

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2261

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H.P. 1653 House of Representatives, February 12, 1988  
Submitted by the Department of Conservation pursuant to  
Joint Rule 24.  
Reference to the Committee on Labor suggested and ordered  
printed.

EDWIN H. PERT, Clerk  
Presented by Representative WILLEY of Hampden.  
Cosponsored by Senator COLLINS of Aroostook.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-EIGHT

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1 AN ACT to Clarify that Volunteer and Intern  
2 Service in the State Environmental Resource  
3 Volunteer Effort Program is Not Considered  
4 Employment for Unemployment  
5 Compensation Purposes.  
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7 Emergency preamble. Whereas, Acts of the  
8 Legislature do not become effective until 90 days  
9 after adjournment unless enacted as emergencies; and

1       Whereas, the State Environmental Resource  
2 Volunteer Effort Program has been established by the  
3 Legislature to create, promote and manage volunteer  
4 and intern opportunities with public natural resource  
5 related agencies; and

6       Whereas, certain volunteers and interns receive  
7 stipends as authorized by law; and

8       Whereas, an unemployment compensation claim  
9 awarded on the basis of a State Environmental Resource  
10 Volunteer Effort Program volunteer or intern stipend  
11 is inconsistent with, and potentially damaging to, the  
12 program's goal of promoting volunteer and educational  
13 opportunities; and

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

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

22       26 MRSA §1043, sub-§11, ¶F, as amended by PL  
23 1987, c. 17, §1, is further amended to read:

24       F. The term "employment" shall not include:

25           (1) Service performed in the employ of this  
26 State, or of any political subdivision  
27 thereof, or of any instrumentality of this  
28 State or its political subdivisions, except  
29 as provided by this subsection;

30           (2) Service performed in the employ of the  
31 United States Government or an  
32 instrumentality of the United States immune  
33 under the Constitution of the United States  
34 from the contributions imposed by this  
35 chapter, except that on and after January 1,  
36 1940, to the extent that the Congress of the  
37 United States has permitted states to require

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any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation or employment security law, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 1225, subsection 5, with respect to contributions erroneously collected;

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(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system or employment security system established by an Act of Congress. The commissioner is authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in section 1082, subsection 2, for regulations, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter;

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(4) Agricultural labor as defined in subsection 1, except as provided in paragraph A-2;

1 (4-1) Agricultural labor in the harvesting  
2 of apples, if performed by an individual who  
3 is an alien, other than a citizen of a  
4 contiguous country with which the United  
5 States has an agreement with respect to  
6 unemployment compensation, admitted to the  
7 United States to perform agricultural labor  
8 pursuant to the United States Immigration and  
9 Nationality Act, Sections 214(c) and 101(a)  
10 (15) (H);

11 (5) Domestic service in a private home,  
12 except as provided in paragraph A-3;

13 (6) Service performed by an individual in  
14 the employ of his son, daughter or spouse,  
15 and service performed by a child under the  
16 age of 18 in the employ of his father or  
17 mother;

18 (6-1) Services performed by a student  
19 attending an elementary or secondary school  
20 while participating in a cooperative program  
21 of education and occupational training;

22 (9) Service performed with respect to which  
23 unemployment compensation is payable under  
24 the Railroad Unemployment Insurance Act (52  
25 Stat. 1094);

26 (10) Services performed in the employ of any  
27 other state, or any political subdivision  
28 thereof, or any instrumentality of any one or  
29 more of the foregoing which is wholly owned  
30 by one or more states or political  
31 subdivisions; and any services performed in  
32 the employ of any instrumentality of one or  
33 more other states or their political  
34 subdivisions to the extent that the  
35 instrumentality is, with respect to such  
36 service, immune under the Constitution of the  
37 United States from the tax imposed by section  
38 3301 of the Federal Internal Revenue Code;  
39 except as provided in paragraph A-1,  
40 subparagraph (1);

1 (11) Service performed in any calendar  
2 quarter in the employ of any organization  
3 exempt from income tax under section 501(a)  
4 of the Federal Internal Revenue Code, other  
5 than an organization described in section  
6 401(a) or under section 521, of such Code, if  
7 the remuneration for such service is less  
8 than \$150;

9 (16) Service performed in the employ of a  
10 foreign government, including service as a  
11 consular or other officer or employee or a  
12 nondiplomatic representative;

