

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

subchapter II, article 5, except that in calendar year 1996 a license holder shall pay by April 1, 1996 applicable fees for the use of elver fyke nets, Sheldon eel traps and dip nets and affix tags by April 1, 1996 to elver fyke nets and Sheldon eel traps used by the license holder when those nets and traps are used to fish for or take elvers. A person who holds an eel fishing license issued under Title 12, former section 6505 and fishes for or takes eels that are not for personal use is subject to Title 12, chapter 621, subchapter II, article 5.

**Sec. A-13. Effective dates.** Those sections of this Part that enact the Maine Revised Statutes, Title 12, sections 6575 and 6575-A take effect March 16, 1996. Those sections of this Part that amend Title 12, section 6001, subsection 29 and enact Title 12, section 6864 take effect April 15, 1996.

## PART B

**Sec. B-1. 12 MRSA §7001, sub-§§6-A to 6-C, 37-A and 39-A** are enacted to read:

**6-A. Eel.** "Eel" means a member of the species Anguilla rostrata in that stage of its life cycle when it is 6 inches or more in length.

**6-B. Eel pot.** "Eel pot" means a cylindrical or rectangular trap with funnels that is baited and used to harvest eels. An eel pot is 50 cubic feet or less in total volume and utilizes wire or slatting no smaller than 1/2 inch square measure.

**6-C. Elver.** "Elver" means a member of the species Anguilla rostrata in that stage of its life cycle when it is less than 6 inches in length.

**37-A. Trap net.** "Trap net" means a funnel-shaped net designed to intercept and retain fish in a confined space.

**39-A. Weir.** "Weir" means a structure placed in the inland waters of a river, stream or brook that is designed to entrap fish and that exceeds more than 1/3 of the wetted width of the channel.

**Sec. B-2. 12 MRSA §7153**, as amended by PL 1995, c. 455, §11, is repealed and the following enacted in its place:

### **§7153. Alewife, eel, sucker and yellow perch permit**

**1. Issuance.** The commissioner may issue permits to fish for or possess alewives, eels, suckers and yellow perch under rules that the commissioner establishes, if these permits do not interfere with rights granted under section 6131.

A. Eels may be harvested in inland waters using only eel pots or weirs.

B. Alewives, suckers and yellow perch may be harvested in inland waters using trap nets, dip nets or spears.

**2. Fee.** The minimum fee for an individual permit for alewives, suckers and yellow perch is \$42. Beginning in calendar year 1996, a crew permit may be sold for alewives, suckers and yellow perch for \$100, authorizing up to 3 persons to engage in the licensed activity. The annual fee for an eel pot or weir permit is \$100. An eel pot or eel weir license is not transferable.

**3. Prohibitions.** The following prohibitions apply to the harvesting of eels and elvers in inland waters.

A. It is unlawful for any person to fish for or take elvers from inland waters.

B. It is unlawful for any person other than the owner of a weir used to fish for or take eels in inland waters to tend that weir while the weir is immersed unless that person has in the person's possession written permission from the owner to tend the weir or is in the presence of the owner and has the owner's permission to tend the weir.

**4. Disposition of fees.** All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$42 accrues to the General Fund for each eel pot or eel weir permit issued under this section. This subsection is repealed on January 1, 2001.

**5. Five-year limited entry; inland eel weirs.** The department may not issue an eel weir permit to a person unless that person possessed a valid eel weir permit for calendar year 1995. This subsection is repealed on January 1, 2001.

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

Effective March 14, 1996, unless otherwise indicated.

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## CHAPTER 537

H.P. 1188 - L.D. 1629

**An Act to Implement the  
Recommendations of the Study  
Commission on Property Rights and  
the Public Health, Safety and  
Welfare Establishing a Land Use  
Mediation Program and Providing  
for Further Review of Rules**

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

**Sec. 1. 2 MRSA §8** is enacted to read:

**§8. Land use mediation; obligation to participate**

Agencies within the executive branch shall participate in mediation under Title 5, chapter 314, subchapter II, when requested to participate by the Court Mediation Service. This section is repealed October 1, 2001.

**Sec. 2. 4 MRSA §18, sub-§6-B** is enacted to read:

**6-B. Land use mediation.** The land use mediation program is a program within the Court Mediation Service.

A. The Director of the Court Mediation Service shall administer the land use mediation program established in Title 5, chapter 314, subchapter II.

