

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

April 28, 1982 to April 29, 1982

AND AT THE

FIFTH SPECIAL SESSION

May 13, 1982

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND AND THIRD SPECIAL SESSIONS

and

SECOND REGULAR SESSION

and

FOURTH AND FIFTH SPECIAL SESSIONS

of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 705

H.P. 2383 - L.D. 2145

AN ACT Making Certain Appropriations and Allocations for Expenditures and Changing Certain Provisions of the Law Necessary to Carry out Certain New, Expanded or Revised Programs of State Government for the Fiscal Years Ending June 30, 1982 and June 30, 1983.

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

Whereas, the 90-day period will not terminate until after the beginning of the next fiscal year; and

Whereas, failure to implement this legislation immediately will impose a heavy and inequitable burden on certain purchasers of vehicles for use in interstate commerce; and

Whereas, failure to implement this legislation immediately will jeopardize the successful operation of the harness horse racing industry in Maine during the coming summer season; and

Whereas, failure to implement this legislation immediately will prolong the period during which potentially hazardous used pesticide containers will constitute a threat to the public health and welfare; and

Whereas, failure to implement this legislation immediately will delay the time when outreach services will be available to veterans who have been exposed to the chemical known as Agent Orange; and

Whereas, failure to implement this legislation immediately will interrupt the vital operations of the Health Facilities Cost Review Board; and

Whereas, failure to implement this legislation immediately will create unnecessary hardship and delay for many Maine citizens who are the beneficiaries of the programs provided hereinafter; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Consti-

tution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**PART A
REIMBURSING GREAT POND ON ACCOUNT OF TAXES
LOST DUE TO LANDS BEING CLASSIFIED UNDER
THE MAINE TREE GROWTH TAX LAW**

Reimbursement to be paid to the Town of Great Pond.
Resolved: That there is appropriated from the General Fund the sum of \$2,189.55 to reimburse the Town of Great Pond for taxes lost by reason of forest lands being classified under the provisions of the Maine Tree Growth Tax Law pursuant to the Revised Statutes, Title 36, section 578, subsection 1.

**PART B
REIMBURSING CERTAIN MUNICIPALITIES ON ACCOUNT
OF TAXES LOST DUE TO THE VETERANS' PROPERTY
TAX EXEMPTION**

Reimbursements to be paid to certain municipalities.
Resolved: That there is appropriated from the General Fund to the Department of Finance and Administration the following amount to reimburse certain municipalities for taxes lost for 1981 by reason of certain veterans' exemptions under the provisions of the Revised Statutes, Title 36, section 661.

1981-82

FINANCE AND ADMINISTRATION,

DEPARTMENT OF

Bureau of Taxation

All Other \$34,826

**PART C
CLARIFICATION OF FISH INSPECTION
RESPONSIBILITIES**

Sec. 1. 12 MRSA §6102, 3rd and 4th sentences, as amended by PL 1979, c. 672, Pt. A, §50, is further 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. 2. 12 MRSA §6103 is enacted to read:

§6103. Implementation of fish product or shellfish inspection programs

The Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Marine Resources shall cooperate in implementing any fish product or shellfish inspection programs.

Sec. 3. 22 MRSA §2152, sub-§4-A, last sentence, as enacted by PL 1979, c. 672, Pt. A, §52, is amended to read:

Eating establishments, as defined in section 2491, subsection 7, fish and shellfish processing establishments inspected under Title 12, section 6101, 6102 or 6856, storage facilities for one kind of native produce, such as apple warehouses, potato warehouses or carrot warehouses, and establishments, such as farm stands primarily selling fresh produce, not including dairy and meat products, are not considered food establishments required to be licensed under section 2167.

PART D AMENDMENT TO THE MAINE MEDICAL COMPACT

Sec. 1. 20 MRSA §2273, sub-§§1-B and 1-C are enacted to read:

1-B. Forgiveness. Any student who, upon the conclusion of his professional education, including, if applicable, internship, residency and obligated public health service, elects to serve as a general, family, pediatric or veterinary practitioner in an underserved rural geographic area in the State shall be forgiven 20% of the indebtedness, as determined in subsection 1-A, for each of the first 5 years of that service.

1-C. Determination. The Commissioner of Human Services shall determine underserved rural areas for general, family or pediatric services. The Commissioner of Agricul-

ture, Food and Rural Resources shall determine underserved rural areas for veterinary services.

Sec. 2. Retroactivity. This Part shall be applied retroactively to July 1, 1981.

PART E
REQUIREMENT TO REPORT THE ABUSE OF
ELDERLY OR INCAPACITATED ADULTS

Sec. 1. 22 MRSA §3475, as enacted by PL 1981, c. 527, §2, is amended by adding at the end a new sentence to read:

Any licensed, registered, accredited or certified professional who has been adjudged to have violated a provision of this chapter shall, in addition to any financial penalty, be reported by the court to the appropriate professional licensing, registration board, accrediting unit or facility.

Sec. 2. 22 MRSA c. 958-A, sub-c. 1-A is enacted to read:

SUBCHAPTER 1-A

REPORTING OF ABUSE, NEGLECT OR EXPLOITATION

§3477. Persons mandated to report suspected abuse, neglect or exploitation

1. Reasonable cause to suspect. When, while acting in his professional capacity, an allopathic or osteopathic physician, intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, ambulance attendant or emergency medical technician suspects that an incapacitated adult has been abused, neglected or exploited, he shall immediately report or cause a report to be made to the department.

Whenever a person is required to report in his capacity as a member of the staff of a medical, public or private institution, agency or facility, he shall immediately notify the person in charge of the institution, agency or facility, or his designated agent, who shall then cause a report to be made. The staff person shall also make a report directly to the department.

2. Reports. Reports regarding abuse, neglect or

exploitation shall be made immediately by telephone to the department and shall be followed by a written report within 48 hours if requested by the department. The reports shall contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; his occupation; and where he can be contacted. The report may contain any other information which the reporter believes may be helpful.

3. Confidentiality in case of treatment. This section does not require any person acting in their professional capacity to report when:

A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation;

B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and

C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.

§3478. Mandatory reporting to medical examiner for post-mortem investigation

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that an adult has died as a result of abuse or neglect, shall report that fact to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the department and, if the institution making the report is a hospital, the hospital.

§3479. Optional reporting

Any person may make a report if that person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been abused, neglected or exploited.

§3479-A. Immunity from liability

1. Reporting and proceedings. A person participating in good faith in reporting under this subchapter, or in a related adult protection investigation or proceeding, is

immune from any civil liability that might otherwise result from these actions.

2. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

Sec. 3. Report. The Department of Human Services shall make a report to the joint standing committee of the Legislature having jurisdiction over health and institutional services on or before January 15, 1983 as to the cost to the department of mandatory reporting of abuse of adults covered under the Revised Statutes, Title 22, chapter 958-A, subchapter I-A. The report shall identify the number of complaints that were a result of optional reporting, the number of investigations made as a result of these complaints and the personnel and resources used to respond to these complaints.

Sec. 4. Information given to organizations and boards; public information campaign. The department shall inform appropriate professional organizations and boards of their responsibilities and those of their members under this subchapter. The department shall also conduct a public information campaign on this topic upon enactment.

**PART F
INCREASED COMPENSATION FOR DISTRICT COURT
JUDGES AND WORKERS' COMPENSATION
COMMISSIONERS**

Sec. 1. 4 MRSA §157, 4th sentence, as repealed and replaced by PL 1981, c. 486, §3, is amended to read:

Each judge shall receive an annual salary of \$33,202 until June 30, 1981, and an annual salary of \$34,862 until June 30, 1982, and an annual salary of ~~\$36,605~~ \$38,260 thereafter; and the Chief Judge shall receive an annual salary of \$34,347 until June 30, 1981, and an annual salary of \$36,064 until June 30, 1982, and an annual salary of ~~\$37,867~~ \$39,260 thereafter.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1982-83

JUDICIAL DEPARTMENT

Personal Services

\$50,638

WORKERS' COMPENSATION COMMISSION

Personal Services

\$11,187

PART G
REVISIONS TO THE STATUTE REGARDING
SELECTION AND SERVICES OF TRAVERSE
AND GRAND JURORS

Sec. 1. 14 MRSA §1201-A is enacted to read:

§1201-A. Declaration of policy

It is the policy of the State that all persons chosen for jury service be selected at random from the broadest feasible cross section of the population of the area served by the court, that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service and that qualified citizens fulfill their obligation to serve as jurors when summoned for that purpose.

Sec. 2. 14 MRSA §1202-A is enacted to read:

§1202-A. Prohibition of discrimination

A citizen shall not be excluded from jury service in this State on account of race, color, religion, sex, national origin, ancestry, economic status, marital status, age or physical handicap, except as provided in this chapter.

Sec. 3. 14 MRSA §1203-A is enacted to read:

§1203-A. Definitions

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

1. Clerk. "Clerk" means the Clerk of Court of the Superior Court and includes any of his deputies.

2. Court. "Court" means the Superior Court of this State and includes, when the context requires, any justice of the court.

3. Juror. "Juror," for the purposes of this chapter, means any person who attends court for the purpose of serving on a jury, is on call and available to report to court to serve on a jury when so needed and so requested by the court or whose summoned service on a jury is postponed to a future date certain.

4. Master list. "Master list" means a list of names and addresses, or identifying numbers, of prospective jurors that have been randomly selected from the source list.

5. Random selection. "Random selection" means the selection of names in a manner immune from the purposeful or inadvertent introduction of subjective bias, so that no recognizable class of the population on the lists from which the names are being selected can be purposely or inadvertently included or excluded.

6. Source list. "Source list" means the list or lists from which names of prospective jurors are drawn.

Sec. 4. 14 MRSA §1211, as amended by PL 1973, c. 461, is further amended to read:

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if he: ~~is~~ is not a citizen of the United States, 18 years old and a resident of the county; , or is unable to read, speak and understand the English language; ~~is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service;~~ but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion; or has lost the right to vote because of a criminal conviction. The following persons are exempt from serving as jurors and their names shall not be placed on the list: The Governor, councilors, judges, clerks and deputy clerks of common law courts, Secretary and Treasurer of State, all officers of the United States, judges of probate, physicians and surgeons, dentists, sheriffs, counselors and attorneys at law, attorneys-at-law and all persons exempt under Title 37-A, section 1117.

Sec. 5. 14 MRSA §1212, as enacted by PL 1971, c. 391, §1, is repealed.

Sec. 6. 14 MRSA §1213, as enacted by PL 1971, c. 391, §1, is repealed and the following enacted in its place:

§1213. Excuses from jury service

1. Determination. The presiding justice or the clerk of court acting under the supervision of the presiding justice, upon request of a prospective juror, shall determine on the basis of information provided on the juror qualification form, supplemented by other competent evidence when

deemed necessary to such determination, whether the prospective juror should be excused from jury service.

2. Basis for excuse; record. A qualified prospective juror may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity, or that he is incapable of rendering satisfactory jury service by reason of physical or mental disability. A person claiming a disability excuse may be required to submit a physician's certificate or accredited Christian Science practitioner's certificate and the certifying physician or Christian Science practitioner is subject to inquiry by the court at its discretion. The decision concerning a request for excuse shall be made by the presiding justice or by a clerk of court acting under the supervision of the presiding justice. Depending upon the circumstances, such a juror may be excused from jury service finally, be required to serve at a later specific time or be required to serve for a period of time less than the usual 15 court days. The clerk shall enter this determination and the reason therefor in the appropriate record kept for that purpose.

Sec. 7. 14 MRSA §1216, as enacted by PL 1971, c. 391, §1, is amended by adding at the end a new paragraph to read:

The terms of the grand jury in any county shall be set by the Chief Justice with a maximum of 12 months' service required. When the number of grand jurors is reduced by death or otherwise, additional grand jurors may be selected and summoned under the direction of the court at any time.

Sec. 8. 14 MRSA §1217, last sentence, as amended by PL 1979, c. 663, §79, is repealed and the following enacted in its place:

Notwithstanding Title 17-A, section 4-A, a prospective juror who fails to show good cause for noncompliance with the summons is guilty of contempt and upon conviction may be punished by a fine of not more than \$100 and by imprisonment for not more than 3 days, or by both.

Sec. 9. 14 MRSA §1251, as repealed and replaced by PL 1979, c. 57, §1, is repealed.

Sec. 10. 14 MRSA §1251-A is enacted to read:

§1251-A. Juror selection plan

The Supreme Judicial Court shall adopt and implement a written master plan for the random selection and usage of grand and traverse jurors that shall be designed to foster

the policy, protect the rights secured and otherwise comply with the provisions of this chapter.

Sec. 11. 14 MRSA §§1252-A, 1252-B, 1252-C and 1252-D are enacted to read:

§1252-A. Source list

1. Lists used. The lists of licensed drivers, persons issued an identification card by the Secretary of State and any person who notifies the clerk of the court in the county of their residence and requests to be put on the source list of prospective jurors shall serve as the source for prospective jurors in each county. These lists may be supplemented with names from other lists specified by the Supreme Judicial Court.

