

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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

J.S. McCarthy Company
Augusta, Maine
1999

One month (registered farm vehicle)	20%
2 months	30%
3 months	40%
4 months	50%
5 months	60%
6 months	70%
7 months	75%
8 months	80%

See title page for effective date.

CHAPTER 467

H.P. 181 - L.D. 259

An Act to Secure Wounded Deer

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

Sec. 1. 12 MRSA §7101, sub-§5, ¶N is enacted to read:

N. License to use leashed dogs to track wounded deer (Permits a person to use one or more leashed dogs to track a lawfully wounded deer) \$25

Sec. 2. 12 MRSA §7406, sub-§17, ¶J, as enacted by PL 1979, c. 420, §1, is amended to read:

J. Uses a dog to hunt deer or moose, except as provided in section 7101, subsection 5, paragraph N;

Sec. 3. Rules. The Commissioner of Inland Fisheries and Wildlife shall adopt rules specifying when and how a person licensed under the Maine Revised Statutes, Title 12, section 7101, subsection 5, paragraph N may lawfully use leashed dogs to track wounded deer. Those rules are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A and must be provisionally adopted and submitted to the Legislature no later than January 15, 2000.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF

Savings Fund Program

All Other \$2,500

Appropriates funds to be used only to avoid future fee increases.

Sec. 5. Effective date. Sections 1 and 2 of this Act take effect January 1, 2000.

See title page for effective date, unless otherwise indicated.

CHAPTER 468

S.P. 756 - L.D. 2132

An Act to Consolidate Traffic Movement Permits within the Department of Transportation

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

Whereas, under current law, the Department of Environmental Protection issues traffic movement permits pursuant to the site location of development laws; and

Whereas, Public Law 1995, chapter 704 requires that this permit-granting authority be transferred to the Department of Transportation beginning June 30, 1999; and

Whereas, this Act contains the necessary implementing legislation to accomplish this transfer of permit-granting authority; 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. 23 MRSA §651, 6th ¶, as enacted by PL 1991, c. 409, §3, is amended to read:

The department, at its discretion, may authorize a person, corporation or entity who has had conditions imposed ~~by the Department of Environmental~~

~~Protection pursuant to Title 38, section 484, subsection 2 pursuant to Title 23, section 704-A or by other governmental review to perform construction work on the state or state aid highway system and on town ways. The performance of the work must be in compliance with the department's standards for highway and bridge construction, traffic control and bonding and any other standards or conditions the department may impose. All of the department's expenses and administrative costs relating to the work must be paid by the person authorized to perform the work. Notwithstanding the Maine Tort Claims Act, Title 14, chapter 741, the State or its employees are immune from suit for damages arising from any activities performed in connection with this work.~~

Sec. 2. 23 MRSA §704-A is enacted to read:

§704-A. Traffic movement permit

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

A. "Department" means the Department of Transportation.

B. "Passenger car equivalents at peak hour" means the number of passenger cars or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. For purposes of this paragraph, one tractor-trailer combination is the equivalent of 2 passenger cars.

C. "Project" includes any construction, alteration or conversion of a building, or any development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2.

2. Permit. A traffic movement permit must be obtained from the department for any project that generates 100 or more passenger car equivalents at peak hour. A person receiving a permit under this section is not required to obtain a permit pursuant to section 704.

A. For any project that generates 100 or more passenger car equivalents at peak hour, the person responsible for the project is required to make adequate provision for traffic movement of all types into and out of the project area. Before issuing a permit, the department shall determine that any traffic increase attributable to the proposed project will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed project.

B. The department, together with the appropriate representative of the municipality or municipalities where the project is located, shall discuss with the applicant at a meeting, referred to in this paragraph as a "scoping meeting," the scope of impact evaluation required for the proposed project and the type of proceedings warranted. The applicant shall provide notice to abutting municipalities. If the department determines as a result of these communications that the applicant has demonstrated that the proposed project satisfies standards adopted for projects that generate 100 to 200 passenger car equivalents at peak hour and the department determines that there are no other significant traffic-related issues presented, the department may issue a permit to the applicant without further proceedings. The department shall adopt rules establishing the submission requirement for a scoping meeting. Those rules must, at a minimum, establish 2 submission standards: one for an expedited review without further proceedings and one for a preliminary review with further proceedings anticipated. The rules must also establish the level of professional certification required by any submission and may not impose undue professional liability on the applicant.

C. If a project is located in an area designated as a growth area in a local growth management plan that has been found by the State to be consistent with the growth management program in Title 30-A, chapter 187, or if a project is located within the compact area of an urban compact municipality, the required improvements are limited only to those necessary to mitigate the impacts of the project.

