, funds and money;

F. Acquire, rent, lease, hold, use and dispose of other personal property for its purposes;

G. Borrow money and issue its negotiable bonds or notes, provide for and secure the payment of its bonds or notes, provide for the rights of the holders of those bonds and notes and purchase, hold and dispose of any of its bonds or notes;

H. Fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities;

I. Accept gifts or grants of property, funds, money, materials, labor, supplies or services from the United States or the State or any other state or agencies or departments of those entities, or from any governmental unit or any person, and carry out the terms or provisions or make agreements with respect to any such gifts or grants, and do any and all things necessary, useful, desirable or convenient in connection with procuring, accepting or disposing of those gifts or grants;

J. Do and perform any acts and things authorized by this chapter under, through or by means of its officers, agents or employees or by contracts with any person;

K. Make, enter into and enforce all contracts or agreements necessary, convenient or desirable for the purposes of the bank or pertaining to any loan to a governmental unit or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution or carrying out of any of its powers under this chapter;

L. Purchase or hold municipal securities of governmental units at such prices and in such manner as the bank considers advisable, and sell municipal securities acquired or held by it at such prices without relation to cost and in such manner as the bank considers advisable;

M. Invest any funds or money of the bank not then required for loan to governmental units and for the purchase of municipal securities in the same manner as permitted for the investment of funds belonging to the State or held in the State Treasury, except as otherwise permitted or provided by this chapter;

N. Fix and prescribe any form of application or procedure to be required of a governmental unit for the purpose of any loan or the purchase of its municipal securities, and fix the terms and conditions of any such loan or purchase and to enter into agreements with governmental units with respect to any such loan or purchase; and

O. Do all acts and things necessary, convenient or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

§5955. Additional powers

In order to carry out the purposes and provisions of this chapter, the bank, in addition to any powers granted to it elsewhere in this chapter, may:

1. Loans. Consider, in connection with any loan to a governmental unit:

A. The need, desirability or eligibility of the loan;

B. The ability of the governmental unit to secure borrowed money from other sources and the costs of alternative financing; and

C. The particular public improvements or purpose to be financed by the municipal securities to be purchased by the bank;

2. Charges. Impose and collect charges for its costs and services in review or consideration of any proposed loan to a governmental unit or purchase of municipal securities of the governmental unit, whether or not the loan is made or the municipal securities are purchased;

3. Purchase. Fix and establish any and all terms and provisions with respect to any purchase of municipal securities by the bank, including:

A. Dates and maturities of the bonds;

B. Provisions as to redemption or payment before maturity; and

C. Any other matters in connection with the bank's purchase of municipal securities which are necessary, desirable or advisable in the judgment of the bank;

4. Hearings. Conduct examinations and hearings and hear testimony and take proof, under oath or affirmation, at public or private hearings on any matter material for its information and necessary to carry out this chapter;

5. Subpoenas. Issue subpoenas requiring the attendance of witnesses and the production of books and papers relating to any hearing before the bank, or before one or more of the commissioners of the bank appointed by it to conduct that hearing;

6. Contempt. Apply to the Superior Court in Kennebec County, to have punished for contempt any witness who:

A. Refuses to obey a subpoena;

B. Refuses to be sworn or affirmed to testify; or

C. Is guilty of any contempt after summons to appear;

7. Insurance. Procure insurance against any losses in connection with its property, operations or assets in such amounts, from such amounts and from such insurers as it considers desirable; and

8. Modification. Consent to any modification with respect to rates of interests, time and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party, to the extent permitted under its contracts with the holders of bonds or notes of the bank.

§5956. State services

1. State assistance authorized. All state officers, departments, boards, agencies, divisions and commissions may provide any service to the bank that is:

A. Requested by the bank; and

B. Within the area of their governmental functions as established by law.

2. Study or review requests. All state officers, departments, boards, agencies, divisions and commissions shall promptly comply with any reasonable request made by the bank under subsection 1, as to the making of any study or review as to:

A. The desirability, need, cost or expense with respect to any such public project, purpose or improvement;

B. The financial feasibility of the project; or

C. The financial or fiscal responsibility or ability in connection with the project of any governmental unit applying to the bank for a loan and for the bank's purchase of municipal securities to be issued by the governmental unit.

3. Cost of services. At the request of the officer, department, board, agency, division or commission providing the service, the bank shall pay the cost and expense of any services requested by the bank.

§5957. Allocation of state ceiling

By rulemaking under Title 5, chapter 375, subchapter II, the bank may establish a process for allocation and carry forward of that portion of the state ceiling on issuance of tax-exempt bonds allocated to the bank under Title 10, chapter 9.

§5958. Prohibited acts and limitation of powers

The bank may not:

1. Loans. Make loans of money to any person other than a governmental unit or purchase securities issued by any person other than a governmental unit or for investment, except as provided in this chapter;

2. Banking business. Emit bills of credit, accept deposits of money for time or demand deposit, administer trust, engage in any form or manner in, or in the conduct of, any private or commercial banking business or act as a savings bank or savings and loan association; or

3. Bank and trust company. Be or constitute a bank or trust company within the jurisdiction or under the control of the Bureau of Banking, the Superintendent of Banking or the comptroller of the currency of the United States or the United States Department of the Treasury.

Nothing in this chapter may be construed to authorize or to empower the bank to be or to constitute a dealer in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States or of the State or of any other state or jurisdiction, domestic or foreign.

## SUBCHAPTER III

## FINANCIAL OPERATION

### §6001. Budget

Not later than June 1st of each year the bank shall prepare and file in the office of the Bureau of the Budget a budget of its operating expenses for the ensuing fiscal year. This budget:

1. Quarterly requirements. Shall be prepared on the basis of quarterly requirements so that it will be possible to determine from the budget the operating expenses for each quarter of the year;

2. General categories. Shall set forth the general categories of anticipated expenditures and the amount on account of each;

3. Reserves. Shall include provisions for reserve for contingencies and for overexpenditures; and

4. Others. May set forth any additional material that the bank determines.

### §6002. Annual report

On or before the last day of December in each year, the bank shall make an annual report of its activities for the preceding fiscal year to the Governor. This report shall set forth a complete operating and financial statement covering its operations during the year. The bank shall have an audit of its books and accounts made at least once in each year by certified public accountants. The cost of the audit is considered an expense of the bank. A copy of the audit shall be filed with the Treasurer of State.

### §6003. Bonds and notes of the bank

1. Bonds authorized. The bank may issue its bonds from time to time in any principal amounts that it considers necessary to provide funds for any of the purposes authorized by this chapter, including:

A. The making of loans;

B. The payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds issued by the bank, whether the bonds or interest to be funded or refunded have or have not become due or subject to redemption before maturity in accordance with their terms;

C. The establishment or increase of reserves to secure or to pay bonds or interest on the bonds; and

D. All other costs or expenses of the bank incident to and necessary or convenient to carry out its corporate purposes and powers.

2. Bonds as general obligation bonds; additional security. Except as expressly provided otherwise in this chapter or by the bank, every issue of bonds shall be general obligations of the bank payable out of any revenues or funds of the bank, subject only to any agreements with the holders of particular bonds pledging any particular revenues or funds. General obligation bonds may be additionally secured by a pledge of any grants, subsidies, contributions, funds or money from the Federal Government, the State, any governmental unit, any person or a pledge of any income or revenues, funds or money of the bank from any source.

3. Bank notes authorized. The bank may issue its notes for any corporate purpose of the bank from time to time, in any principal amounts that it considers necessary and renew or pay and retire or refund the notes from the proceeds of bonds or of other notes, or from any other funds or money of the bank available or to be made available for that purpose in accordance with any contract between the bank and the noteholders, not otherwise pledged.

A. The notes shall be issued in the same manner as bonds. The notes and the resolution or resolutions authorizing the notes may contain any provisions, conditions or limitations which the bonds or a bond resolution of the bank may contain.

B. Unless provided otherwise in any contract between the bank and the noteholders, and unless the notes have been otherwise paid, funded or refunded, the proceeds of any bonds of the bank issued, among other things, to fund such outstanding notes, shall be held, used and applied by the bank to the payment and retirement of the principal of these notes and the interest due and payable on the notes.

C. The bank may make contracts for the future sale from time to time of the notes, under which the purchaser is committed to purchase the notes from time to time on terms and conditions stated in the contracts. The bank may pay any consideration that it determines proper for these commitments.

4. Bonds and notes made negotiable instruments. Whether or not the bonds or notes of the bank are of such form and character as to be negotiable instruments un-

der the Uniform Commercial Code, article 8, the bonds and notes shall be and are made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds and notes for registration.

5. General characteristics. Bonds or notes of the bank shall be authorized by resolution of the bank and may be issued in one or more series. The resolution or resolutions may provide:

A. The date or dates the bonds or notes will bear;

B. The time or times the bonds or notes will mature;

C. The rate or rates of interest per year the bonds or notes will bear;

D. The denomination or denominations of the bonds or notes;

E. The form of the bonds or notes, either coupon or registered;

F. The conversion or registration privileges carried by the bonds or notes;

G. The rank or priority of the bonds or notes;

H. The manner of execution of the bonds or notes;

I. The sources, medium and place or places, within or outside the State, of payment; and

J. The terms of redemption of the bonds or notes, with or without premium.

6. Manner of sale. Bonds or notes of the bank may be sold at public or private sale at the time or times and at the price or prices determined by the bank.

7. No further conditions required. Bonds or notes of the bank may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

8. Payment of notes. The bank may from time to time issue its notes as provided under this chapter and pay and retire or fund or refund those notes from proceeds of bonds or of other notes, or from any other funds or money of the bank available or to be made available for those purposes in accordance with any contract between the bank and the noteholders. Unless provided otherwise in any contract between the bank and the holders of notes, and unless the notes have been otherwise paid, funded or refunded, the proceeds of any bonds of the bank issued among other things, to fund those outstanding notes, shall be held, used and applied by the bank to the payments and retirement of the principal of the notes and the interest due and payable on the notes.

§6004. Resolutions and indentures

1. Trust agreement or trust indenture authorized. In any resolution of the bank authorizing or relating to the issuance of any bonds or notes, the bank, in order to secure the payment of those bonds or notes may, by provisions in the resolution, enter into any trust agreement or trust indenture with a corporate trustee. That trustee may be any trust company or national banking association or state bank, within or outside the State, having the powers of a trust company. The provisions in the resolution constitute covenants by the bank and contracts with the holders of the bonds or notes.

2. Provisions of indenture, agreement or resolution. The trust agreement, indenture or the resolution providing for the issuance of the bonds or notes may pledge or assign the revenues of the bank, and may contain any provisions for protecting and enforcing the rights and remedies of the holders of the bonds and notes that are reasonable and proper and not in violation of law, including the custody, safeguarding and application of all money. The trust agreement may set forth the rights and remedies of the holders of the bonds and notes and of the trustee, and may restrict the individual right of action by the holders. The bank may provide by the trust indenture for the payment of the proceeds of the bonds and notes and the revenues to the trustee under the trust indenture or other depository, and for the method of disbursement of those proceeds and revenues, with any safeguards and restrictions that it determines.

3. Expenses; no separate trustee for holders. All expenses incurred in carrying out a trust indenture under this section may be treated as a part of the operating expenses of the bank. If the bonds are secured by a trust indenture, the bondholders may not appoint a separate trustee to represent them.

§6005. Intent of pledge

Any pledge of revenue or other money made by the bank is valid and binding when the pledge is made. The revenues or other money so pledged and thereafter received by the bank is immediately subject to the lien of the pledge without any physical delivery of the revenues or other money. The lien of any such pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise against the bank, regardless of whether those parties have notice of the pledge. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the bank.

§6006. Reserve fund

1. Reserve fund. The bank shall establish and maintain a reserve fund called the "Maine Municipal Bond Bank Reserve Fund" in which there shall be deposited

all money appropriated by the State for the purpose of that fund, all proceeds of bonds required to be deposited in the fund by terms of any contract between the bank and its bondholders or any resolution of the bank with respect to the proceeds of bonds, any other money or funds of the bank which it determines to deposit in the fund and any other money made available to the bank only for the purposes of the fund from any other source or sources.

A. Money in the reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds and sinking fund payments mentioned in this chapter with respect to bonds as the interest, principal and sinking fund payments become due and payable; and for the retirement of bonds, including the payment of any redemption premium required to be paid when any bonds are redeemed or retired before maturity. Money may not be withdrawn from the fund if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for:

(1) Payment of interest then due and payable on bonds;

(2) Payment of the principal of bonds then maturing and payable;

(3) Sinking fund payments mentioned in this chapter;

(4) The retirement of bonds in accordance with the terms of any contract between the bank and its bondholders; and

(5) The payment for which other money of the bank is not then available for payment of interest, principal or sinking fund payments or the retirement of bonds in accordance with the terms of any such contract.

B. As used in this chapter "required debt service reserve" means, as of any date of computation, the amount or amounts required to be on deposit in the reserve fund as provided by resolution of the bank. The required debt service reserve shall be, as of any date of computation, an aggregate amount equal to at least the largest amount of money, required by the terms of all contracts between the bank and its bondholders to be raised in the then current or any succeeding calendar year for:

(1) The payment of interest on and maturing principal of that portion of outstanding bonds, the proceeds of which were applied solely to the purchase of municipal securities; and

(2) Sinking fund payments required by the terms of any such contracts to sinking funds established for the payment or redemption of those bonds.

The required debt service reserve shall be calculated on the assumption that the bonds will cease to be outstanding after the date of the computation because of the payment of those bonds at their respective maturities and the payments of the required money to sinking funds and the application of those sinking funds in accordance with the terms of all such contracts to the retirement of the bonds.

2. Transfer. Money in the reserve fund at any time in excess of the required debt service reserve, whether because of investment or otherwise, may be withdrawn at any time by the bank and transferred to any other fund or account of the bank.

3. Investment. Money in the reserve fund may be invested at any time in the same manner as permitted for the investment of funds belonging to the State or held in the treasury.

4. Reserve. Notwithstanding any other provision of this chapter, the bank may not issue any bonds unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and the bonds to be issued, provided that nothing in this chapter prevents or precludes the bank from satisfying this requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The bank may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet any higher or additional reserve that may be fixed by the bank with respect to the fund.

5. Restoration. In order to ensure the maintenance of the required debt service reserve in the reserve fund, there shall be annually appropriated and paid to the bank for deposit in the fund, the sum, if any, certified by the chairman of the bank under paragraph A.

A. On or before December 1st of each year, the chairman shall make and deliver to the Governor a certificate stating the sum, if any, required to restore the reserve fund to an amount equal to the required debt service reserve and the sum or sums so certified shall be appropriated and paid to the bank during the then current state fiscal year.

6. Valuation. In computing the amount of the required debt service reserve, investments held as a part of the reserve shall be valued in the manner provided in the bond resolution.

§6007. General fund

1. General fund established; money deposited. The bank shall establish and maintain a fund called the "general fund" which shall consist of and in which there shall be deposited:

A. Fees received or charges made by the bank for the use of its services or facilities;

B. Any money which the bank transfers to the general fund from the reserve fund under section 6006, subsection 2;

C. Money received by the bank as:

(1) Payments of principal of or interest on municipal securities purchased by the bank;

(2) Proceeds of the sale of any municipal securities or investment obligations of the bank; and

(3) Proceeds of the sale of bonds or notes of the bank and required under the terms of any resolution of the bank or contract with the holders of its bonds or notes to be deposited in the general fund;

D. Any money required under the terms of any resolution of the bank or contract with the holders of its bonds or notes to be deposited in the general fund; and

E. Any money transferred to the general fund from any other fund or made available by the State for the purpose of the general fund or for the operating expenses of the bank.

2. Use of general fund. Any money in the general fund may, subject to any contracts between the bank and its bondholders or noteholders, be transferred to the reserve fund. If it is not so transferred, the money shall be used to pay the principal of or interest on bonds or notes of the bank when the principal or interest becomes due and payable, whether at maturity or upon redemption, including the payment of any premium upon redemption before maturity.

A. Any money available in the general fund may also be used for:

(1) The purchase of municipal securities;

(2) The purchase or redemption of its bonds or notes. Any such bonds purchased for retirement shall be thereupon cancelled; and

(3) All other purposes of the bank including the payment of its operating expenses.

(a) No amount may be expended for the bank's operating expenses in any year out of the general fund or from any account in that fund established for that purpose, in excess of the amount provided for the bank's operating expenses by the annual budget for that year or any amendment of the annual budget in effect at the time of the payment or expenditure for operating expenses.

B. The bank may create and establish in the general fund any accounts which in the opinion of the bank are necessary, desirable or convenient for the purposes of the bank under this chapter.

(1) The bank may establish an account in the general fund for the purpose of paying its operating expenses.

§6008. Additional reserves and funds

The bank may establish any additional and further reserves or any other funds or accounts that are, in its discretion, necessary, desirable or convenient to further the accomplishment of the purposes of the bank to comply with the provisions of any agreement made by or any resolution of the bank.

§6009. Application of money

Money or investments in any fund or account of the bank established or held for any bonds, notes, indebtedness or liability to be paid, funded or refunded by the issuance of bonds or notes shall, unless the resolution authorizing the bonds or notes provides otherwise, be applied to the payment or retirement of those bonds, notes, indebtedness or liability, and to no other purpose. If there is any money in any such fund or account in excess of the amount required for the payment, funding or refunding, that money may be removed from the fund or account, but only to the extent that the money or investments remaining in the fund or account are not less than the outstanding bonds, notes, indebtedness or liability of the bank to be paid, funded or refunded and for which the fund or account was established or held.

§6010. Purchase of bonds and notes of bank

The bank may purchase bonds or notes of the bank out of any funds or money of the bank available for that purpose. The bank may hold, cancel or resell these bonds or notes subject to and in accordance with agreements with holders of its bonds or notes.

§6011. Bonds as legal investments and security

Notwithstanding any restrictions contained in any other law, the State and all public officers, governmental units and agencies of the State, all national banking associations, state banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or notes issued by the bank under this chapter. These bonds or notes are authorized security for any and all public deposits.

§6012. Tax exemptions

All property of the bank and all bonds and notes issued under this chapter are deemed to constitute essential public and governmental purposes and the property

and the bonds and notes so issued, their transfer and the income from those bonds and notes, including any profits made on the sale of the bonds or notes, are at all times exempt from taxation within the State.

§6013. Insurance or guaranty

1. Insurance or guaranty authorized. The bank may obtain any insurance or guaranty from any department or agency of the United States or nongovernmental insurer, as to, or of, or for, the payment or repayment of, interest or principal, or both, or any part of the interest and principal on:

A. Any bonds or notes issued by the bank; or

B. Any municipal securities of governmental units purchased or held by the bank under this chapter.

2. Contracts and agreements for insurance. Notwithstanding any other provisions of this chapter, the bank may enter into any agreement or contract with respect to any insurance or guaranty under this section, except to the extent that the agreement or contract would in any way impair or interfere with the bank's ability to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the bank.

§6014. Federal aid

The Treasurer of State may receive from the Federal Government any amount of money as appropriated, allocated, granted, turned over or in any way provided for the purposes of the bank or this chapter. Unless otherwise directed by federal authority, these amounts shall be credited to and deposited in the General Fund and are available to the bank.

The Treasurer of State shall pay and deposit in the General Fund and make available to the bank, any funds or money in the treasurer's custody or control whether the funds or money is available because of any grant, allocation or appropriation by the Federal Government or the State or any state agency to assist any governmental unit in paying its municipal securities owned or held by the bank, or required by the terms of any other law to be paid to holders or owners of municipal securities upon failure or default of a governmental unit to pay the principal of or interest on its municipal securities when due and payable, to the extent that any such funds or money is applicable with respect to municipal securities of a particular governmental unit which are then owned or held by the bank and as to which that governmental unit has failed or defaulted to make payment of principal or interest as and when due and payable.

To the extent that the Treasurer of State is the custodian of any funds or money due or payable to a governmental unit at any time after written notice to the Treasurer of State from the bank to the effect that the governmental unit has not paid or is in default as to the payment of principal of or interest on any municipal securities of that governmental unit then held or owned by the bank, the Treasurer of State shall withhold the payment of such funds or money from the governmental unit until the amount of the principal or interest then due and unpaid has been paid to the bank, or the Treasurer of State has been advised that arrangements, satisfactory to the bank, have been made for the payment of the principal and interest.

§6015. Undertakings of depositories

1. Undertakings; securities as collateral. All national banking associations or state banks, trust companies, savings banks, investment companies and other persons carrying on a banking business may give to the bank a good and sufficient undertaking with sureties approved by the bank to the effect that the national banking association or state bank or banking institution, as described, will faithfully keep and pay over to the order of or upon the warrant of the bank or its authorized agent, all the funds deposited with it by the bank and agreed interest on those funds under this chapter, at such times or upon such demands as are agreed with the bank.

A. Instead of those sureties, the national banking association or state bank or banking institution as described may deposit with the bank or its authorized agent or any trustee for the bank or for the holders of any bonds, as collateral, any securities approved by the bank.

2. Deposit agreement. The deposits of the bank may be evidenced by an agreement in the form and upon the terms and conditions agreed upon by the bank and the national banking association or state bank or banking institution.