2. Release to court. Notwithstanding any provision regarding confidentiality, whoever has custody, possession or control of the lists referred to in subsection 1 shall provide those lists to the court at cost for selection of prospective jurors at all reasonable times. All lists so supplied shall contain the name and address of each person on the lists.

3. Use of source list. The source list shall be used for the random selection of names or identifying numbers of prospective jurors to whom questionnaires shall be sent to determine their qualifications for jury service, as provided in sections 1253-A and 1254-A. When supplemental lists are used, selection of names shall be accomplished in a manner which accords the names on all lists an equal probability of selection.

4. Notice. At least once each year, the clerk shall give public notice to the residents of the county that their names may be placed on the source list of prospective jurors by notifying the clerk of the court. This notice may be made by newspapers, radio or any other method or combination of methods which will reasonably assure as broad a dissemination as possible to the residents of the county.

§1252-B. Master list

When the volume of names on the source list is, in the judgment of the court, so large as to render the drawing of names by the means available to the court unduly cumbersome, burdensome and uneconomical, the court may order that a secondary list be created. This list shall be created by randomly drawing from the source list the number of names

the court deems necessary to permit subsequent random selections of names, over a period of time administratively convenient for the court, for the mailing of qualification questionnaires and summonses for jury service.

§1252-C. Creation and maintenance of lists

The lists required to be created and maintained by this subchapter may be created and maintained by use of electronic data processing equipment.

§1252-D. Limitation on use of certain information

The lists of licensed drivers provided by the Secretary of State may only be used for the selection of traverse and grand jurors pursuant to this chapter.

Sec. 12. 14 MRSA §1253-A is enacted to read:

§1253-A. Drawing of names to determine qualified jurors

From time to time and in a manner prescribed by the juror selection plan, the clerk shall draw, or cause to be drawn, at random, from the source or master list, as appropriate, the names or identifying numbers of as many prospective jurors as the court deems necessary for service on trials during the time period established by the court.

Sec. 13. 14 MRSA §1254, as last amended by PL 1979, c. 57, §4, is repealed.

Sec. 14. 14 MRSA §§1254-A and 1254-B are enacted to read:

§1254-A. Qualification questionnaire; juror selection

1. Procedure. The clerk shall, at times deemed reasonable and necessary to promote the efficient operation of the court and the juror selection system, but in no event less than 30 days before service by jurors is required, mail a juror qualification form to every prospective juror whose name has been drawn in accordance with section 1253-A. The form shall be accompanied by instructions directing the prospective juror to fill out and return the form by mail to the clerk within the time specified. The clerk shall prepare or cause to be prepared a list of the names to whom questionnaires are mailed. Neither the list of questionnaire recipients nor the names drawn may be disclosed to any person, except as provided in this chapter.

2. Content. The juror qualification form shall conform, in form and content, to the qualification form prescribed by the Supreme Judicial Court and shall solicit information sufficient to determine the prospective juror's qualification for jury service. The qualification questionnaire may also solicit other information including, but not limited to, education and employment.

3. Ambiguous or erroneous responses. If it appears there is an omission, ambiguity or error in a returned form, the clerk may, at his discretion, contact the prospective juror by telephone to obtain the additional information, clarification or correction.

4. Failure to complete form; penalty. A prospective juror, who fails to return a completed juror qualification form as instructed, may be ordered by the court to appear and show cause why he should not be held in contempt for his failure to complete and submit the questionnaire. Notwithstanding Title 17-A, section 4-A, a prospective juror, who fails to show good cause for his failure to complete and submit the questionnaire or who without good cause fails to appear pursuant to a court order, may be punished by a fine of not more than \$100 and by imprisonment for not more than 3 days, or by both.

5. Intentional misrepresentation. Notwithstanding Title 17-A, section 4-A, a person, who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror, may upon conviction for a violation of this section be punished by a fine of not more than \$100 and by imprisonment for not more than 3 days, or by both.

6. Determination of qualification. The clerk shall determine on the basis of information provided on the juror qualification form, supplemented by other competent evidence when deemed necessary to such determination, whether the prospective juror is qualified for jury service. This determination shall be reflected on the juror qualification form or any other record designated by the court.

7. Availability of qualification forms. The names of prospective jurors and the contents of juror qualification forms shall be made available to the public upon specific request to the court, supported by an affidavit setting forth the reasons therefor, unless the court determines in any instance that this information in the interest of justice should be kept confidential or its use limited in whole or in part. The contents of juror qualification forms may at the discretion of the court be made available to attor-

néys at the courthouse for use in the conduct of voir dire examination.

§1254-B. Preservation of records

1. Records preserved. The clerk shall cause to be preserved all records and lists compiled and maintained in connection with selection and service of jurors for the length of time ordered by the court.

2. Records' confidentiality; limits. The contents of any records or lists used in connection with the selection process and not made public under any other provision of this chapter shall not be disclosed, except in connection with the preparation or presentation of a motion under section 1214, until all persons selected to serve as grand jurors or traverse jurors from those lists have been discharged.

Sec. 15. 14 MRSA §1255, as repealed and replaced by PL 1979, c. 57, §5, is repealed.

Sec. 16. 14 MRSA §1255-A is enacted to read:

§1255-A. Summoning prospective qualified jurors

From time to time, as specified in the juror selection plan, the clerk shall summon or cause to be summoned sufficient prospective jurors as in his judgment are necessary to supply traverse jurors or grand jurors, or both, for the Superior Court.

The summons shall require the prospective juror to report for possible jury service at a specified time and place unless advised by the clerk in advance that his attendance will not be required.

Sec. 17. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Part.

1982-83

JUDICIAL DEPARTMENT

Administrative Office of the Court

All Other

\$1,500

Sec. 18. Implementation; application of current law. Sections 10, 11, 12, 14, and 16 of this Part, shall be

implemented by the Supreme Judicial Court on a county by county basis. The court shall designate when those sections shall be implemented in each county. Those sections shall be fully implemented by September 1, 1983. Title 14, sections 1251, 1254 and 1255 shall not apply to those counties which have fully implemented the jury selection plan, as determined by the Supreme Judicial Court.

Sec. 19. Effective date. Sections 9, 13 and 15 of this Part, shall take effect on September 1, 1983.

PART H
REVISION TO THE PROCEDURE FOR MUNICIPALITIES
WITHDRAWING FROM THE MAINE FORESTRY DISTRICT

Sec. 1. 12 MRSA §1204 is enacted to read:

§1204. Withdrawal of municipality from a district

1. 20% petition. Upon receipt of a petition of 20% of the number of voters in a municipality who voted at the last gubernatorial election, the municipal officers shall prepare a plan for withdrawal from the Maine Forestry District.

