

# 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**

an employee's elections or administrative decision, in any dispute related to an employee's elections or to any issue as to the plan provided by the employer under section 18252-B. Neither the retirement system nor the system's board of trustees has responsibility or jurisdiction to make the final administrative decision with respect to any of these matters. The retirement system is responsible only to ensure that its records accurately reflect the information provided by the employer, the employer's decision as to any of these matters, and the legally cognizable outcome of any dispute related to any of these matters.

D. With respect to matters related to participation and membership other than those specified in paragraph C, the retirement system and the board retain responsibility and authority according to applicable retirement system law and rules as to the participating local districts and their employees to whom this section applies, including the authority to make final administrative decisions.

3. Exclusions. This section does not apply to employees of participating local districts who are employed in part-time, seasonal or temporary positions or to employees for whom membership in the retirement system is optional under section 18201, subsection 3; section 18251, subsection 2; section 18252; or section 18801, subsection 1, paragraph D or denied under section 18256.

**§18252-B. Requirements for plan provided by district employer for employees to whom section 18252-A applies**

The plan provided by the participating local district employer for employees to whom section 18252-A applies must meet the following requirements.

1. Internal Revenue Code. The plan must meet the requirements of United States Internal Revenue Code, Section 401(a) for defined contribution plans or United States Internal Revenue Code, Section 457 for deferred compensation plans, or both.

2. Employer contribution. The employer must contribute as a percentage of compensation on behalf of each employee in each pay period an amount not less than the employer would be required to pay if the employee were covered under the United State Social Security Act, not including the Medicare portion of the payment, consistent with applicable contribution limits of federal law.

3. Employee contribution. The employee must contribute as a percentage of compensation in each pay period an amount not less than the employee

would have been required to contribute had the employee been a member under the retirement system under the so-called "Regular Plan A" of the consolidated plan for participating local districts, consistent with applicable contribution limits of federal law.

4. Education. The employer must provide for employees to whom section 18252-A applies an education program that meets the requirements of federal law for such programs for the plan that the employer provides.

5. Disability benefits. For employees who become covered under the plan, the employer must provide a disability benefit program, the cost of which must be paid by the employer. At a minimum, that program must establish eligibility criteria, provide coverage for physical and mental disabilities and provide a level of benefits at least equal to 60% of the employee's annual compensation.

6. Change or termination of plan. Except with respect to current employees covered under the plan and with respect to persons receiving benefits under the plan, the employer may change or terminate the plan at any time, to the extent that change or termination is not prohibited by other law. The employer may allow current employees covered under the plan the choice to instead be covered under the changed plan.

A. Section 18252-A, subsection 1, paragraph A applies to an employee hired or rehired by the employer after the employer changes the plan.

B. If, after plan termination, the employer no longer provides a plan under this section, an employee hired or rehired after termination of the plan must be a member under the retirement system.

C. Section 18252-A, subsection 1, paragraph B applies to an employee who is a member under the retirement system at the time of the change, except that an employee who has previously exhausted the elections available under section 18252-A, subsection 1, paragraph B and who elects to be covered under the plan provided by the employer under this subsection may not later become a member under the retirement system while employed by the same participating local district.

See title page for effective date.

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**CHAPTER 710**

**H.P. 1380 - L.D. 1935**

**An Act Regarding Electric Utilities**

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

**Sec. 1. 35-A MRSA §102, sub-§6**, as amended by PL 1987, c. 613, §1, is further amended to read:

**6. Electric plant.** "Electric plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, conservation, load management, transmission, delivery or furnishing of electricity for light, heat or power, for public use, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power for public use. "Electric plant" includes, but is not limited to, fixtures and personal property on the premises of a utility's customer, financed in whole or in part by that utility, and found by the commission to constitute a cost-effective investment in conservation or load management. In the case of these conservation or load management investments only, "electric plant" may include property actually owned by the customer or by a party other than the utility. The presence of property on the premises of a customer or other party, which property is included in the rate base of an electric utility as qualifying conservation or load management investment, ~~shall may~~ not cause the customer or other party to be determined to be a public utility for any purpose.

"Electric plant" does not include excluded electric plant, as defined in subsection 6-A.

**Sec. 2. 35-A MRSA §102, sub-§6-A** is enacted to read:

**6-A. Excluded electric plant.** "Excluded electric plant" means:

A. Prior to March 1, 2000, any generation assets, as defined in section 3201, subsection 10, and any related interconnecting transmission or distribution facilities used for the purpose of connecting one or more generation assets to transmission or distribution plant, as defined in section 3201, subsection 18, to the extent the generation assets are owned, leased, controlled, operated or managed for one or more of the following purposes:

(1) For the generation of electricity for sale for resale, or for sale at retail to any electric consumer for delivery outside of the State;

(2) For the generation of electricity by a small power producer or cogenerator for its own use, for its tenants or its associates, as provided in section 3305, subsection 2;

(3) For the generation of electricity by an electric generation enterprise for its own use or for its affiliates as provided in chapter 31, subchapter V; or

(4) For self generation, as defined in subsection 16-A.