§6016. Purchase of municipal securities

1. Contracts with bank; interest; terms; fees. Notwithstanding any general law or special Act applicable to or constituting any limitation on the maximum rate of interest per year payable on bonds or notes, or as to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, a governmental unit may contract to pay interest on, or an interest cost per year for, money borrowed from the bank and evidenced by its municipal securities purchased by the bank. Every governmental unit may contract with the bank concerning the terms and conditions of the loan or purchase. Every governmental unit may pay fees and charges required to be paid to the bank for its services.

2. Bonds and notes; sale; general characteristics. Notwithstanding any general or special Act or other statute applicable to or constituting any limitation on the sale of bonds or notes, any governmental unit may sell bonds or notes to the bank without limitation as to denomination. As provided in the proceedings of the governing body of the governmental unit under which the bonds and notes are authorized to be issued, those bonds and notes may:

A. Be fully registered, registerable as to principal only or in bearer form;

B. Bear interest at the rate or rates that are determined in accordance with this section;

C. Be evidenced in any manner that is determined;

D. Contain other provisions not inconsistent with this section; and

E. Be sold to the bank without advertisement at any price or prices that are determined.

3. Exchange of bonds. The following provisions apply to the exchange of bonds.

A. Subject to the limitations in paragraphs B and C, the governing body of the governmental unit may provide for the exchange, in the manner provided in the proceedings authorizing the issuance of bonds, of:

(1) Coupon bonds for fully registered bonds;

(2) Fully registered bonds for coupon bonds; and

(3) Any such bonds after issuance for bonds of larger or smaller denominations.

B. The bonds in changed form or denominations must:

(1) Be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid; and

(2) Bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged.

C. When any exchange is made under this section the bonds surrendered by the holders at the time of the exchange shall be cancelled. The exchange shall be made only at the request of the holders of the bonds to be surrendered. The governmental unit may require the bondholders to pay all expenses incurred in connection with the exchange. If any of the officers whose signatures appear on the bonds or coupons cease to be officers before the bonds are delivered, the signatures are valid for all purposes, the same as if they had remained in office.

§6017. Remedies on default of municipal securities

If a governmental unit defaults in the payment of interest on or principal of any municipal securities owned or held by the bank when due and payable by the governmental unit, the bank shall proceed to enforce payment under applicable provisions of law of the interest or principal or other amounts then due and payable.

§6018. Purchase of anticipation notes

The bank may purchase notes of any governmental unit issued in anticipation of the sale of municipal securities in an amount not exceeding at any one time outstanding the authorized amount of those municipal securities. The issue and sale of those anticipation notes must be in accordance with the laws applying to the governmental unit issuing the notes. In connection with any such purchase of anticipation notes, the bank may by agreement with the governmental unit impose any terms, conditions and limitations that in its opinion are proper in the circumstances and for the purposes and security of the bank and the holders of its bonds or notes. The bank shall enforce all the rights, remedies and provisions of law that it has under this section or provided elsewhere in this chapter or as otherwise provided by law.

§6019. Agreements with financial institutions

1. Agreements. The bank may enter into any agreements or contracts with any commercial banks, trust companies, banking or other financial institutions within or outside the State that are necessary, desirable or convenient in the opinion of the bank for the following purposes:

A. To provide services to the bank in connection with the care, custody or safekeeping of municipal securities or other investments held or owned by the bank;

B. To provide services to the bank in connection with the payment or collection of amounts due and payable as to principal or interest;

C. To provide services to the bank in connection with the delivery to the bank of municipal securities or other investments purchased by it or sold by it; and

D. To pay the cost of services provided under this section.

2. Requiring security. The bank may, in connection with any of the services provided by commercial banks, trust companies or banking or other financial institutions, as to the custody and safekeeping of any of its municipal securities or investments, require security in the way of collateral bonds, surety agreements or security agreements in the form and amount that, in the opinion of the bank, is necessary or desirable for the purpose of the bank.

§6020. Form of municipal securities and investments

All municipal securities or other investments of money of the bank permitted or provided for under this chapter shall at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the bank. All municipal securities at any time purchased, held or owned by the bank must upon delivery to the bank be accompanied by documentation including:

1. Bond opinion. Approving bond opinion;

2. Signature certification. Certification and guaranty as to signatures;

3. Litigation certification. Certification as to the absence of litigation; and

4. Other documentation. Any other or further documentation that is required from time to time in the municipal bond market.

§6021. Presumption of validity

After issuance, all bonds or notes of the bank are conclusively presumed to be fully authorized and issued under the laws of the State, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution or delivery by the bank.

To the extent that this chapter is inconsistent with or in conflict with any private or special Act or the charter of any district or other quasi-municipal corporation, this chapter shall be effective and such other private or special Act or charter of any district or other quasi-municipal corporation does not apply. This chapter is not intended to affect the general laws relating to municipalities, Part 2, in any way.

§6022. Exemption of property from execution sale

All property of the bank is exempt from levy and sale by virtue of an execution. No execution or other judicial process may issue against the bank's property nor may any judgment against the bank be a charge or lien upon its property, provided that nothing in this chapter may apply to or limit the rights of the holder of any bonds or notes to pursue any remedy for the enforcement of any pledge or lien given by the bank on its revenues or other money.

1. Action on resolution. Any action or proceeding in any court to set aside a resolution authorizing the bank's issuance of bonds or notes under this chapter or to obtain any relief upon the ground that the resolution is invalid must be commenced within 30 days after the bank adopts the resolution. After this period of limitation expires, no right of action or defense founded upon the invalidity of the resolution or any of its provisions may be asserted nor may the validity of the resolution or any of its provisions be open to question in any court on any ground.

§6023. Remedies of holders of bonds and notes

1. Trustee. If the bank defaults in the payment of principal of or interest on any issue of bonds after the principal and interest become due, whether at maturity or upon call for redemption, and that default continues for a period of 30 days, or if the bank fails or refuses to comply with this chapter or defaults in any agreement made with the holders of any issue of bonds, the holders of 25% in aggregate principal amount of bonds then outstanding, by instrument or instruments filed in the office of the clerk of courts of the County of Kennebec and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the bondholders for the purposes provided.

2. Duties of trustee. The trustee appointed under subsection 1 may, and upon written request of the holders of 25% in principal amount of all such bonds then outstanding shall, in the trustee's or the bank's own name:

A. By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the bank to collect rates, charges and other fees; and to collect interest and amortization payments on municipal securities held by it adequate to carry out any agreement as to, or pledge of, those rates, charges and other fees and of such interest and amortization payments; and to require the bank to carry out any other agreements with the bondholders and to perform its duties under this chapter;

B. Bring suit upon the bonds;

C. By action or suit, require the bank to account as if it were the trustee of an express trust for the bondholders; and

D. By action or suit in equity, enjoin any acts or omissions which may be unlawful or in violation of the rights of the bondholders.

3. Additional powers of trustee. The trustee shall also have all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this chapter or incident to the general representation of bondholders in the enforcement and protection of their rights.

4. Jurisdiction. The Superior Court has jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders. The venue of any such suit, action or proceeding shall be laid in the County of Kennebec.

5. Notice. Before declaring the principal of bonds due and payable, the trustee shall first give 30 days' notice in writing to the bank.

§6024. Personal liability

Neither the commissioners of the bank nor any person executing bonds or notes issued under this chapter may be liable personally on those bonds or notes by reason of the issuance of the bonds or notes.

## CHAPTER 229

## MUNICIPAL FINANCE BOARD

§6101. Membership

The Board of Emergency Municipal Finance, as authorized by Title 5, chapter 379, subsection 8, and referred to in this chapter as the "board," shall be composed of the 3 persons who hold the offices of the Commissioner of Finance, Treasurer of State and State Tax Assessor. The successor of any person to any of these offices immediately becomes a member of the board and the person who formerly held that office ceases to be such a member. The person holding the office of State Tax Assessor is the chairman of the board. The members of the board shall be compensated according to the provisions of Title 5, chapter 379.

§6102. Purpose

The purpose of establishing the board is to enable municipalities that have fallen into financial difficulties to receive assistance from the State and to be reestablished on a sound financial basis and to assure the State of the collection of the taxes due from those municipalities to the State.

§6103. General powers; construction

1. General powers. All powers and duties necessary to carry out the purposes set forth in this chapter are conferred on the board.

2. Liberal construction. This chapter shall be liberally construed to carry out the intent expressed in section 6102.

§6104. Availability of state funds for public assistance programs

1. Application for funds. Any municipality, which is financially unable to provide for its direct relief and work programs or its contributory share of public assistance programs of any nature, may apply to the Department of Human Services for funds from the State for that purpose. The municipal officers shall apply in writing and shall send a copy of the application to the Board of Emergency Municipal Finance.

2. Determination of eligibility. When the application is received, the Department of Human Services and the State Auditor shall determine if the municipality or unorganized territory is unable to provide for its direct relief and work programs or its contributory share of public assistance programs of any nature.

3. Provision of state funds. Through the Department of Human Services, the State may provide for direct relief and work programs or the necessary share for the municipality of its contributory share of public assistance programs of any nature in the municipality. No such funds may be expended until the Board of Emergency Municipal Finance takes over the municipality's affairs.

§6105. Audit

If a municipality falls one year and 6 months behind in the payment of its taxes to the State in full or in part, or defaults on any bond issue or payment of interest due on a bond issue, or neglects to pay school and other salaries due and has received funds from the State in support of its poor, the board may:

1. Audit or investigation. Have an audit made of the financial condition of the municipality at the municipality's expense, or an investigation of the financial affairs of the municipality that will reveal whether or not its affairs are in such condition that the interest of the State and public necessity require, in the board's judgment, that its affairs be taken over and administered under this chapter; and

2. Other investigation. Make any other investigation of the affairs of that municipality that it considers wise to determine the reason for the failure to pay such taxes and indebtedness and the reason for the need for state relief of its poor.

Whenever any municipality applies to the State under section 6104 for funds in support of its poor, the board shall have the audit and investigation provided for in this section performed.

§6106. Board may take over local government

1. Board may take over local government. If, after having made the audit or investigation provided for in section 6105, the board decides by a majority vote that the delinquency is not due to disbursements for emergency relief which could not reasonably be anticipated or to other unavoidable misfortune, the board may take over and regulate the administration of the government of the municipality and the management of the municipality's financial affairs and administer the municipality's government and financial affairs to the exclusion of or in cooperation with any other local government or governmental agency, as otherwise provided by law.

2. Appointment of commissioner or commissioners. For municipalities with a population under 5,000, the board may appoint one person as commissioner. For municipalities with a population of 5,000 or over, the board may appoint 3 persons as commissioners, one of whom the board shall designate as chairman. The commissioner or commissioners shall act under the direction of the board with relation to the government and management of the governmental and financial affairs of the municipality and are responsible to the board.

§6107. Powers and duties of commissioners

1. Employees; compensation; appropriation. The commissioner or commissioners appointed under section 6106 may employ any experts, counsel and other assistants and incur any other expenses that they consider necessary, subject to the control of the board. The municipality shall:

A. Appropriate each year a sum sufficient to cover those expenses and a reasonable compensation, set by the board, for the commissioner or commissioners; and

B. Pay this sum upon requisition of the commissioner or commissioners.

The commissioner or commissioners have the same right to incur expenses in anticipation of its appropriation as if it were a regular department of the municipality. If no such appropriation is made, the commissioner or commissioners may expend the amount found necessary under this section. That payment is a lawful obligation of the municipality.

2. Supervision of financial affairs. The commissioner or commissioners shall supervise the municipality's financial affairs. No appropriation may be made and no debt incurred, except with the written approval or upon the written recommendation or requisition of the commissioner or commissioners. No department or officer of the municipality may expend any money or incur any liability, except with the written approval of the commissioner or commissioners. The commissioner or commissioners may from time to time authorize in writing any department or officer of the municipality to make expenditures or incur liabilities without the commissioner or commissioners' written approval until further notice. The commissioner or commissioners may make recommendations in writing to any department or officer of the municipality.

§6108. Temporary officials

1. Appointment by commissioners. The commissioner or commissioners may declare the offices of auditor, treasurer, collector and assessors or any other offices in the municipality vacant temporarily and appoint successors to any of the offices to serve at the will of the commissioner or commissioners. The appointees shall receive the compensation set by the commissioner or commissioners and the former incumbents shall receive no compensation during their absence from office.

2. Appointment by board. The choice of managers, officers and agents shall be and remain with the board and their compensation shall be set by the board, any other law to the contrary notwithstanding. The former incumbents shall receive no compensation during their absence from office. The board may appoint the commissioner or commissioners to serve as any official in the municipalities and fix the compensation for serving in that capacity. If the board considers it advisable, the board may appoint one officer, commissioner or agent to administer 2 or more municipalities.

§6109. Loans and assessments

1. Loan; commissioners' certificates; borrowing from the State. After having taken over the administration of government and control of the financial affairs of any municipality under section 6106, the board, through the commissioner or commissioners in charge of that municipality, may make temporary loans to the extent of the constitutional debt limit of the municipality. The commissioner or commissioners may:

A. Issue negotiable commissioners' certificates which shall be a preferred claim against the assets of the municipality operated by the commissioner or commissioners; and

B. Borrow from the State, if and when an amendment to the Constitution of Maine is adopted authorizing the loan, in an amount sufficient:

(1) To pay the outstanding state taxes of the municipality;

(2) To pay any expenses of the board that are allocated to the municipality; and

(3) For other lawful purposes.

These obligations must be signed by the commissioner or commissioners and otherwise shall be issued in the same manner and form as provided by law upon the terms determined by the board, and thereby to become the valid debt of the municipality.

2. Commissioners' authority. In issuing temporary commissioners' certificates or any other acts pursuant to their duties in connection with the government of any municipality, the board has the same authority as is vested in the municipal officers and shall further have the right to issue its certificates as if authorized by the vote of the inhabitants of any such municipality at a regular election called for that purpose.

3. Assessments and collection; statute of limitations tolled. The board may make assessments upon the property in the municipality and may collect the same to pay deficiencies and accounts previously contracted by the municipality.

During the period of the control by the commissioner or commissioners, the statute of limitations shall not run on any obligations of the municipality.

§6110. Duration of power of board

The board shall continue in charge of the government and financial affairs of the municipality until:

1. Obligations paid. Its taxes due the State, or loans made to pay those taxes, or expenses or obligations incurred by the commissioner or commissioners appointed under section 6106 or the board, have been paid; and

2. Municipality may resume control. In the opinion of the commissioner or commissioners or the board, the financial affairs of the municipality may be resumed under local control.

§6111. Complaint; notice

1. Commissioners may file complaint. If the commissioner or commissioners who are in charge of the affairs of any municipality under this chapter believe that the municipality has incurred, prior to the date on which the board took over the administration of the municipality's affairs, debts and obligations in excess of the debt limit fixed by the Constitution of Maine for the municipality, and, except for section 6109 the municipality would be subjected to a multiplicity of actions, the commissioner or commissioners may bring a complaint in the name of the inhabitants of the municipality in the Superior Court in the county in which the municipality is located against all of the known persons holding any debts or obligations against the inhabitants of the municipality, to have the validity of all the debts and obligations of the municipality determined.

2. Attorney General to represent petitioners. The Attorney General shall appear for and on behalf of the petitioner in these proceedings. The commissioner or commissioners in charge of the municipality's affairs shall pay the expense of the Attorney General's representation from any funds in their control.

3. Filing deadline; notice. The court may fix a time within which all persons holding claims or demands against the inhabitants of the municipality must file their claim or demand for adjudication of its validity as an obligation of the municipality. The court shall order public notice to be given to creditors of the inhabitants of the municipality to file their claims within the time specified. The notice must be published in a newspaper of general circulation in the county in which the municipality is located for at least 3 successive weeks. The last publication must be at least 30 days before the final date set by the court for filing claims against the inhabitants of the municipality. The court, in its discretion, may order any additional notice to be given that is proper and necessary.

4. Hearing. After notice has been given under subsection 3 and before the period for filing claims against the inhabitants of the municipality has expired, the court shall fix the time for hearing upon the claims so filed to determine the validity and amount of the obligation. This hearing may be adjourned from time to time.

5. Appeal to Law Court. Any party aggrieved by the finding of the Superior Court may appeal within 30 days to the Supreme Judicial Court. The judgment of the Superior Court is binding upon all parties unless appealed under this subsection.

6. Effect of judgment. All obligations determined by the court not to be valid claims against the inhabitants of the municipality shall be forever barred in any action against the inhabitants of the municipality. The court's finding may be pleaded as a bar to any action brought upon the claim or claims. All indebtedness adjudicated to be valid against the inhabitants of the municipality by the finding of the Superior Court or on appeal, if an appeal is taken by either party, shall be thereafter considered as a valid outstanding indebtedness against the inhabitants of the municipality.

§6112. Voluntary compromise settlements

1. Settlement offers authorized. The board, when it considers it advisable to do so for the purpose of reestablishing upon a sound financial basis any municipality under its control, may at any time in behalf of the municipality offer compromise settlements to any of its creditors upon:

A. Claims, demands or obligations of whatever nature which accrued before the board assumed control; and

B. Upon all interest, whenever accrued, on those claims, demands or obligations.

2. Offers to the State. An offer may be made to the State under this section upon obligations due the State, whether arising from taxes, bonds, notes or otherwise by presentation to the Treasurer of State. Upon recommendation, certification and approval in the manner prescribed in Title 5, section 1504, the Treasurer of State shall accept and give a receipt for the sum or sums so offered in full and final settlement. The balance of any such obligation shall be charged off the books of account of the State.

3. Offers to a county. With respect to obligations due any county, whether arising from taxes, bonds, notes or otherwise, an offer may be made to its county commissioners and upon acceptance of that offer and tender of the sum agreed upon, the county treasurer shall accept and give a receipt for the sum or sums so offered in full and final settlement. The balance of any such obligation shall be charged off the books of account of the county.

4. Creditor or holders' remedies unaffected. This section shall not be construed to require any creditor or the holder of any obligation of the municipality to accept any offer of settlement made under this section, nor shall a refusal to accept diminish any existing rights or remedies in any manner.

5. Acceptance and discharge. A creditor's acceptance of any offer made under this section and payment of the sum agreed upon shall in all cases constitute a full and complete discharge of any such claim, demand or obligation, whether arising from taxes, bonds, notes or otherwise. No attachment, levy, action or other process or proceeding may thereafter be commenced, maintained or prosecuted for the collection of any part of the claim, demand or obligation.

SUBPART 10

VILLAGES

CHAPTER 241

VILLAGES

§6301. Meetings

When its legislative body has so provided, the meetings of a village corporation may be announced by having an attested copy of the warrant posted in a conspicuous, public place within the corporate limits at least 7 days before the meeting, instead of in the manner provided by its charter.

§6302. Ordinance authority

A village corporation or its officers have the same powers and duties which a municipality or its municipal officers have under sections 3002, 3005, and 3007 to 3009.

§6303. Zoning and planning

A village corporation may enact planning and zoning ordinances, subject to the same guidelines and standards which apply to municipalities in chapter 191. When there is a conflict between the zoning provisions of a village corporation and those of the municipality of which it is a part, the zoning provisions of the municipality prevail.

§6304. Parks

Village corporations may take and hold lands by devise or gift, in trust for playground or park purposes, and may expend not more than 10% of the money apportioned to the village corporation, under its charter, for the improvement and care of that land.

1. Park commissioners. A village corporation has the powers of a municipality under section 3264, regarding the appointment of park commissioners.

PART 3

PLANTATIONS AND UNORGANIZED

PLACES

CHAPTER 301

PLANTATIONS

SUBCHAPTER I

ORGANIZATION

§7001. Organization of unincorporated townships

1. Census. Any unincorporated township may, by petition of 20% or more of the voters of the township, require the county commissioners to determine from the Federal Decennial Census or by actual enumeration whether the township has 200 inhabitants or more. The county commissioners shall report the result of the census to the Secretary of State who shall record it.

2. Organization of township with population of 200 or more. If the report made under subsection 1 indicates that the township has a population of 200 or more, the county commissioners shall, with the consent of a majority of the petitioners under subsection 1, issue their warrant to an inhabitant of the unincorporated township, commanding that inhabitant to notify the voters of the unincorporated township, to assemble on a day and at a place named in the warrant, to choose a moderator, clerk, 3 assessors, treasurer, collector of taxes, constable, school committee and other necessary plantation officers.

A. The person selected by the commissioners shall give notice of the meeting by posting an attested copy of the warrant for the meeting in 2 public and conspicuous places in the township at least 14 days before the day of meeting. The warrant, with the inhabitant's return on it, shall be returned to the meeting and the officers shall be chosen and sworn.

3. Alternative method. Any unincorporated or unorganized place containing any number of inhabitants may be organized under this subsection. One or more of the county commissioners, on written application signed by at least 3 voters of any unincorporated or unorganized place in their county, may issue a warrant to one of the 3 voters, requiring that voter to announce a meeting of the voters of the unincorporated or unorganized place residing within the limits described in the warrant. When a state or county tax is assessed to the unincorporated or unorganized place, the Treasurer of State or the county commissioners, without application by the voters, may issue their warrant to an inhabitant of the unincorporated or unorganized place. In either case the warrant, notice of meeting and proceedings shall be the same as provided in subsection 2.