2. Withdrawal plan. The withdrawal plan shall contain at least the following information:

A. The number and training of personnel who will be available to make initial response to a forest fire within the municipality;

B. An inventory of forest fire fighting equipment which the municipality possesses or will obtain prior to withdrawal;

C. Plans for maintaining and storing such equipment;

D. A copy of any contracts with other municipalities or agencies which will provide assistance in the event of a forest fire;

E. A statement containing the municipality's potential liability in the event of a forest fire and plans for meeting that liability; and

F. Any other information required by regulations promulgated by the Department of Conservation.

3. Review of plan. The withdrawal plan shall be submitted to the Department of Conservation. The department

shall, within 30 days, send its comments on the adequacy of the plan to the municipality and may make recommendations for improvements.

4. Submission of plan to voters. Within 60 days of the receipt of the department's comments, the municipal officers shall call and hold a special election, in the manner provided for the calling and holding of town meetings or city elections, to vote on the withdrawal of the municipality from the Maine Forestry District. At least 10 days before the election, a posted or otherwise advertised public hearing on the question of withdrawal shall be held by the municipal officers. The municipal officers shall make copies of the withdrawal plan and department comments available to members of the public prior to the hearing.

The question to be voted upon shall be in the following form: "Shall the municipality of _____ withdraw from the Maine Forestry District and assume initial responsibility for forest fires within municipal boundaries?" The question must be approved by secret ballot by a majority of the voters present and voting.

5. Notice of vote. If the residents of a municipality vote favorably on the question of withdrawal, the municipal officers shall notify the Department of Conservation, the State Tax Assessor and the county commissioners.

6. Withdrawal. The municipality shall be considered withdrawn from the Maine Forestry District on April 1st of the year following the effective date of legislation providing for the municipality's withdrawal.

Sec. 2. 12 MRSA §1601, 4th¶, as amended by PL 1981, c. 364, §2, is further amended by adding after the first sentence a new sentence to read:

The bill shall also provide for the withdrawal from the district of municipalities which have voted to withdraw, following the procedures specified in section 1204.

Sec. 3. Maine Forest Fire Control Study Commission established. There is created a Maine Forest Fire Control Study Commission, known in this section as the "commission."

The commission shall be composed of 13 members as follows: Three members of the Legislature, one appointed by the President of the Senate and 2 appointed by the Speaker of the House; one member representing the Department of Conservation to be appointed by the commissioner; 3 municipal officials appointed by the Maine Municipal Association, one

from a municipality within the Maine Forestry District, one from a heavily forested municipality outside the district and one from an urban area; one member appointed by the Maine Forest Products Council; one member appointed by the Paper Industry Information Office; one member appointed by the Maine Fire Chiefs' Association; and 3 public members without connection to the forest products industry, one of whom resides in the unorganized territory, appointed by the Governor. The members shall be appointed in a timely manner and the commission shall hold an organizational meeting within 30 days after the adjournment of the Legislature at the call of the Chairman of the Legislative Council. At this meeting the commission shall elect a chairman and a vice-chairman from within the membership.

The commission shall: Review the organization, administration, funding and delivery of state forest fire control services, including present local capabilities for forest fire control, and review alternatives to forest fire prevention and suppression, including technique used in other states; identify the most modern, effective and cost efficient method for providing forest fire control services within the State utilizing and coordinating local resources; and make any other studies and evaluations necessary to fully assess existing laws and information relating to forest fire control.

The commission shall report its findings, together with any suggested legislation, to the 111th Legislature on or before January 14, 1983.

The commission is authorized to contract for staff support in conducting its functions.

Members, except state employees, shall receive reimbursement for the necessary actual expenses incurred in carrying out the purposes of this commission.

All executive departments are directed to give prompt assistance to the commission.

The commission is authorized to accept funds from any agency of the United States.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part. These funds may be carried over to fiscal year 1982-83 until the commission's purposes are fulfilled.

MAINE FOREST FIRE CONTROL STUDY
COMMISSION

1981-82

All Other

\$5,000

PART I
ASSISTANCE IN THE MARKETING OF MAINE
AGRICULTURAL PRODUCTS

Sec. 1. 7 MRSA §402-A is enacted to read:

§402-A. Agriculture promotion

1. Agriculture Promotion Committee. The commissioner may appoint a promotional committee to advise and assist the department in its general efforts to promote Maine agricultural products. The committee shall include, at a minimum, representatives involved in the production or marketing of those agricultural commodities which maintain, through state taxes or otherwise, an ongoing promotion and advertising program.

2. Fund. There is created a nonlapsing Agriculture Promotion Fund. The commissioner is authorized to accept moneys for this fund from any public or private source and to credit to this fund any moneys received from the sale of agricultural promotional materials.

3. Duties of the committee. The Agriculture Promotion Committee shall advise the commissioner concerning promotional programs for Maine agricultural products. The committee may when authorized by the commissioner, expend moneys from the Agriculture Promotion Fund; provided that the committee shall not be considered an agency of the State when acting in this capacity.

4. Rule-making authority. The commissioner may adopt such rules as he considers necessary to achieve the purposes of this chapter including, but not limited to, rules requiring registration of persons wishing to identify products as Maine products under a logo or trademark adopted by the department and requiring verification of the origin of those products.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1982-83

AGRICULTURE, FOOD AND RURAL RESOURCES
DEPARTMENT OF

All Other

\$15,000

PART J
ESTABLISHMENT OF A DATA INPUT AND
RETRIEVAL SYSTEM FOR THE WORKERS'
COMPENSATION COMMISSION

Sec. 1. Purpose. By Public Law 1981, chapter 514, section 7, the Legislature directed the Workers' Compensation Commission to conduct a study of the feasibility of instituting a data input and retrieval system. From the results of the report, submitted to the Joint Standing Committee on Labor, the Legislature determines that such a system should be acquired.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1982-83

WORKERS' COMPENSATION COMMISSION

Positions	(1)
Personal Services	\$69,000
All Other	61,000
Capital Expenditures	<u>45,000</u>
 Total	 \$175,000

Includes funds for one Director/Programmer position, 3 permanent Data Entry positions and temporary coding personnel. Three present clerical positions shall be changed from full-time status to temporary status and shall terminate on or before June 30, 1983.