Prior to March 1, 2000, "excluded electric plant" does not include electric plant owned, leased, controlled, operated or managed by an entity that was regulated by the commission as an electric utility before September 19, 1997 or by an entity owning, operating, leasing, managing or controlling a nuclear power plant, as defined in section 4352, subsection 9.

B. After February 29, 2000, "excluded electric plant" means any generation assets, as defined in section 3201, subsection 10, other than generation assets held by an electric utility pursuant to section 3204, subsection 3 or 6.

**Sec. 3. 35-A MRSA §102, sub-§16-A** is enacted to read:

**16-A. Self generation.** "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in section 3201, subsection 18.

**Sec. 4. 35-A MRSA §906, sub-§3** is enacted to read:

**3. Domestic electric utility.** For purposes of this section only, the term "domestic electric utility" does not include an entity that is not an electric utility as a result of the application of section 102, subsection 6-A.

**Sec. 5. 35-A MRSA §3131, sub-§1-A** is enacted to read:

**1-A. Electric utility.** "Electric utility" has the same meaning as defined in section 102, subsection 5.

**Sec. 6. 35-A MRSA §3132, sub-§3-A**, as enacted by PL 1989, c. 60, §4, is amended to read:

**3-A. Minor transmission line construction projects.** Each domestic electric utility shall file annually with the commission a schedule of minor transmission line construction projects ~~which that~~ it intends to carry out during the next 5 years concerning transmission lines that will be capable of operating at 100 kilovolts or more. A minor transmission line construction project ~~shall be~~ is a transmission line construction project, the cost of which does not exceed

25% of the utility's current annual transmission property depreciation charge. The schedule ~~shall~~ must describe each project, showing the length, location and estimated cost.

If the commission determines that an investigation of any minor transmission line construction project is warranted, it shall notify the electric utility within 60 days of the annual filing and the electric utility ~~shall then be required to~~ must then comply with the provisions of this section with respect to that project. The absence of commission notification requiring the utility to file a petition does not preclude such notification in subsequent years.

For purposes of this subsection only, the term "domestic electric utility" does not include an entity that is not an electric utility as a result of the application of section 102, subsection 6-A.

**Sec. 7. 35-A MRSA §3140, sub-§5** is enacted to read:

**5. Exemption.** An entity that is not an electric utility as a result of the application of section 102, subsection 6-A is exempt from the requirements of this section.

**Sec. 8. 35-A MRSA §3142, sub-§3-A** is enacted to read:

**3-A. Retail electric service.** For the purposes of this section "retail electric service" does not include the sale of an electric commodity from an excluded electric plant, as defined in section 102, subsection 6-A, unless the sale is of generation service, as defined in section 3201, subsection 11, to a person who is not an affiliate, as defined in section 3180, subsection 1.

**Sec. 9. 35-A MRSA §3204, sub-§8** is enacted to read:

**8. Authority to transfer title.** Except as otherwise expressly provided by law, a law of this State enacted prior to September 1, 1997, including any private and special law, that grants generation-asset-related rights, privileges or immunities to an investor-owned electric utility is deemed to grant authorization to the investor-owned electric utility to convey or otherwise transfer those rights, privileges or immunities in accordance with this section only if:

A. The investor-owned utility provides to the commission a copy of the law granting the rights, privileges or immunities and a description of the proposed transfer; and

B. The commission makes a written finding that the law grants rights, privileges or immunities that are generation assets required to be divested under this section or that are necessary to the

ownership or operation of generation assets required to be divested under this section.

Upon the issuance of a written finding by the commission under paragraph B, an electric utility is authorized to transfer those generation-asset-related rights, privileges and immunities identified in the written finding of the commission, provided that the electric utility complies with all other applicable requirements of law, including section 1101. The commission may issue a written finding under paragraph B in an order approving a divestiture of generation assets, pursuant to section 1101.

For purposes of this subsection, "generation-asset-related rights, privileges or immunities" means rights, privileges or immunities that constitute generation assets or that are necessary to the ownership or operation of generation assets, including water rights associated with hydro-electric facilities. For purposes of this subsection, the term "investor-owned electric utility" includes an affiliate of an investor-owned electric utility to the extent that the affiliate is transferring an asset that the affiliate is required to divest pursuant to this section.