4. Organization meeting. At the time and place appointed for meetings for the organization of plantations under subsections 2 and 3, a moderator shall be chosen by ballot by the voters present to preside at the meeting. The person to whom the warrant was directed shall preside until the moderator is chosen and sworn by that person. A clerk, 3 assessors, treasurer and school committee shall be chosen by ballot and sworn by the moderator or a notary public. Other plantation officers may be chosen by ballot or other method agreed on by vote of the meeting and shall be sworn by the moderator or a notary public.

5. Documents recorded with Secretary of State. When a plantation is organized, the clerk and assessors shall send to the Secretary of State:

A. A certified copy of all proceedings performed in

organizing the plantation, including:

(1) The petition, if any;

(2) The warrant issued for the organizational meeting and the return on the warrant; and

(3) The record of the organizational meeting; and

B. A written description of the limits of the plantation.

The Secretary of State shall record these documents. Upon recording, all laws applicable to organized plantations apply to plantations organized under this chapter.

§7002. Organized plantations to consist of one township

Organized plantations may not be composed of more than one township, and when organized under section 7001, former organizations cease.

§7003. Plantations reorganized

Plantations organized upon application of 3 or more inhabitants may be reorganized at any time under this chapter.

§7004. Annual meeting

Organized plantations shall hold an annual meeting and choose a clerk, 3 assessors, treasurer, collector of taxes and a school committee.

1. Term of office and election of assessors. The provisions of section 2526, subsection 5, relating to the terms of office and election of assessors, apply to the terms of office and election of assessors of organized plantations.

2. Road commissioners. When money is raised for the repair of ways and bridges, the assessors of the plantation shall appoint one or more road commissioners.

§7005. Officers' names sent to Secretary of State

The Secretary of State shall furnish blanks to the clerks of organized plantations who shall return them to the Secretary of State on or before the first day of September, annually, with the names of the assessors and clerks of their respective plantations, and a statement that the assessors and clerk have been sworn.

1. Failure to return blanks. When any plantation fails to return the blanks, the Secretary of State shall not furnish it with blanks for election returns, and no votes purporting to be cast by voters of that plantation may be counted or allowed by the Governor.

2. During the first year of organization. When a plantation is organized after the first day of July, the clerk of that plantation is not required to return the blanks during that year, but the votes from those plantations shall not be counted or allowed by the Governor for any purpose, during the calendar year of its organization, unless it is organized at least 60 days before the Tuesday following the first Monday of November.

§7006. Town law applies to officials and employees

1. Plantation meetings, officials and employees. The following provisions apply to plantations and their officials and employees, as far as applicable, except when specifically provided otherwise:

A. Laws relating to calling, notifying and conducting town meetings; and

B. Laws relating to the election, appointment, hiring, qualification, duties, powers, compensation, liabilities and penalties for official neglect and misconduct of town officials and employees.

2. Unlawful voting. Voters in plantations are liable to the same penalties for unlawful voting as voters in towns.

§7007. Duties of officials

Assessors of plantations shall be considered the selectmen of the plantation for the purpose of performing the duties performed by the selectmen of towns. Treasurers, collectors and constables of plantations must give the same bond as similar officials of towns are required to give, to be approved in the same manner. The valuation of property for the assessment of taxes in plantations, as well as the assessment, collection and disposal of taxes, shall be the same as in towns.

§7008. Inventory of estates; basis of taxation; money for ways

The assessors first chosen in plantations organized under section 7001 shall immediately ascertain and list the value of the property in the plantation, in the same manner as done in towns. They shall return this list to the county commissioners of their county on or before the 15th day of May following the election of the assessors. The county commissioners may examine and correct the list so as to make it conform to the last state valuation, and return a copy of this corrected valuation to the Treasurer of State. When this copy is returned to the Treasurer of State, the plantation's ratable proportion according to the corrected valuation of all state and county taxes shall be assessed on the plantations in the same manner as on towns.

1. Money for ways. Such plantations, and any other plantations that are required by special order of the Legislature to pay state or county taxes, may raise money by taxation for making and repairing ways in compliance with Title 23, sections 2001 and 3302.

2. When valuation is taken. The valuation of property in any plantation shall be taken as required un-

der this section, corrected and returned to the Treasurer of State, whenever required.

§7009. Incorporation into town; first valuation

When towns are incorporated, the assessors of the town shall return to the county commissioners of their county the original valuation first taken in their towns, on or before the 15th day of May following the town's incorporation. The county commissioners shall examine and correct this valuation and return a copy of the valuation to the Treasurer of State. This corrected valuation shall be the basis of state and county taxes in the same manner as the valuations of plantations under section 7008.

§7010. Failure to make and return valuation

If the valuation required by section 7008 or 7009 is not made and returned by any town or plantation, which is not within a primary assessing district or is not itself a primary assessing district, within the time specified, the county commissioners shall appoint 3 suitable persons of the county to be assessors in that town or plantation. These persons shall be sworn and make and return the valuation required within the time fixed by the commissioners. The county commissioners shall examine and correct this valuation and return a copy of the valuation to the Treasurer of State. This corrected valuation shall be the basis for the assessment of state and county taxes, in the same manner as if the valuation had been taken by the assessors chosen by the town or plantation.

1. Assessors paid by county commissioners. Assessors appointed under this section shall be paid from the county treasury a reasonable compensation, to be determined by the county commissioners, for their services. Any sum paid to the assessors for compensation under this section shall be added to the county tax apportioned to the town or plantation and shall be collected and paid into the treasury in the same manner as county taxes.

SUBCHAPTER II

POWERS AND DUTIES

§7051. General powers and duties

Plantations have the same powers and duties, and are subject to the same restrictions, as a municipality under the following provisions of this Title:

1. History and observances. Chapter 131;

2. Health, welfare and improvements. Chapter 151;

3. Municipal fire protection. Chapter 153;

4. Municipal forests. Chapter 155;

5. Parks, trees and playgrounds. Chapter 157;

6. Public dumps. Chapter 159;

7. Sewers and drains. Chapter 161;

8. Leasing of air rights. Chapter 165;

9. Regulations, licenses and permits. Subpart 6; and

10. Tax base sharing. Chapter 223, subchapter V.

§7052. Perambulation of boundary lines

Sections 2851 and 2852, which contain perambulation provisions for town lines, apply equally to plantations.

§7053. Vehicles on icebound inland lakes

For the purposes of regulating motor vehicles on icebound inland lakes, plantations have the same powers as municipalities under section 3009, subsection 1, paragraph E.

§7054. Recreation

A plantation may acquire and maintain real estate and personal property for recreational purposes and may establish and conduct a recreational program.

1. Joint operation. A plantation may act jointly with another plantation or a municipality to establish and conduct a recreational program and may contract with another plantation or a municipality for its operation.

§7055. Employment of historian

A plantation may appoint a historian and determine the historian's duties and compensation.

§7056. Plantation forest

A plantation may acquire land by purchase, gift or bequest for the purpose of forestation or to reclaim and plant forest trees upon that land. The assessors may appoint a forester whose duties are to make and enforce all necessary regulations and to care for and maintain the land as a forest producing area. A plantation may establish a plantation forest reserve account to fund the operation and maintenance of the forest in accordance with sections 5801 and 5802.

§7057. Devises and gifts for open areas, public park and playground

Any plantation may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of public parks and playgrounds and open areas, as defined in section 2001, subsection 13, by plantation meeting vote. If any plantation receives any such bequest or gift, and that plantation is later incorporated into a town, the bequests and gifts and their proceeds fully vest in that town.

§7058. Conservation and energy commissions

Plantations may provide for a conservation commission or an energy commission as described in sections 3261 and 3271.

§7059. Planning, zoning and subdivision control

Plantations may enact planning and zoning ordinances, subject to the same guidelines and standards which apply to municipalities in chapter 191, and shall adopt ordinances or regulations necessary to exercise and enforce these powers, including the enactment of ordinances providing for the regulation of buildings and equipment. These ordinances must comply with section 7060.

§7060. Buildings and equipment

1. Ordinances regulating buildings and equipment required. Plantations adopting planning and zoning shall adopt ordinances:

A. Regulating the design, construction materials and construction of new buildings and additions to and alterations of existing buildings; regulating the alteration, demolition, maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of all buildings; regulating the installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; and requiring permits and establishing reasonable permit fees for all of the operations mentioned in this paragraph;

B. Establishing adequate standards for all features of means of exit, fire protection, fire prevention, accident prevention and structural safety of buildings which are used occasionally or regularly for public assembly; compelling the owners to make improvements to bring these buildings up to the established standards; requiring the owner or lessee of a building used for public assembly which is regulated by an ordinance authorized by this section and operated with the intent of financial gain to obtain a permit for which a fee may be imposed commensurate with its size or capacity; and requiring the owner or lessee of such a building to file a plan showing all safety features as a condition precedent to the issue of a permit or the further use of one already issued.

(1) The building inspector shall send a written order to the owner or lessee of a building used for public assembly requiring any conditions which exist in violation of an ordinance to be corrected within 30 days after the order is sent.

(2) After the 30-day period expires, the owner or lessee is strictly liable for all injury caused by the failure to correct the violations and the building inspector shall order the building vacated.

(3) As used in this section, "building used for public assembly" means a room or space in or on any structure which is used for the gathering of 100 or more persons for any purpose and includes any room or space on the same level, above or below, which has a common entrance; and

C. Requiring persons, firms, corporations or any other organizations which intend to construct or locate manufactured housing, as defined in section 4553, subsection 1, in the plantation to provide:

(1) Certification of payment of sales tax in accordance with Title 36, section 1760, subsection 40; and Title 36, section 1952-B; and

(2) A valid bill of sale indicating the name and address of the person, firm or corporation which sold or provided the manufactured housing to the buyer who intends to locate the housing in the plantation.

In any plantation for which a permit for manufactured housing is required, the permit is deemed to be not approved or valid until payment of the sales tax has been certified with the assessors or the Maine Land Use Regulation Commission.

2. Additional provisions. The provisions of this subsection apply to subsection 1.

A. The provisions pertaining to buildings apply equally to all structures and parts of them, including mobile and modular homes.

B. The building inspector is the licensing authority, unless otherwise provided by the plantation.

C. Ordinances defining the duties of the building inspector and other enforcement officers, not contrary to Title 25, chapter 313, may be enacted. All enforcement officers designated by ordinance shall be given free access at reasonable hours to all parts of buildings regulated by ordinance.

D. An application for a permit must be in writing and must be signed by the applicant and directed to the building inspector. The failure of the building inspector to issue a written notice of the decision, directed to the applicant within 30 days from the filing of the application, constitutes a refusal of the permit. The building inspector shall not issue any permit:

(1) For a building or use for which the applicant is required to obtain a license under Title 38, section 413, until the applicant has obtained that license; nor

(2) For a building or use within a land subdivision, as defined in section 4551, unless that subdivision has been approved in accordance with that section.

E. An appeal may be taken from any order issued by the building inspector or from the licensing authority's refusal to grant a permit.

(1) A person aggrieved by an order of the building inspector or a permit applicant may appeal in writing to the plantation officers. At their next meeting following receipt of the appeal, the plantation officers shall affirm, modify or set aside the decision of the building inspector according to the terms of the pertinent ordinance. They may permit a variation from the terms of an ordinance when necessary to avoid undue hardship, provided that there is no substantial departure from the intent of the ordinance. They may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the plantation. The failure of the plantation officers to issue a written notice of their decision, directed to the applicant, within 30 days from the filing of the appeal constitutes a denial of the appeal. If a plantation has by ordinance required that all such appeals be taken to a board of appeals, the procedure shall be the same as in appeals directed to the plantation officers, unless the plantation has provided otherwise.

(2) A further appeal may be taken within 30 days by any party to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. The hearing before the Superior Court shall be a trial de novo without a jury.

§7061. Land taken for parks, squares, open areas, public libraries and playgrounds

A plantation may acquire real estate or easements by using the condemnation procedure for town ways, as provided in Title 23, chapter 304, subject to the following provisions. The limitations set forth in this section do not apply to any taking authorized by any other law.

1. Purposes. A plantation may acquire real estate or easements under this section for the following purposes:

A. Public park;

B. Squares;

C. Open areas, as defined in section 2001, subsection 13;

D. Playgrounds;

E. Buildings for plantation purposes; or

F. A public library building.

2. Limitation on use. Except as provided in paragraph A, land taken under this section may not be used for any purpose other than the purposes for which it was originally taken.

A. Land in any plantation which is taken for a public park, by authority of a majority vote of the plantation, may be conveyed to the Federal Government to become part of a national park.

3. Consent of owner required. A plantation may not take any land without the consent of the owner if at the time of the taking the land is occupied by a dwelling house in which the owner or the owner's family resides.

## SUBCHAPTER III

## FISCAL MATTERS

§7101. Indebtedness; temporary loans

Plantations may borrow money in anticipation of taxes and issue general obligation securities in the manner provided for in chapter 223.

§7102. Expenditures

All plantations may raise and expend money:

1. Schools. For school purposes as part of a school administrative unit, as defined in Title 20-A, section 1, subsection 26;

2. General assistance. For general assistance programs as provided in Title 22, chapter 1161; and

3. Other legal expenditures. For sums necessary for legal plantation expenses.

§7103. Federal and state grants

Plantations organized before November 1, 1977, may apply for, accept and appropriate federal or state grants for any purpose which they are authorized by law to perform, either directly or through the State or a state agency.

1. Borrowing in anticipation. Notwithstanding any provisions in a charter or special Act of the Legislature, but subject to the constitutional limit on indebtedness, any plantation organized before November 1, 1977, which has contracted for and accepted an offer or a grant of federal or state aid, or both, for a particular project, may by vote of its assessors incur indebtedness in anticipation of the receipt of that aid for the particular project by issuing its general obligation notes payable in not more than one year. These notes may be renewed from time to time by the issue of other notes, provided that no notes may be issued or renewed in an amount which at the time of the issuance or renewal exceeds the unpaid amount of the federal or state aid in anticipation of which the notes are issued or renewed.

A. To any extent that the federal or state aid in anticipation of which the notes were issued when received exceeds the amount of the aid remaining to be paid under contract or accepted offer, plus the amount of any outstanding notes issued in anticipation of the aid, the remaining aid shall be kept in a separate account and used solely for the payment of any outstanding note.

2. Funds for educational purposes. The assessors of any plantation organized before November 1, 1977, may borrow in anticipation of any funds or reimbursements that the Legislature has authorized to be paid to plantations organized before November 1, 1977, for educational purposes during the municipal year. The notes shall be paid from those funds received for educational purposes from state agencies during the municipal year.

§7104. Accounting and postaudit provisions

Sections 5821 to 5824 and 5826, which contain accounting and postaudit provisions for municipalities, apply equally to plantations.

## CHAPTER 303

## DEORGANIZED PLACES

§7301. Applicability to deorganization by Legislature

This chapter applies to any municipalities or plantations that are or have been deorganized by Act of the Legislature.

§7302. Records surrendered

Whenever any municipality is deorganized, the municipality shall surrender all its records to the State Archivist.

§7303. Debts of municipalities and school districts therein

When municipalities are deorganized by a repeal of their charters, and their liabilities are excepted and reserved by the repealing act, legal service of process to collect those liabilities may be made on any inhabitant of lawful age residing in the territory included in the municipality, provided that there are no legal officers in that territory on whom service can be made. This section extends to school districts in deorganized municipalities so far as applicable.

§7304. Power and authority of State Tax Assessor

Whenever the organization of any municipality or plantation has been terminated by Act of the Legislature, the powers, duties and obligations relating to the affairs of that municipality or plantation are vested in the State Tax Assessor for not more than 5 years. The real and personal property of the municipality or plantation shall be held by the State Tax Assessor and used as described in this chapter.

1. Powers of State Tax Assessor. The State Tax Assessor may:

A. Subject to the restriction in subparagraph (1), sell or otherwise dispose of any property which the municipality or plantation holds title to at the time of deorganization or may receive title to after deorganization. When disposing of property, the State Tax Assessor shall ensure that the interests of the residents of the unorganized territory are the most important consideration.

(1) In the case of school property, the State Tax Assessor shall consult with the Commissioner of Educational and Cultural Services; and

B. Assess taxes any time after the act terminating the organization of the municipality or plantation takes effect by making assessment once a year under the laws relating to the assessment of property taxes in unorganized territory.

(1) The State Tax Assessor may make additional assessments in the same manner against the property owners in the deorganized municipality or plantation to provide funds to pay the debts of the municipality or plantation.

2. Use of money. All money received under this section shall be applied:

A. To pay the necessary expenses of the State Tax Assessor in making assessments under subsection 1;

B. To pay any obligation of the municipality or plantation outstanding at the time its organization is terminated;

C. To pay taxes assessed against the municipality or plantation; and

D. To complete any public works of the municipality or plantation already begun.

3. Surplus funds and property. At the end of the 5-year period, or when in the judgment of the State Tax Assessor final payment of all known accounts against the municipality or plantation has been made, any funds which have not been expended shall be deposited with the county commissioners as undedicated revenue for the unorganized territory fund of that county. Any property of the municipality or plantation which has not been sold shall be held by the State in trust for the unorganized territory or transferred to the county to be held in trust for the unorganized territory. Income from the sale or use of the property shall be used as described in Title 36, section 1604.

§7305. Cemetery trust funds

The State Tax Assessor may transfer any cemetery trust funds held by a municipality at the time of deorganization to a cemetery association, provided that association is formed under the laws of the State. If no such association exists, the State Tax Assessor may transfer the funds to the county commissioners. These funds are to be retained for the purpose of allowing the interest only to be used in the same manner and for the same purposes for which the fund was originally accepted

by the deorganized municipality. If the funds are in the care and custody of the county commissioners and a cemetery association is subsequently formed, the county commissioners may transfer the funds to the cemetery association.

## CHAPTER 305

## MUNICIPAL SERVICES IN UNORGANIZED AREAS

### §7501. Municipal services authorized

The county commissioners of each county may provide or contract for the provision of the following municipal services for the residents of the unorganized territory in their county:

1. Fire protection. Fire protection other than forest fires;

2. Dumps. Public dumps;

3. Roads and bridges. Construction, repair and maintenance of roads and bridges, including snow removal, except that the county commissioners may not expend money for improvements, maintenance or snow removal on any privately owned road within the unorganized territory in which the county has not acquired any property interest;

4. Polling places. Establishment of polling places under Title 21-A, section 632;

5. Administrative services. Coordination of services provided, payment of expenses, administration of the unorganized territory fund. The amount charged for administrative services may not exceed 5% of the budget for the unorganized territory established under section 7503 for the year;

6. Other services. Any other service which a municipality may provide for its inhabitants and which is not provided by the State; and

7. Law enforcement. Law enforcement.

### §7502. Unorganized territory funds

1. Fund established. There is established in each county, one unorganized territory fund into which shall be credited all receipts under Title 12, section 7824 and Title 36, sections 1489 and 1606 and all other receipts which are allocated for municipal services in the unorganized territory, and from which all disbursements for municipal services in the unorganized territory shall be made.

2. Prior receipts and surpluses. All money received by the county for municipal services for the unorganized territory before September 23, 1983, and remaining unspent shall be deposited into the fund. Any surplus in revenue remaining in the fund at the end of the year, not including amounts allocated to the contingent account or set aside in capital reserve accounts established after November 1, 1983, which is in excess of 10% of the amount of expenditures for that year, shall be used to reduce the amount to be collected in taxes during the next year.

3. Commingling; interest. This fund shall be accounted for separately from the funds raised for countywide activities. The return on investment of unorganized territory funds shall be credited to those funds and shall be used only for the unorganized territories. No countywide funds, nor return on investments of countywide funds, may be used to fund expenditures for services that a county is providing to unorganized territories in place of municipal government.

4. Uses of the fund. The fund may be used for any of the services authorized in section 7501 in any area of the unorganized territory of the county.

5. Contingent account. The county commissioners may establish within the fund a contingent account not to exceed $25,000 annually. Funds within the contingent account may be transferred to any other account within the fund when those accounts are not sufficient to meet the needs for municipal services to the unorganized territory of the county.

6. Capital reserve accounts. The county commissioners may establish capital reserve accounts by following the procedures specified in section 921.

### §7503. Budget

Before November 7th of each year, the county commissioners of each county shall provide to the members of the county legislative delegation a preliminary budget for the services to be provided under this chapter to the unorganized territory in the next year. These preliminary budgets shall be provided in a form that shows how the funds are to be spent for each category of service identified in section 7501 and any projected surplus for the year of unorganized territory funds held by the county. The county commissioners shall provide an opportunity for public comment on the preliminary budget at the same time as a public hearing is held on the county budget, as provided under Part 1, chapter 3, subchapter I. The budget for the unorganized territory shall be finalized at the same time as the regular county budget. A copy of the finalized budget and an accurate identification of any surplus which can be used to reduce the amount needed to be collected in taxes shall be submitted to the State Tax Assessor and to the fiscal administrator of the unorganized territory by January 1st of each year.