PART K
AMENDMENT TO THE EXEMPTION FROM SALES AND
USE TAX FOR THE SALE OF CERTAIN INSTRUMENTALITIES
OF INTERSTATE OR FOREIGN COMMERCE

36 MRSA §1760, sub-§41, as enacted by PL 1979, c. 686, §2, is amended to read:

41. Certain instrumentalities of interstate or foreign commerce. The sale of a vehicle, railroad rolling stock, aircraft or watercraft which is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within ~~40~~ 30 days after that sale and which is used by the purchaser not less than 80% of the time for the next 2 years as an instrumentality of interstate or foreign commerce. The State Tax Assessor may for good cause extend for not more than 30 days the time for placing the instrumentality in use in interstate or foreign commerce. For purposes of this subsection, property is "placed in use as an instrumentality of interstate or foreign commerce" by its carrying of, or providing the motive power for the carrying of, a bona fide payload in interstate or foreign commerce, or by being dispatched to a specific location at which it will be loaded upon arrival with, or will be used as motive power for the carrying of, a payload in interstate or foreign commerce. For purposes of this subsection, "bona fide payload" means a cargo of persons or property transported by a contract or common carrier for compensation which exceeds the direct cost of carrying that cargo or pursuant to a legal obligation to provide service as a public utility or a cargo of property transported in the reasonable conduct of the purchaser's own nontransportation business in interstate commerce.

PART L
REVISION TO CERTAIN EXECUTIVE SALARY RANGES

Sec. 1. 2 MRSA §6, as last amended by PL 1981, c. 501, §1, is repealed and the following enacted in its place:

§6. Salaries subject to adjustment by Governor

Notwithstanding any other provisions of law, the Governor is authorized to adjust the salaries of the following state officials within the salary ranges indicated in this section. The adjustment may be at the time of appointment of the official and subsequently as provided by law. The salary ranges shall be as provided by law; except that, for the purposes of this section, each salary range shall be increased by 2 steps in addition to and in the same manner of increase as the steps in the range otherwise provided by law. No other state salary shall be paid to these officials.

1. Range 91. The salaries of the following state officials and employees shall be within salary range 91:

Commissioner of Transportation;

Commissioner of Conservation;

Director of State Development Office;
Commissioner of Finance and Administration;
Commissioner of Educational and Cultural Services;
Commissioner of Environmental Protection;
Commissioner of Human Services;
Commissioner of Mental Health and Mental Retardation;
Commissioner of Public Safety;
Commissioner of Business Regulation;
Commissioner of Labor;
Commissioner of Personnel;
Commissioner of Agriculture, Food and Rural Resources;
Commissioner of Inland Fisheries and Wildlife;
Commissioner of Marine Resources; and
Commissioner of Corrections.

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Superintendent of Banking;
Bureau of Consumer Credit Protection Superintendent;
State Tax Assessor; and
Superintendent of Insurance.

3. Range 89. The salaries of the following state officials and employees shall be within salary range 89:

State Director of Public Improvements;
State Budget Officer;
State Controller;
Director of the Bureau of Forestry;
Chief of the State Police;

Director, State Planning Office;

Director, Energy Resources Office;

Public Advocate; and

Commissioner of Defense and Veterans' Services.

4. Range 88. The salaries of the following state officials and employees shall be within salary range 88:

State Purchasing Agent;

Director, Arts and Humanities Bureau;

Director, State Museum Bureau;

Director of the Bureau of Parks and Recreation;

State Director of Alcoholic Beverages;

Executive Director, Retirement System;

Director of Public Lands; and

State Librarian.

5. Range 86. The salaries of the following state officials and employees shall be within the salary range 86:

Director of Labor Standards;

Deputy Chief of the State Police;

Director of State Lotteries;

State Archivist;

Director of Maine Geological Survey;

Executive Director, Maine Land Use Regulation Commission; and

Chairman, Maine Employment Security Commission.

6. Range 85. The salaries of the following state officials and employees shall be within salary range 85:

Director of Veterans' Services;

Director of Civil Emergency Preparedness;

Executive Director, Historic Preservation Commission;
Members, Maine Employment Security Commission; and
Deputy Adjutant General (Director of Military Bureau).

7. Range 83. The salaries of the following state officials and employees shall be within salary range 83:

8. Range 81. The salaries of the following state officials and employees shall be within salary range 81:

Assistant Adjutant General.

Sec. 2. Transitional clause. The Commissioner of Personnel shall evaluate and assign a salary range to the positions of: Chief Boiler Inspector and Supervising Elevator Inspector; Dispute Resolution Specialist; and the Director of the Real Estate Commission. Notwithstanding the salary range which may be assigned, an incumbent of one of the named positions at the time this Part becomes law shall not be given a decrease in pay.

Sec. 3. Effective date. This Part shall take effect January 6, 1983.

PART M
FINANCIAL ASSISTANCE TO STUDENTS OF
OSTEOPATHIC MEDICINE

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

1982-83

EDUCATIONAL AND CULTURAL SERVICES,
DEPARTMENT OF

Education-Grant, Loan-Scholarship Fund

All Other \$30,000

This appropriation provides additional funding for the Osteopathic Revolving Loan Fund.

PART N
STATE FUNDS FOR LITERACY VOLUNTEERS

Appropriation. The following funds are appropriated

from the General Fund to carry out the purposes of this Part.

1982-83

EDUCATIONAL AND CULTURAL SERVICES,
DEPARTMENT OF

Adult basic education

All Other \$25,000

This appropriation provides funds for literacy volunteers.

PART O
COMPREHENSIVE CAREER AND OCCUPATIONAL
INFORMATION SYSTEM

Sec. 1. 26 MRSA c. 20 is enacted to read:

CHAPTER 20

COMPREHENSIVE CAREER AND OCCUPATIONAL
INFORMATION SYSTEM

§1451. Purpose

A Comprehensive Career and Occupational Information System is established to develop and maintain comprehensive career and occupational information, utilizing a commonly defined data base to ensure that all employment and training programs in the State are planned and implemented so as to result in the efficient delivery of employment and training services.

The Comprehensive Career and Occupational Information System shall consist of 2 components: A planning component for employment and training program planners and administrators; and a career information delivery system component for persons involved in the career decision-making process.

§1452. Maine Occupational Information Coordinating Committee

The Maine Occupational Information Coordinating Committee is established to support the development, maintenance and operation of a comprehensive career and occupational information system and to foster communication and coordina-

tion of education, employment and training programs through the use of the system. The committee shall consist of the Commissioner of Labor, Commissioner of Human Services, Commissioner of Educational and Cultural Services and the Director of the State Development Office. The Commissioner of Labor shall be the chairman of the committee with the Department of Labor serving as the fiscal agent for the committee.

