

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1764

S. P. 672

In Senate, January 7, 1980

Reported by Senator McBreairty of Aroostook from the Committee on Audit and Program Review and Printed under Joint Rule No. 17 pursuant to Title 3, Section 505 and 2,200 ordered printed.

MAY M. ROSS, Secretary of the Senate.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Relating to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Law.

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

PART A

Sec. 1. 3 MRSA § 507-B is enacted to read:

§ 507-B. Continuation of reviewed agencies

The following independent state agencies have been reviewed by the Joint Standing Committee on Audit and Program Review and are continued beyond the following termination dates, subject to section 506, subsection 1.

1. Agencies scheduled for termination on June 30, 1980. Pursuant to section 507, subsection 2, paragraph A, the following independent agencies, scheduled for termination on June 30, 1980, are continued without modification or are continued as modified by Act of the Legislature passed prior to June 30, 1980.

A. Agencies continued without modification are:

- (1) Maine Blueberry Commission;
- (2) Blueberry Industry Advisory Board;
- (3) Maine Milk Commission;

- (4) **Maine Agricultural Bargaining Board;**
- (5) **Board of Veterinary Medicine;**
- (6) **Maine Milk Tax Committee;**
- (7) **Maine Dairy and Nutrition Council Committee; and**
- (8) **State Lottery Commission.**

B. Agencies continued as modified by Act of Legislature are:

- (1) **Seed Potato Board;**
- (2) **State Harness Racing Commission;**
- (3) **Board of Pesticide Control; and**
- (4) **State Planning Office.**

Sec. 2. 5 MRSA § 1510-A, sub-§ 1, last ¶, as enacted by PL 1977, c. 624, § 2, is amended to read:

These claims shall include, but shall not be limited to, claims for damage or injury caused by patients, inmates, prisoners in the care or custody of the Department of Mental Health and Corrections or of any institution administered by a department, by children in the custody of the Department of Human Services ~~and by wild animals.~~

Sec. 3. 5 MRSA § 1510-B is enacted to read:

§ 1510-B. No liability for wild animal damage

The State is not liable for damage to livestock or beehives done by wild animals. Neither state agencies nor the State Claims Board may accept claims for such wild animal damage.

Sec. 4. 5 MRSA § 3305, sub-§ 1, ¶ A, as enacted by PL 1967, c. 533, § 1, is repealed and the following enacted in its place:

A. Coordinate the preparation of goals and policies to guide and carry forward the wise and coordinated development of the State's economy and the conservation of the State's natural resources. These goals and policies and recommendations for implementation shall be submitted to the Governor and Legislature for their approval. They shall be developed in such areas as: Land use, housing, natural resource development and conservation and commerce and industrial development.

The State Planning Office shall give the public full opportunity to participate in the formulation of these goals and policies and these goals and policies shall not be in direct conflict with adopted local and regional plans;

Sec. 5. 5 MRSA § 3305, sub-§ 1, ¶ B, as amended by PL 1973, c. 721, is repealed and the following enacted in its place:

B. Provide technical assistance to the Governor and Legislature by undertaking special studies and plans and preparing policy alternatives. The office shall prepare the plans and studies at the request of the Governor, the Legislature or interdepartmental committees, councils and task forces;

Sec. 6. 5 MRSA § 3305, sub-§ 1, ¶ G, sub-¶ (1), first sentence, as repealed and replaced by PL 1979, c. 127, § 37, is amended to read:

Act as the coordinating agency between the several officers, authorities, boards, commissions, departments and divisions of the State in matters relative to the physical development of the State, and review the proposals of said agencies in the light of their relationship to the ~~comprehensive plan~~ **adopted goals and policies** and incorporate such reviews in the reports of the office.

Sec. 7. 5 MRSA § 3311, as enacted by PL 1973, c. 778, § 1, is repealed and the following enacted in its place:

§ 3311. Findings; declaration of purpose

The Legislature finds that the State has an overriding interest in the optimum development and preservation of sites or areas of unusual natural, scenic or scientific significance. In order to facilitate their preservation for present and future generations, the Legislature finds that these areas should be inventoried. The Legislature directs that a state-wide inventory and an official, authoritative listing of the natural, scenic and scientific areas of overriding state interest be made by the State Planning Office as part of its overall responsibility for comprehensive state-wide planning and coordination of the planning and conservation efforts of state and local agencies. The official listing shall be known as the "Register of Critical Areas" and may be referred to as the "register."

The Legislature also finds that the best ways to accomplish the objectives cited in this section are through continued implementation of the State's land use laws which guide and control development in all areas of the State, including those areas listed in the state-wide inventory and through voluntary conservation efforts by landowners. The Legislature authorizes the State Planning Office to work with interested landowners on voluntary conservation of these areas.

Sec. 8. 5 MRSA § 3312, sub-§ 2, as enacted by PL 1973, c. 778, § 1, is amended to read:

2. Critical areas. "Critical areas" mean areas containing or potentially containing plant and animal life or geological features worthy of preservation in their natural condition, or other natural features of significant scenic or scientific or ~~historical~~ value.

Sec. 9. 5 MRSA § 3314, sub-§ 1, first sentence, as enacted by PL 1973, c. 778, § 1, is amended to read:

The State Planning Office, with the advice and approval of the board, shall establish a Register of Critical Areas, which shall contain an inventory of sites

and areas of significant natural, scenic or scientific ~~or historic~~ value duly classified as "critical areas" as defined in section 3312.

Sec. 10. 5 MRSA § 3314, sub-§ 4, as enacted by PL 1973, c. 778, § 1, is repealed.

Sec. 11. 5 MRSA c. 313, as enacted by PL 1975, c. 623, § 5, is repealed.

Sec. 12. 7 MRSA § 62, first sentence, as amended by PL 1965, c. 436, § 1, is repealed and the following enacted in its place:

There shall be appropriated annually from the State Treasury a sum of money equal to 5% of the amount contributed under Title 8, section 275, and additional sums of money as provided and limited by Title 8, sections 274 and 333, which shall be known as the state stipend for aid and encouragement to agricultural societies and hereafter designated as the "stipend."

Sec. 13. 7 MRSA § 62, 2nd sentence which starts "One-half of the amounts contributed," as repealed and replaced by PL 1971, c. 91, § 1, is repealed and the following enacted in its place:

Forty percent of the amounts contributed under Title 8, sections 274 and 333, shall be divided for reimbursements in equal amounts to each recipient of the Stipend Fund which conducts pari-mutuel racing in conjunction with its annual fair if the recipient has improved its racing facilities and has met the standards for facility improvements set by the commissioner for the recipients.

Sec. 14. 7 MRSA § 62, 4th sentence which starts "A sum equal to 2¢ per inhabitant," as amended by PL 1979, c. 541, Pt. B, § 5, is repealed and the following enacted in its place:

A sum equal to 15% of the amount collected under Title 8, sections 274 and 333 shall be divided for reimbursement in amounts in proportion to the sums expended for premiums in the current year to each recipient of the Stipend Fund which does not conduct pari-mutuel racing, if the recipient has improved its facilities and has met the standards for facility improvements set by the commissioner for the recipients.

Sec. 15. 7 MRSA § 402, as last amended by PL 1977, c. 694, § 45, is repealed and the following enacted in its place:

§ 402. Advertising of products

The commissioner may enter into agreements or cooperative arrangements with any person, firm or corporation for the purpose of advertising and increasing the sale and consumption of Maine farm products or disseminating information concerning Maine farm products. He may receive, administer and disburse any funds or contributions from these persons, firms or corporations, either independently or in conjunction with state funds allocated to the purpose, provided that funds so contributed shall be used only for the purposes set forth. He may employ such agents and assistants, subject to the Personnel Law, and make such purchases as may be necessary in the proper performance of his duties.