B. A land use mediation fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected for mediation services pursuant to Title 5, chapter 314, subchapter II must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 5, chapter 314, subchapter II.

This subsection is repealed October 1, 2001. Any balances remaining in the land use mediation fund must be transferred to a nonlapsing account within the Judicial Department to be used to defray mediation expenses.

**Sec. 3. 5 MRSA c. 314** is amended by repealing the chapter headnote and enacting the following in its place:

**CHAPTER 314**

**COORDINATION OF LAND USE AND NATURAL RESOURCE MANAGEMENT**

**SUBCHAPTER I**

**LAND AND WATER RESOURCES COUNCIL**

**Sec. 4. 5 MRSA §3331, sub-§5** is enacted to read:

**5. Reporting on the land use mediation program.** The council shall report by December 1, 1998 and December 1, 2000 to the Governor, the Administrative Office of the Courts, the Executive Director of the Legislative Council and the Director of the Court Mediation Service on the operation and

effectiveness of the land use mediation program established under subchapter II. The reports must list the number and type of mediation requests received, the number of mediation sessions conducted, the number of signed mediation agreements, a summary of the final disposition of mediation agreements, a narrative discussion of the effectiveness of the program as determined by the council, a summary of deposits and expenditures from the land use mediation fund created in Title 4, section 18, subsection 6-B and any proposals by the council with respect to the operation, improvement or continuation of the mediation program. This subsection is repealed October 1, 2001.

**Sec. 5. 5 MRSA c. 314, sub-c. II** is enacted to read:

**SUBCHAPTER II**

**LAND USE MEDIATION PROGRAM**

**§3341. Land use mediation program**

**1. Program established.** The land use mediation program is established to provide eligible private landowners with a prompt, independent, inexpensive and local forum for mediation of governmental land use actions as an alternative to court action.

**2. Provision of mediation services; forms, filing and fees.** The Court Mediation Service created in Title 4, section 18 shall provide mediation services under this subchapter. The Court Mediation Service shall:

A. Assign mediators under this subchapter who are knowledgeable in land use regulatory issues and environmental law;

B. Establish a simple and expedient application process. Not later than February 1st of each year, the Court Mediation Service shall send to the chair of the Land and Water Resources Council a copy of each completed application received and each agreement signed during the previous calendar year; and

C. Establish a fee for services in an amount not to exceed \$175 for every 4 hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under subsection 7.

**3. Application; eligibility.** A landowner may apply for mediation under this subchapter if that landowner:

A. Has suffered significant harm as a result of a governmental action regulating land use;

B. Applies for mediation under subsection 4 within the time allowed under law or rules of the court for filing for judicial review of that governmental action;

C. Has:

(1) For mediation of municipal governmental land use action, sought and failed to obtain a permit, variance or special exception and has pursued all reasonable avenues of administrative appeal; or

(2) For mediation of state governmental land use action, sought and failed to obtain governmental approval for a land use of that landowner's land and has a right to judicial review under section 11001 either due to a final agency action or the failure or refusal of an agency to act; and

D. Submits to the Superior Court clerk all necessary fees at the time of application.

**4. Submission of application for mediation.** A landowner may apply for mediation under this subchapter by filing an application for mediation with the Superior Court clerk in the county in which the land that is the subject of the conflict is located. The Superior Court clerk shall forward the application to the Court Mediation Service.

**5. Stay of filing period.** Notwithstanding any other provision of law, the period of time allowed by law or by rules of the court for any person to file for judicial review of the governmental action for which mediation is requested under this subchapter is stayed for 30 days beyond the date the mediator files the report required under subsection 12 with the Superior Court clerk, but in no case longer than 120 days from the date the landowner files the application for mediation with the Superior Court clerk.

**6. Purpose; conduct of mediation.** The purpose of a mediation under this subchapter is to facilitate, within existing land use laws, ordinances and regulations, a mutually acceptable solution to a conflict between a landowner and a governmental entity regulating land use. The mediator, whenever possible and appropriate, shall conduct the mediation in the county in which the land that is the subject of the conflict is located. When mediating that solution, the mediator shall balance the need for public access to proceedings with the flexibility, discretion and private caucus techniques required for effective mediation.