§1453. Duties and responsibilities

Although not limited to the following duties, the committee shall:

1. Develop and implement system. Develop and implement an overall system for coordinating and delivering occupational and demand and supply information to employment, training, vocational education and vocational rehabilitation agencies; private industry; and individuals, using standardized techniques as feasible;

2. Facilitate use of occupational information. Facilitate the use of occupational information in planning and allocating employment, training, vocational education and vocational rehabilitation programs;

3. Career and occupational information. Facilitate the use of career and occupational information in both school and nonschool settings;

4. Provide information. Provide the Governor with the comprehensive occupational information required to improve the coordination of employment, training, vocational education and vocational rehabilitation programs to meet commonly defined needs, achieve economic development goals and support business development initiatives; and

5. Recommendation. Recommend to the Governor legislative and executive initiatives designed to increase the utility of the Comprehensive Career and Occupational Information System as the system relates to a more effective coordination of employment, training, vocational education and vocational rehabilitation programs and as the system relates to the delivery of career information to those involved in the career decision-making process.

§1454. Operational authority

The chairman shall nominate an executive director for appointment by the committee, who shall serve at the committee's pleasure. With the committee's approval, the execu-

tive director may appoint, subject to the Personnel Law, such personnel as are necessary and who are authorized.

The committee may accept gifts, grants or other moneys from any source and may enter into contracts, charge fees and make grants for services consistent with this chapter.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1982-83

LABOR, DEPARTMENT OF

Maine Occupational Information
Coordinating Committee

Positions (3)

Personal Services \$49,500

All Other 50,250

TOTAL \$99,750

PART P
AUTHORIZATION FOR THE TREASURER OF STATE
TO ISSUE TAX EXEMPT COMMERCIAL PAPERS

5 MRSA §150, 2nd ¶, as last amended by P&SL 1975, c. 147, Pt. C, § 13, is further amended to read:

The Treasurer of State, with the approval of the Governor, may negotiate a temporary loan or loans in anticipation of taxes levied for that fiscal year, but not exceeding a total of \$25,000,000 that amount of taxes estimated by the Treasurer of State to be collected in the fiscal year in which such temporary loan or loans, or renewal thereof, is made, provided that such temporary loans or renewals thereof shall not exceed any limitation set forth in the Constitution of Maine, Article IX, Section 14. Such loans may be renewed from time to time as the Treasurer of State, with the approval of the Governor, may determine, provided that each loan or renewal thereof shall be retired not later than the close of the fiscal year in which such loan was orig-

inally made and for which was levied the taxes in anticipation of the collection of which such loan was originally made; and that each such loan or renewal thereof shall comply with the provisions of this section and the Constitution of Maine, Article IX, Section 14. The Treasurer of State is directed to pay such loan or loans in anticipation of taxes during such year and there is appropriated for any year in which the Treasurer of State and the Governor deem it necessary to borrow in anticipation of taxes the sum of \$25,000,000 \$30,000,000.

PART Q
HARNESS RACING AT AGRICULTURAL FAIRS,
THE STATE STIPEND AND PARI-MUTUEL POOLS

Sec. 1. 8 MRSA §271, 2nd sentence, as amended by PL 1971, c. 593, §22, is repealed.

Sec. 2. 8 MRSA §274, as last amended by PL 1979, c. 672, Pt. A, §46, is repealed and the following enacted in its place:

§274. Pari-mutuel pools

1. Sale of pari-mutuel pools. Within the enclosure of any race track where a race or race meet licensed and conducted under this chapter is held, but not elsewhere, the sale of pari-mutuel pools by the licensee, under such rules as may be prescribed by the commission, is permitted and authorized. Commissions on pools of regular wagers other than exotic wagers shall not in any event or at any track exceed 16% of each dollar wagered, and commissions on pools of exotic wagers shall not in any event or at any track exceed 25% 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. For the purpose of this chapter, "exotic wagers" means those in which the bettor selects 2 or more horses in one or more races in a single wager. The maximum shall include the tax on regular wagers and the tax on exotic wagers prescribed in section 275.

2. Payment to Treasurer of State. Each person, association or corporation licensed to conduct a race or race meet under this chapter shall pay to the Treasurer of State a sum equal to 1.13% of the total contributions of regular and exotic wagers to all pari-mutuel pools conducted or made at any race or race meet licensed under this chapter. The Treasurer of State shall distribute the total amount so col-

lected in the following manner.

A. The first \$295,000 of the total amount, regardless of when actually collected, shall be credited to the Stipend Fund, provided by Title 7, section 62.

B. From the next \$55,000 of the total amount, regardless of when actually collected, 75% shall be paid and returned by the end of each calendar year to those persons, associations and corporations which during that calendar year conducted an extended meet pursuant to a license granted by the commission as provided in section 271. As used in this section, the term "extended meet" means any series of harness horse races, except harness horse races conducted by an agricultural society at the time of its annual fair. This payment shall be divided in the proportion that the contributions of regular and exotic wagers to pari-mutuel pools made or conducted at the extended meets of each licensee during that calendar year bear to the total contributions of regular and exotic wagers to pari-mutuel pools made or conducted at the extended meets of all licensees during that calendar year. Licensees sharing in this distribution shall use 1/2 of the funds so received for the purpose of supplementing purse money.

The remaining 25% shall be credited to the Stipend Fund, provided in Title 7, section 62.

C. From the balance of the total amount in excess of \$350,000, regardless of when actually collected, 80% shall be paid and returned by the end of each calendar year to those persons, associations and corporations which during that calendar year conducted an extended meet pursuant to a license granted by the commission in section 271. This payment shall be divided in the proportion that the contributions of regular and exotic wagers to pari-mutuel pools made or conducted at the extended meets of each licensee during that calendar year bear to the total contributions of regular and exotic wagers to pari-mutuel pools made or conducted at the extended meets of all licensees during that calendar year. Licensees sharing in this distribution shall use 1/2 of the funds so received for the purpose of supplementing purse money.

The remaining 20% shall be credited to the Stipend Fund, provided by Title 7, section 62.

3. Payment to commission. A sum equal to 1 1/2% of

the total contributions on exotic wagers shall be paid to the commission to be credited to the Sire Stakes Fund, provided in section 281.

Sec. 3. 8 MRSA §275, 1st ¶, as last amended by PL 1979, c. 672, Pt. A, §47, is repealed and the following enacted in its place:

On the effective date of this paragraph each person, association or corporation licensed to conduct a race meet under this chapter shall pay to the Treasurer of State, to be credited to the General Fund of the State, a sum equal to .70% of the total contributions of regular wagers and 3.80% of the total contributions of exotic wagers to all pari-mutuel pools conducted or made at any race or race meet licensed under this chapter. Beginning January 1, 1983, each person, association or corporation licensed to conduct a race meet under this chapter shall pay to the Treasurer of State, to be credited to the General Fund of the State, a sum equal to .50% of the total contributions of regular wagers and 2.27% of the total contributions of exotic wagers to all pari-mutuel pools conducted or made at any race or race meet licensed under this chapter. Each licensee shall calculate on an annual basis the difference between the sum paid by him pursuant to this paragraph, as it then existed, for calendar year 1981 and the sum paid by him pursuant to this paragraph for each succeeding calendar year. One-half of this difference shall be used for the purpose of supplementing purse money.