## PART B

**Sec. 1. 10 MRSA c. 951, sub-c. VII** is enacted to read:

## SUBCHAPTER VII

## REGULATION OF MOBILE HOME PARKS; LANDLORD AND TENANT

### §9091. Definitions

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

1. Mobile home. "Mobile home" means a structure, transportable in one or more sections, which:

A. Is 8 body feet or more in width and 32 body feet or more in length;

B. Is built on a permanent chassis;

C. Is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and

D. Includes the plumbing, heating, air-conditioning and electrical systems contained in the structure.

2. Mobile home park. "Mobile home park" means any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate 2 or more mobile homes.

3. Normal wear and tear. "Normal wear and tear" means that deterioration which occurs, without negligence, carelessness, accident or abuse of the premises or equipment by the tenant, members of the tenant's household or their invitees or guests. The term does not include sums or labor expended by the landlord in removing articles abandoned by the tenant, such as trash, from the premises.

4. Security deposit. "Security deposit" means any advance or deposit of money, the primary function of which is to secure the performance of a rental agreement for a mobile home, including premises used solely for the storage or display of mobile homes.

5. Tenant. "Tenant" means a mobile home owner who rents a parcel of land in a mobile home park.

### §9092. Purchase of equipment

No mobile home park owner or operator may require a resident of the park to purchase from the owner or operator any underskirting, equipment for tying down mobile homes or any other equipment required by law, local ordinance or rule of the mobile home park.

1. Permitted regulations. The park operator may determine by rule the style or quality of the equipment which the tenant purchases from a vendor selected by the tenant.

### §9093. Fees; charges; assessments; rules

1. Duty to disclose. A mobile home park owner or operator shall disclose fully in writing all fees, charges, assessments and rules before a mobile home dweller assumes occupancy in the park.

2. Increases or changes. The park owner or operator must give at least 30 days' written notice to all tenants before changing any rules or increasing any fees, charges or assessments.

3. Failure to disclose charges. If the park owner or operator fails to fully disclose any fees, charges or assessments, those fees, charges or assessments may not be collected. The owner or operator may not use the mobile home dweller's refusal to pay any undisclosed charge as a cause for eviction in any court.

### §9094. Restrictions on disposal of mobile homes

1. Park acting as agent; advertising. No mobile home park owner or operator may exact a commission or fee with respect to the price realized by the seller of a mobile home, unless the park owner or operator has acted under a written contract as an agent for the mobile home owner in the sale. No mobile home park owner or operator may require as a condition of tenancy or continued tenancy that a mobile home owner designate the park owner or operator, or any other individual or agent, to act as an agent for the mobile home owner in the sale of the home owner's mobile home. No mobile home park owner or operator may restrict in any manner the reasonable advertising for sale of any mobile home in that park.

2. Rules. No mobile home park owner or operator may require a mobile home owner to remove the owner's mobile home from the park, except under a rule contained in the written copy of the park rules given to the tenant under section 9097, subsection 5. The rules must clearly describe the specific circumstances under which the park owner or operator may require a tenant to remove the tenant's mobile home from the park.

A. In the case of a rule governing the circumstances under which a park owner or operator may require a mobile home owner to remove that mobile home from the park because of the age or condition of the mobile home, the park owner or operator must obtain approval of the rule by the Manufactured Housing Board before including the rule in the written copy of the park rules given to the tenant. After approval by the board, such a rule remains in effect until the board approves a rule submitted to it by the park owner or operator to replace that rule.

B. Nothing in this subsection may be construed to require a park owner or operator to obtain the approval of the Manufactured Housing Board before including a rule in the park rules, except as provided in paragraph A.

§9095. Restrictions on the purchase of fuel oil or bottled gas

Except as provided in subsection 1, no mobile home park owner or operator may require, as a condition of tenancy or continued tenancy, that a mobile home owner or dweller purchase fuel oil or bottled gas from any particular fuel oil or bottled gas dealer or distributor.

1. Centralized distribution system. This section does not apply to a mobile home park owner or operator who provides a centralized distribution system for fuel oil or bottled gas, or both, for residents in the park. No mobile home park owner or operator who provides such a centralized distribution system may charge residents more than the average retail price charged by other retail distributors for fuel oil or bottled gas in the county in which the mobile home park is located.

§9096. Space for purchaser of mobile home from owner of park

A tenancy or other estate at will or lease in a mobile home park may not be terminated solely for the purpose of making the tenant's space in the park available for a person who purchased a mobile home from the owner of the mobile home park or the owner's agents.

§9097. Terms of rental agreement

1. Eviction of tenant. A tenancy may be terminated by a park owner or operator only for one or more of the following reasons:

A. Nonpayment of rent, utility charges or reasonable incidental service charges, provided that no action for possession may be maintained if, prior to the expiration of a notice to quit, the tenant pays or tenders all arrearages due plus 5% of the outstanding rent or a maximum of $5 as liquidated damages;

B. Failure of the tenant to comply with local ordinances or state or federal law, rules or regulations relating to mobile homes or mobile home parks, provided that the tenant first is given written notice of failure to comply with those restrictions and a reasonable opportunity to comply with the restrictions;

C. Damage by the tenant to the demised property, except for reasonable wear and tear;

D. Repeated conduct of the tenant upon the mobile home park premises which disturbs the peace and quiet or safety of other tenants in the mobile home park;

E. Failure of the tenant to comply with reasonable written rules of the mobile home park as established by the park owner or operator in the rental agreement at the beginning of the tenancy or as subsequently amended, provided that the tenant first is given written notice of failure to comply and a reasonable opportunity to comply with those rules;

F. Condemnation or change of use of the mobile home park;

G. Renovation or reconstruction of any portions of the park, provided that 60 days' notice, in addition to any other notice required by this section, is given in writing to the tenant;

H. Under terms and expressed conditions in the original lease or rental agreement which is entered into by the tenant and landlord; or

I. Violation by a tenant of paragraph A, B or E, 3 or more times in a 12-month period, notwithstanding the fact that the tenant in each case corrected the violation after being notified of the violation by the park owner or operator. For purposes of termination under this paragraph, the tenant must have engaged in at least 3 separate instances of misconduct.

2. Notice. A tenancy in a mobile home park may be terminated only by:

A. The tenant giving at least 45 days' notice of termination to the park owner; or

B. The park owner entitled under subsection 1 to the mobile home space giving at least 45 days' notice of termination in writing to the tenant. If the landlord or the landlord's agent has made at least 3 witnessed good faith efforts made on 3 separate days to serve the tenant, service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's space in the park.

(1) In cases where the reason for eviction is nonpayment of rent, the tenancy may be terminated by 30 days' notice given in the same manner.

3. Fees. The owner of a mobile home park or the owner's agents may not charge any fees to tenants other than charges for rent, utilities, incidental service charges, entrance fees or security deposits, unless otherwise provided for in the original lease or agreement. The owner of a mobile home park or the owner's agents may not charge any entrance fee to a tenant who is moving into a mobile home currently in the park which is greater than 4 times the amount of the monthly rent.

4. Rules. A mobile home park owner may adopt reasonable rules governing the conduct of tenants, if the rules are reasonably related to preserving the order and peace of other tenants and the mobile home park. No park rule may be unreasonable, unfair or unconscionable. Any rule or change in rent which does not apply uniformly to all park tenants creates a rebuttable presumption that the rule or change in rent is unfair. Any park rule which does not comply with this section is void.

5. Tenant to be given copy of rules and applicable laws. Before any rental agreement is entered into, the

owner must provide each tenant who resides in the park and all prospective tenants with:

A. A written copy of the rules of the mobile home park; and

B. A written copy of this subchapter.

6. Enforcement. In addition to any other remedy under this subchapter, any mobile home park resident may sue to enforce any provision of this section and the court may award damages or grant injunctive or other appropriate relief.

7. Waiver prohibited. No lease or rental agreement, oral or written, may contain any provision by which the tenant waives any rights under this subchapter. Any such waiver is contrary to public policy and unenforceable.

8. Written or oral rental agreement. Nothing in this section may be construed to permit a park owner or operator to vary the terms of a written or oral rental agreement without the express written consent of the tenant.

9. Rental agreements involving children. The following provisions govern mobile home park rental agreements involving children.

A. If, at the beginning of a tenancy for a space in a mobile home park, the park owner or operator and a mobile home owner who has children enter into an oral or written rental agreement that allows the tenant and the tenant's children to rent that space, the park owner or operator may not terminate the tenancy on the sole basis that the tenant has children residing in the mobile home.

B. Except as provided in subparagraph (1), if a tenant sells the mobile home and, at the time of sale, the tenant has at least one child age 18 years or under residing in the mobile home, the park owner or operator may not refuse to rent a space to the person who purchases that mobile home from the tenant on the sole basis that the purchaser has children who will reside in the mobile home. The park owner or operator may not terminate the tenancy with the purchaser on the sole basis that the purchaser has children residing in the mobile home.

(1) If the park owner or operator discloses to the tenant an intention to do so at the beginning of tenancy, the park owner or operator may refuse to enter into a tenancy with a person who purchases the mobile home from the tenant on the basis that the purchaser has children who will reside in the mobile home.

C. This subsection does not apply when:

(1) A mobile home park owner or operator rents a space to a tenant under an agreement that the space is to be occupied only by adults; or

(2) A park owner or operator rents a space normally designated as an adult site to a tenant with children under an agreement that the tenancy is against normal park procedures and only temporary.

§9098. Security deposits

1. Maximum security deposit. No lessor of a mobile home park lot may require a security deposit greater than 3 months' rent.

2. Return of security deposit. The following provisions apply to the retention and return of a security deposit.

A. A security deposit or any portion of a security deposit may not be retained to pay for normal wear and tear.

B. A mobile home park operator shall return to a tenant the full security deposit deposited with the landlord by the tenant, plus 4% annual interest or, if there is actual cause for retaining the security deposit or any portion of it, the mobile home park operator shall provide the tenant with a written statement, itemizing the reasons for the retention of the security deposit or any portion of it, within 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs first.

(1) The written statement itemizing the reasons for the retention of any portion of the security deposit must be accompanied by a full payment of the difference between the security deposit and the amount retained.

(2) The mobile home park operator is deemed to have complied with this section if the operator mails the statement and any payment required to the tenant's last known address.

(3) Nothing in this section precludes the mobile home park operator from retaining the security deposit for nonpayment of rent or nonpayment of utility charges which the tenant was required to pay directly to the mobile home park operator.

C. If a mobile home park operator fails to provide a written statement or to return the security deposit within the time specified in paragraph B, the park owner or operator forfeits the right to withhold any portion of the security deposit.

3. Wrongful retention; damages; burden of proof. The following provisions apply to the wrongful retention of a security deposit by a mobile home park operator.

A. If the mobile home park operator fails to return the security deposit and provide the itemized statement within 21 days as specified in subsection 3, paragraph B, the tenant must notify the mobile home park operator of the intention to bring a legal action at least

7 days before commencing the action. If the mobile home park operator fails to return the entire security deposit within the 7-day period, it is presumed that the landlord is willfully and wrongfully retaining the security deposit.

B. A mobile home park operator who willfully retains a security deposit in violation of this subchapter is liable for double the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney's fees and court costs.

C. In any court action brought by a tenant under this section, the mobile home park operator has the burden of proving that the operator's withholding of the security deposit, or any portion of it, was not wrongful.

§9099. Implied warranty and covenant of habitability

1. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a space in a mobile home park, the park owner or operator is deemed to covenant and warrant that the space and its associated facilities are fit for human habitation.

2. Complaints. If a condition exists in a space which renders the space unfit for human habitation, a tenant may file a complaint against the park owner or operator in the District Court or Superior Court. The complaint must state that:

A. A condition, which must be described, endangers or materially impairs the health or safety of the tenants;

B. The condition was not caused by the tenant or another person acting under the tenant's control;

C. Written notice of the condition was given without unreasonable delay to the park owner or operator or to the person who customarily collects rent on behalf of the park owner or operator.

(1) This notice requirement may be satisfied by actual notice to the person who customarily collects rents on behalf of the park owner or operator;

D. The park owner or operator unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and

E. The tenant was current in rental payments owing to the park owner or operator when written notice was given.

3. Remedies. If a complaint is filed under this section, the court shall enter any temporary restraining orders that are necessary to protect the health or well-being of tenants or of the public. If the court finds that the allegations in the complaint are true, the park owner or operator is deemed to have breached the warranty of fitness for human habitation established by this section as of the date when actual notice of the condition was given to the park owner or operator. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

A. The court may issue appropriate injunctions ordering the park owner or operator to repair all conditions which endanger or materially impair the health or safety of the tenant.

B. The court may determine the fair value of the tenant's use and occupancy of the space from the date when the park owner or operator received actual notice of the condition until the time that the condition is repaired and further declare what, if any, money the tenant owes the park owner or operator or what, if any, rebate the park owner or operator owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there is a rebuttable presumption that the rental amount equals the fair value of the space free from any condition rendering it unfit for human habitation.

C. The court may authorize the tenant to temporarily vacate the space if the space must be vacant during necessary repairs. No use and occupation charge may be incurred by a tenant until the tenant resumes occupation of the space. If the park owner or operator offers reasonable alternative housing accommodations, the court may not surcharge the park owner or operator for alternate tenant housing during the period of necessary repairs.

D. The court may enter any other orders that it considers necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

4. Waiver. A written agreement under which the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the park owner or operator.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section is void.

5. Municipal ordinance or rule. Municipalities may adopt or retain, by ordinances or rules, standards more stringent than those provided in this section. Any less restrictive municipal ordinance or rule establishing standards is invalid and suspended by this section.

§9100. Violations

A violation of this subchapter is a violation of Title 5, chapter 10, the unfair trade practices laws.

**Sec. 2. 12 MRSA c. 202-B** is enacted to read:

## CHAPTER 202-B

## PUBLIC RESERVED LOTS

### §581. Public reserved lands; location

1. Public reserved lands. In every township, or plantation existing on October 3, 1973, or organized after that date, there shall be reserved, as the Legislature directs, 1,000 acres of land, and in the same proportion in all tracts less than a township, for the exclusive benefit of the State. This land must be of average quality, situation and value as to timber and minerals as compared to other lands in the township or plantation. Title to these reserved public lots is in the State. All future earnings attributable to those public lots belong to the State to be used for the management and preservation of the public lots as state assets.

2. Location by agreement. In townships or tracts sold and not incorporated, the public reserved lots may be selected and located by the Commissioner of Conservation and the proprietors by a written agreement describing the reserved lands by metes and bounds, signed by the parties and recorded in the commissioner's office. The plan or outline of the lands so selected shall be:

A. Entered on the plan of the township or tract in the commissioner's office; and

B. Recorded in the registry of deeds in the county in which the township is located.

3. Location without agreement. When the commissioner and proprietors of a tract or township described in subsection 1 cannot agree on the location of the public reserved lands, the commissioner may petition the Superior Court in the county where the land lies to appoint a committee of 3 disinterested persons. The court shall issue a warrant under the seal of the court to these persons, requiring them to locate the public reserved lot or lots in the township or tract as soon as possible. The public reserved lot or lots must be of average quality as compared to other lands in the tract or township.

A. Before taking any action, the members of the committee formed under this subsection must be sworn before a notary public. A certificate of the swearing shall be endorsed on the court's warrant.

B. At least 30 days before their first meeting, the members of the committee shall announce their appointment and the time and place of their meeting to perform their duties by:

(1) Publishing a notice in a newspaper of general circulation in the State, to be designated by the court; and

(2) If ordered by the court to do so, posting written notification in 2 or more public places in the same plantation or town.

C. The members of the committee shall make a signed return of the court's warrant and their activity under it to the Superior Court when they have completed their service. Upon acceptance by the court and after being recorded in the registry of deeds in the county or registry district where the land is located, within 6 months, the public reserved lot or lots shall be legally assigned and located.

D. In a proceeding for the location of public reserved lots under this subsection, an appeal may be taken to the Law Court as in other actions.

### §582. Subdivided lands

When portions or lots are reserved for public uses in a tract of land to be divided, they shall first be set out, of an average quality and situation, and a return made of that reserved land to the commissioner's office, with a description of its quality and location. The commissioner's return of partition, accepted and recorded as provided, is a valid location of the reserved lands.

### §583. Incorporation into town; location

When, in the grant of any townships or parts of townships, certain portions are reserved for public uses and those portions have not been located in severalty before the townships or parts are incorporated into a town, the Superior Court in the county where the land lies, on application of the assessors of the town, may appoint a committee of 3 disinterested persons of the county. The court shall issue a warrant under seal of the court to these persons, requiring them to locate the reserved portion according to the terms of the grant as soon as possible. If the use or purpose of the reservation is prescribed in the grant, they shall set off and locate the lots accordingly.

1. Members sworn. Before taking action under the warrant, the members of a committee formed under this section must be sworn to the faithful discharge of the duty assigned them. A certificate of the swearing shall be endorsed on the court's warrant.

2. Notice. At least 30 days before locating the reserved portions, the members of the committee shall announce their appointment and the time and place of their meeting to perform their duties by:

A. Publishing a notice in a newspaper of general circulation in the State, to be designated by the court; and

B. Posting written notices in 2 or more public places in the same town.

3. Return; location of lands. The members of the committee shall make a return of the court's warrant and

their activity under it to the Superior Court when they have completed their duties. Upon acceptance by the court and after being recorded in the registry of deeds in the county or registry district where the land is located, within 6 months, the reserved portions shall be legally assigned and located.

§584. Criteria for location

Whenever land reserved for public use is located under this chapter and the commissioner makes the return of partition under section 582, the determination as to what lands are of an average quality, situation and value with the other lands in the township shall include, but not be limited to, appropriate consideration of the following criteria:

1. Contiguousness. Contiguousness to other public lands;

2. Recreational needs. Public recreational needs;

3. Accessibility to transportation. Accessibility to roads, highways and other transportation;

4. Proximity to population. Proximity to centers of population;

5. State needs. Needs of state agencies;

6. Scenic quality. Scenic quality;

7. Mineral value. Value as to minerals;

8. Timber value. Value as to timber;

9. Resource preservation. The preservation of significant natural, recreational and historic resources, including wildlife habitat and other areas critical to the ecology of the State; and

10. Management plan. The provisions of any applicable comprehensive or long-range management plan for the use of public lands.

§585. Management of public reserved lands

1. Purpose. The Legislature finds that:

A. It is in the public interest and for the general benefit of the people of this State that title, possession and the responsibility for the management of the public reserved lands contained within the unincorporated areas of the State be vested and established in an agent of the State acting on behalf of all of the people of the State;

B. It is in the public interest that the public reserved lands be managed under the principles of multiple use to produce a sustained yield of products and services and that this management should be effected by the use of both prudent business practices and the principles of sound planning; and

C. It is in the public interest that the lands be managed to demonstrate exemplary land management practices, including silvicultural wildlife and recreational management practices, as a demonstration of state policies governing management of forested and related types of lands.

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

A. "Multiple use" means:

(1) The management of all of the various renewable surface resources of the public reserved lots, including outdoor recreation, timber, watershed, fish and wildlife and other public purposes;

(2) Making the most judicious use of the land for some or all of these resources over areas large and diverse enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(3) That some land will be used for less than all of the resources; and

(4) Harmonious and coordinated management of the various resources, each with the other, without impairing the productivity of the land, with consideration being given to the relative values of the various resources and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

B. "Public reserved lands" means:

(1) All the public reserved lots of the State, including any ministerial and school lands in the unincorporated areas of the State;

(2) All lands acquired with proceeds from the sale of those reserved lands;

(3) All lands received by the State in exchange for or pursuant to relocation of those reserved lands; and

(4) All lands purchased by the State and expressly designated as public reserved lands.

C. "Sustained yield" means the achievement and maintenance in perpetuity of a high-level regular periodic output of the various renewable resources of the public reserved lots without impairing the productivity of the land.

3. Responsibility. The commissioner has the care, custody, control and responsibility for the management of the public reserved lands in the unincorporated areas of the State. The commissioner shall prepare, revise from time to time and maintain a comprehensive management

plan for the management of the public reserved lands in accordance with the guidelines in this chapter. The management plan must provide for a flexible and practical approach to the coordinated management of the public reserved lands. In preparing, revising and maintaining this management plan, the commissioner, to the extent practicable, shall compile and maintain an adequate inventory of the public reserved lands, including not only the timber on those lands but also the other multiple use values for which the public reserved lands are managed. In addition, the commissioner shall consider all criteria listed in section 584 for the location of public reserved lands in developing the management plan. The commissioner is entitled to the full cooperation of the Maine Geological Survey, Department of Inland Fisheries and Wildlife, Bureau of Parks and Recreation, Maine Land Use Regulation Commission and State Planning Office in compiling and maintaining the inventory of the public reserved lands. The commissioner shall consult with those agencies as well as other appropriate state agencies in the preparation and maintenance of the comprehensive management plan for the public reserved lands. This plan shall provide for the demonstration of appropriate management practices that will enhance the timber, wildlife, recreation, economic and other values of the lands. When prepared, all management of the public reserved lands, to the extent practicable, shall be in accordance with this management plan.