D. If a project is located in an area designated as a growth area in a local growth management plan that has been found by the State to be consistent with the growth management program in Title 30-A, chapter 187, or if a project is located within the compact area of an urban compact municipality, or if a project is on a former military base pursuant to Title 38, section 488, subsection 15, and when the project consists of conversion of an existing facility and the project does not have an entrance or exit on a federally classified arterial highway, the required improvements are limited only to the entrances and exits of the project.

E. Adequate provision for traffic movement may be provided through payment of funds pursuant to section 57-A.

F. Prior to issuing a traffic movement permit, the department must find that the applicant has right, title or interest to the property necessary to

execute the traffic-related conditions of the permit, and that no inconsistent control of access provision exists with respect to access to the property. The department shall also advise the applicant that following issuance of the permit yet prior to construction of any improvements affecting the right-of-way of the department, the applicant must demonstrate through a developer agreement the financial, legal and technical ability to develop such improvements.

3. Exemptions. A permit is not required for any project reviewed under Title 38, section 1310-N, 1319-R or 1319-X. A permit is not required for any project exempt from review under Title 38, chapter 3, subchapter I, article 6 pursuant to Title 38, section 488, subsection 7 or subsection 18.

4. Registered municipalities. The department may register municipalities for issuing traffic movement permits under this section for projects generating 100 or 200 passenger car equivalents at peak hours upon finding that:

A. The municipality has in effect an ordinance or regulation for reviewing traffic movement permits that is consistent with the policy and purpose of this section; and

B. The ordinance or regulation is administrable and enforceable and will be properly administered and enforced.

Whenever any of the conditions set forth in this subsection are no longer being met, the department shall resume promptly the administration of reviewing traffic movement permits upon written notice to the municipality.

Upon a determination by the department that there will be no adverse traffic impact in a municipality other than the municipality in which the project is located, the department may register any municipality for issuing traffic movement permits under this section for any project generating more than 200 passenger car equivalents at peak hour.

The department may provide technical assistance to municipalities upon request for projects reviewed under this section.

The department may review projects for registered municipalities if the local reviewing authority for the municipality in which the project is located petitions the department in writing. Any neighboring municipality affected by the project may petition the department in writing to review the project no later than 30 days after it has been approved by the local reviewing authority.

5. Reconsideration. Requests for reconsideration by the commissioner under this subsection must be made in accordance with this subsection. Nothing in this subsection may be construed to limit a person's lawful right to appeal a final agency action.

If the department issues an order without a hearing, a person may request reconsideration by the department within 30 days after notice of the department's decision. This request must set forth, in detail, the findings and conclusions of the department to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the department may schedule and hold a hearing limited to the matters set forth in the request.

6. Fees. The department shall assess fees for the issuance and processing of a permit under this section. Fees may not exceed \$500 for issuance of a permit following a scoping meeting as described in section 704-A, subsection 2, paragraph B, with no further review. Fees may not exceed \$2,000 for issuance of a permit requiring review beyond a scoping meeting.

7. Consolidation. If an applicant is required to obtain both a permit from the department pursuant to this section and a permit under the site location of development laws from the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter I, article 6, the applicant may either apply individually to each agency for the appropriate permit or request that the department and the Department of Environmental Protection provide a consolidated application process.

A. On the request of an applicant prior to the submission of applications for permits pursuant to this section and Title 38, chapter 3, subchapter I, article 6, the department and the Department of Environmental Protection shall provide a consolidated application process. As long as an application is not withdrawn, the process must result in a consolidated order issued by both the department and the Department of Environmental Protection, either approving or denying the applicable permits. Any necessary findings or conditions relevant to the individual permits must be separately identified in the order. All applicable fees and the longer of the applicable processing times apply. The processing period may be extended pursuant to Title 38, section 344-B, subsection 3 or if a hearing is required pursuant to subsection 5.

B. If an aggrieved party seeks an administrative appeal of a consolidated order, and there are issues relevant to both permits, the department and the Department of Environmental Protection shall provide a consolidated administrative appeal process. If there are issues relevant to only

one permit, the relevant portion of the order may be appealed to the appropriate agency.

C. The department and the Department of Environmental Protection shall enter into a memorandum of agreement establishing procedures for coordination of the consolidated application process and the consolidated administrative appeal process by June 30, 1999.

This subsection does not apply to a project reviewed by a municipality under subsection 4 or Title 38, section 489-A.