Sec. 4. Transition provisions. The Revised Statutes, Title 1, section 302, does not apply to proceedings involving harness racing licenses or assignment of harness racing dates held pursuant to the Revised Statutes, Title 8, section 271, which are pending before the State Harness Racing Commission on the effective date of this Part.

PART R CLARIFY SOLAR ENERGY TAX EXEMPTIONS

Sec. 1. 36 MRSA §1752, sub-§14-A, 2nd sentence, as enacted by PL 1977, c. 542, §3, is amended to read:

This equipment shall be used directly and exclusively for the conversion of solar energy for purposes of water heating ~~and~~, space heating and cooling or producing electrical power and does not include walls, roof or equipment that would ordinarily be contained in a similar structure not designed or modified to use solar energy for these same purposes.

Sec. 2. 36 MRSA §5127, sub-§3, as enacted by PL 1979,

c. 557, §1, is amended by adding at the end of the first paragraph a new sentence to read:

This subsection shall remain in effect until January 1, 1984.

Sec. 3. 36 MRSA §5127, sub-§3, ¶A, sub-¶(1), div. (a), as enacted by PL 1979, c. 557, §1, is amended to read:

(a) An "active solar system" means an assembly of collectors, thermal storage device or devices and transfer liquid which converts solar energy into thermal energy and in which energy in addition to solar is used to accomplish the transfer of thermal energy or devices, such as photovoltaics, which convert solar energy into electrical energy.

PART 5
THE STORAGE AND DISPOSAL OF ILLEGAL AND
OBSOLETE PESTICIDES AND HANDLING EMPTY
PESTICIDES CONTAINERS

Sec. 1. 22 MRSA §1471-P is enacted to read:

§1471-P. Storage of illegal and obsolete pesticides

1. Board to accept illegal and obsolete pesticides. Within the limits of resources made available to it for the storage or disposal of illegal and obsolete pesticides purchased for use in Maine, the board shall accept, store and dispose of pesticides from persons who purchased them with the intent of applying them.

2. Board may adopt rules and fees. The board may adopt any rules necessary to implement this section, including rules limiting the quantity and nature of pesticides it accepts for storage or disposal. The board may adopt and charge fees for storage or disposal of pesticides presented to it where the amount of pesticides, or special treatments necessary for safe storage or disposal, will require a substantial cost to the board; provided, that the fees charged are close to the actual cost incurred by the board.

Sec. 2. Study. Not later than December 15, 1982, the board shall submit to the Legislative Council a study describing any problems and proposed solutions for the storage and disposal of illegal and obsolete pesticides, and for the proper handling of used pesticide containers. At a minimum, the study shall include the following:

1. An evaluation of any problems of storage and dis-

posal of illegal and obsolete pesticides and recommendations for their solution;

2. An evaluation of any problems of the handling of used pesticide containers and recommendations for their solution including legal, geological, engineering and economic feasibility studies of the use of pesticide container rinsing stations sited in the State, the use of tax and deposit schemes to encourage proper handling, and the use of recycling and destruction for empty containers; and

3. All necessary implementing legislation.

Sec. 3. Cooperation. The Department of Environmental Protection, the Department of Conservation, the Department of Finance and Administration, the State Planning Office, the Office of the Attorney General and any state agency shall provide whatever assistance is required by the Department of Agriculture, Food and Rural Resources in carrying out this Part.

Sec. 4. Permits. Before accepting any illegal or obsolete pesticide, the board shall obtain all necessary permits, but shall not be required to pay any fees.

Sec. 5. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

DEPARTMENT OF AGRICULTURE

1981-82

Board of Pesticide Control

Storage of illegal or obsolete pesticides	
Unallocated	\$25,000

These funds shall be used for the purpose of the Revised Statutes, Title 22, §1471-P.

Study

Unallocated	5,000
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These funds shall be used for the study authorized in section 2.

These funds shall not lapse until June 30, 1983.

PART T
FUNDS FOR THE AGENT ORANGE INFORMATION
COMMITTEE

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

1981-82

HUMAN SERVICES, DEPARTMENT OF

Bureau of Health

All Other \$8,000

Any unencumbered balance remaining on June 30, 1982, shall not lapse, but shall carry forward to June 30, 1983, to be expended for the same purpose.

PART U
EXTENSION OF THE HEALTH FACILITIES INFORMATION
DISCLOSURE ACT AND AUTHORIZING THE CHARGING
OF FEES FOR THE DISSEMINATION OF INFORMATION

Sec. 1. 22 MRSA §360, sub-§3 is enacted to read:

3. Fees. The board may charge and retain fees to recover the reasonable costs incurred both in reproducing and distributing reports, studies and other publications and in responding to requests for information filed with the board.

Sec. 2. 22 MRSA §370, as enacted by PL 1977, c. 691, §1, is amended to read:

§370. Repeal

This chapter shall be repealed on July 1, ~~1982~~ 1983.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1982-83

HEALTH FACILITIES COST
REVIEW BOARD

Health Facilities Cost Review Board

Positions

(2)

Personal Services	\$ 49,008
All Other	<u>78,542</u>
TOTAL	\$127,550

PART V
AMENDMENT TO THE MAINE CERTIFICATE
OF NEED LAW

Sec. 1. 22 MRSA §303, sub-§§2-A and 2-B are enacted to read:

2-A. Annual operating costs. For purposes of section 304-A, subsection 4, paragraph B, "annual operating costs" means the total incremental costs to the institution which are directly attributable to the addition of a new health service.

2-B. Appropriately capitalized expenditures. "Appropriately capitalized expenditures" means those expenditures which would be capitalized if the project were implemented.

Sec. 2. 22 MRSA §303, sub-§3, as enacted by PL 1977, c. 687, §1, is amended to read:

3. Capital expenditure. "Capital expenditure" means an expenditure, including a force account expenditure or predevelopment activities, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and, for the purposes of this chapter, shall include capitalized interest on borrowed funds and the fair market value of any property or equipment which is acquired under lease or comparable arrangement or through by donation.