Within the context of the comprehensive management plan, the commissioner, after adequate opportunity for public review and comment, shall adopt specific action plans for each of the units of the public reserved lands system. Each action plan shall include consideration of the related systems of silviculture and regeneration of forest resources and shall provide for outdoor recreation, including remote, undeveloped areas, timber, watershed protection, wildlife and fish. The commissioner shall complete the action plans no later than December 31, 1989, and shall revise them from time to time as necessary. The commissioner shall provide adequate opportunity for public review and comment on any substantial revision of an action plan. Management of the public reserved lands before the action plans are completed must be in accordance with all other provisions of this section.

4. Actions. The Director of the Bureau of Public Lands may take the following actions on the public reserved lands consistent with the management plans for those lands and upon such terms and conditions and for such consideration as the director considers reasonable:

A. Grant permits and enter into contracts to cut timber, harvest grass and wild foods, tap maple trees for sap and cultivate and harvest crops, provided that these permits and contract rights create revocable licenses to the permittee or party to the contract and do not create any real property interest in the public reserved lands or any other public lands;

B. Sell sand and gravel existing in the soil for the construction of public roads or for any other purposes which the director considers consistent with the purposes of this chapter;

C. Lease the right, for a term not exceeding 25 years, to:

(1) Set and maintain or use poles, electric power transmission and telecommunication transmission facilities, roads, bridges and landing strips;

(2) Lay and maintain or use pipelines and railroad tracks; and

(3) Establish and maintain or use other rights-of-way;

D. Lease campsites, garages, depots, warehouses and other structures, or sites for the same, for a term not exceeding 5 years, and also do the following:

(1) Grant options to renew these leases for a further term not to exceed 15 years in the case of a commercial use which in the opinion of the director requires the option to secure adequate financing for the maintenance or improvement of facilities located upon public reserved land;

(2) In the case of leases acquired by the State on lands exchanged for public reserved lands, the director shall authorize, upon reasonable terms and conditions, the transfer of leasehold interests from a lessee of a residential campsite to another; and

(3) Sell storehouses and other structures and fixtures that are surplus to the needs of the bureau;

E. Construct and maintain overnight campsites and other camping and recreational facilities and charge reasonable fees to defray the cost of constructing and maintaining these facilities;

F. Grant the right to construct and maintain public roads;

G. With the consent of the Governor, lease mill privileges and other rights in land for industrial and commercial purposes, dam sites, dump sites, the rights to pen, construct, put in, maintain and use ditches, tunnels, conduits, flumes and other works for the drainage and passage of water, flowage rights and other rights of value in the public reserved lands for a term not exceeding 10 years;

H. With the consent of the Governor, lease to the Federal Government the right to use public reserved lands;

I. Sell severed timber and other products, including, but not limited to, wood and timber necessary to be used in the operation of a mine, severed grass and other wild foods, maple sap and syrup, crops and sand and gravel;

J. Lease the right to use parcels of land, except submerged lands, to municipalities and other agencies or political subdivisions of the State, and to private, nonprofit organizations, for a period not exceeding 25 years, for purposes of protecting, enhancing or developing the natural, scenic or wilderness qualities or recreational, scientific or educational uses of the lands under the care, custody and control of the Bureau of Public Lands, provided that each such lease contains a provision authorizing the State to terminate the lease at any time when the State, in its sole discretion, determines that termination is in the best interests of the State. No adjustment or compensation may be due to any lessee under this section on account of that termination; and

K. Lease to incorporated towns the right to manage timber on all or part of the public reserved lands within the boundaries of the towns in accordance with multiple use management plans, subject to the following conditions:

(1) Public reserved lands acquired through land exchanges may not be leased under this paragraph;

(2) A management plan submitted to the director by a town shall be approved or disapproved by the director within 60 days of submission or the plan is deemed approved. The director shall conduct the same interagency reviews and apply the same standards in evaluating these management plans as are being applied in formulating the bureau's own management plans as of the date of submittal;

(3) The leases shall be for a period not exceeding 15 years and may be renewed if the director determines that the management plans have been implemented and substantially complied with in a professionally acceptable manner;

(4) The director may terminate the lease at any time, without adjustment or compensation due any lessee, if the termination is in the best interests of the State. The director shall give 30 days' written notice before termination. The director shall hold a public hearing, if requested by the lessee within 30 days of that notice. The director shall issue written notice of a final decision within 30 days of the hearing. This decision may be appealed to the Superior Court;

(5) Public access to lands leased under this paragraph may not be unreasonably denied; and

(6) No lease may convey any interest in lands affected other than those permitted by this section.

5. Transfer of responsibility. Whenever a particular portion of the public reserved lands is to be used, under the management plan, for a dominant use which is within the particular expertise of another agency of the State, the commissioner, with the consent of the Governor and the state agency involved, may transfer to that other state agency the responsibility for the management of that particular portion of the public reserved lands.

6. Application. Nothing in this section may be construed to require the location of unlocated public reserved lands. The commissioner shall determine the desirability of locating unlocated public reserved lands in the preparation and maintenance of the management plan for the public reserved lands. The commissioner shall take appropriate steps to ensure that, in those townships in which public reserved lands remain unlocated, the State receives its proportionate share of common income and that the lands are not subjected to waste by the other cotenants.

7. Bond; stumpage or other rights of value. Persons, corporations or other legal entities obtaining permits or contracts to sever or extract materials upon the public reserved lands under this section shall give bond to the director with satisfactory sureties for the payment of stumpage or other rights of value and the performance of all conditions of the permit or contract. All timber cut or other material taken under permits or contracts is the property of the State until the stumpage or other rights are paid in full.

8. Persons with residential leasehold interests in public lands on October 1, 1975. With respect to persons with residential leasehold interests in public reserved lands on October 1, 1975, or on lands exchanged for public reserved lands, the director shall enter into new leasehold agreements with those persons, and thereafter shall renew those leases on what from time to time may be reasonable terms and conditions, as long as the lessee complies with the terms and conditions of the leases and with all applicable laws and rules of the State.

9. Lease rates. The annual fee for camp leases under subsection 4 shall not exceed 10% of the fair market value of the land, as determined once during each 5-year lease term by the State Tax Assessor. Notwithstanding this subsection, there shall be a minimum annual camp lease fee of $150.

§586. Funds from public reserved lands

1. Fund established. All income received by the director from the public reserved lands, except income provided for in section 588, shall be deposited with the Treasurer of State, to be credited to the Public Reserved Lands Management Fund which is established as a nonlapsing fund. Any interest earned on this money shall also be credited to the fund.

2. Expenditures from fund. Expenditures from the fund are subject to legislative approval in the same manner as appropriations from the General Fund. No money may be expended without allocation by the Legislature. The joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs must approve the allocations.

§587. Unorganized Territory School Fund

1. Fund; unexpended income. The Unorganized Territory School Fund, which includes the existing principal of that fund arising from the public reserved lots before October 3, 1973, and any accrued but unexpended income from the fund since that date, shall continue in existence.

2. Administration; annual income. The Treasurer of State shall hold and administer the fund. The income of the fund shall be credited on December 31st annually to the Unorganized Territory Education and Services Fund established by Title 36, chapter 115, and used to reduce the amount determined to be the municipal cost components for the next fiscal year.

§588. Organized Townships Fund

1. Fund; continued existance. The Organized Townships Fund, which includes the existing principal of the fund arising from the public reserved lots before October 3, 1973, and any accrued but unexpended income of the fund since that date, shall continue in existence. The income of the fund shall be credited to the fund annually as earned.

2. Administration; income; incorporation into town. The Treasurer of State shall hold and administer the fund. The income of the fund shall be added to the principal of the funds, until the inhabitants of the township or tract are incorporated into a municipality, unless previously expended according to law. When any such tract or township is incorporated as a town, the Treasurer of State shall pay the funds belonging to it to the treasurer of the town. The funds shall be added to the funds of that corporation and held and managed as other school funds of that town are required to be held and managed.

3. Income from camps; payment for school support. Notwithstanding subsections 1 and 2, 75% of any income from residential leasehold camps, excluding any income or proceeds from the sale, exchange or relocation of any of these camps under section 590, and 25% of any other income arising from activities under section 585, subsection 4, on public reserved lands located in townships or tracts organized into plantations as of March 1, 1974, shall be held by the Treasurer of State in the Organized Townships Fund. The Treasurer of State shall pay annually the income from that portion of the fund belonging to each such plantation to the treasurer of the plantation to be applied toward the support of schools according to the number of students in each school. The Treasurer of State shall compute this income on January 1st of each year. The Commissioner of Educational and Cultural Services shall file in the office of the State Controller a list of these plantations with the amount due for income for the preceding year according to a record of those amounts to be furnished to the commissioner by the Treasurer of State. The Commissioner of Educational and Cultural Services must be satisfied that the plantations are organized, that schools have been established in the plantations according to law, that assessors are sworn and qualified and that the treasurers of the plantations have given bonds as required by law. The State Controller shall insert the name and amount due the plantations in one of the first warrants drawn in that year.

A. The amount due Lakeville Plantation, Penobscot County, annually under this section shall be expended in accordance with this section. Any excess shall be used, under the supervision and direction of the superintending school committee of Lakeville Plantation, be used to establish scholarship aid for students of Lakeville Plantation to receive post high school education.

§589. Trespass; duty of assessors

The assessors in the organized plantations shall help police the public reserved lots within the boundaries of their respective plantations without any expense to the Bureau of Public Lands. They shall immediately report any cutting or removal of timber or other materials of value to the director in writing.

The assessors in plantations organized before March 1, 1974, may review and comment before final actions taken by the commissioner under section 585, subsection 4, on the public lots located within their respective plantations.

§590. Public reserved land acquisition, sale, exchange or relocation

1. Recommendations to the Legislature. The director may make recommendations to the Legislature for the sale, exchange or relocation of public reserved lands. Except as provided in subsection 2, the director may sell, exchange or relocate those lands only after the approval of the Legislature.

2. Sale of small parcels. The director, after review by the joint standing committee of the Legislature having jurisdiction over state and local government and subsequent approval by the Governor, may sell any parcel of public reserved land not exceeding 1/4 acre in size, provided that:

A. The parcel is sold to the owner of private land which adjoins the parcel;

B. The director determines that public ownership of the parcel, because of its size, shape and location, has no use or value except as an adjunct to the adjoining private property; and

C. The sale is for fair market value of the parcel as determined by the director, taking into account factors including the effect of ownership of the parcel upon the value of the adjoining private property.

Before making any sale, the director shall make a written finding with respect to the requirements of this subsection. The written finding shall be available for public

inspection at the director's office during regular working hours.

It is the policy of the State that the requirements of this subsection be strictly applied and that sale of any parcel of a public reserved lot be discouraged, except in compliance with this subsection.

3. Notice of sales, exchanges and relocations. Before requesting approval under subsection 1 or review under subsection 2, the director shall give notice of the proposed sale, exchange or relocation and may hold a public hearing, provided that the director shall hold a public hearing if requested by any party.

4. Public Reserved Lands Acquisition Fund. To accomplish the purposes of this chapter, there is established the Public Reserved Lands Acquisition Fund. Notwithstanding section 586, all income or proceeds received by the Bureau of Public Lands from the sale, exchange or relocation of any public reserved lands shall be recorded on the books in a separate account and shall be deposited with the Treasurer of State to be credited to the Public Reserved Lands Acquisition Fund. Any interest earned on this money shall also be credited to the fund.

5. Expenditures of fund. All money credited to the fund shall be used exclusively to purchase and assemble quantities of land of such size and location as the director determines best fulfill the purposes of this chapter. Lands acquired with this money are deemed to be public reserved lands. The State shall hold and manage these lands, subject to the same terms and conditions that apply to other public reserved lands. There is appropriated to pay for this property so much of the funds raised from income designated in subsection 4 and paid into the State Treasury as necessary to pay for the purchase of real property to be held and managed as public reserved lands. The director, with the prior approval of the commissioner and the Governor, shall authorize the State Controller to draw the director's warrant for such a purchase at any time. Any remaining balance shall continue from year to year as a fund available only for the purposes of this section.

## PART C

**Sec. 1. 1 MRSA §72, sub-§13,** as repealed and replaced by PL 1981, c. 698, §1, is amended to read:

13. Municipality. "Municipality" includes cities, towns and plantations, except that "municipality" does not include plantations in Title 10, chapter 110, subchapter IV; ~~Title 30, chapters 201 to 213; 235; 239, subchapters I-A, I-B, II, III, III-A and IV; and chapters 240, 241 and 243 to 245~~ or Title 30-A, Part 2.

**Sec. 2. 4 MRSA §152, sub-§6,** as repealed and replaced by PL 1987, c. 192, §1, is repealed and the following enacted in its place:

6. Land use laws. Original jurisdiction, concurrent with that of the Superior Court, to grant equitable relief in proceedings involving alleged violations of a local land use ordinance or regulation or a state land use law or rule, including, but not limited to, the following:

A. The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A;

B. The minimum lot size law, Title 12, sections 4807 to 4807-G;

C. Shoreland zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 12, sections 4811 to 4817;

D. The alteration of rivers, streams and brooks laws, Title 38, sections 425 to 431;

E. The plumbing and subsurface waste water disposal rules adopted by the Department of Human Services under Title 22, section 42;

F. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;

G. Local ordinances enacted under Title 22, section 2642, and in accordance with Title 30-A, section 3001;

H. Local land use ordinances enacted under Title 30-A, section 3001;

I. Local building codes adopted pursuant to Title 30-A, section 3001, and in accordance with Title 30-A, chapter 185, subchapter I;

J. Automobile junkyards, Title 30-A, chapter 183, subchapter I;

K. Regulation and inspection of plumbing, Title 30-A, chapter 185, subchapter III;

L. Malfunctioning domestic waste water disposal units, Title 30-A, section 3428;

M. The subdivision law, Title 30-A, section 4551; local subdivision ordinances enacted under Title 30-A, section 3001; and subdivision regulations adopted under Title 30-A, section 4551;

N. Local zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 30-A, section 4503;

O. The great ponds program, Title 38, sections 386 to 396;

P. Laws pertaining to the discharge of wastes, Title 38, sections 413, 414, 417, 418 and 420;

Q. The alteration of coastal wetlands laws, Title 38, sections 471 to 476 and 478;

R. The site location of development laws, Title 38, sections 481 to 485 and 488 to 490; and

S. The oil discharge prevention and pollution control laws, Title 38, sections 543, 545 and 560.

**Sec. 3. 4 MRSA §301, 2nd ¶** is amended to read:

Judges of probate in the several counties shall receive annual salaries as set forth in Title ~~30,~~ 30-A, section 2.

**Sec. 4. 4 MRSA §807, first ¶,** as repealed and replaced by PL 1987, c. 402, Pt. A, §8, is repealed and the following enacted in its place:

No person may practice law or hold that person out to practice law within the State or before its courts, or demand or receive any remuneration for those services rendered in this State, unless that person has been admitted to the bar of this State and has complied with section 806-A, or unless that person has been admitted to try cases in the courts of this State under section 802. Any person who practices law in violation of these requirements is guilty of the unauthorized practice of law, which is a Class E crime. This section shall not be construed to apply to practice before any Federal Court by any person admitted to practice therein; nor to a person pleading or managing that person's own cause in court; nor to the officer or employee of a corporation, partnership, sole proprietorship or governmental entity, who is not an attorney, but is appearing for that organization in an action cognizable as a small claim under Title 14, chapter 738; nor to a person who is not an attorney, but is representing a municipality under Title 30-A, section 2671, subsection 3; section 4221, subsection 2; section 4506, subsection 1; or Title 38, section 441, subsection 2; nor to a person who is not an attorney, but is representing the Department of Environmental Protection under Title 38, section 342, subsection 7; nor to a person who is not an attorney, but is representing the Bureau of Employment Security or the Bureau of Taxation under section 807-A. In all proceedings, the fact, as shown by the records of the Board of Overseers of the Bar, that that person is not recorded as a member of the bar shall be prima facie evidence of nonmembership of the bar licensed to practice law in the State.

**Sec. 5. 5 MRSA §243, sub-§2,** as amended by PL 1979, c. 541, Pt. A, §21, is further amended to read:

2. Accounting systems for counties. To install uniform accounting systems and perform annual postaudits of all accounts and other financial records of the several counties or any departments or agencies thereof, the expenses of such audits to be paid by the counties and reports of such audits shall accompany the county estimates submitted to the Legislature as provided by Title ~~30, section 253~~ 30-A, chapter 3, subchapter I, and shall be published in the county reports next following the completion of such audits;

**Sec. 6. 5 MRSA §243, sub-§3** is amended to read:

3. Accounting systems for municipalities. To install uniform accounting systems and perform audits for cities, towns and villages as required by Title ~~30, sections 5251 to 5253~~ 30-A, sections 5821 to 5823;

**Sec. 7. 5 MRSA §1816, sub-§2, ¶A,** as amended by PL 1985, c. 222, §1, is further amended to read:

A. The procurement of services, supplies, materials and equipment required involves the expenditure of less than $250 or $1,000 or less for purchases by county commissioners pursuant to Title ~~30, section 304~~ 30-A, section 124, and the interests of the State would best be served thereby;

**Sec. 8. 5 MRSA §3305, sub-§1, ¶D,** as amended by PL 1985, c. 765, §1, is further amended to read:

D. Upon request provide technical assistance to local and regional planning groups in the fields of planning, public housing and urban renewal. The State Planning Office may assist in forming regional planning commissions and councils of governments and may assist with financing the cost of operation of ~~such~~ regional planning commissions ~~established under Title 30, chapter 204-A, subchapter III,~~ and of councils of governments empowered under Title ~~30, chapter 204-A, subchapter II~~ 30-A, chapter 119, subchapter I. Participation shall be limited to half of the nonfederal share of a federally assisted project or 1/3 of a nonfederally assisted planning operation;

**Sec. 9. 5 MRSA §5005, sub-§1, ¶N,** as amended by PL 1985, c. 481, Pt. A, §16, is further amended to read:

N. In cooperation with the Office of the State Fire Marshal and other interested parties, prepare proposed standards for the installation of stoves designed exclusively to burn wood for the purposes of heating or cooking, but shall not include wood stoves designed as furnaces attached to a central heating system. A hearing shall be held, preceded by reasonable notice to the public, on these proposed standards and they shall be modified as deemed necessary in response to the public hearing. The Office of Energy Resources shall make these standards available to those municipalities which desire to regulate the installation of wood stoves, pursuant to their powers as expressed in Title ~~30, section 2151~~ 30-A, section 3001;

**Sec. 10. 5 MRSA §12004, sub-§7, ¶A, sub-¶¶(6)and (9),** are amended to read:

| | | | |
|---|---|---|---|
| (6) | Maine State Housing Authority | Legislative Per Diem | ~~30 MRSA §4601-A~~ 30-A MRSA §4722 |
| (9) | Maine Municipal Bond Bank, Board of Commissioners | Legislative ~~per diem~~ Per Diem | ~~30 MRSA §5164~~ 30-A MRSA §5951 |

**Sec. 11. 5 MRSA §12004, sub-§8, ¶A, sub-¶¶(8) and (11)** are amended to read:

| | | | | |
|---|---|---|---|---|
| (8) | Environment/ Natural Resources | (General) River Corridor Commission | Not Authorized | ~~30 MRSA 1961~~ 30 MRSA §4601 |
| (11) | Finance | Board of Emergency Municipal Finance | Expenses Only | ~~30 MRSA §5301~~ 30-A MRSA §6101 |

**Sec. 12. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶(29), (50) and (51),** are amended to read:

| | | | | |
|---|---|---|---|---|
| (29) | Housing | Advisory Board to the Maine State Housing Authority | Expenses Only | ~~30 MRSA §4602~~ 30-A MRSA §4723 |
| (50) | Local and County Government | County Records Board | Not Authorized | ~~30 MRSA §347~~ 30-A MRSA §554 |
| (51) | Local and County Government | Municipal Records Board | Not Authorized | ~~30 MRSA §2214~~ 30-A MRSA §2754 |

**Sec. 13. 8 MRSA §502, 2nd ¶,** as amended by PL 1987, c. 264, is further amended to read:

No traveling circus, traveling amusement show or amusement device may operate or exhibit any parade, show or entertainment in this State without first paying a license fee for each calendar year. Application for the license shall be made to the Commissioner of Public Safety and shall contain the name of the person or corporation using or operating the traveling circus, traveling amusement show or amusement device, and a statement of proposed territory within the limits of the State, and names of the cities and towns in which the traveling circus, traveling amusement show or amusement device is to operate or exhibit. No traveling circus or traveling amusement show or amusement device may exhibit any parade, show or entertainment in this State without first furnishing the Commissioner of Public Safety, in an amount to be determined by him, a certificate of public liability insurance issued by an authorized insurer or approved surplus lines insurer pursuant to Title 24-A or any risk retention group licensed in any state pursuant to the United States Code, Title 15, Chapter 65, or through a purchasing group licensed in any state pursuant to the United States Code, Title 15, Chapter 65. Upon receipt of the application, accompanied by a certificate of public liability insurance and upon payment of the required fee, a license shall be issued. For amusement shows, carnivals, thrill shows, ice shows, rodeos or similar types of performances which are held indoors or outdoors the fee shall be $250. For circuses which are held outdoors or under tents or similar temporary cover or enclosure the fee shall be $500. For circuses held indoors in an auditorium, arena, civic center or similar type building the fee shall be $250. For circuses produced in their entirety by a nonprofit, charitable organization a license is required but no fee may be charged. The amusement device license fee shall be $25 per amusement device. A traveling amusement show, having amusement devices and having secured a traveling amusement show license, shall pay an additional amusement device license fee for each amusement device over 8 rides. "Amusement device" means a device by which a person is conveyed, where control by the rider over the speed or direction of travel is incomplete. It does not include a vehicle or device, the operation of which is regulated as to safety by any other provision of law, except a municipal ordinance under Title ~~30, section 2151~~ 30-A, section 3001, or any coin-operated kiddie amusement device on a nonmoving base which is designed to accommodate one child.