8. Modification of existing permits. A permit issued under Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this section may be modified by the department to address issues relating to traffic movement and adequate provision of roads. At the department's request, a person holding such a permit shall send a copy of the permit application to the department and to the Department of Environmental Protection. The department shall notify the Department of Environmental Protection of any substantive changes in the permit and shall provide that department with a copy of the final revised permit.

9. Rules. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 3. 38 MRSA §352, sub-§5-A, as amended by PL 1997, c. 794, Pt. B, §4, is further amended by amending Table I in that part designated Title 38, section 485-A as follows:

TABLE I

485-A, Site location of development		
A. Residential subdivisions		
1. Affordable housing	50/lot	50/lot
2. On public water and sewers	175/lot	175/lot
3. All Other	250/lot	250/lot
B. Industrial parks	460/lot	460/lot
C. Mining	1,500	1,000
D. Structures	4,000	2,000
D-1. Traffic		
Scoping meeting		
with no further review	500	0
Scoping meeting with		
further review	500	1,500
"Scoping meeting" refers		
to the process described in section 484, subsection 2, paragraph B		
E. Other	1,000	1,000

Sec. 4. 29-A MRSA §2385, sub-§4, as enacted by PL 1999, c. 108, §1, is amended to read:

4. Trailers or semi-trailers. A trailer or semi-trailer that is wider than the vehicle towing ~~the trailer~~ it must be equipped with reflective material or a lamp on each front corner that is visible to oncoming traffic.

Sec. 5. 38 MRSA §481, last ¶, as enacted by PL 1995, c. 704, Pt. A, §2 and affected by Pt. C, §2, is repealed.

Sec. 6. 38 MRSA §482, sub-§2, ¶D, as repealed and replaced by PL 1997, c. 502, §5, is amended to read:

D. Is a subdivision as defined in this section; or

Sec. 7. 38 MRSA §482, sub-§2, ¶E, as repealed and replaced by PL 1997, c. 502, §5, is repealed.

Sec. 8. 38 MRSA §482, sub-§3-C, as enacted by PL 1995, c. 704, Pt. A, §4 and affected by Pt. C, §2, is repealed.

Sec. 9. 38 MRSA §484, sub-§2, as amended by PL 1997, c. 502, §7, is repealed.

Sec. 10. 38 MRSA §484, sub-§6, as amended by PL 1993, c. 383, §22 and affected by §42, is further amended to read:

6. Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities; and ~~and~~ solid waste disposal and roadways, required for the development, and the development will not have an unreasonable adverse effect on the existing or proposed utilities ~~and roadways~~ in the municipality or area served by those services.

Sec. 11. 38 MRSA §485-A, sub-§1-B, as enacted by PL 1995, c. 704, Pt. A, §12 and affected by Pt. C, §2, is repealed.

Sec. 12. 38 MRSA §488, sub-§14, ¶A, as amended by PL 1995, c. 704, Pt. A, §19 and affected by Pt. C, §2, is further amended to read:

A. A development is exempt from review under ~~traffic movement~~, flood plain, noise and infrastructure standards under section 484 if that development is located entirely within:

- (1) A municipality that has adopted a local growth management program that the State Planning Office has certified under Title 30-A, section 4348; and
- (2) An area designated in that municipality's local growth management program as a growth area.

An applicant claiming an exemption under this paragraph shall include with the application a statement from the State Planning Office affirming that the location of the proposed development meets the provisions of subparagraphs (1) and (2).

An applicant claiming an exemption under this paragraph shall publish a notice of that application in a newspaper of general circulation in the region that includes the municipality in which the development is proposed to occur. That notice must include a statement indicating the standard or standards for which the applicant is claiming an exemption.

Sec. 13. 38 MRSA §488, sub-§14, ¶B, as amended by PL 1995, c. 462, Pt. A, §75, is further amended to read:

B. The commissioner may require application of the ~~traffic movement~~, noise, flood plain or infrastructure standards to a proposed development if the commissioner determines, after receipt of a petition under subparagraph (1) or on the commissioner's own initiative under subparagraph (2), that a reasonable likelihood exists that the development will have a significant and unreasonable impact on ~~traffic movement~~, flood plains, infrastructure or noise beyond the boundaries of the municipality within which the development is to be located.

(1) Within 15 working days after the publication of the notice required under paragraph A, municipal officers or residents of the municipality in which the development is proposed to occur or municipal officers or residents of an abutting municipality may petition the commissioner to apply one or more of the standards for which an exemption is claimed under this subsection. A petition must be signed either by the municipal officers of the petitioning municipality or by 10% of that number of registered voters of the petitioning municipality casting ballots in the most recent gubernatorial election or 150 registered voters of the petitioning municipality, whichever is less. The petition must include the name and legal address of each signatory and must designate one signatory as the contact person. The commissioner shall notify the contact person and the applicant of the commissioner's decision within 10 working days after receipt of a petition meeting the requirements of this subsection. A decision by the commissioner under this subparagraph is appealable to the board.