Sec. 16. 7 MRSA § 441, as amended by PL 1977, c. 694, § 46, is repealed and the following enacted in its place:

§ 441. Rules and regulations

The commissioner may prescribe, in a manner consistent with the Maine Administrative Procedure Act, rules and regulations for carrying out this subchapter, including the fixing of fees to be charged any individual, firm or organization requesting an inspection pursuant to section 446. These fees shall, as nearly as possible, cover the costs of the inspection services for the commodity inspected. All fees collected shall be paid by the commissioner to the Treasurer of State and are appropriated for the purposes of this subchapter. Any unexpended balance from the funds thus appropriated shall not lapse, but shall be carried forward to the same fund for the next fiscal year.

Sec. 17. 7 MRSA § 446 is repealed and the following enacted in its place:

§ 446. Inspections

The commissioner or his duly authorized agents may inspect any fruits, vegetables, poultry, eggs, farm products, sardines or other commodities that are marked, branded or labeled in accordance with official grades or standards established and promulgated by the commissioner for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of that inspection and executed by the inspector shall state the date and place of inspection, the grade, condition and approximate quality of the fruits, vegetables, poultry, eggs, farm products, sardines or other commodities inspected and such other pertinent facts as the commissioner may require. Such a certificate relative to the condition or quality of the farm products and sardines shall be prima facie evidence in all courts of the State of the facts required to be stated in the certificate.

Sec. 18. 7 MRSA § 486, first sentence is amended to read:

The commissioner ~~shall~~ may have all analyses of commodities, except milk and cream, examined under the inspection laws of which he is the executive, made at the Maine Agricultural Experiment Station.

Sec. 19. 7 MRSA c. 103, sub-c. II-A, as enacted by PL 1975, c. 382, § 3 and as amended, is repealed.

Sec. 20. 7 MRSA § 714, sub-§ 2, as enacted by PL 1971, c. 77, § 1, is repealed and the following enacted in its place:

2. Fees. The fees so collected by the commissioner shall be deposited in the General Fund.

Sec. 21. 7 MRSA c. 103, sub-cc. VI and VII, as amended, are repealed.

Sec. 22. 7 MRSA c. 103, sub-cc. IX and XII, as amended, are repealed.

Sec. 23. 7 MRSA § 743, 2nd sentence is amended to read:

The application for registration shall be submitted to the commissioner on ~~form~~ forms furnished by the commissioner and shall be accompanied by a fee of ~~\$9~~ \$12 per plant food element guaranteed.

Sec. 24. 7 MRSA § 743, 3rd ¶ from the end is repealed and the following enacted in its place:

The fees so collected by the commissioner shall be deposited in the General Fund.

Sec. 25. 7 MRSA § 1015, 4th ¶, as enacted by PL 1971, c. 366, is amended to read:

In order to insure the licensee's financial responsibility and to protect potato producers, the commissioner shall require the licensee to file a bond in a form and amount satisfactory to the commissioner, but in no event not less than ~~\$5,000~~ **\$10,000** nor more than ~~\$50,000~~ **\$100,000**, payable to the commissioner in his official capacity and conditioned on the full and prompt payment for all potatoes received or purchased from producers or other licensees during the effective period of the license.

Sec. 26. 7 MRSA § 1044-A is enacted to read:

§ 1044-A. Registration

1. Registration fees. Registration fees shall be paid to the commissioner by each manufacturer or processor distributing seed in this State. All fees collected by the commissioner shall be payable by him to the Treasurer of State for deposit into the General Fund. Fees are established as follows.

A. For any seed sold in containers of more than one pound, a fee of 25¢ per hundredweight shall be paid.

B. For any seed sold only in containers of one pound or less, a flat fee of \$2 per variety shall be paid in lieu of a fee based on weight. The fee shall be paid annually prior to distribution in this State. Fees are renewable annually on January 1st.

2. Reporting requirements. For any seed sold in containers of more than one pound, a report shall be filed annually on February 1st on forms supplied by the commissioner, and fees based on the 25¢ per hundredweight rate shall accompany the report. Each manufacturer or processor shall maintain adequate records for reporting purposes. The records shall be made available to the commissioner, or his designee, for audit if requested.

3. Exceptions. Exceptions to the fee requirements are:

A. Seed not intended for sowing purposes;

B. Seed in storage in or consigned to a seed cleaning or processing establishment for cleaning or processing; and

C. Seed grown, sold and delivered by the producer on his own premises for seeding purposes to the ultimate consumer, provided that the seed has neither been advertised for sale nor been delivered via commercial carrier, and provided that the seed contains no prohibited noxious-weed seeds or not more than one restricted noxious-weed seed to 2,000 of the seeds being sold.

Sec. 27. 7 MRSA § 2501, first sentence, as amended by PL 1977, c. 157, § 1, is further amended to read:

All persons owning bees within the State shall annually notify the commissioner of the keeping of bees and the location thereof and shall forward to the commissioner for deposit with the Treasurer of State an annual license fee of ~~10¢~~ 25¢ per colony for all bees in the hive on June 15th of each year.

Sec. 28. 7 MRSA § 2501, 2nd sentence is amended to read:

No license fee returned shall be less than ~~\$1~~ \$2 per beekeeper.

Sec. 29. 7 MRSA § 2552, 2nd sentence, as enacted by PL 1977, c. 157, § 7, is repealed as follows:

~~A minimum of \$5 per hour and the current state mileage rate shall be used~~

Sec. 30. 7 MRSA § 2901, sub-§§ 10-B to 10-D are enacted to read:

10-B. Frozen dairy product mix. "Frozen dairy product mix" means any unfrozen mixture to be used in the manufacture of frozen dairy products for sale or resale and shall contain in whole or in part the ingredients enumerated under the definition of frozen dairy products.

10-C. Frozen dairy products. "Frozen dairy products" means the frozen products made from cream or a mixture of milk and cream or a combination of dairy products of equivalent composition, sweetened with sugar or other suitable sweetening agent and containing natural or imitation flavoring. Frozen dairy products include ice cream, frozen custard, ice milk, sherbet, ices and related food products, and frozen dairy product mix. They may or may not contain egg-yolk solids and may be frozen with or without agitation. They shall contain no fats or oils other than butter fat, except those necessarily contained in the flavoring.

10-D. Frozen dairy products plant. "Frozen dairy products' plant" means any place, premises or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbet, ices and related food products are assembled, processed, manufactured or converted into form for distribution or sale, and rooms or premises where such frozen dairy products' manufacturing equipment is washed, sterilized or kept.

Sec. 31. 7 MRSA § 2901, sub-§ 13-A is enacted to read:

13-A. Home made or home maid. "Home made" or "home maid," or similar terminology applied to these frozen dairy products, means frozen dairy products manufactured and frozen under conditions normally found in the home.

Sec. 32. 7 MRSA § 2901, sub-§ 22, first sentence, as repealed and replaced by PL 1971, c. 164, § 8, is amended to read:

Milk products means cream, sour cream, milk, butter, evaporated milk, sweetened condensed milk, nonfat dry milk solids, half and half, reconstituted half and half, concentrated milk, skim milk, nonfat or fat-free milk, reconstituted milk and milk products, vitamin D milk and milk products, low-fat milk, fortified milk and milk products, homogenized milk, flavored milk, flavored dairy drink, eggnog, imitation eggnog, eggnog flavored milk, cultured buttermilk, cottage

cheese, creamed cottage cheese, acidified milk and milk products, **frozen dairy products and frozen dairy product mix**, and any other products designated as milk products by the commissioner.