**Sec. 14. 10 MRSA §1041, sub-§3,** as amended by PL 1985, c. 344, §58, is further amended to read:

3. Acquire securities. Issue revenue obligation securities to acquire one or more issues of revenue obligation securities issued by municipalities or to acquire any other bond not eligible for purchase pursuant to Title ~~30, chapter 241, subchapter II, Article 3-A~~ 30-A, chapter 225. Any single issue of securities may provide funds for the acquisition of revenue obligation securities of one or more municipalities or of bonds for one or more projects which may be separate, unconnected, distinct and unrelated in purpose;

**Sec. 15. 10 MRSA §1043, sub-§4,** as amended by PL 1985, c. 344, §63, is further amended to read:

4. Exception. This section and section 1044, subsection 2, shall not apply in the case of issue by the authority of revenue obligation securities for the purpose of acquiring one or more issues of outstanding revenue obligation securities issued by municipalities or one or more issues of any other bond not eligible for purchase pursuant to Title ~~30, chapter 241, subchapter II, Article 3-A~~ 30-A, chapter 225.

**Sec. 16. 11 MRSA §9-203, sub-§(4),** as enacted by PL 1977, c. 696, §127, is amended to read:

(4) A transaction, although subject to this Article, is also subject to the applicable provisions of Title 9-A, or to Title ~~30, section 3051 and sections 3151 to 3155~~ 30-A, sections 3961 and 3965, and in the case of conflict between the provisions of this Article and any such statute the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

**Sec. 17. 12 MRSA §552, sub-§1, ¶B,** as enacted by PL 1975, c. 339, §6, is amended to read:

B. Prepare for review by the Commissioner of Conservation, revise from time to time and maintain plans for the management of such land in accordance with the principles of multiple use as defined in Title ~~30, section 4162,~~ 12, section 585, subsection 2, paragraph A.

**Sec. 18. 12 MRSA §552, sub-§2, ¶¶A and E,** as enacted by PL 1975, c. 339, §6, are amended to read:

A. The Bureau of Public Lands may employ or retain such expert and professional consultants, and contract for such research and development projects, as it deems necessary within the limits of funds available and consistent with the purposes of this chapter and Title ~~30, chapter 233~~ 12, chapter 202-B.

E. The bureau, at the expense of the State, may cause copies of sections or parts of sections of this chapter or Title ~~30, chapter 233~~ 12, chapter 202-B, and of other laws of the State relating to the administration of public lands to be printed and freely distributed. The bureau may prepare tracts or circulars of information on the administration of public lands which shall be available for distribution.

**Sec. 19. 12 MRSA §553, sub-§3, ¶C,** as amended by PL 1985, c. 299, §1, is further amended to read:

C. Make a written report on or before the 30th day of the first regular legislative session to the joint standing committee of the Legislature having jurisdiction over natural resources, containing a complete accounting of the income and expenditures of the Bureau of Public Lands during the biennium ending on the 31st day of December next preceding the convening of such session. The report shall also contain a summary of the bureau's management activities during the past year regarding timber, recreation, wildlife and other subjects as appropriate. The director shall also report on any gates or other constructed barriers to public access by motor vehicle to any public reserved lands, when these block the sole or primary motor vehicle access, whether or not these barriers are located on public or private land and whether or not they are owned by the State or private parties. The director shall also report on any campsite or recreational facility fees charged under Title ~~30, section 4162,~~ 12, section 585, subsection 4, paragraph E;

**Sec. 20. 12 MRSA §554,** as enacted by PL 1975, c. 339, §6, is amended to read:

§554. Management of public lands

The Director of the Bureau of Public Lands shall have the same powers, subject to the same conditions, with respect to the management of all the lands under the care, custody, control or management of the Bureau of Public Lands as he has with respect to the public reserved lands as set forth in Title ~~30, section 4162,~~ 12, section 585, subsections 4 and 7.

**Sec. 21. 12 MRSA §557, sub-§3,** as repealed and replaced by PL 1985, c. 506, Pt. A, §11, is amended to read:

3. Compensation to municipalities. Notwithstanding the other provisions of this section, 25% of the net revenues from any public lands, excluding submerged lands, public reserved lands and lands held under section 560, and excluding proceeds from the sale of land, located in municipalities and managed by the Bureau of Public Lands, shall be returned by the Treasurer of State to the municipality wherein the land generating the income is located, to be used for municipal purposes. With respect to those public reserved lands which were located in townships or tracts organized into plantations as of March 1, 1974, when any such plantation, subsequent to that date, becomes incorporated into a town, 75% of any income from residential leasehold camps, excluding any income or proceeds from the sale, exchange or relocation of any of these camps under Title ~~30, section 4169~~ 12, section 590, and 25% of any other income from such public reserved land shall be returned by the Treasurer of State to the municipality wherein such public reserved land is located, to be used for municipal purposes. With respect to stumpage income from timber located on public reserved lands and leased pursuant to Title ~~30, section 4162, subsection 4, paragraph L~~ 12, section 585, subsection 4, paragraph K, 50% of the income shall be returned by the Treasurer of State to the lessee for its own purposes. The director may approve the handling of income from sales or permits for up to $500 by the lessees. The lessees shall submit a semiannual accounting of this income and payment for the State's share of the income.

**Sec. 22. 12 MRSA §685-A, sub-§4,** as repealed and replaced by PL 1985, c. 506, Pt. A, §12, is amended to read:

4. Land use standards considered as minimum requirements. Land use standards shall be interpreted and applied by the commission as minimum requirements, adopted to reasonably and effectively promote health, safety and general welfare and insure compliance with state plans and policies.

Whenever the requirements of the adopted land use standards are at variance with the requirements of any other lawfully adopted rules, regulations, standards, ordinances, deed restrictions or covenants, the more protective of existing natural, recreation and historic resources shall govern.

Any portion of a land use district which subsequently becomes an organized municipality or part of an organized municipality or any plantation which adopts planning, zoning and subdivision control as provided in Title ~~30, section 5621~~ 30-A, section 7059, shall continue to be regulated by the Maine Land Use Regulation Commission pursuant to this chapter until such time as the municipality or plantation of which the regulated district is then a part shall adopt land use plans and regulations not less protective of the existing natural, recreational or historic resources than those adopted by the commission.

A. Any municipality organized after September 23, 1971, or any plantation which adopts planning, zoning

and subdivision control as provided in Title ~~30, section 5621~~ 30-A, section 7059, may submit to the commission and receive the approval of the commission of the following:

(1) A comprehensive land use plan for that plantation or proposed city or town;

(2) Standards for determining land use district boundaries and uses permitted within the districts in that plantation or proposed city or town;

(3) A land use district boundary map for that plantation or proposed city or town; and

(4) Such other proposed regulations or standards as the commission deems to be necessary to achieve the purpose, intent and provisions of this chapter.

Upon request of the municipality or plantation, the commission shall prepare such plans, maps, regulations and standards as it may deem necessary to meet minimum planning and zoning standards for its approval of those standards.

Upon obtaining approval, the plantation, city or town shall thereafter adopt, administer and enforce the approved plans, maps, regulations and standards.

B. From time to time, the commission may review the administration and enforcement of local land use plans and regulations by plantations and municipalities which have adopted land use plans, maps, regulations and standards approved by the commission. If, following the review, the commission finds that any of the following have occurred, the commission may reestablish its jurisdiction over that plantation or municipality:

(1) A plantation or municipality has repealed the land use plan, maps, standards or regulations necessary to satisfy the requirements of this subsection or has substantially modified the land use plan, maps, standards or regulations so that the resources of the plantation or municipality are not reasonably protected;

(2) A plantation or municipality has abolished or does not have functioning the administrative bodies and officers necessary to implement the land use program as approved by the commission, normally a planning board, board of appeals and code enforcement officer are included, but this may vary depending on the local program; or

(3) A plantation or municipality has not administered or enforced its land use plan, maps, standards or regulations in a manner which reasonably protects the resources in the plantation or municipality involved.

The action by the commission shall conform with the provisions for rulemaking of the Maine Administrative Procedure Act, Title 5, chapter 375.

Action taken by the commission to reestablish its jurisdiction over a plantation or municipality shall be effective immediately, but shall be submitted to the current or next regular session of the Legislature for approval. If the Legislature fails to act, the action shall continue in effect.

**Sec. 23. 12 MRSA §7824, sub-§3, ¶A,** as amended by PL 1987, c. 88, §2, is further amended to read:

A. The registration fee for residents shall be credited as follows:

(1) $4.75 of each fee shall be credited to the department;

(2) $5.25 of each fee shall be credited to the Snowmobile Trail Fund of the Bureau of Parks and Recreation; and

(3) $6 of each fee shall be annually distributed to the municipality of the owner's residence as shown on his registration certificate, except that in unorganized territory, $6 of each fee shall be annually distributed to the county of the owner's residence as shown on his registration certificate and credited to the unorganized territory fund of that county established in Title ~~30, section 5902~~ 30-A, section 7502.

**Sec. 24. 13 MRSA §1223** is amended to read:

§1223. Investment of funds

Cemetery trust funds of any cemetery corporation or association, trust company, church, religious or charitable society, or other trustee, shall be invested in the manner provided in Title ~~30, section 5051~~ 30-A, chapter 223, subchapter III-A, and, unless the instrument or order creating the trusts prohibits, may be combined with other similar trust funds in the manner provided in Title ~~30, section 1903~~ 30-A, section 5654, and the annual income only shall be expended in performance of the requirements of the trust.

**Sec. 25. 13 MRSA §1261** is amended to read:

§1261. Authority to hold

Any person owning or interested in a lot or lots in a public burying ground of a city or town may deposit with the treasurer of such city or town a sum of money for the purpose of providing for the preservation and care of such lot or lots, or their appurtenances, which sum shall be entered upon the books of the treasurer and invested and held in accordance with Title ~~30, section 5051~~ 30-A, chapter 223, subchapter III-A.

**Sec. 26. 13 MRSA §3165** is amended to read:

§3165. Investment of funds

As soon as may be the corporation shall invest the proceeds of sale in the manner provided in Title ~~30, section 5051~~ 30-A, chapter 223, subchapter III-A.

**Sec. 27. 14 MRSA §8102, sub-§1,** as amended by PL 1987, c. 218, §1, and c. 386, §1, is repealed and the following enacted in its place:

1. Employee. "Employee" means a person acting on behalf of the governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials, volunteer firefighters as defined in Title 30-A, section 3151, emergency medical service personnel, Maine National Guardsmen while receiving state active duty pay under Title 37-B, section 143, in accordance with Title 37-B, sections 181 to 183 and 742, and while engaged in the Domestic Action Program, but the term "employee" shall not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

**Sec. 28. 14 MRSA §8102, sub-§3,** as amended by PL 1987, c. 386, §3, is further amended to read:

3. Political subdivision. "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title ~~30, chapters 203 and 204-A~~ 30-A, chapters 115 and 119, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, school district of any type, any volunteer fire association as defined in Title ~~30, section 3771~~ 30-A, section 3151, and any emergency medical service.

**Sec. 29. 15 MRSA §1702,** as amended by PL 1987, c. 45, Pt. B, §2, is further amended to read:

§1702. No punishment until conviction; costs; concurrent or consecutive sentences

No person ~~shall~~ may be punished for an offense until convicted thereof in a court having jurisdiction of the person and case. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution, except before the District Court in which court he may be sentenced to pay a fine sufficient to cover said costs as provided in Title 4, section 173; and except before a District Court for violations of Title 28-A, sections 2078, 2080, 2223 and 2225, and Title ~~30, chapter 215, subchapter IV~~ 26, chapter 7, subchapter I-B, he shall be sentenced to pay such costs.

**Sec. 30. 17-A MRSA §1253, sub-§2,** as repealed and replaced by PL 1985, c. 285, §1, is amended to read:

2. Each person sentenced to imprisonment who has previously been detained for the conduct for which the sentence is imposed in any state correctional facility or county institution or facility or in any local lockup awaiting trial, during trial, post-trial awaiting sentencing or post-sentencing prior to the date on which the sentence commenced to run either to await transportation to the place of imprisonment specified, or pursuant to court order, and not in execution of any other sentence of confinement, shall be entitled to receive a day-for-day deduction from the total term of imprisonment required under that sentence. Each person shall be entitled to receive the same deduction for any such period of detention in any federal, state or county institution, local lockup or similar facility in another jurisdiction, including any detention resulting from being a fugitive from justice, as defined by Title 15, section 201, subsection 4, unless he is simultaneously being detained for non-Maine conduct.

For the purpose of calculating the day-for-day deduction specified by this subsection, a "day" means 24 hours.

The total term required under the sentence of imprisonment shall be reduced by the total deduction of this subsection prior to applying any of the other deductions specified in this section or in Title ~~30, section 1806~~ 30-A, section 1606.

The attorney representing this State shall furnish the court, at the time of sentencing or within 10 days thereafter, a statement showing the total deductions of this subsection, to that point in time, and the statement shall be attached to the official records of the commitment.

The sheriff or other person upon whom the legal duty is imposed to deliver a sentenced person who is entitled to a deduction for a period of detention post-sentencing shall, at the time of delivery, furnish to the custodian a statement showing the length of that post-sentencing detention. In addition, the transporter shall furnish to the sentencing court the same statement which shall be attached to the official records of the commitment.

**Sec. 31. 17-A MRSA §1253, sub-§6-A,** as enacted by PL 1985, c. 285, §3, is amended to read:

6-A. When a judgment of conviction involving a term of imprisonment is vacated or a sentence involving a term of imprisonment is revised or reviewed and a new sentence involving a term of imprisonment is thereafter imposed upon the person for the same offense, day-for-day credit shall be accorded on the new sentence both for each day the person served in execution of the initial sentence and for all previously earned deductions specified in subsections 4 and 5 and Title ~~30, section 1806~~ 30-A, section 1606. Prior to the day-for-day credit being given on the new sentence, the new sentence shall, after first having been reduced by any deductions specified in subsection 2 previously or subsequently received, have applied to it the controlling deduction specified in either subsection 3 or 3-B.

**Sec. 32. 17-A MRSA §1330, sub-§1,** as repealed and

replaced by PL 1983, c. 793, §2, is amended to read:

1. Work program; payment of restitution. No prisoner who has been ordered to pay restitution may be released pursuant to a work program administered by the Department of Corrections under Title 34-A, section 3035, or a sheriff under Title ~~30, section 1804~~ 30-A, section 1605, unless he consents to pay at least 25% of his gross weekly wages to the victim until such time as full restitution has been made. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's wages agreed to as payment of restitution. If the victim or victims ordered by the court to receive restitution have died or cannot be located, the correctional facility shall inform the court that ordered restitution. The court shall determine the distribution of these funds.

**Sec. 33. 18-A MRSA §1-501**, as enacted by PL 1979, c. 540, §1, is amended to read:

§1-501. Election; bond; salaries; copies

Registers of probate are elected or appointed as provided in the Constitution. Their election is effected and determined as is provided respecting county commissioners by Title ~~30, chapter 1~~ 30-A, chapter 1, subchapter II, and they enter upon the discharge of their duties on the first day of January following; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall give bond to the treasurer of their county with sufficient sureties in the sum of $2,500, except that this sum shall be $10,000 for Cumberland County. Every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of his county, to be presented to them at their next meeting for approval. After the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county within 10 days after its approval, to be filed in his office.

Registers of probate in the several counties shall receive annual salaries as set forth in Title ~~30, section 2~~ 30-A, section 2.

The salaries of the registers of probate shall be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service, which shall be deemed a fee for the use of the county. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the statutory fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds shall be deemed to be official fees for the use of the county.

Nothing in this section ~~shall~~ may be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge.

**Sec. 34. 18-A MRSA §1-506, first ¶**, as amended by PL 1981, c. 394, §1, is further amended to read:

Any register of probate in this State may appoint a deputy register of probate for the county, subject to the requirements of Title ~~30, section 64-A~~ 30-A, section 501. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners.

**Sec. 35. 20-A MRSA §1004**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§1004. Conflict of interest; contracts

A contract made by a school board shall follow the requirement of Title ~~30, section 2251~~ 30-A, section 2605.

**Sec. 36. 20-A MRSA §1202, sub-§5, ¶A**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

A. Municipalities voting on the questions of district formation under Title ~~30, sections 2061 to 2064~~ 30-A, sections 2528 to 2531, shall open the polls at 10 a.m. and shall close the polls at 7 p.m.

**Sec. 37. 20-A MRSA §1253, first ¶**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

For the purpose of nominations, school directors shall be considered municipal officials and shall be nominated in accordance with Title ~~30, chapter 207~~ 30-A, chapter 121, or with a municipal charter, whichever is applicable.

**Sec. 38. 20-A MRSA §1253, sub-§2, ¶B**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

B. Under Method C:

(1) Nominations for directors shall be made on petitions provided by the district secretary. The petitions shall be signed as provided in Title ~~30, section 2061, subsection 3~~ 30-A, section 2528, subsection 4, or if the candidate is a voting resident in a municipality having less than 200 population, signed by at least 20% of the registered voters of that municipality;

(2) The petitions shall be submitted to the registrar of voters in the respective municipalities for certification of the voting residence of the director nominated and of the voters signing the petition;

(3) The registrar of voters shall return the certified petitions to the district secretary not later than 30 days prior to the date of the annual election to be held in the municipality;

(4) The ballot shall be prepared and distributed by the district secretary. It shall give the number of offices to be filled and list the candidates by municipalities or subdistricts in which they are resident;

(5) Notwithstanding any other provision of law, school directors shall be elected by secret ballot;

(6) If all member municipalities do not conduct the election for directors on the same date, then all ballots cast in the elections shall be impounded by the clerk of each municipality:

(a) After all municipalities have voted, the clerks and one or more election supervisors designated by the municipal officers of each municipality shall meet at an agreed upon location and tally the ballot;

(b) The tally shall be completed within one day of the last member municipality election;

(c) The election supervisors shall select from among their members a chairman who shall supervise the tally of ballots; and

(d) The clerk of each municipality shall as promptly as possible after the election certify to the board of directors the result of the voting in that municipality; and

(7) Any recount petitions shall be filed with the secretary of the board of directors and recounts shall be conducted in each member municipality in accordance with the applicable laws.

**Sec. 39. 20-A MRSA §1256, sub-§7, ¶B,** as amended by PL 1983, c. 806, §18, is further amended to read:

B. If the gift is in trust, the board shall deposit or invest those trust funds according to Title ~~30, section 5051~~ 30-A, chapter 223, subchapter III-A.

(1) Unless prohibited by a trust instrument, the district may treat any 2 or more trust funds as a single fund for the purposes of investment.

(2) After deduction for management expenses, any interest earned or capital gains realized shall be prorated among the various trust funds.

(3) Property or securities included in the corpus of a trust fund shall be retained where the trust instrument so provides.

(4) Unless otherwise specified in the trust instrument, only the annual income from the trust fund may be spent.

(5) If the district fails to comply with the terms of the trust instrument, the trust fund reverts to the donor or the donor's heirs.

**Sec. 40. 20-A MRSA §1256, sub-§7, ¶C,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

C. If the money or other property is a conditional gift for any specified benevolent or educational purpose, the following shall apply.

(1) Prior to the acceptance of a gift the board of directors shall obtain approval of the legislative body of the school administrative district.

(2) When the donor's part of the agreement respecting the execution of the conditional gift has been completed, the district shall perpetually comply with, and may raise money to carry into effect, the conditions upon which it was made.

(3) Unless otherwise specified by its terms, a conditional gift of money shall be deposited or invested according to Title ~~30, section 5051~~ 30-A, chapter 223, subchapter III-A.

**Sec. 41. 20-A MRSA §1311, sub-§5,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

5. District status. Notes and bonds, and loans to pay current operating expenses, contracts, leases and agreements with the Maine School Building Authority, shall be legal obligations of the district. The district shall be a quasi-municipal corporation within the meaning of Title ~~30, section 5053~~ 30-A, section 5701 and all the provisions of that section shall be applicable to them.

**Sec. 42. 20-A MRSA §1312, sub-§2,** as repealed and replaced by PL 1983, c. 98, §1, is amended to read:

2. Deposit or investment. All district funds, including reserve funds and trust funds to the extent that the terms of the instrument or vote creating the fund do not prohibit, shall be deposited or invested by the treasurer under the direction of the board of directors according to the requirements for the deposit or investment of municipal funds contained in Title ~~30, section 5051-A~~ 30-A, chapter 223, subchapter III-A.

