

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

Sec. 2. 38 MRSA §610-C is enacted to read:

§610-C. Outdoor Wood Boiler Fund

1. Fund established. The Outdoor Wood Boiler Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the commissioner to be used by the department to upgrade, purchase and replace outdoor wood boilers that create a nuisance condition as defined in the department's rules or threat to public health or safety.

2. Sources of money. The fund consists of any money received from the following sources:

- A. Appropriations by the State;
- B. Contributions from any other source, both public and private; and
- C. Up to \$200,000 of civil penalties for violations of air quality laws or rules administered by the department if the penalties are imposed pursuant to an administrative consent agreement or court-ordered consent decree and the person against whom the penalty is imposed expressly assents in the agreement or decree that the penalty may be paid into the fund.

3. Application of fund. The department shall apply the money in the fund toward the upgrade, purchase and replacement of outdoor wood boilers installed prior to February 1, 2008 and determined by the department to constitute a nuisance condition or threat to public health or safety. The department shall adopt rules that include, but are not limited to, criteria for determining whether an outdoor wood boiler constitutes a nuisance condition or threat to public health or safety and is eligible for use of the fund, compensation criteria and amounts and procedures for certification and verification of removal and possible replacement of eligible outdoor wood boilers. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Repeal. This section is repealed August 31, 2013.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

**ENVIRONMENTAL PROTECTION,
DEPARTMENT OF**

Air Quality 0250

Initiative: Allocates general operating expenses for the Outdoor Wood Boiler Fund.

| OTHER SPECIAL REVENUE FUNDS | 2007-08 | 2008-09 |
|-----------------------------|---------|-----------|
| All Other | \$0 | \$200,000 |

| | | |
|---------------------|-----|-----------|
| OTHER SPECIAL | \$0 | \$200,000 |
| REVENUE FUNDS TOTAL | | |

See title page for effective date.

CHAPTER 681

H.P. 1659 - L.D. 2301

An Act To Amend the Maine Certificate of Need Act of 2002

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

Whereas, the Maine Certificate of Need Act of 2002 is an important tool in the planning and development of affordable health care services in the State; and

Whereas, this legislation is necessary immediately for the enhancement of the strength and clarity of the Maine Certificate of Need Act of 2002; 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. 22 MRSA §328, sub-§16, as amended by PL 2003, c. 469, Pt. C, §4, is further amended to read:

16. Major medical equipment. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services that costs \$1,200,000 or more. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and has been determined to meet the requirements of the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and 11. In determining whether medical equipment costs more than the threshold provided in this subsection, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value. Beginning September 30, 2004 and annually thereafter through 2007, the

threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index, medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year.

Sec. 2. 22 MRSA §328, sub-§17-A, ¶C, as corrected by RR 2003, c. 1, §15, is amended to read:

C. The addition in the private office of a health care practitioner, as defined in Title 24, section 2502, subsection 1-A, of new technology that costs \$1,200,000 or more. The department shall consult with the Maine Quality Forum Advisory Council established pursuant to Title 24-A, section 6952, prior to determining whether a project qualifies as a new technology in the office of a private practitioner. Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year. With regard to the private office of a health care practitioner, "new health service" does not include the location of a new practitioner in a geographic area.

Sec. 3. 22 MRSA §329, sub-§3, as amended by PL 2003, c. 469, Pt. C, §7, is further amended to read:

3. Capital expenditures. Except as provided in subsection 6, the obligation by or on behalf of a health care facility of any capital expenditure of \$2,400,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure for replacement equipment or for parking lots and garages, information and communications systems and physician office space do not require a certificate of need. Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year;

Sec. 4. 22 MRSA §333-A, sub-§2, as enacted by PL 2007, c. 440, §11, is amended to read:

2. Procedure. The balance of the nursing facility MaineCare funding pool must be used for development of additional nursing facility beds in areas of the State where additional beds are needed to meet the

community need. The department must assess needs throughout the State and issue requests for proposals for the development of additional beds in areas where need has been identified by the department, except in the event of an emergency, when the department may use a sole source process. Proposals must be evaluated based on consideration of quality of care and cost, and preference must be given to existing nursing facilities in the identified need area that may increase licensed capacity by adding on to or renovating the existing facility. Projects that exceed the review thresholds require a certificate of need, but no additional assessment of need will be conducted as part of that process. Except as set forth in section 334-A, subsection 2, a project requiring certificate of need approval may not increase MaineCare costs beyond the total amount appropriated for nursing facility care plus the available balance of the nursing facility MaineCare funding pool.

Sec. 5. 22 MRSA §333-A, sub-§3, as enacted by PL 2007, c. 440, §11, is repealed and the following enacted in its place:

3. Emergencies and necessary renovations.

The department may determine an emergency exists and may approve a necessary nursing facility certificate of need application, as described in paragraph A, that is not limited by the nursing facility MaineCare funding pool set forth in subsection 1.