Sec. 33. 7 MRSA § 2901, sub-§ 33 is enacted to read:

33. Wholesale manufacturer. "Wholesale manufacturer" means any person, firm, corporation, association or society which manufactures frozen dairy products, any of which are sold to another for resale, or which manufactures frozen dairy product mix within the State, or for sale within the State.

Sec. 34. 7 MRSA § 2902, 2nd ¶, 2nd sentence is repealed as follows:

~~Each vehicle from which sales or distribution of milk or cream are made, shall be covered by a license~~

Sec. 35. 7 MRSA § 2902, as last amended by PL 1977, c. 694, § 138, is further amended by inserting after the 2nd paragraph the following:

Each wholesale manufacturer of frozen dairy products not licensed under this section as a milk dealer shall, during the month of June in each year, file with the commissioner an application for a license, upon a form prescribed by the commissioner.

The application shall show the location of the plant at which frozen dairy products or frozen dairy product mix is to be manufactured and the name of the brand or brands, if any, under which the product or product mix is to be sold. The license shall expire on June 30th or in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, whichever date is later. Each license shall cover one group of buildings constituting a frozen dairy products' plant in one location.

Sec. 36. 7 MRSA § 2902, 3rd ¶ is repealed and the following enacted in its place:

The commissioner, if satisfied after inspection or investigation that the applicant has complied with sections 2901 to 2904 and 3101 to 3103 and the rules and regulations issued thereunder, shall issue a license.

The fee for each license to sell or distribute milk or cream from a dairy farm shall be based on the annual volume of milk sold or distributed by the farm, but shall not be less than \$10 nor greater than \$25. The fee for each license to sell or distribute milk or cream from a milk plant shall be based on the annual volume of milk sold or distributed by the milk plant, but shall not be less than \$25 nor more than \$50. The Commissioner of Agriculture shall promulgate and establish a fee schedule according to the procedures and subject to the Maine Administrative Procedure Act.

The fee for each wholesale license to sell or distribute frozen dairy products shall be \$25.

All money received by the commissioner shall be deposited in the General Fund.

Sec. 37. 7 MRSA § 2903, as last amended by PL 1971, c. 164, § 16, is further amended by inserting after the first paragraph the following:

No person may sell, advertise or offer or expose for sale any frozen dairy product or frozen dairy product mix unless the manufacturer of the product or mix is licensed under this chapter. No person may sell, offer for sale or advertise for sale any frozen dairy product or frozen dairy product mix if the label upon it or the advertising accompanying it gives a false indication of the origin, character, composition or place of manufacture, or is otherwise false or misleading in any particular. No person may sell, advertise or offer or expose for sale any frozen dairy product for which a standard has not been established by the commissioner, regardless of trade name, brand or coined name. No person may sell or offer, advertise or expose for sale any frozen dairy product or frozen dairy product mix which does not conform to the standards of strength, quality, purity and identity now or hereafter fixed by the commissioner.

Sec. 38. 7 MRSA § 2903, 3rd ¶ is amended to read:

It shall be unlawful for any milk dealer to sell any milk, or milk products as defined in sections 2901 to 2904 and 3101 to 3103, **except frozen dairy products**, the container of which is not plainly marked or labelled with the name of the contents, the word "pasteurized" or the word "natural" in accordance with the quality therein contained and the name and address of the licensed dealer and sufficient information to identify the milk plant where packaged.

Sec. 39. 7 MRSA § 3652, first 2 sentences are amended to read:

Whenever any livestock, poultry or domestic rabbits, properly enclosed, owned by a resident of this State ~~is~~ **are** killed or injured by dogs ~~or wild animals~~, the owner, after locating such animal, animals or poultry or a sufficient part of each to identify the same, may make complaint thereof to the mayor of a city or to one of the municipal officers of the town or plantation where such damage was done within 24 hours after he had knowledge of same. Thereupon, the municipal officers shall investigate the complaint and if satisfied such damage was committed by dogs ~~or wild animals~~ within the limit of their municipality, after viewing the evidence estimate the actual value of such animals or poultry according to the purposes for which they were kept, whether as breeders or other purposes, together with the damage to any other animals or poultry being bitten, torn or chased or exhausted, and make returns on blanks furnished by the Department of Agriculture.

Sec. 40. 7 MRSA § 3654, as amended by PL 1977, c. 157, § 15, is repealed.

Sec. 41. 8 MRSA § 265 is repealed and the following enacted in its place:

§ 265. Compensation

Members of the commission shall receive a per diem compensation in the amount of \$50 for each meeting attended and, in addition, each member shall receive his actual and reasonable expenses incurred in the performance of his duties.

Sec. 42. 8 MRSA § 274, 2nd sentence, as amended by PL 1977, c. 96, § 2, is further amended to read:

Commissions on pools of regular wagers other than exotic wagers shall in no event and at no track exceed ~~16%~~ 16¼% of each dollar wagered, and commissions on pools of exotic wagers shall in no event and at no track exceed ~~25%~~ 25¼% of each dollar wagered, plus the odd cents of all redistribution to be based on each dollar wagered, whether regular wagers or exotic wagers, exceeding a sum equal to the next lowest multiple of 10, known as "breakage," which breakage shall be retained by the licensee.

Sec. 43. 8 MRSA § 274, next to last sentence is amended to read:

A sum equal to ~~1%~~ 1¼% of such total contributions shall be paid to the Treasurer of State to be credited to the "Stipend Fund" provided by Title 7, section 62.

Sec. 44. 10 MRSA § 2701, last ¶ is repealed and the following enacted in its place:

All fees and expenses collected under this chapter by the state sealer shall be deposited in the General Fund.

Sec. 45. 12 MRSA § 4814, as last amended by PL 1973, c. 681, § 3, is further amended by inserting before the last sentence the following new sentence:

The district attorney may enforce the provisions of a local shoreland zoning ordinance upon the request of an authorized municipal official.

Sec. 46. 12 MRSA § 6102, 3rd and 4th sentences, as enacted by PL 1977, c. 661, § 5, are amended to read:

The program may include provisions similar to those of section 6856, shellfish sanitation and certificate, and section 6101, voluntary fish products inspection program, including any additional inspection, licensing and certification requirements that are necessary to insure proper ~~sanitation and~~ quality control. The commissioner may adopt or amend regulations prescribing the minimum standards for establishments and for ~~sanitation and~~ quality control of the processing of any marine organism or its products.

Sec. 47. 22 MRSA c. 564, as enacted by PL 1969, c. 464, § 1 and as amended, is repealed.

Sec. 48. 22 MRSA c. 259-A is enacted to read:

CHAPTER 259-A

REGISTRATION, DISTRIBUTION AND DISPOSAL OF PESTICIDES

§ 1491. Enforcing authority

This chapter shall be administered by the Board of Pesticides Control, hereinafter referred to as the "board."

§ 1492. Declaration of purpose

The purpose of this chapter is to regulate, in the public interest, the labeling, distribution, storage, transportation, use and disposal of pesticides as defined in this chapter. The Legislature finds that pesticides are valuable to our state's agricultural production and to the protection of man and the environment from

insects, rodents, weeds and other forms of life which may be pests; but it is essential to the public health and welfare that pesticides be regulated to prevent adverse effects on human life and the environment. New pesticides are continually being discovered or synthesized which are valuable for the control of pests and for use as defoliant, desiccant, plant regulators and related purposes. The dissemination of accurate scientific information on the proper use of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of such pesticides.

§ 1493. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Active ingredient. "Active ingredient" means any ingredient which will prevent, destroy, repel, control or mitigate pests, or which will act as a plant regulator, defoliant or desiccant.