Nothing in this subsection may be interpreted to permit the transfer of any rights, privileges or immunities that by law are expressly nontransferable or that are transferable only on condition, unless the condition is met. Nothing in this subsection may be interpreted as extinguishing or affecting any lawful rights, privileges or immunities that any person or entity or the public may have in any property held or transferred by an electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right of eminent domain held by an investor-owned electric utility in relation to generation-asset-related rights, privileges or immunities terminates upon the divestiture of the generation-asset-related rights, privileges or immunities.

**Sec. 10. Application and interpretation.**

Whether an entity that owns, leases, controls, operates or manages electric plant, other than "excluded electric plant" as defined in the Maine Revised Statutes, Title 35-A, section 102, subsection 6-A, is an electric utility is determined by application of applicable provisions of the Maine Revised Statutes, Title 35-A. The definition of "excluded electric plant" under Title 35-A, section 102, subsection 6-A may not be construed to affect the application of other provisions of Title 35-A in any way other than to create the specific exclusions provided for in subsection 6-A. Nothing in this Act may be construed

to affect the meaning of the term "for public use" as used in Title 35-A.

See title page for effective date.

**CHAPTER 711**

**H.P. 1440 - L.D. 2004**

**An Act to Ensure Long-term  
Funding of the Maine Agricultural  
Experiment Station Research Farms  
Connected with Land Grant Colleges**

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

**Sec. 1. 5 MRSA §12004-G, sub-§4-A** is enacted to read:

<u>4-A.</u>	<u>Board of</u>	<u>Legislative</u>	<u>7 MRSA</u>
<u>Agriculture</u>	<u>Agriculture</u>	<u>Per Diem</u>	<u>§125</u>

**Sec. 2. 7 MRSA c. 5** is amended by repealing the chapter headnote and enacting the following in its place:

**CHAPTER 5**

**BOARD OF AGRICULTURE AND MAINE  
AGRICULTURAL EXPERIMENT STATION**

**Sec. 3. 7 MRSA §121**, as amended by PL 1985, c. 779, §25, is repealed and the following enacted in its place:

**§121. Maine Agricultural Experiment Station**

**1. Establishment.** The department of the University of Maine System known and designated as the Maine Agricultural Experiment Station, referred to in this section as the "station," established at the University of Maine at Orono in connection with the university and under the direction of the university, the director and the Board of Agriculture, for the purpose of carrying into effect an Act of the Congress of the United States, approved March 2, 1887, to establish agricultural experiment stations in connection with the colleges established in the several states under an Act approved July 2, 1862, and of the Acts supplementary thereto, must be maintained in accordance with the purposes for which it was originally established.

**2. Director.** The President of the University of Maine at Orono, in consultation with the Board of Agriculture, shall appoint for a term of 5 years the Director of the Maine Agricultural Experiment Station, referred to in this section as the "director." After the term has expired, the director is eligible for reappointment. The director may be removed by the

President of the University of Maine at Orono, in consultation with the Board of Agriculture, for cause. The director shall work with the Board of Agriculture to oversee the work of the university faculty at the station. The director of the station is the executive and administrative officer of the station and shall exercise supervision, direction and control over the station in accordance with the programs and policies of the University of Maine System and those established by the Board of Agriculture.

**Sec. 4. 7 MRSA §§122 to 124** are amended to read:

**§122. Orchardling and crops**

The Maine Agricultural Experiment Station shall conduct scientific investigations in orcharding, corn and other farm crops and, to this end, shall maintain the ~~farm~~ farms heretofore purchased in the name of the State, and stocked and equipped for the use and benefit of ~~said~~ the station. The Director of the Maine Agricultural Experiment Station ~~shall have, with the agreement of the Board of Agriculture,~~ has the general supervision, management and control of ~~said farm~~ those farms and of all investigations thereon. The board and the director shall seek agreement on all issues. In the event that agreement can not be reached, final authority rests with the director.

**§123. Animal husbandry**

The Maine Agricultural Experiment Station shall conduct scientific investigations in animal husbandry, including experiments and observations on dairy cattle and other domestic animals, and ~~such~~ these investigations ~~shall be~~ are under the control of the director of ~~said~~ the station with the agreement of the Board of Agriculture. The experiments in animal husbandry may be conducted at any of the farms owned by the State. The board and the director shall seek agreement on all issues. In the event that agreement can not be reached, final authority rests with the director.

**§124. Expenditure of appropriation**

~~Such sums as shall be~~ Sums that are appropriated in favor of the Maine Agricultural Experiment Station ~~shall~~ must be expended by the director of ~~said~~ the station with the agreement of the Board of Agriculture in executing ~~section~~ sections 121, 122 and 123. The board and the director shall seek agreement on all issues. In the event that agreement can not be reached, final authority rests with the director.

**Sec. 5. 7 MRSA §125** is enacted to read:

**§125. Board of Agriculture**

**1. Establishment; duties.** The Board of Agriculture, referred to in this section as the "board," as