**Sec. 43. 20-A MRSA §1353, sub-§2, ¶A,** as amended by PL 1985, c. 797, §16, is further amended to read:

A. The voting at referendum held in towns shall be held and conducted in accordance with Title ~~30, sections 2054, 2061 to 2065~~ 30-A, sections 2524 and 2528

to 2532, even though the town has not accepted the provisions of Title ~~30, sections 2061 and 2062~~ 30-A, sections 2524 and 2525. The facsimile signature of the clerk under Title ~~30, section 2061, subsection 5, paragraph F~~ 30-A, section 2528, subsection 6, paragraph F, shall be that of the chairman of the board of directors. If a district referendum is called to be held simultaneously with any statewide election, the voting in towns shall be held and conducted in accordance with Title 21-A, except that the duties of the Secretary of State shall be performed by the board. The absentee voting procedure of Title 21-A shall be used, except the duties of the Secretary of State shall be performed by the board.

**Sec. 44. 20-A MRSA §1403, sub-§1, ¶B,** as amended by PL 1987, c. 395, Pt. A, §59, is further amended to read:

B. The petition must be approved by secret ballot by a 2/3 vote of the voters present and voting before it may be presented to the board of directors and the commissioner. Voting in towns shall be conducted in accordance with Title ~~30, sections 2061 and 2062~~ 30-A, sections 2528 and 2529, even if the towns have not accepted the provisions of Title ~~30, section 2061~~ 30-A, section 2528, and voting in cities shall be conducted in accordance with Title ~~21~~ 21-A.

**Sec. 45. 20-A MRSA §1403, sub-§6, ¶B,** as amended by PL 1983, c. 364, §1, is further amended to read:

B. Except as otherwise provided in this section, the voting at the meetings held in towns shall be conducted in accordance with Title ~~30, sections 2061 and 2062~~ 30-A, sections 2528 and 2529, even if the towns have not accepted the provisions of Title ~~30, section 2061~~ 30-A, section 2528.

**Sec. 46. 20-A MRSA §1403, sub-§6, ¶C,** as amended by PL 1983, c. 364, §1, is further amended to read:

C. The voting at the meeting held in cities shall be conducted in accordance with Title ~~21~~ 21-A.

**Sec. 47. 20-A MRSA §1403, sub-§8,** as amended by PL 1983, c. 364, §1, is further amended to read:

8. Ballots; posting of agreement. The dissolution agreement need not be printed on the ballot. Copies of the agreement shall be posted in each participating municipality in the same manner as specimen ballots are posted under Title ~~30, chapter 207~~ 30-A, section 2528.

**Sec. 48. 20-A MRSA §1653, sub-§1, ¶B,** as amended by PL 1983, c. 806, §21, is further amended to read:

B. In a district which includes grades one to 12, the member towns shall elect their representatives directly to the district's school committee as follows.

(1) For the purpose of nominations, the members of the school committee shall be considered municipal officers and shall be nominated in accordance with Title ~~30, chapter 207~~ 30-A, chapter 121, or in accordance with a municipal charter, whichever is applicable.

(2) Upon the election of the members to the school committee, the clerks of the several municipalities within the district shall forward the names of the members of the committee elected by each municipality to the secretary of the district's school committee.

(3) The terms of office shall be determined by lot as follows: One-third of the members of the school committee shall serve one-year terms; 1/3 shall serve 2-year terms; and 1/3 shall serve 3-year terms. In the event the number of members is not evenly divisible by 3, the terms of the members represented by the integer obtained by dividing the number of members by 3 shall be determined by the preceding sentence; if one member remains, that member shall serve a 3-year term; if 2 members remain, one shall serve a 3-year term; and one shall serve a 2-year term, to be determined by lot. The members of the school committee shall serve their terms as determined and an additional period until the next regular election of the municipalities. Thereafter, their terms of office shall date from the time of each municipality's regular election. In a city where elections are held biennially, the term of each member shall be for 4 years, dating from the time of the regular city election and, following the initial election, the members shall choose by lot to see who will serve for 4 years and who will serve for 2 years. Thereafter, each member shall be elected to serve for 4 years.

**Sec. 49. 20-A MRSA §1702, sub-§5,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

5. Status. A community school district shall be a quasi-municipal corporation within the meaning of Title ~~30, section 5053~~ 30-A, section 5701. The provisions of Title ~~30, section 5053~~ 30-A, section 5701, shall be applicable to it.

**Sec. 50. 20-A MRSA §1705, sub-§1, ¶B,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

B. If the gift is in trust the committee shall either deposit or invest trust funds according to Title ~~30, section 5051~~ 30-A, chapter 223, subchapter III-A.

**Sec. 51. 20-A MRSA §2301,** as repealed and replaced by PL 1985, c. 506, Pt. A, §29, is amended to read:

§2301. Applicability of provisions to certain towns or cities

Sections 2302, 2303 and 2305 do not apply to munici-

palities whose charters specify the methods of selection, recall and term of office of a school committee, nor to municipalities who revise their charters or adopt new charters under the "home rule" provisions of Title ~~30, chapter 201-A~~ 30-A, chapter 111, with specifications for method of selection, recall and term of office of a school committee, nor to municipalities authorized by private and special laws to otherwise choose a school committee.

**Sec. 52. 20-A MRSA §2303, sub-§1, ¶B,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

B. At a special town meeting held at least 30 days before the annual meeting, if a municipality has accepted Title ~~30, section 2061~~ 30-A, section 2528, relative to secret ballot.

**Sec. 53. 20-A MRSA §4102, sub-§4, ¶B,** as amended by PL 1985, c. 161, §2, is further amended to read:

B. Secondary schools in school administrative districts and community school districts and either elementary or secondary schools in other school administrative units may be closed without voter approval, unless the school board is presented with a written petition, within 30 days of the board's decision to close the school, by 10% of the number of voters in the school administrative unit who voted at the last gubernatorial election, then a special referendum shall be called pursuant to:

(1) Section 1351 for school administrative districts;

(2) Title ~~30, sections 2061 to 2065~~ 30-A, sections 2528 to 2532, for community school districts, except the school board shall issue a warrant specifying that the municipalities within the district place the petitioned article on the ballot, and shall prepare and furnish the required number of ballots for carrying out the election; and

(3) Title 21-A and Title ~~30~~ 30-A, respectively, for cities and towns.

**Sec. 54. 20-A MRSA §8307, sub-§4,** as amended by PL 1985, c. 161, §3, is further amended to read:

4. Referendum. After the public hearing, the school board of the school administrative unit or units requesting a change shall submit the proposal to the voters in their school administrative unit or units in accordance with the relevant provisions for holding elections in sections 1351 to 1354 and in Titles 21-A and ~~30~~ 30-A.

**Sec. 55. 20-A MRSA §8455,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§8455. Vocational region considered a political subdivision

A vocational region shall be a political subdivision within the meaning of Title 5, section 1222, subsection 6, and a quasi-municipal corporation within the meaning of Title ~~30, section 5053~~ 30-A, section 5701, and all the provisions of that section shall be applicable to them.

**Sec. 56. 20-A MRSA §12712, sub-§7, ¶B,** as enacted by PL 1985, c. 695, §11, is amended to read:

B. The board of trustees may adopt the provisions of Title ~~30, section 2151, subsection 3, paragraph A~~ 30-A, section 3009, subsection 1, paragraph C, relating to prima facie evidence and the establishment of a waiver of court action by payment of specified fees.

**Sec. 57. 20-A MRSA §15613, sub-§4, ¶¶A and D,** as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, are amended to read:

A. Notwithstanding any other provision of this chapter, if students attend nonpublic schools that are not operated for profit in whole or in part, the commissioner shall reimburse 50% of the expenditures of the base year for providing services to these nonpublic school students as authorized by Title ~~30, section 5104~~ 30-A, section 5724, subsections 5 to 8. Municipal officers shall report these expenditures to the commissioner on forms provided by the commissioner.

D. The commissioner may adopt or amend rules to assure that:

(1) All sums reimbursed were utilized and actually expended for programs authorized pursuant to Title ~~30, section 5104~~ 30-A, section 5724, subsections 5 to 8;

(2) No municipality receives reimbursement for a student who attends school at public expense; and

(3) All services provided to nonpublic school students that require professional personnel are provided by public employees.

**Sec. 58. 20-A MRSA §15617, sub-§§4 and 5,** as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, are amended to read:

4. Budget format; town or city charter. In a municipality where the responsibility for final adoption of the school budget is vested by municipal charter in a council, the school budget format may be changed through amendment of the charter under the home rule procedures of Title ~~30, sections 1911 to 1920~~ 30-A, chapter 111, except that the amendment shall be approved by a majority of voters in an election in which the total vote is at least 20% of the number of votes cast in the municipality in the last gubernatorial election.

5. Budget format; town meeting. When the final budget authority is vested in a town meeting operating under the general enabling procedures of Title ~~30~~ 30-A, the format of the school budget may be determined by the town meeting or under the procedures of Title ~~30,~~

~~section 2053 or 2061~~ 30-A, section 2522 or 2528.

**Sec. 59. 20-A MRSA §15617, sub-§6, ¶B,** as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, is amended to read:

B. The article containing the budget format may be voted on by secret ballot at an election conducted in accordance with Title ~~30, sections 2061 to 2065~~ 30-A, sections 2528 to 2532.

**Sec. 60. 20-A MRSA §15904, sub-§1,** as repealed and replaced by PL 1987, c. 402, Pt. A, §131, is repealed and the following enacted in its place:

1. Municipal schools. In a municipality where the responsibility for final adoption of the school budget is vested in a municipal council by municipal charter or in a town meeting, the vote shall be by referendum in accordance with the appropriate provisions set forth in Title 21-A and Title 30-A, except that the filing requirement contained in Title 30-A, section 2528, subsection 5, does not apply.

**Sec. 61. 20-A MRSA §15904, sub-§3,** as amended by PL 1985, c. 506, Pt. B, §§15 and 18, is further amended to read:

3. Community school districts. In a community school district, the vote shall be conducted in accordance with Title ~~30, sections 2061 to 2065~~ 30-A, sections 2528 to 2532. The return and counting of votes shall be conducted in accordance with the procedures established in section 1353, subsection 3. The district school committee shall:

A. Issue a warrant ordering the municipalities within the district to place the school construction article on the ballot; and

B. Prepare and furnish the required number of ballots for carrying out the vote.

**Sec. 62. 21-A MRSA §101, sub-§3,** as enacted by PL 1985, c. 161, §6, is amended to read:

3. Oath required. Before assuming the duties of office, he must be sworn and the fact of his oath recorded as provided in Title ~~30, section 2060,~~ 30-A, section 2526, subsection 9.

**Sec. 63. 21-A MRSA §356, sub-§2, ¶F,** as enacted by PL 1985, c. 161, §6, is amended to read:

F. Only a voter of the county establishing a charter commission may challenge the nomination petition for county charter commission member. The challenge must be in writing and must set forth the reasons for the challenge. The challenge must be filed in the office of the Secretary of State before 5 p.m. on the 55th day following the order of the county officers under Title ~~30, section 1551,~~ 30-A, section 1321, subsection 1, or the receipt of a certificate of sufficiency under Title ~~30, section 1551,~~ Title 30-A, section 1321, subsection 4.

**Sec. 64. 22 MRSA §42, sub-§3,** as amended by PL 1985, c. 612, §1, is further amended to read:

3. Plumbing and subsurface waste water disposal. The department shall adopt minimum rules relating to plumbing and subsurface sewage disposal systems and the installation and inspection thereof consistent with Title ~~30, chapter 215, subchapter X~~ 30-A, chapter 185, subchapter III, and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title ~~30, section 1917~~ 30-A, section 3001, to adopt more restrictive ordinances; and shall hold hearings on the first Tuesday of February of each year for the purpose of considering changes in the rules pertaining to plumbing and subsurface sewage disposal systems and the installation and inspection thereof. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title ~~30, section 3221,~~ 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification shall be penalized in accordance with Title ~~30, section 4966~~ 30-A, section 4506. Enforcement of the rules shall be the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

**Sec. 65. 22 MRSA §2655, sub-§1,** as enacted by PL 1983, c. 463, §4, is amended to read:

1. Circulation. Any time the issue of whether to fluoridate a public water supply is submitted to the voters in multiple community water districts pursuant to petition, the petition or petitions shall be circulated and signed in the manner prescribed by Title ~~30, section 5353,~~ 30-A, section 2503, subsection 3, paragraph B, subparagraphs (2) and (3), and shall be dated and gathered within the time frame prescribed by the Constitution of Maine, Article IV, Part ~~3rd~~ Third, Section 18, ~~subsection~~ Subsection 2.

**Sec. 66. 22 MRSA §4322, first ¶,** as amended by PL 1983, c. 697, §4, is further amended to read:

Any person aggrieved by a decision, act, failure to act or delay in action concerning his application for general assistance under this chapter shall have the right to an appeal. If a person's application has been approved,

there shall be no revocation of general assistance during the period of entitlement until that person has been provided notice and an opportunity for hearing as provided in this section. Within 5 working days of receiving a written notice of denial, reduction or termination of assistance, in accordance with the provisions of section 4321, or within 10 working days after any other act or failure to act by the municipality with regard to an application for assistance, the person may request an appeal. A hearing shall be held by the fair hearing authority within 5 working days following the receipt of a written request by the applicant for an appeal. The hearing may be conducted by the municipal officers, a board of appeals, created under Title ~~30, section 2411~~ 30-A, section 2691, or one or more persons appointed by the municipal officers to act as a fair hearing authority. In no event may an appeal be held before a person or body responsible for the decision, act, failure to act or delay in relating to the applicant.

**Sec. 67. 23 MRSA §153, sub-§5,** as amended by PL 1987, c. 267, §1, is further amended to read:

5. Automobile graveyards. Secure the relocation, removal or disposal of automobile graveyards and junkyards which are not in conformity with Title ~~30, sections 2451 to 2459~~ 30-A, chapter 183, subchapter I;

**Sec. 68. 23 MRSA §1802, sub-§1,** as enacted by PL 1981, c. 492, Pt. C, §26, is amended to read:

1. Population. "Population" means the population as determined by the latest Federal Decennial Census or the population as determined and certified by the Department of Human Services in accordance with the requirements of Title ~~30, section 5055, subsection 4,~~ 30-A, section 5681, subsection 2, paragraph A, whichever is later.

**Sec. 69. 25 MRSA §2803, sub-§11,** as enacted by PL 1985, c. 155, §3, is amended to read:

11. Provide assistance and materials. May provide to municipal and county officers and municipal and county law enforcement officers any assistance or instructional materials the board deems necessary to fulfill the purposes of this chapter and Title ~~30, sections 951 and 2365~~ 30-A, sections 381 and 2671.

**Sec. 70. 26 MRSA §962, sub-§6, ¶B,** as amended by PL 1981, c. 698, §117, is further amended to read:

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, except that appointees to county offices shall not be excluded under this paragraph unless defined as a county ~~officer~~ commissioner under Title ~~30, section 1502~~ 30-A, section 1302; or

**Sec. 71. 26 MRSA §1043, sub-§28,** as repealed and replaced by PL 1977, c. 585, §1, is amended to read:

28. Governmental entity. "Governmental entity" means the State of Maine, its instrumentalities, political subdivisions and school administrative units as represented by their elected or appointed governing bodies and shall include, without limitation, city and town councils, boards of selectmen, boards of county commissioners, municipally owned and operated hospitals and administrative entities formed under Title ~~30, chapter 203~~ 30-A, chapter 115. In the case of school administrative units, governing bodies shall include, without limitation, municipal school committees, school administrative district directors, community school district school committees and school unions formed under Title ~~20, chapter 17~~ 20-A, chapter 109. In the case of special purpose districts, governing bodies shall include, without limitation, boards of directors or trustees.

**Sec. 72. 29 MRSA §2020, first ¶,** as amended by PL 1979, c. 2, is further amended to read:

School buses which are operated by a motor carrier holding a certificate of public convenience from the Public Utilities Commission, while transporting school children, shall comply with all of the requirements of school buses, except that they shall be exempted from the vehicle color requirements. School buses which are operated by a transit district, as defined in Title ~~30, section 4977~~ 30-A, section 3501, subsection 1, shall be exempted from the school bus marking, emergency door, lateral seating and color requirements of this subchapter, except that the school buses shall continue to use signal lamps as required by section 2012, subsection 1, paragraph D.

**Sec. 73. 32 MRSA §1102-B, sub-§5, ¶D,** as amended by PL 1981, c. 543, §1, is further amended to read:

D. Installations or alterations for which a permit and inspection are required by municipal resolution or ordinance under Title ~~30, section 2557~~ 30-A, section 4173;

**Sec. 74. 33 MRSA §604, first ¶** is amended to read:

Registers of deeds in the several counties shall receive annual salaries as set forth in Title ~~30,~~ 30-A, section 2.

**Sec. 75. 33 MRSA §605, first ¶,** as amended by PL 1981, c. 698, §167, is further amended to read:

Each register shall appoint a deputy register of deeds subject to the requirements of Title ~~30, section 64-A~~ 30-A, section 501; the deputy register shall be sworn. He shall give bond to the county for the faithful discharge of his duties in such sum as the county commissioners order and with such sureties as they approve in writing thereon. The premium of the bond shall be met by the county. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners. In case of sickness, absence or any temporary disability of the register, such deputy shall make and sign for him all certificates and make all entries and minutes required to be signed or made by the register. Such certificates, entries and minutes shall be as valid as if made by the register.

**Sec. 76. 33 MRSA §1601-106,** as amended by PL 1987, c. 322, is further amended to read:

§1601-106. Applicability of local laws and regulations

A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership. Otherwise, no provision of this Act invalidates or modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation. No county, municipality, village corporation or other political subdivision, whether or not acting under the municipal home rule powers provided for under the Constitution of Maine, Article VIII, Part Second or Title ~~30, sections 1911 through 1920~~ 30-A, chapter 111, and section 3001, or any other authority from time to time, may adopt or enforce any law, ordinance, rule, regulation or policy which conflicts with the provisions of this Act.

**Sec. 77. 36 MRSA §314, sub-§2,** as amended by PL 1975, c. 545, §11, is further amended to read:

2. Tenure. A chief assessor having tenure may be removed for cause by the executive committee on the form and manner provided for the removal of town managers in Title ~~30, section 2313~~ 30-A, section 2633. The chief tax assessor shall hold office for an indefinite term unless otherwise specified by contract.

**Sec. 78. 36 MRSA §714,** as enacted by PL 1971, c. 478, §2, is amended to read:

§714. State-municipal revenue-sharing aid

The assessors shall deduct from the total amount required to be assessed an amount equal to the amount that the municipal officers estimate will be received under Title ~~30, section 5055~~ 30-A, section 5681, during the municipal fiscal year.

**Sec. 79. 36 MRSA §892-A,** as amended by PL 1983, c. 595, is further amended to read:

§892-A. Interest on delinquent county taxes

Interest shall accrue on all unpaid balances of the county tax that are then due, beginning on the 60th day after the date for payment set by the county commissioners under Title ~~30, section 254~~ 30-A, section 706. County taxes, not paid prior to the 60th day after the date for payment, are delinquent.

The rate of interest shall be specified by vote of the county commissioners and a notification of this rate shall be included in the warrant to assessors required under Title ~~30, section 254~~ 30-A, section 706. The rate of interest may not exceed the rate of interest established by the State Tax Assessor under section 186. Interest may not be charged a municipality before the latest date, set by the municipality under section 505 for charging interest on delinquent taxes, which falls within the county's fiscal year to which the delinquent tax is to apply. The specified rate of interest shall apply to delinquent taxes committed during the taxable year until those taxes are paid in full, and the interest shall be added to and become part of the taxes.

**Sec. 80. 36 MRSA §1603, sub-§1, ¶C,** as amended by PL 1983, c. 471, §17, is further amended to read:

C. The cost of reimbursement by the State for services a county provides to the unorganized territory in accordance with Title ~~30, chapter 407~~ 30-A, chapter 305. No county may be reimbursed for services provided on or after January 1, 1979, unless a legislative allocation is obtained pursuant to this chapter.

**Sec. 81. 36 MRSA §1605, sub-§1,** as enacted by PL 1977, c. 698, §8, is amended to read:

1. Fund established. The Legislature hereby creates the Unorganized Territory Education and Services Fund. The State Tax Assessor shall deposit in the fund all Unorganized Territory Educational and Services Tax ~~moneys~~ money and county tax ~~moneys~~ money, assessed pursuant to Title ~~30, section 254~~ 30-A, section 706, which he collects.

**Sec. 82. 36 MRSA §1760, sub-§37,** as enacted by PL 1977, c. 342, §2, is amended to read:

37. Regional planning commissions and councils of government. Sales to regional planning commissions and councils of government, which are established in accordance with Title ~~30~~ 30-A.

**Sec. 83. 36 MRSA §4641-B, last ¶,** as enacted by PL 1985, c. 381, §2, is amended to read:

The State Tax Assessor shall pay all net receipts to the Treasurer of State, who shall credit 1/2 of the revenue to the General Fund and who shall monthly pay the remaining 1/2 to the Maine State Housing Authority, which shall deposit the funds in the Housing Opportunities for Maine Fund created in Title ~~30, section 4733~~ 30-A, section 4853.