2. Adulterated. "Adulterated" means any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

3. Animal. "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish and shellfish.

4. Beneficial insects. "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests or are otherwise beneficial.

5. Board. "Board" means the Board of Pesticides Control or its authorized agents.

6. Defoliant. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

7. Desiccant. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

8. Device. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than man and other bacteria, virus or other microorganism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

9. Distribute. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver, pesticides in this State.

10. **Environment.** "Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

11. **EPA.** "EPA" means the United States Environmental Protection Agency.

12. **FIFRA.** "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC 135 et seq., PL 92 - 516.

13. **Fungi.** "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other living animals, and except those in or on processed food, beverages or pharmaceuticals.

14. **Highly toxic pesticide.** "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under the authority of the Federal Insecticide, Fungicide and Rodenticide Act, section 25 (c) (2) or by the board under section 1499, subsection 1, paragraph B.

15. **Imminent hazard.** "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to section 1498 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the United States Secretary of the Interior under United States Public Law 91-135.

16. **Inert ingredient.** "Inert ingredient" means an ingredient which is not an active ingredient.

17. **Ingredient statement.** "Ingredient statement" means statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

18. **Insect.** "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example, spiders, mites, ticks, centipedes and wood lice.

19. **Label.** "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

20. **Labeling.** "Labeling" means the label and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the United States Environmental

Protection Agency; the United States Departments of Agriculture and Interior and United States Department of Health, Education and Welfare; state experiment stations; state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

21. Land. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

22. Nematode. "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

23. Person. "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

24. Pest. "Pest" means any insects, rodents, nematodes, fungi, weeds and other forms of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals, which the board declares to be a pest under section 1499, subsection 1, paragraph A.

25. Pesticide. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. This definition also includes "highly toxic pesticide."

26. Plant regulator. "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

27. Protect health and the environment. "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

28. Registrant. "Registrant" means a person who has registered any pesticide pursuant to this chapter.

29. Registration. "Registration" also means reregistration.

30. Restricted use pesticide. "Restricted use pesticide" means any pesticide or pesticide use classification for restriction use by the administrator of the United States Environmental Protection Agency.

31. Rodent. "Rodent" means any member of the animal group of the order

rodentia, including, but not limited to, rats, mice, gophers, porcupines and squirrels.

32. Unreasonable adverse effects on the environment. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

33. Weed. "Weed" means any plant which grows where not wanted.

34. Wildlife. "Wildlife" means all living things that are neither human, domesticated nor, as defined in this chapter, pests, including, but not limited to, mammals, birds and aquatic life.

§ 1494. Misbranded

The term "misbranded" applies:

1. False, misleading or inconspicuous labeling. To any pesticide subject to this chapter:

A. If its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

B. If it is an imitation of or is distributed under the name of another pesticide; or

C. If any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; and

2. Lack of certain information. To any pesticide:

A. If the labeling does not contain a statement of the use classification under which the product is registered;

B. If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under the Federal Insecticide, Fungicide and Rodenticide Act, section 3(d), are adequate to protect health and the environment;

C. If the label does not bear:

(1) The name, brand or trademark under which the pesticide is distributed;

(2) An ingredient statement on that part of the immediate container, and on the outside container and wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions

of purchase; provided that the ingredient statement may appear prominently on another part of the container as permitted pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, section 2 (q) (2) (A) if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(3) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under the FIFRA, section 3(d), would be adequate to protect the health and environment;

(4) The net weight or measure of the content;

(5) The name and address of the manufacturer, registrant or person for whom manufactured; or

(6) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;

D. If that pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to other label requirements:

(1) The skull and crossbones;

(2) The word "POISON" in red and prominently displayed on a background of distinctly contrasting color; or

(3) A statement of a practical treatment, including first aid or otherwise, in case of poisoning by the pesticide; or

E. If the pesticide container does not bear a registered label or if the label does not contain all the information required by this chapter or the regulations adopted under this chapter.

§ 1495. Prohibited acts

1. Unlawful distribution. It is unlawful for any person to distribute in the State any of the following:

A. Any pesticide which has not been registered pursuant to this chapter;

B. Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product, if the registration is amended to reflect such change and if such change will not violate any provision of FIFRA or this chapter;

C. Any pesticide unless it is in the registrant's or the manufacturer's unbroken

immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the regulations adopted under this chapter;

D. Any pesticide which has not been colored or discolored pursuant to section 1499, subsection 1, paragraph D;

E. Any pesticide which is adulterated or misbranded or any device which is misbranded; or

F. Any pesticide in containers which are unsafe due to damage.

2. Unlawful alteration, misuse, divulging of formulas, transportation, disposal and noncompliance. It shall be unlawful:

A. For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or regulations adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the regulations adopted hereunder;

B. For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or to regulations of the commissioner, if those regulations further restrict the uses provided on the labeling;

C. For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or federal executive agencies, or to the courts of this State or of the United States in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 1496 or any information judged by the commissioner as containing or relating to trade secrets or commercial or financial information obtained by authority of this chapter and marked as privileged or confidential by the registrant;

D. For any person to handle, transport, store, display or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with the pesticides;

E. For any person to dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or pollute any water supply or waterway; or

F. For any person to refuse or otherwise fail to comply with this chapter, the regulations adopted hereunder, or of any lawful order of the commissioner.

§ 1496. Registration

1. **Conditions requiring registration.** Every pesticide which is distributed in this State shall be registered with the board, subject to this chapter. The registration shall be renewed annually prior to January 1st, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide which is registered under this chapter, or if the pesticide is distributed under the provisions of an experimental use permit issued under section 1497 or any experimental use permit issued by EPA.

2. **Contents of statement made by applicant.** The applicant for registration shall file a statement with the board which shall include:

A. The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

B. The name of the pesticide;

C. Other necessary information required for completion of the department's application for registration forms; and

D. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA.

3. **Submission of formula.** The board, when it deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

4. **Test results.** The board may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide not registered pursuant to FIFRA, section 3 or on any pesticide on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

5. **Power to require other information.** The board may prescribe other necessary information by regulation adopted in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375.

6. **Registration fee; validity.** The applicant desiring to register a pesticide shall pay an annual registration fee of \$10 to the board for each pesticide registered for such applicant. All such registrations shall expire on December 31st of any one year on in a manner consistent with the Maine Administrative Procedure Act as to license expiration, Title 5, section 10002, whichever date is later.

7. **Renewal of registration.** Forms for reregistration shall be mailed to registrants at least 30 days prior to the due date.

8. Approval of application for registration.

A. Provided the State is certified by the administrator of EPA to register pesticides pursuant to FIFRA, section 24 (c), the board shall consider the required information set forth under subsections 2, 3, 4 and 5 and shall, subject to the terms and conditions of the EPA certification, register such pesticide upon determining that:

- (1) Its composition is such as to warrant the proposed claims for it;**
- (2) Its labeling and other material required to be submitted comply with the requirements of this chapter;**
- (3) It will perform its intended function without unreasonable adverse effects on the environment;**
- (4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment; and**
- (5) A special local need for the pesticide exists.**

B. Prior to registering a pesticide for a special local need, the board shall classify the uses of the pesticide for general or restricted use in conformity with FIFRA, section 3 (d); provided that the board shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where 2 pesticides meet the requirements of this paragraph, one should not be registered in preference to the other.

C. The board may develop and promulgate such other requirements by regulation, adopted in a manner consistent with the Maine Administrative Procedure Act, as are necessary for the state plan to receive certification from EPA.

9. Adverse environmental effects. If, at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit the information to the board.