**7. Schedule; notice; participants.** The mediator is responsible for scheduling all mediation sessions. The mediator shall provide a list of the names and addresses and a copy of the notice of the

mediation schedule to the Superior Court clerk, who shall mail the notices. The mediator shall include on the list persons identified in the following ways.

A. The landowner and the governmental entity shall provide to the mediator the names and addresses of the parties, intervenors and other persons who significantly participated in the underlying governmental land use action proceedings.

B. Any other person who believes that that person's participation in the mediation is necessary may file a request with the mediator to be included in the mediation.

C. The mediator shall determine if any other person's participation is necessary for effective mediation.

**8. Parties to mediation.** A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation, including persons representing municipal, county or state agencies and abutters, parties, intervenors or other persons significantly involved in the underlying governmental land use action. A mediator may exclude or limit a person's participation in mediation when the mediator determines that exclusion or limitation necessary for effective mediation. This subsection does not require a municipality to participate in mediation under this subchapter.

**9. Sharing of costs.** Participants in the mediation may share the cost of mediation after the initial 4 hours of mediation services have been provided.

**10. Admissibility.** The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by the Maine Rules of Evidence, Rule 408(a) for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.

**11. Agreements.** A mediated agreement must be in writing. The landowner, the governmental entity and all other participants who agree must sign the agreement as participants and the mediator must sign as the mediator.

A. An agreement that requires any additional governmental action is not self-executing. If any additional governmental action is required, the landowner is responsible for initiating that action and providing any additional information reasonably required by the governmental entity to implement the agreement. The landowner must notify the governmental entity in writing within

30 days, after the mediator files the mediator's report under subsection 12, that the landowner will be taking action in accordance with the agreement.

B. Notwithstanding any procedural restriction that would otherwise prevent reconsideration of the governmental action, a governmental entity may reconsider its decision in the underlying governmental land use action in accordance with the agreement as long as that reconsideration does not violate any substantive application or review requirement.

**12. Mediator's report.** Within 90 days after the landowner files an application for mediation, the mediator shall file a report with the Superior Court clerk. The mediator shall file the report as soon as possible if the mediator determines that a mediated agreement is not possible. The report must contain:

A. The names of the mediation participants, including the landowner, the governmental entity and any other persons;

B. The nature of any agreements reached during the course of mediation, which mediation participants were parties to the agreements and what further action is required of any person;

C. The nature of any issues remaining unresolved and the mediation participants involved in those unresolved issues; and

D. A copy of any written agreement under subsection 11.

**13. Application.** This subchapter applies to final agency actions and failures and refusals to act occurring after the effective date of this subchapter.

**14. Repeal.** This subchapter is repealed October 1, 2001.

**Sec. 6. 5 MRSA §8056, sub-§6,** as enacted by PL 1981, c. 524, §13, is amended to read:

**6. Attorney General review and approval.** The review required in subsection 1 ~~shall~~ may not be performed by any person involved in the formulation or drafting of the proposed rule. The Attorney General may not approve a rule if it is reasonably expected to result in a taking of private property under the Constitution of Maine unless such a result is directed by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking.

**Sec. 7. 5 MRSA §8072, sub-§4, ¶¶F and G,** as enacted by PL 1995, c. 463, §2, are amended to read:

F. Whether the provisionally adopted rule could be made less complex or more readily understandable for the general public; ~~and~~

G. Whether the provisionally adopted rule was proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law; ~~and~~

**Sec. 8. 5 MRSA §8072, sub-§4, ¶H** is enacted to read:

H. For a rule that is reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the rule to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the rule.

**Sec. 9. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1996-97

**JUDICIAL DEPARTMENT**

**Land Use Mediation Fund**

All Other \$5,000

Allocates funds to cover the cost of providing mediation services.

See title page for effective date.

**CHAPTER 538**

**H.P. 1205 - L.D. 1655**

**An Act to Conform the Maine Tax Laws for 1995 with the United States Internal Revenue Code**

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

**Whereas,** the 90-day period would delay the processing of the 1995 income tax returns; and

**Whereas,** legislative action is immediately necessary to ensure continued and efficient administration of the Maine Income Tax Law and certain other state taxes; and

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