**Sec. 84. 38 MRSA §438, sub-§2, ¶A,** as enacted by PL 1985, c. 481, Pt. A, §91, is amended to read:

A. Prepared a comprehensive plan adequate to comply with the requirements of Title ~~30, section 4961~~ 30-A, section 4502, and this chapter and notified the State Planning Office; and

**Sec. 85. 38 MRSA §439, 3rd ¶,** as reallocated by PL 1985, c. 481, Pt. A, §27, is amended to read:

Zoning ordinances adopted pursuant to this chapter need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title ~~30, section 4962~~ 30-A, section 4503, to the contrary, it being the intention of the

Legislature to recognize that it is reasonable for municipalities to treat specially with shoreland areas and to choose to immediately zone around water bodies rather than to wait until such time as it enacts zoning ordinances for all of the land within its boundaries. However, the provisions of ordinances, which zone shoreland areas only, must relate solely to measures necessary to protect and enhance water quality, preserve and enhance the aesthetics of water bodies and views therefrom, protect shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use and to encourage and insure the integrity of points of access to water bodies.

**Sec. 86. 38 MRSA §440, 3rd ¶,** as reallocated by PL 1985, c. 481, Pt. A, §28, is amended to read:

Zoning ordinances adopted or extended pursuant to this section need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title ~~30, section 4962~~ 30-A, section 4503, to the contrary, provided such ordinances are required for entrance of the municipality into the Federal Flood Insurance Program. Ordinances or amendments adopted by authority of this section shall not extend beyond an area greater than that necessary to comply with the requirements of the Federal Flood Insurance Program.

**Sec. 87. 38 MRSA §441, sub-§§1 and 2,** as reallocated by PL 1985, c. 481, Pt. A, §29, are amended to read:

1. Appointment. In every municipality, the municipal officers shall annually by July 1st appoint or reappoint a code enforcement officer, whose job may include being a local plumbing inspector or a building inspector and who may or may not be a resident of the municipality for which he is appointed. The municipal officers may appoint the planning board to act as the code enforcement officer. The municipal officers may remove a code enforcement officer for cause, after notice and hearing. This removal provision shall only apply to code enforcement officers who have completed a reasonable period of probation as established by the municipality pursuant to Title ~~30, section 2256~~ 30-A, section 2701. If not reappointed by a municipality, a code enforcement officer may continue to serve until a successor has been appointed and sworn.

2. Certification; authorization by municipal officers. No person may serve as a code enforcement officer who is authorized by the municipal officers to represent the municipality in District Court unless he is currently certified under Title ~~30, section 3222,~~ 30-A, section 4221, subsection 2, as being familiar with court procedures.

Upon written authorization by the municipal officers, a certified code enforcement officer may serve civil process on persons whom he determines to be in violation of ordinances adopted pursuant to this chapter and, if authorized by the municipal officers, may represent the municipality in District Court in the prosecution of violations of ordinances adopted pursuant to this chapter.

**Sec. 88. 38 MRSA §451-A, sub-§1, ¶C,** as repealed and replaced by PL 1975, c. 209, is amended to read:

C. Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system which has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs shall include, but not be limited, to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon shall be invested and expended pursuant to Title ~~30, chapter 241~~ 30-A, subpart 9.

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement shall be determined by agreement between the municipality and the discharger.

**Sec. 89. 38 MRSA §451-A, sub-§5,** as enacted by PL 1975, c. 209, is amended to read:

5. Fees. Municipalities and quasi-municipal entities shall assess and collect the fees to be charged pursuant to this section in accordance with the provisions of chapter 11, and Title ~~30, chapters 235 and 237~~ 30-A, chapters 161 and 213.

**Sec. 90. 38 MRSA §482, sub-§5, ¶B,** as amended by PL 1981, c. 227, §1, is further amended to read:

B. All the lots are at least 5 acres, and the municipality has adopted additional regulations governing subdivisions pursuant to Title ~~30, section 4956~~ 30-A, section 4551, and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access;

**Sec. 91. 38 MRSA §489, sub-§1,** as enacted by PL 1975, c. 447, is amended to read:

1. Municipal application for review power. A municipality may apply to the Board of Environmental Protection, on forms provided by the board, for authority to substitute permits issued pursuant to Title ~~30, section 4956~~ 30-A, section 4551, for permits required by section 483 for subdivisions more than 20 acres but less than 100 acres. The board shall grant such authority if it finds that the municipality has:

A. Established a planning board;

B. Developed a suitable application;

C. Made provisions by ordinance or regulation for prompt notice to the board upon receipt of the application, written notification to the applicant and the board of the issuance of or denial of a permit, stating the reason therefor, public notice and satisfactory hearing procedures.

In the event that the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the board determines that a municipality has failed to exercise its permit granting authority in accordance with its approved procedures or the purposes of this ~~Article~~ article as embodied in the standards set forth in section 484 and Title ~~30, section 4956~~ 30-A, section 4551, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality, to solicit public or official comment thereon. Following such hearing, if it finds that such deficiencies will persist, it shall revoke the municipality's permit granting authority.

In the event that a municipality has the authority granted by this Act revoked by the board, it may reapply to the board for such authority at any time.

**Sec. 92. 38 MRSA §837, sub-§6, ¶B,** as enacted by PL 1983, c. 417, §6, is amended to read:

B. To a river corridor commission, lake or watershed district, dam commission or other similar agency created by Act of the Legislature or by an agreement among municipalities or other public agencies under the interlocal cooperation laws, Title ~~30, chapter 203~~ 30-A, chapter 115;

**Sec. 93. 38 MRSA §1105, first ¶,** as amended by PL 1971, c. 618, §12, is further amended to read:

Trustees shall be nominated and elected in the same manner as municipal officers are nominated and elected under Title ~~30~~ 30-A, or in accordance with a municipal charter, whichever is applicable; or, in the case of unorganized territory, in accordance with the procedure for the organization of larger townships set forth in Title ~~30, section 5602~~ 30-A, section 7001, subsection 2. Upon receipt of the names of all the trustees, the Board of Environmental Protection shall set a time, place and date for the first meeting of the trustees, notice thereof to be given to the trustees by certified or registered mail, return receipt requested, mailed at least 10 days prior to the date set for the meeting, to determine the length of their terms. The terms shall be determined by lot in accordance with the following table:

| | TERM | | |
|---|---|---|---|
| Total number of Trustees | 1 year | 2 years | 3 years |
| 5 | 1 | 2 | 2 |
| 6 | 2 | 2 | 2 |
| 7 | 2 | 2 | 3 |
| 8 | 2 | 3 | 3 |
| 9 | 3 | 3 | 3 |
| 10 | 3 | 3 | 4 |
| 11 | 3 | 4 | 4 |
| 12 | 4 | 4 | 4 |
| 13 | 4 | 4 | 5 |
| 14 | 4 | 5 | 5 |
| 15 | 5 | 5 | 5 |
| 16 | 5 | 5 | 6 |
| 17 | 5 | 6 | 6 |
| 18 | 6 | 6 | 6 |

The trustees shall enter on their records the determination so made. The trustees shall serve their terms as determined at the organizational meeting, except that in the case of trustees representing a municipality, such trustees shall serve an additional period until the next regular election of the municipality, and thereafter such trustees' terms of office shall date from the time of each regular municipal election; and except that in the case of trustees representing residents of unorganized territory, such trustees shall serve until an election to fill the vacancy caused by the expiration of their terms shall be called by the county commissioners; and such commissioners shall call such election in the same manner as is provided for the initial election of trustees and cause the same to be held on a date as closely following the date upon which such terms expire as may be.

**Sec. 94. 38 MRSA §1201, sub-§1,** as amended by PL 1985, c. 506, Pt. B, §35, is further amended to read:

1. Authorization of bonds. Any sanitary district formed under this chapter may provide by resolution of its board of trustees, without district vote, except as provided in subsection 10, for the borrowing of money and the issuance from time to time of bonds for any of its corporate purposes, including, but not limited to:

A. Paying and refunding its indebtedness;

B. Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether in-

curred by the district or any municipality therein or any person residing in unorganized territory encompassed by the district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by the district for any such expenses incurred or paid by it or him;

C. Paying costs directly or indirectly associated with acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction and for such period thereafter as the trustees may determine;

D. Providing such reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds; and

E. Any combination of these purposes.

Bonds may be issued under this chapter as general obligations of the district or as special obligations payable solely from particular funds. The principal of, premium, if any, and interest on all bonds shall be payable solely from the funds provided for that purpose from revenues. For purposes of this chapter, the term "revenues" means and includes the proceeds of bonds, all revenues, rates, fees, entrance charges, assessments, rents and other receipts derived by the district from the operation of its sewer system and other properties, including, but not limited to, investment earnings and the proceeds of insurance, condemnation, sale or other disposition of properties. All bonds issued by a district under this chapter shall be legal obligations of the district, and all districts formed under this chapter are declared to be quasi-municipal corporations within the meaning of Title ~~30, section 5053~~ 30-A, section 5701. Bonds may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of any municipality encompassed by the district, and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter. Bonds issued under this chapter do not constitute a debt or liability of the State or of any municipality encompassed by the district or a pledge of the faith and credit of the State or any such municipality, but the bonds shall be payable solely from the funds provided for that purpose, and a statement to that effect shall be recited on the face of the bonds.

**Sec. 95. 38 MRSA §1304-B, sub-§5,** as amended by PL 1985, c. 593, §9, is further amended to read:

5. Public waste disposal corporations. Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to any interlocal agreement entered into in accordance with Title ~~30, chapter 203~~ 30-A, chapter 115, any 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81, or Title 13-B for the purpose, among other permissible purposes, of owning or operating any one or more waste facilities described in subsection 4, paragraph A, and a subscribing municipality may agree in any such interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B, for such term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation shall provide that:

A. The corporation shall be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person;

B. The directors of the corporation shall be elected by the municipal officers of the municipalities participating in the corporation; and

C. Upon dissolution or liquidation of the corporation, title to all of its property shall vest in one or more of the municipalities participating in the corporation.

Any interlocal agreement complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner which satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, shall be deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation shall have the power, in addition to any other powers which may be delegated under Title ~~30, chapter 203~~ 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter IV, and any other bonds, notes or debt obligations which municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter IV, means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6, shall not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C, are applicable to the contract or payments.

**Sec. 96. 38 MRSA §1304-B, sub-§6,** as repealed and replaced by PL 1985, c. 593, §10, is amended to read:

6. Relationship to other laws. The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision.

A. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the last full state valuation of the municipality; minus

(2) The municipality's then obtaining allocable share of any debt or portions of debt described in paragraph B with regard to which it is obliged to make payments.

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus

(2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations.

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 may be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection may be exercised by the municipal officers as defined in Title ~~30, section 1901~~ 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after ~~the effective date of this subsection~~ March 21, 1986.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title ~~30, section 1917~~ 30-A, section 3001, or on the ability of communities to jointly exercise their powers as is recognized in Title ~~30, section 1951~~ 30-A, section 2201. This section provides an additional and alternative method for carrying out this subchapter.

**Sec. 97. 38 MRSA §1305, sub-§5,** as enacted by PL 1973, c. 387, is amended to read:

5. Municipal permits. All permits issued pursuant to Title ~~30, sections 2451 to 2460~~ 30-A, chapter 183, subchapter I, shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules and regulations adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality shall be submitted to the department within 30 days of issue.

**Sec. 98. 38 MRSA §1705, sub-§9,** as enacted by PL 1983, c. 820, §2, is amended to read:

9. Municipal officer. "Municipal officer" means municipal officer as defined in Title ~~30, section 1901~~ 30-A, section 2001, and includes the assessors of a plantation.

**Sec. 99. 38 MRSA §1751, sub-§§1 and 5,** as enacted by PL 1983, c. 820, §2, are amended to read:

1. Authorization of bonds. Subject to the limitations in subsection 10 and sections 1754 and 1755, any district formed under this chapter may provide by resolution of its board of directors, without district vote, for the borrowing of money and the issuance from time to time of bonds and notes for any of its corporate purposes, including, but not limited to:

A. Paying and refunding its indebtedness;

B. Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether incurred by the district or any municipality in the district. The district may reimburse any municipality in the district for any such expenses incurred or paid by it;

C. Paying costs directly or indirectly associated with acquiring properties, paying damages, constructing, maintaining and operating waste facilities, and making renewals, additions, extensions and improvements to the property or facilities, and covering interest payments during the period of construction and for such period as the directors may determine;

D. Providing such reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds or notes;

E. Financing all or part of a waste facility for a user. The term "user," as used in this section, means one or more persons or entities, other than a district, acting as lessee, purchaser, mortgagor or borrower or contracting party; and

F. Any combination of these purposes.

Bonds may be issued by a district under this chapter as general obligations of the district or as special obligations payable solely from particular funds. The principal, premium and interest on all bonds shall be payable solely from the funds provided for that purpose from revenues. All bonds issued by a district under this chapter shall be legal obligations of the district, and all districts formed under this chapter are declared to be quasi-municipal corporations within the meaning of Title ~~30, section 5053~~ 30-A, section 5701. Bonds may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of any municipality encompassed by the district and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter. Except as provided in this subchapter, bonds issued by a district under this chapter do not constitute a debt or liability of the State or of any municipality encompassed by the district or a pledge of the faith and credit of the State or any such municipality, and a statement to that effect shall be recited on the face of the bonds.

5. Trust funds. Notwithstanding any other provision of law, all ~~moneys~~ money set aside for payment of the bonds, or other purposes pursuant to the provisions of any trust agreement securing the bonds, shall be deemed to be trust funds, to be held and applied as provided by the trust agreement; provided that investment or deposit of those funds shall be subject to the provisions applicable to municipal funds under Title ~~30, section 5051-A~~ 30-A, chapter 223, subchapter III-A. The resolution authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that any officer to whom, or bank, trust company or other financial institution or fiscal agent to which, ~~those moneys~~ money shall be paid shall act as trustee of ~~those moneys~~ money and shall hold and apply the same for the purposes hereof, subject to such regulations as may be provided in the resolution or trust agreement or as may be required by this chapter.

**Sec. 100. 38 MRSA §1757,** as enacted by PL 1983, c. 820, §2, is amended to read:

§1757. Bonds issued by municipalities

For the purpose of assisting a district in financing any solid waste facility authorized by this chapter, and notwithstanding any other provision of law, any individual municipality may issue general obligation bonds backed by the full faith and credit of the municipality. Proceeds of the bonds or any part thereof may be either loaned or contributed to a district of which a municipality is a member. The issuance of the bonds and the loaning or contributing of funds to a district formed under this chapter shall constitute a valid purpose for which a municipality may raise or appropriate money under Title ~~30, sections 5101 to 5108~~ 30-A, sections 5721 to 5728. General obligation bonds issued by a municipality under this section shall be a municipal security as defined in Title ~~30, section 5163~~ 30-A, section 5903, and shall be eligible for purchase by the Maine Municipal Bond Bank. Nothing in this section may be read or construed to prohibit a municipality acting under this section from levying user fees and charges and discharging its debt out of the funds generated by the fees and charges. A municipality issuing bonds under this section and a district receiving the proceeds of the bonds may enter into such contracts and agreements as they may agree upon, both with each other and 3rd parties, establish trust or enterprise funds to provide for timely payment of the bonds, employ a trustee and do all things which may be necessary or convenient to the district or the municipality to make use of the bonds, as may be determined by the board of directors of the district and the municipal officers of the municipality.

**Sec. 101. 39 MRSA §2, sub-§5, ¶A,** as amended by PL 1987, c. 409, §1, is further amended to read:

A. "Employee" includes officials of the State, counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States; and persons operating as sternmen as defined in Title 36, section 5102, subsection 8-A;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire fighters' association, as defined in Title ~~30, section 3771~~ 30-A, section 3151; volunteer emergency medical services' persons, as defined in Title 32, section 83, subsection 12; and policemen shall be deemed employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services' person, the average weekly wage shall be taken to be the earning capacity of the injured employee in the occupation in which he is regularly engaged. Employers who hire workmen within this State to work outside the State may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such an agreement. Any reference to an employee who has been injured shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable;

(3) Notwithstanding any other provisions of this Act any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in conformity with subchapter II; and the executive officer shall remain an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract shall cause the officer to be an employee of the corporation under this Act;

(4) Any person who states in writing to the commission that he waives all the benefits and privileges provided by the workers' compensation laws, provided that the commission shall have found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which he is employed and that this waiver was not a prerequisite condition to employment.

Any person may revoke or rescind his waiver upon 30 days' written notice to the commission and his employer. The parent, spouse or child of a person who has made a waiver under the previous sentence may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commissioner finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation which employs the person who has made the first waiver;

(5) The parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commission finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 1-A;

(7) An independent contractor; or

(8) If a person employs an individual contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. No insurance company may charge a premium to any person for any employee excluded by this subparagraph.

**Sec. 102. 39 MRSA §64-B, first ¶**, as amended by PL 1975, c. 480, §10, is further amended to read:

If any person has been an active member of a municipal fire department or of a volunteer fire fighters' association, as defined in Title ~~30, section 3771~~ 30-A, section 3151, for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if ~~said~~ the disease has developed or the injury has occurred within 6 months of having participated in fire fighting or training or drill which actually involves fire fighting, there shall be a rebuttable presumption that the employee received the injury or contracted the disease arising out of and in the course of his employment, that sufficient notice of the injury or disease has been given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

**Sec. 103.** 39 MRSA §64-C, first ¶, as amended by PL 1975, c. 480, §10, is further amended to read:

If any person had been an active member of a municipal fire department or of a volunteer fire fighters' association, as defined in Title ~~30, section 3771~~ 30-A, section 3151, for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and provided that the person had developed the disease or had suffered the injury which resulted in death within 6 months of having participated in fire fighting or training or drill which actually involves fire fighting, there shall be a rebuttable presumption that the person received the injury or disease arising out of and in the course of his employment, that sufficient notice of the injury or disease was given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

**Sec. 104. Transition clause.** The following provisions apply to the transition from the Maine Revised Statutes, Title 30 to Title 30-A.

1. Personnel. This Act does not affect the term or appointment of any officer, official, employee or other personnel of any county, municipality, plantation, village, quasi-municipal corporation or any state agency, department or board governed by the Maine Revised Statutes, Title 30-A.

2. Agreements, leases, contracts, authorizations or bonds. All agreements, leases, contracts, authorizations, notes or bonds issued under the Maine Revised Statutes, Title 30, before the effective date of this Act shall continue to be valid under the terms of issuance until they expire or are rescinded, amended or revoked.

3. Ordinances, rules and regulations. All ordinances, rules and regulations enacted or adopted by any county, municipality, plantation, village, quasi-municipal corporation or any state agency, department or board under the authority of the Maine Revised Statutes, Title 30, shall continue in force until they are repealed, rescinded, amended or revoked.

4. Dedicated revenues. This Act shall not be construed to change the status of any dedicated revenues. All dedicated revenues existing prior to this Act shall not lapse because of this Act, but shall be transferred to the funds of the same name which are created by this Act.

**Sec. 105. Legislative intent.** It is the intent of the Legislature that this Act shall be considered a revision of certain laws governing state and local government and shall not in any way be considered to change or revise the meaning or intent of those laws.

**Sec. 106. Effective date.** This Act shall take effect on March 1, 1989.

Effective March 1, 1989.

# CHAPTER 738

H.P. 1887 — L.D. 2582

**AN ACT to Increase the Minimum Wage.**

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

**Sec. 1.** 26 MRSA §664, first ¶, as amended by PL 1985, c. 76, §2, is further amended to read:

By reason of the declaration of policy set forth in section 661 and in the protection of the industry or business and in the enhancement of public interest, health, safety and welfare, it is declared unlawful for any employer to employ any employee, except as otherwise provided in this subchapter, at the rate of less than ~~$3.45 per hour starting on January 1, 1985, and $3.55 per hour starting on January 1, 1986, and~~ $3.65 per hour ~~starting on January 1,~~ in 1987 and $3.75 per hour starting January 1, 1989 and $3.85 per hour starting January 1, 1990, but in no case may the minimum hourly wage exceed the average minimum hourly wage of the 5 other New England states; or to require any employee to work more than 40 hours in one week, unless 1 1/2 times the regular hourly rate is paid for all work done over 40 hours in any one week; and whenever the highest federal minimum wage is increased in excess of ~~$3.55 per hour,~~ the minimum wage established under this section, the minimum wage shall be increased to the same amount, effective on the same date as the increase in the highest federal minimum wage, but in no case shall the minimum wage exceed ~~$4~~ $5 per hour. The overtime provision of this section shall not apply to seamen, the canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of herring as sardines, of perishable foods, of agricultural produce and meat and fish products, nor to the canning of perishable goods, nor to hotels, motels, restaurants and other eating establishments, public employees, nor to automobile mechanics or automobile salesmen.

**Sec. 2.** 26 MRSA §664, 2nd ¶, as amended by PL 1985, c. 576, is further amended to read:

In determining the wage of a service employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of ~~$1.54 in 1986, and~~ $1.64 per hour ~~beginning on January 1,~~ in 1987, and $1.74 per hour starting January 1, 1989 and, starting January 1, 1990, at the minimum hourly wage set forth in this section, minus $2.01 per hour; except that in the case of an employee who, either himself or acting through his representative, shows to the satisfaction of the director that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.