§ 1497. Experimental use permits

1. Board's powers. Provided the State is authorized by the administrator of EPA to issue experimental use permits, the board may:

A. Issue an experimental use permit to any person applying for an experimental use permit, if it determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 1496. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed;

B. Prescribe terms, conditions and period of time for the experimental use permit, which shall be under the supervision of the board; and

C. Modify any experimental use permit in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory proceedings, if it finds that its terms or conditions are being violated, or that its

terms and conditions are inadequate to avoid unreasonable adverse effects on the environment. These permits may be revoked by the Administrative Court if the terms or conditions are being violated or are inadequate to avoid unreasonable adverse effects on the environment.

2. Development and promulgation of other requirements. The board may develop and promulgate such other requirements by regulation, adopted in a manner consistent with the Maine Administrative Procedure Act, as are necessary for the state plan to receive such authorization from EPA.

3. Limitation or prohibition of experimental use pesticides. The board may, by regulation adopted in a manner consistent with the Maine Administrative Procedure Act, limit or prohibit the use of any pesticide for which an experimental use permit has been issued by EPA pursuant to FIFRA, section 5(a), and which the board finds may cause unreasonable adverse effects on the environment.

§ 1498. Refusal to register; cancellation; suspension; legal recourse

1. Procedure. Provided the State is certified by the administrator of EPA to register pesticides formulated to meet special local needs, the board shall consider the following for refusal to register; for cancellation; for suspension; or for legal recourse for such pesticides. This registration, cancellation and suspension shall be considered rule-making as that term is defined in the Maine Administrative Procedure Act, Title 5, chapter 375, and notice shall be provided in a manner consistent with the Maine Administrative Procedure Act.

A. If it does not appear to the board that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with this chapter or regulations adopted hereunder, it shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with this chapter so as to afford the applicant an opportunity to make the necessary corrections and shall notify, in a manner consistent with the Maine Administrative Procedure Act, the applicant of the opportunity for hearing prior to refusal to register.

B. When the board determines that a pesticide or its labeling does not comply with this chapter or the regulations adopted hereunder, it may cancel the registration of a pesticide or change its classification, after a notice and opportunity for hearing has been provided in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act.

C. When the board determines that there is an imminent hazard, it may, on its own motion, suspend the registration of a pesticide in a manner consistent with the Maine Administrative Procedure Act, Title 5, section 8054, as to emergency rule-making pending decisions reached after notice and opportunity for a hearing. Hearings shall be held with the utmost possible expedition.

D. When the board becomes cognizant of any possible hazard or violation involving either a registered or unregistered product, it shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or charge to be preferred, to be delivered by registered mail, return receipt requested, to the person concerned, who shall be given an opportunity to be

heard under such rules and regulations as may be prescribed by the board.

E. Any person who will be adversely affected by such order in this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of the order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the board and upon receipt of the copy the board shall file in the court the record of the proceedings on which it based its order. The court shall have jurisdiction to affirm or set aside the order complained of, in whole or in part. The findings of the board with respect to questions of fact shall be sustained, if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the board to take further testimony, if there are reasonable grounds for the failure to adduce such evidence in the prior hearing. The board may modify its findings and its order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

2. Federally registered pesticides. If the board determines that any federally registered pesticide, with respect to the use of such pesticide within this State, does not warrant the claims for it, or might cause unreasonable adverse effects on the environment, it may refuse to register the pesticide as required in section 1496, or, if the pesticide is registered under section 1496, the registration may be cancelled or suspended as provided in subsection 1. If the board believes the pesticide does not comply with the provisions of FIFRA or the regulations adopted thereunder, it shall advise EPA of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of FIFRA, and suggest necessary corrections.

§ 1499. Determinations; rules and regulations; restricted use pesticides; uniformity

1. Determinations. The board is authorized, after due notice and an opportunity for a hearing in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, Title 5, chapter 375:

A. To declare as a pest any form of plant or animal life, except virus, bacteria or other microorganisms on or in living man or other living animals, which is injurious to health or the environment;

B. To determine whether pesticides registered under the authority of FIFRA, section 24(c) are highly toxic to man. The definition of highly toxic, as defined in the Code of Federal Regulations 162.8 Title 40, as issued or hereafter amended, shall govern the board's determination;

C. To determine pesticides and quantities of substances contained in pesticides, which are injurious to the environment, the board shall be guided by EPA regulations in this determination; and

D. To prescribe regulations requiring any pesticide to be colored or discolored, if it determines that such requirement is feasible and is necessary for the protection of health and the environment.

2. Rule-making powers. The board is authorized, after due notice and a public hearing, in a manner consistent with the Maine Administrative Procedure Act, to

make appropriate regulations for carrying out the provisions of this chapter, including, but not limited to, regulations providing for:

- A. The collection, examination and reporting of samples of pesticides or devices;
- B. The safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers;
- C. Labeling requirements of all pesticides required to be registered under this chapter, provided that such regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA; and
- D. Specifying classes of devices which shall be subject to section 1494, subsection 1.

3. Uniformity of requirements; restricted uses. For the purpose of uniformity of requirements between the states and the Federal Government, the board may, after a public hearing, adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use as established by EPA or other federal or state agencies.

§ 1500. Enforcement

1. Board powers. Notwithstanding any other provisions of law, the sampling and examination of pesticides or devices shall be made under the direction of the board for the purpose of determining whether they comply with this chapter. The board is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to labeled pesticides or devices packaged for distribution, and to open any case, package or other container, and may upon tendering the market price take samples for analysis. If it appears from such examination that a pesticide or device fails to comply with this chapter or regulations adopted hereunder, and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to such person in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375. Any person so notified shall be given an opportunity for a hearing in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings. If thereafter in the opinion of the board it appears that this chapter or regulations adopted hereunder have been violated by such person, the board shall refer a copy of the results of the analysis or the examination of such pesticide or device to the attorney for the district in which the violation occurred.

2. Minor violations. Nothing in this chapter shall be construed as requiring the board to report minor violations of this chapter for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a suitable notice of warning in writing.

§ 1501. “Stop sale, use or removal” order

When the board has reasonable cause to believe a pesticide or device is being distributed, stored, transported or used in violation of this chapter or of any of the prescribed regulations under this chapter, it may issue and serve a written “stop sale, use or removal” order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the board may attach the order to the pesticide or device and notify the owner or custodian and the registrant. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the board or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding as defined by the Maine Administrative Procedure Act, Title 5, chapter 375.

§ 1502. Judicial action after “stop sale, use or removal” order

1. **Adjudication; court powers.** After service of a “stop sale, use or removal” order is made upon any person, either that person, the registrant or the board may file an action in a court of competent jurisdiction in the district in which a violation of this chapter or regulations adopted hereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or regulations adopted hereunder.

2. **Disposition of condemned pesticide.** If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and if such pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the Treasurer of State as provided in section 1510, provided that the pesticide or device shall not be sold contrary to this chapter or regulations adopted hereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing or otherwise bringing the product into compliance.

3. **Award of court costs and fees.** When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

§ 1503. Denial, suspension, revocation of license

Upon notice and opportunity for a hearing as provided in sections 1497 and 1498, the board is authorized to deny, or refuse to renew, any license, registration or permit provided for in this chapter, subject to a hearing in any case in which it

finds there has been a failure or refusal to comply with this chapter or regulations adopted hereunder. When it finds any failure or refusal to comply, the board is further authorized to cancel or suspend registration of a pesticide, as provided in section 1498, or to file a complaint for suspension or revocation of any other permit or license with the Administrative Court.

§ 1504. Subpoenas

The board may issue subpoenas to compel the attendance of witnesses and the production of books, documents and records in the State in any hearing affecting the authority or privilege granted by a license, registration or permit issued under this chapter.

