

# **MAINE STATE LEGISLATURE**

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**LAWS**  
**OF THE**  
**STATE OF MAINE**  
**AS PASSED BY THE**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 7, 1998 to March 31, 1998**

**SECOND SPECIAL SESSION**  
**April 1, 1998 to April 9, 1998**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 1998**

**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 9, 1998**

**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**  
**1997**

benefits of the rate plan to the utility and to ratepayers, the impact on economic development, the reallocation of risk between investors and ratepayers, the development of a competitive market for gas services that are not natural monopolies and any other factor relevant to the establishment or authorization of an alternative rate-making mechanism. Prior to adopting an alternative rate-making mechanism, the commission shall consider the need for a rate case in order to establish a base line for the alternative rate-making mechanism.

**2. Adoption of rate-making mechanisms.** Upon the filing of an application for a rate plan by a gas utility, or upon the commission's own motion, the commission, in an adjudicatory proceeding, may adopt alternative rate-making mechanisms for any gas utility in the State. The alternative rate-making mechanisms need not conform with chapter 3 to the extent that the provisions of chapter 3 require the use of rate-base, rate-of-return or any other specific form of regulation of the rates of a gas utility or to the extent that the provisions of chapter 3 give any party, including the gas utility, the right to petition to change rates for gas services. This section may not be construed to limit the authority of the commission under section 1322.

**3. Just and reasonable rates.** In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ensure that the rates resulting from the implementation of a rate-adjustment mechanism are just and reasonable.

**4. General safeguards.** In adopting alternative rate-making mechanisms, the commission shall consider appropriate consumer and competitive safeguards.

**5. Rate flexibility.** Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize a gas utility to implement a program under which:

- A. The utility may change its schedule of rates with limited notice to the commission; and
- B. The utility may enter into contracts for the sale of gas, transmission and distribution services and related management services with limited or no prior approval by the commission.

The commission shall establish the terms and conditions under which a program is authorized under this subsection.

**6. Amendment to multivear rate plans.** The commission may not amend or prematurely terminate the terms of a multivear rate plan in a manner that prevents or threatens the utility's opportunity to

recover a reasonable rate of return over the entire term of the plan.

**7. Authority.** The authority granted to the commission under this section is in addition to the authority of the commission granted under other provisions of this Title and this section may not be construed to limit the authority of the commission under any other provision of this Title.

**8. Cost-of-gas adjustment.** As part of the implementation of alternative rate-making mechanisms pursuant to this section, the commission may waive or modify the requirements of section 4703 to the extent necessary to promote efficiency in operation, appropriate financial incentives, rate stability or equitable cost recovery.

**9. Annual report.** The commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities matters an annual report detailing any actions taken or proposed to be taken by the commission under this section. The report must be submitted by December 31st of each year.

#### **§4707. Stranded costs; notice of risk**

Notwithstanding any other provision of this Title, costs arising from obligations incurred by a gas utility after March 1, 1998, other than costs or obligations that are beyond the control of the gas utility, determined by the commission in an adjudicatory proceeding to be unrecoverable as a result of competition or deregulation are incurred at the risk of the shareholders of the gas utility and may not be borne by ratepayers of the gas utility. This section may not be interpreted as requiring that costs incurred prior to March 1, 1998 be recovered from ratepayers.

**Sec. 11. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to all proceedings of the Public Utilities Commission pending at the time of its enactment.

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

Effective April 3, 1998.

## **CHAPTER 708**

### **H.P. 1523 - L.D. 2145**

#### **An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe**

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

**Whereas,** it is imperative that this Act take effect before the expiration of the 90-day period so that members of the Passamaquoddy Tribe may exercise the licensing provisions of this Act for the spring and summer fisheries; and

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

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

**Sec. 1. 12 MRSA §6302-A** is enacted to read:

**§6302-A. Taking of marine organisms by Passamaquoddy tribal members**

**1. Tribal exemption; commercial harvesting licenses.** A member of the Passamaquoddy Tribe who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6505-A, 6505-C, 6535, 6536, 6601, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751 or 6803 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe to conduct the activities authorized under the state license or permit. A member of the Passamaquoddy Tribe issued a tribal license pursuant to this subsection to conduct activities is subject to all laws and rules applicable to a person who holds a state license or permit to conduct those activities and to all the provisions of chapter 625, except that the member of the tribe:

**A. May utilize lobster traps tagged with trap tags issued by the tribe in a manner consistent with trap tags issued pursuant to section 6431-B. A member of the tribe is not required to pay trap tag fees under section 6431-B if the tribe issues that member trap tags;**

**B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe in a manner consistent with tags issued pursuant to 6505-B. A member of the tribe is not required to pay elver fishing gear fees under section 6505-B if the tribe issues that member elver fishing gear tags; and**

**C. Is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671.**

**2. Tribal exemption; sustenance or ceremonial tribal use.** Notwithstanding any other provision of law, a member of the Passamaquoddy Tribe who is a resident of the State may at any time take, possess, transport and distribute:

**A. Any marine organism, except lobster, for sustenance use if the tribal member holds a valid sustenance fishing license issued by the tribe. A sustenance fishing license holder who fishes for sea urchins may not harvest sea urchins out of season;**