A. The department may approve a nursing facility certificate of need application when the applicant proposes capital expenditures for renovations and improvements that are necessary:

- (1) To achieve compliance with code and related regulatory requirements;
- (2) To comply with the federal Health Insurance Portability and Accountability Act of 1996 and related patient privacy standards;
- (3) To address other patient safety requirements and standards, consistent with the priorities set forth in the current State Health Plan; or
- (4) To address other necessary and time-sensitive patient safety or compliance issues.

B. Certificate of need projects described in paragraph A are not subject to or limited by the nursing facility MaineCare funding pool. Any accompanying increases in MaineCare costs may be approved by the department as long as the project fulfills all other pertinent requirements and sufficient funding is available within MaineCare's nursing facility program. The department may seek additional appropriations to fulfill the purposes of this subsection if necessary.

Sec. 6. 22 MRSA §333-A, sub-§4, as enacted by PL 2007, c. 440, §11, is amended to read:

4. Rulemaking. The department may establish rules ~~regarding the award of pooled savings to implement this section.~~ Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 22 MRSA §350-A, as amended by PL 2007, c. 440, §21, is further amended to read:

§350-A. Cost-of-living adjustment

~~Every 2 years, beginning January 1, 2005~~ Beginning January 1, 2009 and annually thereafter, the department shall review the monetary figures contained in this chapter. The department shall publish revised figures to correspond to changes in the Consumer Price Index medical index.

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

Effective April 23, 2008.

CHAPTER 682

S.P. 932 - L.D. 2324

An Act To Expedite the Maintenance and Repair of Maine's Transportation Network

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

Sec. 1. 25 MRSA §1509-A is enacted to read:

§1509-A. Funding

Beginning in fiscal year 2009-10, state funding for the Department of Public Safety, Bureau of State Police must be provided as follows:

1. Highway Fund. Forty-nine percent must be allocated from the Highway Fund pursuant to Title 23, section 1653; and

2. General Fund. Fifty-one percent must be appropriated from the General Fund.

Sec. 2. PL 2007, c. 537, §3 is repealed.

Sec. 3. Calculation and transfer; Highway Fund allocations reductions to Bureau of State Police. For the biennial budget year beginning July 1, 2009, the State Budget Officer shall calculate the reduction in Highway Fund allocations to the Department of Public Safety, Bureau of State Police resulting from the percentage reduction from 60% as required under the Maine Revised Statutes, former section 1509 to 49% in the section of this Act that enacts Title 25, section 1509-A and shall notify the State Controller, who shall transfer that amount from the Highway Fund

to the TransCap Trust Fund established by Title 30-A, section 6006-G.

Sec. 4. Authorization to issue TransCap Trust Fund revenue bonds for highways. Notwithstanding any other provision of law, the Maine Municipal Bond Bank, at the request of the Department of Transportation, is authorized to issue TransCap Trust Fund revenue bonds as provided in the Maine Revised Statutes, Title 30-A, section 6006-G from time to time in amounts that in total do not exceed \$50,000,000 from the effective date of this Act to fiscal year 2012-13 for the purpose of undertaking highway reconstruction projects in the State. This section does not limit the ability to authorize additional TransCap Trust Fund revenue bonds for additional transportation needs or any other eligible purpose.

Sec. 5. Legislative findings. The Legislature finds that apportioning the funding for the Bureau of State Police between 51% from the General Fund and 49% from the Highway Fund is a fair and equitable method of funding for that bureau. The Legislature further finds that this Act, together with prior use of General Fund resources to pay for services and capital projects normally covered by the Highway Fund, constitutes an equitable division of revenues and spending between the 2 funds now and in the future.

Sec. 6. Transfer from Highway Fund to TransCap Trust Fund. On or before June 30, 2009, the State Controller shall transfer \$5,000,000 from the Highway Fund to the TransCap Trust Fund established in the Maine Revised Statutes, Title 30-A, section 6006-G.

Sec. 7. Appropriations and allocations. The following appropriations and allocations are made.

MUNICIPAL BOND BANK, MAINE

TransCap Trust Fund

Initiative: Allocates funds to authorize transfer to the TransCap Trust Fund at the Maine Municipal Bond Bank.

| OTHER SPECIAL REVENUE FUNDS | 2007-08 | 2008-09 |
|-----------------------------------|---------|-------------|
| All Other | \$0 | \$5,000,000 |
| OTHER SPECIAL REVENUE FUNDS TOTAL | \$0 | \$5,000,000 |

TRANSPORTATION, DEPARTMENT OF Highway and Bridge Capital 0406

Initiative: Deallocates funds on a one-time basis from the Highway and Bridge Capital program to transfer to