§ 1505. Penalties

1. **Violations.** Any person violating this chapter or regulations adopted hereunder commits a civil violation for which the following forfeitures may be adjudged:

- A. For the first violation, a forfeiture not to exceed \$500; and
- B. For each subsequent violation, a forfeiture not to exceed \$1,000.

2. **Injunction.** The board may bring an action to enjoin the violation or threatened violation of this chapter or any regulation made pursuant to this chapter in a court of competent jurisdiction of the district in which such violation occurs or is about to occur.

3. **No damages from administrative action if probable cause exists.** No state court may allow the recovery of damages from administrative action taken or for a "stop sale, use or removal" order, if the court finds that there was probable cause for such action.

§ 1506. Exemptions

1. **Exemptions from penalties.** The penalties provided for violations of section 1495, subsection 1, paragraphs A, B, C, D and E shall not apply to:

- A. Any carrier while lawfully engaged in transporting a pesticide within this State, if such carrier shall, upon request, permit the board to copy all records showing the transactions in and movement of the pesticides or devices;
- B. Public officials of this State and the Federal Government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations;
- C. The manufacturer, shipper or other distributor of a pesticide for experimental use only, provided that such person holds or is covered by a valid experimental use permit as provided for by section 1497 or issued by EPA, and provided further that such permit covers the conduct in question; and
- D. Any person who ships a substance or mixture of substances being put

through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

2. Exemption for pesticides for export. No pesticide or device shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

§ 1507. Publication of information

The board may publish at least annually and in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides, provided that individual distribution information shall not be a public record.

§ 1508. Delegation of duties

All authority vested in the board by virtue of this chapter may, with like force and effort, be executed by such employees of the board as the board may from time to time designate for that purpose.

§ 1509. Cooperation

The board may cooperate with, receive grants-in-aid from and enter into cooperative agreements with any agency of the Federal Government, of this State or its subdivisions, or with any agency of another state for the purpose of, but not limited to:

1. Uniformity. Securing uniformity of regulations;
2. Cooperative agreements with EPA. Preparing and submitting state plans and entering into cooperative agreements with EPA to register pesticides under the authority of this chapter and FIFRA;
3. Use of state and federal facilities. Cooperating in the enforcement of the federal pesticide control laws through the use of state or federal personnel, or both, and facilities and implementing cooperative enforcement programs, including, but not limited to, the registration and inspection of establishments;
4. Contracts for monitoring pesticides. Entering into contracts for monitoring pesticides for the national plan; and
5. Preparation of state plans. Preparing and submitting state plans to meet federal certification standards for issuing experimental use permits.

§ 1510. Disposition of funds

All moneys received by the board under this chapter shall be deposited in the State Treasury to the credit of a special fund to be used only for carrying out the work of the Board of Pesticides Control.

§ 1511. Prior liability

The enactment of this chapter does not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on October 1, 1975.

§ 1512. Jurisdiction

Jurisdiction in all matters pertaining to the registration, distribution and disposal of pesticides and devices is by this chapter vested exclusively in the board.

Sec. 49. 22 MRSA § 2152, sub-§ 7-A is enacted to read:

7-A. Retail food establishment. "Retail food establishment" means any establishment where food and food products are offered for sale to the ultimate consumer and intended for off-premise consumption. Such food or food products may often need further preparation or processing after they have been purchased. "Retail food establishment" does not mean an eating establishment as defined in section 2491, subsection 7.

Sec. 50. 22 MRSA § 2167 is enacted to read:

§ 2167. License required

No person, corporation, firm or copartnership may operate for compensation, directly or indirectly, a factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce, unless licensed by the Department of Agriculture. In the case of retail food establishments, licenses issued shall be displayed in a place readily visible to customers or other persons using a licensed establishment.

Sec. 51. 22 MRSA § 2168 is enacted to read:

§ 2168. Fees

Each application for, or renewal of, a license to operate a food establishment within the meaning of this chapter shall be accompanied by a fee, appropriate to the size of the establishment of the licensee, determined by the department and not to exceed \$30. The fee may not be refunded. No license may be assignable or transferable. The fees so collected by the commissioner shall be deposited in the General Fund.

Sec. 52. 22 MRSA § 2169 is enacted to read:

§ 2169. Issuance of licenses

The department shall, within 30 days following receipt of application, issue a license to operate any food establishment which is found to comply with this chapter and any rules and regulations adopted by the department. When any such applicant, upon inspection by the department, is found not to meet the requirements of this chapter or departmental regulations hereunder, the

department is authorized to issue either a temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department shall be made by the applicant for compliance, or a conditional license setting forth conditions which shall be met by the applicant to the satisfaction of the department.

A full-year license shall be issued for one year from date of issuance and the prescribed fee shall accompany the application for license. Licenses may be renewed upon application therefor and payment of the annual fee, subject to the department's rules and regulations. Licenses erroneously issued by the department shall be considered void and shall be returned to the department on demand.

The department shall, during the 2-year period following the effective date of this section, redistribute the expiration dates of the existing licenses so that an equal number expire in each month of the year, thus allowing for distributing the work of relicensure evenly throughout the year.

The department shall notify license holders not less than 30 days prior to the expiration of their licenses and provide them with any necessary relicensure forms.

Sec. 53. 22 MRSA § 2170 is enacted to read:

§ 2170. Exception

Any establishment subject to this chapter and chapter 562 shall be required to have only one license and that license shall be issued on the predominate portion of the establishment's business.

Sec. 54. 22 MRSA § 2171 is enacted to read:

§ 2171. Licensing conditions

Notwithstanding any other provisions of this chapter, the department may issue a license required under section 2167 on the basis of an inspection performed by an inspector who works for and is compensated by the municipality in which the establishment is located, but only if the following conditions have been met.

1. Adopted rules, regulations; code of standards. The municipality involved has adopted a set of rules and regulations, ordinances or other code of standards for the establishments, which has been approved by the department and which is consistent with the regulations used by the department for the issuance of the licenses in effect at the time of inspection.

2. Inspection to ascertain intent. The department may from time to time inspect the municipally-inspected establishments to ascertain that the intent of these statutes is being followed.

3. Inspection reports. The municipalities shall furnish the department copies of its inspection reports relating to the inspections on a monthly basis.

4. **Charge.** Municipalities may not charge the department for performing the inspections.

5. **License fee.** When a license is issued on the basis of a municipal inspection as specified in this section, the requirement for payment of a license fee to the department as set forth in section 2168 shall be waived. The licensee shall be required to pay the department a sum not to exceed \$5 to support the costs of mailing and handling.

6. **Licenses.** Licenses issued under this section shall be displayed, renewed and in every other way treated the same as licenses issued under this subchapter on the basis of inspection by the department.

Sec. 55. 22 MRSA § 2491, sub-§ 7, as enacted by PL 1975, c. 496, § 3, is amended to read:

7. **Eating establishment.** "Eating establishment" means any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments, or establishments dispensing food from vending machines, or establishments preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, mobile eating places, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving foods, **stores retail frozen dairy product establishments**, airports, parks, theaters, vacation camps or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.

Sec. 56. 22 MRSA § 2491, sub-§ 15 is enacted to read:

15. **Retail frozen dairy product establishment.** "Retail frozen dairy product establishment" means any place, premise or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbet, ices and related food products are prepared for consumption on or off premises.

Sec. 57. 22 MRSA § 2497, as enacted by PL 1975, c. 496, § 3, is amended by adding at the end the following new sentence:

The department and any duly designated officer or employee thereof do not have the right to enter, for inspection, upon and into the premises of any establishment that is licensed under chapter 551, subchapter I.