13 (17) Service performed in the employ of an  
14 instrumentality wholly owned by a foreign  
15 government:

16 (a) If the service is of a character  
17 similar to that performed in foreign  
18 countries by employees of the United  
19 States Government or an instrumentality  
20 thereof; and

21 (b) If the commissioner finds that the  
22 United States Secretary of State has  
23 certified to the United States Secretary  
24 of the Treasury that the foreign  
25 government, with respect to whose  
26 instrumentality exemption is claimed,  
27 grants an equivalent exemption with  
28 respect to similar service performed in  
29 the foreign country by employees of the  
30 United States Government and of  
31 instrumentalities thereof;

32 (18) Service performed as a student nurse in  
33 the employ of a hospital or a nurses'  
34 training school by an individual who is  
35 enrolled and is regularly attending classes  
36 in a nurses' training school chartered or  
37 approved pursuant to state law; and service  
38 performed as an intern in the employ of a  
39 hospital by an individual who has completed a

1 4 years<sup>1</sup> 4-year course in a medical school  
2 chartered or approved pursuant to state law;

3 (19) Service performed by an individual for  
4 a person as a real estate broker, real estate  
5 salesman, an insurance agent or as an  
6 insurance solicitor, if all such service  
7 performed by such individual for such person  
8 is performed for remuneration solely by way  
9 of commission;

10 (20) Service performed by an individual  
11 under the age of 18 in the delivery or  
12 distribution of newspapers or shopping news,  
13 not including delivery or distribution to any  
14 point for subsequent delivery or distribution;

15 (21) Service performed in the employ of any  
16 organization which is excluded from the term  
17 "employment" as defined in the Federal  
18 Unemployment Tax Act solely by reason of  
19 section 3306(c)(7) or (8) if:

20 (a) Service performed in the employ of  
21 a church or convention or association of  
22 churches, or an organization which is  
23 operated primarily for religious  
24 purposes and which is operated,  
25 supervised, controlled or principally  
26 supported by a church or convention or  
27 association of churches;

28 (b) Service performed by a duly  
29 ordained, commissioned or licensed  
30 minister of a church in the exercise of  
31 his ministry or by a member of a  
32 religious order in the exercise of  
33 duties required by such order;

34 (c) Prior to January 1, 1978, service  
35 performed in the employ of a school  
36 primarily operated as an elementary,  
37 secondary or preparatory school for  
38 higher education, which is not an  
39 institution of higher education;

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(d) Service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

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(e) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving such work-relief or work-training;

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(f) Service performed in the employ of a hospital as defined in subsection 26 by a patient of such hospital;

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(g) Services performed prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of such prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

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(h) Service performed in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university; or

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(i) Prior to January 1, 1978, service performed in the employ of a school



1 which is not an institution of higher  
2 education; after December 31, 1977,  
3 service performed in the employ of a  
4 governmental entity referred to in  
5 paragraph A-1, subparagraph (1) if such  
6 service is performed by an individual in  
7 the exercise of duties:

8 (i) As an elected official;

9 (ii) As a member of a legislative  
10 body, or a member of the judiciary,  
11 of a state or political subdivision  
12 thereof;

13 (iii) As a member of the State  
14 National Guard or Air National  
15 Guard;

16 (iv) As an employee serving on a  
17 temporary basis in case of fire,  
18 storm, snow, earthquake, flood or  
19 similar emergency; or

20 (v) In a position which, under or  
21 pursuant to the laws of this State,  
22 is designated as a major nontenured  
23 policymaking or advisory position,  
24 or a policymaking or advisory  
25 position the performance of the  
26 duties of which ordinarily does not  
27 require more than 8 hours per week;

28 (29) Services performed by a  
29 hairdresser who holds a booth license  
30 and operates within another hairdressing  
31 establishment if operated under a booth  
32 rental agreement or other rental  
33 agreement;

34 (30) Services performed by a barber who  
35 holds a booth license and operates  
36 within another barbering establishment  
37 if operated under a booth rental  
38 agreement or other rental agreement;

1 (31) Services performed by a contract  
2 interviewer engaged in marketing  
3 research or public opinion interviewing,  
4 when such interviewing is conducted in  
5 the field or over the telephone on  
6 premises not used or controlled by the  
7 person for whom such contract services  
8 are being provided;