**B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster license issued by the tribe. The sustenance lobster license holder's traps must be tagged with sustenance use trap tags issued by the tribe in a manner consistent with trap tags issued pursuant to section 6431-B; however, a sustenance lobster license holder may not harvest lobsters for sustenance use with more than 25 traps; and**

**C. Any marine organism for noncommercial use in a tribal ceremony within the State, if the member holds a valid ceremonial tribal permit issued to the tribal member by the Joint Tribal Council of the Passamaquoddy Tribe or the governor and council at either Passamaquoddy reservation.**

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within the Passamaquoddy reservation at Pleasant Point or Indian Township or at any location within the State by a tribal member, by a tribal member's immediate family or within a tribal member's household. The term "sustenance use" does not include the sale of marine organisms. A member of the Passamaquoddy Tribe who takes a marine organism under a license or permit issued pursuant to this subsection must comply with all laws and rules applicable to a person who holds a state license or permit that authorizes the taking of that organism, except that a state law or rule that sets a season for the harvesting of a marine organism does not apply to a member of the Passamaquoddy Tribe who takes a marine organism for sustenance use or for noncommercial use in a tribal ceremony. A member of the Passamaquoddy Tribe issued a license or permit under this subsection is exempt from paying elver gear fees under section 6505-B or trap tag fees under section 6431-B and is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671. A member of the Passamaquoddy Tribe who fishes for or takes lobster under a license or permit issued pursuant to this subsection must comply with the closed periods under section 6440.

**3. Lobster and sea urchin licenses; limitations.** The Passamaquoddy Tribe may not issue pursuant to subsection 1:

A. More than 24 commercial lobster and crab fishing licenses in calendar year 1998, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Any lobster and crab fishing license issued by the tribe after calendar year 1998 is subject to the eligibility requirements of section 6421, subsection 5; and

B. More than 24 commercial licenses for the taking of sea urchins in any calendar year. Sea urchin licenses must be issued by zone in accordance with section 6749-P.

**4. Sea urchin and scallop handfishing and tender licenses; limitations.** The Passamaquoddy Tribe may not issue a license or permit pursuant to subsection 1 or 2:

A. For the harvesting of sea urchins or scallops by hand unless the license or permit applicant meets the diver competency requirements of section 6531; and

B. For the tending of a person who fishes for or takes scallops or sea urchins by diving unless the applicant meets the safety training requirements of section 6533.

**5. Notification.** Subsections 1 and 2 do not apply to a member of the Passamaquoddy Tribe unless a copy of that member's tribal license or permit is filed with the commissioner by the tribal licensing agency or a tribal official in accordance with section 6027.

**6. License suspension.** If a member of the Passamaquoddy Tribe issued a license or permit under this section is convicted of a violation for which a license suspension is mandatory under chapter 617, the commissioner shall suspend that member's license or permit for the specified period. If a member of the Passamaquoddy Tribe issued a license or permit under this section is convicted of a violation for which the commissioner may suspend a license, the commissioner may suspend that member's license or permit in accordance with chapter 617.

**7. Enforcement.** A violation of a marine resources law or rule by a member of the Passamaquoddy Tribe who is issued a license or permit pursuant to this section must be enforced pursuant to chapter 609. A member of the Passamaquoddy Tribe who is issued a license or permit pursuant to this section must possess and exhibit that license or permit in accordance with section 6305 and must comply with the provisions of section 6306 regarding

inspections and searches by marine patrol officers for violations related to licensed or permitted activities.

**8. Resident of the State defined.** For the purposes of this section, "resident of the State" means a member of the Passamaquoddy Tribe who is eligible to obtain a state resident license under section 6301, subsection 1.

**Sec. 2. Report.** The Maine Indian Tribal-State Commission shall study any question or issue regarding the taking of marine resources by members of the Passamaquoddy Tribe and the Penobscot Nation. The commission shall report any findings and recommendations to the Joint Standing Committee on Marine Resources by December 15, 1998.

**Sec. 3. Relation to "An Act to Implement the Maine Indian Claims Settlement."** This Act is not an amendment to the Maine Revised Statutes, Title 30, chapter 601, An Act to Implement the Maine Indian Claims Settlement, and is not subject to ratification by the Passamaquoddy Tribe pursuant to United States Code, Title 25, Section 1725(e)(1). If a court of competent jurisdiction finds that this Act or any portion of this Act alters any provisions of Title 30, chapter 601 so as to constitute an amendment to Title 30, chapter 601, this Act or that portion of this Act, if separable, that constitutes an amendment to Title 30, chapter 601 is void.

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

Effective April 3, 1998, unless otherwise indicated.

## CHAPTER 709

### H.P. 1524 - L.D. 2146

**An Act to Amend the Laws  
Concerning Participating Local  
Districts in the Maine State  
Retirement System**

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

**Sec. 1. 5 MRSA §18201, sub-§3-A** is enacted to read:

**3-A. Compliance with federal law.** The local district is responsible for compliance with 26 Code of Federal Regulations, Part 31, with Section 401 of the United States Internal Revenue Code and with other relevant federal law and rules with respect to its employees, including employees to whom section 18252-A applies.