Sec. 58. 25 MRSA § 2108, as enacted by PL 1977, c. 622, is repealed.

Sec. 59. 30 MRSA § 4601-A, sub-§ 1, ¶ A, as repealed and replaced by PL 1975, c. 625, § 7, is repealed.

Sec. 60. 36 MRSA § 4441, 2nd sentence, as amended by PL 1971, c. 158, is further amended to read:

With the filing of said statement, each such person, firm or corporation shall pay to the State Tax Assessor a fee of ~~10¢~~ 12¢ a ton of 2,000 pounds for mixed fertilizer so sold.

Sec. 61. 36 MRSA § 4442 is repealed and the following enacted in its place:

§ 4442. Disposition of fees

The fees so collected by the State Tax Assessor shall be deposited in the General Fund.

Sec. 62. 36 MRSA § 4563, sub-§ 1, ¶¶ A and C as repealed and replaced by PL 1975, c. 554, § 1, are repealed and the following enacted in their place:

A. The commissioner shall, prior to September 1st of any year in which a grower member or members are to be appointed, appoint one grower member for each of the appropriate districts from nominations made in the following manner.

(1) Prior to July 1st of each year, the Maine Potato Commission shall hold or cause to be held in the affected district or districts a meeting of growers for the purpose of electing nominees for commission membership.

(2) In arranging for the meetings, the commission may, if it deems desirable, utilize the services and facilities of existing organizations and agencies.

(3) At the meetings, 3 nominees shall be elected for consideration by the commissioner, provided that at least 30% of the growers in the district are present.

(4) The commission shall establish procedures for holding the meetings and shall certify to the commissioner that the nominations have been made in compliance with this section and the procedures so established.

(5) The commission shall forward the nominations to the commissioner, in such manner and form as he may prescribe, not later than August 1st of each year.

(6) If nominations are not made within the time and manner specified by this section, the commissioner may, without regard to nomination, appoint any qualified grower to membership on the commission.

C. The commissioner shall, prior to September 1st of any year in which a shipper member is to be appointed, appoint the shipper member of the commission from nominations made in the following manner.

(1) Prior to July 1st of any year in which a shipper member is to be appointed, the Maine Potato Commission shall hold or cause to be held a meeting of shippers for the purpose of electing nominees for commission membership.

(2) In arranging for the meetings the commission may, if it deems desirable, utilize the services and facilities of existing organizations and agencies.

(3) At the meetings, 3 nominees shall be elected for consideration by the

commissioner, provided that at least 30% of the shippers in the State are present.

(4) The commission shall establish procedures for holding the meetings, and shall certify to the commissioner that the nominations have been made in compliance with this section and the procedures so established.

(5) The commission shall forward the nominations to the commissioner, in such manner and form as he may prescribe, not later than August 1st of the year in which elections are held.

(6) If nominations are not made within the time and manner specified by this section, the commissioner may, without regard to nominations, appoint any qualified shipper to membership on the commission.

Sec. 63. 36 MRSA § 4563, sub-§ 3, as repealed and replaced by PL 1975, c. 554, § 3, is amended by adding the following new paragraph:

In the case of a grower member, the vacancy shall be filled from the most recent list of nominees from the affected district. In the case of a shipper member, the vacancy shall be filled from the most recent list of nominees.

Sec. 64. 37-A MRSA § 23, as amended by PL 1977, c. 230, § 4, is repealed.

Sec. 65. 37-A MRSA § 24, as amended by PL 1977, c. 230, § 5, is repealed.

Sec. 66. 37-A MRSA § 25 as amended by PL 1977, c. 694, § 738, is repealed.

Sec. 67. 37-A MRSA § 26, as enacted by PL 1971, c. 580, § 1, is repealed.

Sec. 68. 37-A MRSA § 27, as amended by PL 1975, c. 293, § 4, is repealed.

Sec. 69. 37-A MRSA § 34, first sentence, as repealed and replaced by PL 1977, c. 694, § 740, is amended to read:

Any person who is denied a pension under section 23 or 24 or who is denied or is not satisfied with the amount of aid allotted to him by the bureau shall have the right of appeal to the director.

Sec. 70. 37-A MRSA § 50-K, as last amended by PL 1977, c. 694, § 741, is further amended by adding at the end the following new sentence:

Assistance under this section shall not be paid to any person eligible for free tuition in accordance with section 50-L.

Sec. 70-A. 37-A MRSA § 50-K-1 is enacted to read:

§ 50-K-1. Exception

Notwithstanding section 50-K, the bureau shall continue to pay benefits, in the same amount and under the same circumstances, to any eligible person receiving benefits under section 50-K as of June 30, 1980.

Sec. 71. 37-A MRSA § 56, as last amended by PL 1975, c. 771, § 408, is repealed.

Sec. 72. 37-A MRSA § 59, sub-§ 9, as last amended by PL 1979, c. 51, § 2, is further amended to read:

9. Preparation and implementation of plans. The Bureau of Civil Emergency Preparedness shall, **in conjunction with all municipalities and state agencies it requires to provide assistance**, prepare and implement those emergency plans, evacuation plans and other arrangements deemed necessary to protect the public and property in the State from hazards or dangers from radiation, radioactive materials, nuclear materials or the occurrence of a radiological incident as a result of the presence of, release of or emissions from radioactive materials, radioactivity or nuclear materials in this State. This subsection shall only apply to those hazards or dangers which arise from the peaceful use of nuclear or atomic materials.

Sec. 73. Resolves, 1929, c. 153 is repealed.

Sec. 74. Exception; sections 64 and 65. Notwithstanding sections 64 and 65, the Treasurer of State shall continue to pay benefits, in the same amount and under the same circumstances, to any eligible person receiving benefits under the Revised Statutes, Title 37-A, section 23 or 24, as of August 13, 1979.

PART B

Adjustments to General Fund. In order to provide for necessary adjustments of the General Fund for the fiscal year ending June 30, 1981, and in order to implement the recommendations of the Joint Standing Committee on Audit and Program Review, the appropriations provided by the first regular session of the 109th Legislature are decreased by the amounts designated in the following tabulations.

DEPARTMENT OR AGENCY	APPROPRIATION FROM GENERAL FUND
	1980-81
AGRICULTURE, DEPARTMENT OF	
Departmental Administrative Services	
All Other	(\$ 33,500)
Eliminates the \$.03 per inhabitant appropriation for the stipend fund.	
Agricultural Marketing Services	
Positions	(-7)
Personal Services	(\$100,000)
All Other	(28,200)
Provides for the transfer of positions and funds to the Division of Inspections to properly enforce the Branding Law.	

DEPARTMENT OR AGENCY	APPROPRIATION FROM GENERAL FUND 1980-81
Animal Industry Services	
Positions	(-3)
Personal Services	(43,000)
All Other	(30,900)
Eliminates the appropriation for the Production and Pullet Test farm. Reduces General Fund revenues by an estimated \$35,900	
Plant Industry Services	
All Other	(\$ 3,000)
Eliminates the appropriation for payment of claims for damage to beehives by wild animals.	
Consumer Services	
Positions	(-1)
Personal Services	(2,800)
All Other	(700)
Eliminates the appropriation for a seasonal Blueberry Inspector Supervisor.	
Positions	(-6)
Personal Services	(83,000)
All Other	(17,900)
Eliminates the appropriation for the State Meat Inspection Program.	
State Harness Racing Commission	
Personal Services	(2,100)
Reduces the salary of the members of the commission to \$50 per diem.	
Maine Agricultural Bargaining Board	
Personal Services	(1,000)

DEPARTMENT OR AGENCY	APPROPRIATION FROM GENERAL FUND 1980-81
All Other	(2,000)
Eliminates the appropriation for the Agricultural Bargaining Board.	
EXECUTIVE DEPARTMENT	
State Planning Office	
Positions	(-2)
Personal Services	(28,900)
All Other	(21,900)
Eliminates positions and funds from General Policy Activity area.	
DEFENSE AND VETERANS SERVICES, DEPARTMENT OF	
Services to Veterans	
All Other	(\$12,500)
Begins implementation of the elimination of up to \$300 payment for veterans' dependents eligible for free tuition at state-supported institutions.	
TOTAL PART B - GENERAL FUND	(\$411,400)

PART C

Appropriations from General Fund. In order to provide for expenditures of State Government and other purposes for the fiscal year ending June 30, 1981, and in order to implement the recommendations of the Joint Standing Committee on Audit and Program Review, the sums designated in the following tabulations are appropriated out of moneys in the General Fund not otherwise appropriated.