(2) A decision to require the application of one or more standards made on the commissioner's own initiative must be made within 15 working days after the application is filed with the department.

Sec. 14. 38 MRSA §489-A, sub-§1, ¶A, as amended by PL 1997, c. 393, Pt. A, §46, is further amended to read:

A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres ~~or~~.

Sec. 15. 38 MRSA §489-A, sub-§1, ¶G, as enacted by PL 1995, c. 704, Pt. A, §21 and affected by Pt. C, §2, is repealed.

Sec. 16. 38 MRSA §490-D, sub-§11, ¶B, as enacted by PL 1995, c. 700, §24, is amended to read:

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under ~~article 6. This paragraph takes effect July 1, 1997~~ Title 23, section 704-A.

Sec. 17. 38 MRSA §490-Z, sub-§10, ¶B, as enacted by PL 1995, c. 700, §35, is amended to read:

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under ~~article 6. This paragraph takes effect July 1, 1997~~ Title 23, section 704-A.

Sec. 18. Transition. Completed applications pending before the Department of Environmental Protection under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 on the effective date of this Act are not affected by this Act.

Sec. 19. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

	1999-00	2000-01
TRANSPORTATION, DEPARTMENT OF		
Highway Maintenance		
Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$48,835	\$50,832
All Other	1,822	1,900
Provides for the allocation of funds to establish an Administrative Assistant position to handle traffic permit applications in the Department of Transportation.		

DEPARTMENT OF TRANSPORTATION		
TOTAL	\$50,657	\$52,732

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect June 30, 1999.

Effective June 10, 1999.

CHAPTER 469

S.P. 268 - L.D. 761

An Act to Improve the Collection of Restitution

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

Sec. 1. 17-A MRSA §§1326-A to 1326-C are enacted to read:

§1326-A. Time and method of restitution

When restitution is authorized, the time and method of payment or of the performance of the services must be specified. Except when the offender is placed on probation, monetary compensation may be ordered paid to the office of the prosecuting attorney who is prosecuting the case or to the clerk of the court. If the offender is placed on probation, the compensation may be ordered paid to the Department of Corrections. The state agency receiving the restitution shall deposit any money received in the account maintained by the Treasurer of State for deposit of state agency funds, from which funds are daily transferred to an investment account and invested. Interest accrued on that money is the property of and accrues to the State for deposit in the General Fund. The agency receiving the restitution shall make the disbursement to the victim or other authorized claimant as soon as possible after the agency receives the money.

§1326-B. Income withholding order

1. When restitution is required of an offender who will not be commencing service of a period of institutional confinement and who is employed, the court shall, at the time of ordering restitution, enter a separate order for income withholding. The withholding order must direct the employer to deduct from all income due and payable to the offender an amount required by the court to meet the offender's restitution obligation. The withholding order must include an instruction to the employer that upon receipt of a copy of the withholding order the employer shall:

A. Immediately begin to withhold the offender's income when the offender is usually paid;

B. Send each amount withheld to the agency to which restitution has been ordered to be paid at the address set forth in the order within 7 business days of the withholding; and

C. Identify each amount sent to the agency by indicating the court's docket number.

2. The income withholding order is effective as long as the order for restitution upon which it is based is effective or until further order of the court.

§1326-C. Deceased victims

An offender's obligation to pay restitution is not affected by the death of the victim to whom the restitution is due. The money collected as restitution must be forwarded to the estate of the victim.

Sec. 2. 17-A MRSA §1330, sub-§1, as amended by PL 1997, c. 358, §1, is further amended to read:

1. Work program; payment of restitution and fines. ~~No~~ A prisoner who has been ordered to pay restitution or fines may not 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-A, section 1605, unless the prisoner consents to pay at least 25% of the prisoner's gross weekly wages to the victim or the court until such time as full restitution has been made or the fine is paid in full. 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. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall also collect and disburse to the court that portion of the prisoner's wages agreed to as payment of fines after the restitution is paid in full. 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. 3. 17-A MRSA §1330, sub-§2, as amended by PL 1997, c. 358, §2, is further amended to read:

2. Payment of restitution or fines from other sources. ~~Any~~ A prisoner, other than one addressed by subsection 1, who is able to generate money, from whatever source, shall pay 25% of that money to any victim or the court if the court has ordered that restitution or a fine be paid. The chief administrative officer of the correctional facility in which the prisoner is incarcerated shall collect and disburse to