9 (32) After December 31, 1981, services  
10 performed by an individual on a boat  
11 engaged in catching fish or other forms  
12 of aquatic animal life, unless those  
13 services would be included in the  
14 definition of "employment" for federal  
15 unemployment tax purposes under the  
16 Federal Unemployment Act, United States  
17 Code, Title 26, Section 3306(c), as it  
18 may be amended;

19 (a) Such individual does not  
20 receive any cash remuneration other  
21 than as provided in division (b);

22 (b) Such individual receives a  
23 share of the boat's, or the boats'  
24 in the case of a fishing operation  
25 involving more than one boat, catch  
26 of fish or other forms of aquatic  
27 animal life or a share of the  
28 proceeds from the sale of such  
29 catch; and

30 (c) The amount of such  
31 individual's share depends on the  
32 amount of the boat's, or the boats'  
33 in the case of a fishing operation  
34 involving more than one boat, catch  
35 of fish or other forms of aquatic  
36 animal life, but only if the  
37 operating crew of such boat, or  
38 each boat from which the individual  
39 receives a share in the case of a  
40 fishing operation involving more

1 than one boat, is normally made up  
2 of fewer than 7 individuals;

3 (33) Services performed by a member or  
4 leader of a musical group, band or  
5 orchestra or an entertainer when the  
6 services are performed under terms of a  
7 contract entered into by the leader or  
8 an agent of the musical group, band,  
9 orchestra or entertainer with an  
10 employing unit for whom the services are  
11 being performed, provided the leader or  
12 agent is not an employer by reason of  
13 subsection 9 or of section 1222,  
14 subsection 3;

15 (34) Services performed in the delivery  
16 or distribution of periodicals to the  
17 ultimate consumer by an individual who  
18 is compensated by receiving or retaining  
19 a commission or profit on the sale of  
20 the periodical;

21 (35) Services performed by a homemaker  
22 in the knitted outerwear industry as  
23 those terms are defined, on the  
24 effective date of this subparagraph, in  
25 the 29 Code of Federal Regulations, Part  
26 530, Section 530.1; and

27 (36) Service performed by a full-time  
28 student, as defined in subsection 30, in  
29 the employ of an organized camp if the  
30 full-time student performed services in  
31 the employ of the camp for less than 13  
32 calendar weeks in the calendar year and  
33 the camp:

34 (a) Did not operate for more than  
35 7 months in the calendar year and  
36 did not operate for more than 7  
37 months in the preceding calendar  
38 year; or

39 (b) Had average gross receipts for

1 any 6 months in the preceding  
2 calendar year which were not more  
3 than 33 1/3% of its average gross  
4 receipts for the other 6 months in  
5 the preceding calendar year; and

6 (37) Services performed by volunteers  
7 and interns under the State  
8 Environmental Resource Volunteer Effort  
9 Program as authorized by Title 12,  
10 sections 5161 to 5165.

11 **Emergency clause.** In view of the emergency  
12 cited in the preamble, this Act shall take effect when  
13 approved.

14 STATEMENT OF FACT

15 In 1985, the State Environmental Resource  
16 Volunteer Effort Program was established by the  
17 Legislature to create, promote and manage volunteer  
18 and intern opportunities with public agencies which  
19 are responsible for protecting, developing, managing  
20 or preserving the State's natural resources.

21 The enabling legislation, the Maine Revised  
22 Statutes, Title 12, chapter 430, subchapter II,  
23 authorizes sponsoring natural resource agencies to  
24 provide stipends, not to exceed minimum wage, to  
25 volunteers and interns. The purpose of the State  
26 Environmental Resource Volunteer Effort Program is to  
27 encourage contributions of services, not to provide  
28 employment services. The stipend permits those who  
29 could not otherwise afford to do so the opportunity to  
30 both serve and survive. To continue to impress upon  
31 volunteers and sponsoring agencies that the State  
32 Environmental Resource Volunteer Effort Program is not  
33 an employment agency, it is imperative that the  
34 volunteers' services not be defined as employment by  
35 the unemployment compensation laws.

36 This bill clarifies that service performed by  
37 volunteers and interns under the State Environmental

1. Resource Volunteer Effort Program is not employment  
2. under the unemployment compensation laws.

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