DEPARTMENT OR AGENCY	APPROPRIATION FROM GENERAL FUND 1980-81
AGRICULTURE, DEPARTMENT OF	
Consumer Services	
Positions	(7)
Personal Services	\$100,000

DEPARTMENT OR AGENCY	APPROPRIATION FROM GENERAL FUND 1980-81
All Other	28,200
Provided for by transfer from Agricultural Marketing Services.	
Positions	(6)
Personal Services	88,300
All Other	87,900
Provided for by transferring a number of dedicated accounts to General Fund accounts, increasing fees in some instances and establishing new fees in some instances. Total new revenues to General Fund from fees amount to \$221,250.	
TOTAL PART C - GENERAL FUND	\$304,400

PART D

PL 1977, chapter 380, Part B, section 11 and PL 1977, chapter 579, Section B, section 5 are repealed.

This section forgives all remaining loans payable to the General Fund by the Seed Potato Board. The amount of these loans as of the effective date of this Act is \$60,000, payable at the rate of \$20,000 per year. Therefore, this section will reduce General Fund revenues in Fiscal Year 1981 by \$20,000.

Fiscal Note

This bill makes a number of changes in appropriations and revenues that affect the Department of Agriculture, the Department of Defense and Veterans Services and 12 independent agencies. Total estimated decreases in General Fund appropriations for fiscal year 1981 are \$411,400. Total estimated increases in appropriations for fiscal year 1981 are \$304,400. Estimated decreases in revenue for the same year are \$55,900. Recommended increases in fees will generate an estimated \$221,250 in additional revenue to the General Fund. Therefore, the net fiscal impact of this bill is estimated to be \$272,350 in cost savings and additional revenues for fiscal year 1981.

STATEMENT OF FACT

This bill implements the recommendations of the Joint Standing Committee on Audit and Program Review in accordance with the Maine Sunset Law. Part A makes statutory amendments to repeal, modify or leave intact the program reviewed. Parts B, C and D make necessary adjustments to current appropriations.

PART A

Section 1 continues, with or without legislative change, the independent agencies scheduled for termination on June 30, 1980.

Section 2 eliminates state payments for damage to livestock by wild animals.

Section 3 provides specifically that the State will not pay wild animal damage claims.

Sections 4 - 6 eliminate the State Planning Office mandate to develop a comprehensive plan, adds a mandate to develop coordinated goals and policies in specific areas and clarifies the mandate to provide technical assistance.

Section 7 clarifies intent that the Critical Areas program is primarily an identification and voluntary conservation program.

Sections 8 - 10 eliminate "historic" as a criteria for inclusion on the Register of Critical Areas. Section 10, which cites the Revised Statutes, Title 5, section 3314, repeals the requirement that owners of critical areas notify the Critical Areas Advisory Board of potential changes.

Section 11 eliminates statutory reference to the Commission on Maine's Future.

Sections 12 - 14 eliminate the mandated 3¢ per inhabitant General Fund contribution to the Stipend Fund and modifies the distribution formula to give more assistance to small fairs.

Sections 15 - 17 clarify that shipping point inspection programs are intended to be voluntary, self-financing activities.

Section 18 allows the Commissioner of Agriculture to choose where laboratory analysis may be conducted.

Section 19 removes pesticide registration and control activities from the Department of Agriculture. Section 48 of the bill assigns these activities to the Board of Pesticide Control.

Section 20 eliminates dedicated funding of the feed inspection program.

Sections 21 and 22 repeal unenforced statutes regulating flour, bread and rolls, mineral oil and vinegar. Section 21 repeals the present frozen dairy product law, but it is reenacted under sections 30, 55 and 56.

Sections 23 and 24 increase the fertilizer registration fee and eliminate

dedicated funding for this program. Section 60 of this bill increases the fertilizer tax.

Section 25 increases the amount of bond required for potato dealers.

Section 26 establishes fees and reporting requirements for seed inspection services.

Sections 27 and 28 increase the beehive license fees.

Section 29 eliminates restrictions on the compensation of the state bee inspector.

Sections 30 - 38 provide for the licensing and inspection of wholesale frozen dairy product manufacturers under dairy regulation statutes and revise licensing fees and provisions for milk dealers, produce dealers and wholesale frozen dairy product manufacturers.

Section 39 eliminates state payments of wild animal damage to livestock.

Section 40 eliminates state payments of wild animal damage to beehives.

Section 41 replaces the fixed salary of harness racing commissioners with per diem compensation.

Sections 42 and 43 increase the percentage of harness racing wagers credited to the Stipend Fund.

Section 44 eliminates dedicated funding of the weights and measures inspection program.

Section 45 allows municipalities to request the District Attorney to prosecute violators of local ordinances.

Section 46 eliminates the potential for duplicate sanitation inspections by the Departments of Marine Resources and Agriculture.

Section 47 repeals the Maine Meat Inspection Act.

Section 48 establishes pesticide registration and control activities under the Board of Pesticide Control and dedicates all fees collected to the work of the board.

Sections 49 - 52 provide for the licensing of food establishments inspected by the Department of Agriculture.

Section 53 prohibits duplicate licensing of food establishments by the Departments of Agriculture and Human Services.

Section 54 permits municipal inspections of food establishments in lieu of state inspections in some cases.

Sections 55 and 56 clarify that retail frozen dairy establishments shall be inspected by the Department of Human Services.

Section 57 prohibits inspections of eating establishments, licensed under the Department of Agriculture, by the Department of Human Services.

Section 58 eliminates the Hazardous Materials Advisory Board.

Section 59 eliminates the Maine State Housing Authority mandate to collect housing data because it duplicates the State Planning Office mandate.

Section 60 increases the fertilizer tax rate.

Section 61 removes the dedicated funding of the fertilizer program.

Sections 62 and 63 modify the nomination procedure for membership on the Maine Potato Commission.

Sections 64 - 69 repeal pre-World War I pension laws. Section 74 of this bill protects current recipients.

Section 70 and 70-A eliminate the \$300 grant for students receiving free in-state tuition, but continues benefits until recipients are no longer eligible.

Section 71 eliminates the Civil Emergency Preparedness Council.

Section 72 modifies the Civil Emergency Preparedness mandate to prepare emergency plans by encouraging greater cooperation between state agencies and municipalities.

Section 73 eliminates the statutory basis for the Department of Agriculture's poultry test facility in Monmouth.

Section 74 allows present recipients of the state pension to continue to receive benefits until no longer eligible.

PART B

Part B makes adjustments to the General Fund by decreasing appropriations provided by the first session of the 109th Legislature.

PART C

Part C makes adjustments to the General Fund by appropriating funds for the year ending June 30, 1981.

PART D

Part D eliminates repayment of loans made by the Seed Potato Board from the General Fund.