Sec. 3. 22 MRSA §303, sub-§5, as enacted by PL 1977, c. 687, §1, is amended to read:

5. Department. "Department" means the Department of Human Services, but does not include the Certificate of Need Advisory Committee within the department.

Sec. 4. 22 MRSA §303, sub-§§6-A and 6-B are enacted to read:

6-A. Expenditure minimum for annual operating costs. The "expenditure minimum for annual operating costs" is:

A. For services commenced between January 1 and Decem-

ber 31, 1983, \$125,000 for the 3rd fiscal year, including a partial first year;

B. For services commenced between January 1 and December 31, 1984, \$135,000 for the 3rd fiscal year, including a partial first year;

C. For services commenced between January 1 and December 31, 1985, \$145,000 for the 3rd fiscal year, including a partial first year; and

D. For services commenced after December 31, 1985, \$155,000 for the 3rd fiscal year, including a partial first year.

6-B. Generally accepted accounting principles. "Generally accepted accounting principles" means accounting principles approved by the American Institute of Certified Public Accountants.

Sec. 5. 22 MRSA §303, sub-§7, first sentence, as enacted by PL 1977, c. 687, §1, is amended to read:

"Health care facility" means any facility, whether public or private, proprietary or not for profit, required to obtain a certificate of need in accordance with federal laws and regulations under the National Health Planning and Resources Development Act of 1974, or any amendment, and shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers including free standing hemodialysis units, intermediate care facilities, rehabilitation facilities, ambulatory surgical facilities, home health care providers certifiable under Title XVIII of the Federal Social Security Act of 1965, as amended, and health maintenance organizations.

Sec. 6. 22 MRSA §303, sub-§§11-A and 11-B are enacted to read:

11-A. Home health care provider. "Home health care provider" means any business entity or subdivision thereof, whether public or private, proprietary or not for profit, which is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing and at least one other therapeutic service, such as physical therapy, occupational therapy, speech pathology, home health aides, nurse assistants, medical social work and nutritionist services, either directly or through contractual agreement, in a client's place of residence. This term does not apply to any sole practitioner providing private duty nursing services or

other restorative, rehabilitative, maintenance, preventive or health promotion services in a client's place or residence.

11-B. Hospital. "Hospital" means an institution which primarily provides to inpatients by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

Sec. 7. 22 MRSA §303, sub-§12-A is enacted to read:

12-A. Major medical equipment. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs \$300,000 or more. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under the United States Social Security Act, Title XVIII, to meet the requirements of Section 1861 (s), paragraphs 10 and 11 of that Act. In determining whether medical equipment costs more than \$300,000, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

Sec. 8. 22 MRSA §303, sub-§13, as enacted by PL 1977, c. 687, §1, is amended to read:

13. Modification. "Modification" means the alteration, improvement, expansion, extension, renovation or replacement of a health care facility or health maintenance organization or portion thereof, including initial equipment thereof and the replacement of equipment of or existing buildings.

Sec. 9. 22 MRSA §303, sub-§13-A is enacted to read:

13-A. Obligation. An "obligation" for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

A. When a contract, enforceable under Maine law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

B. When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

C. In the case of donated property, on the date on which the gift is completed under applicable Maine law.

Sec. 10. 22 MRSA §303, sub-§15, as enacted by PL 1977, c. 687, §1, is amended to read:

15. Person. "Person" means an individual, trust or estate, partnership, corporation, including associations, joint stock companies and insurance companies, the State or a political subdivision or instrumentality, including a municipal corporation of the State, or any other legal entity recognized by state law.

Sec. 11. 22 MRSA §303, sub-§16, as enacted by PL 1977, c. 687, §1, is amended to read:

16. Predevelopment activities. "Predevelopment activities" means any appropriately capitalized expenditure by or on behalf of a health care facility made in preparation for the offering or development of a new health service for which a certificate of need would be required and arrangements or commitments made for financing the offering or development of the new health service; and shall include site acquisitions, surveys, studies, expenditures for architectural designs, plans, working drawings and specifications.

Sec. 12. 22 MRSA §303, sub-§17-A is enacted to read:

17-A. Rehabilitation facility. "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

Sec. 13. 22 MRSA §303, sub-§18, as enacted by PL 1977, c. 687, §1, is amended to read:

18. Secretary. "Secretary" means the United States Secretary of Health, Education and Welfare and Human Services and any other officer or employee of the United States Department of Health, Education and Welfare and Human Services to whom the authority involved may be delegated.

Sec. 14. 22 MRSA §303, sub-§22, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 15. 22 MRSA §304, as amended by PL 1979, c. 375, is repealed.

Sec. 16. 22 MRSA §304-A is enacted to read:

§304-A. Certificate of need required

No person may enter into any commitment for financing a project which requires a certificate of need or incur an obligation for the project without having sought and received a certificate of need, except that this prohibition shall not apply to commitments for financing conditioned upon the receipt of a certificate of need or to obligations for predevelopment activities of less than \$150,000.

A certificate of need from the department shall be required for:

1. Acquisition by lease, donation, transfer. Any acquisition by or on behalf of a health care facility under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase;

2. Acquisitions of major medical equipment. The following acquisitions:

A. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility; or

B. The acquisition by any person of major medical equipment not owned by or located in a health care facility if:

(1) The equipment will not be used to provide services for inpatients of a hospital, but the person fails to file a written notice of intent to acquire the equipment at least 60 days prior to entering into a contract to acquire the equipment; or

(2) The department finds, within 30 business days after the date it receives a written notice of intent to acquire the equipment, that the equipment will be used to provide services for inpatients of a hospital.

There shall be a waiver for the use of major medical equip-

ment on a temporary basis as provided in section 308, sub-section 4;

3. Capital expenditures. The obligation by or on behalf of a health care facility of any capital expenditure of \$350,000 or more;

4. New health services. The offering or development of any new health service. For purposes of this section, "new health services" shall include only the following:

A. The obligation of any capital expenditures by or on behalf of a health care facility which is associated with the addition of a health service which was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered;

B. The addition of a health service which is to be offered by or on behalf of a health care facility which was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered, and which, for the 3rd fiscal year of operation, including a partial first year, following addition of that service, absent any adjustment for inflation, is projected to entail annual operating costs of at least the expenditure minimum for annual operating costs; or

C. The addition of a health service which falls within a category of health services which are subject to review regardless of capital expenditure or operating cost and which category the department has defined through regulations promulgated pursuant to section 312, based on recommendations from the State Health Coordinating Council;

5. Termination of a health service. The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the termination of a health service which was previously offered by or on behalf of the health care facility;

6. Changes in bed complement. Any change in the existing bed complement of a health care facility, in any 2-year period, which:

A. Increases or decreases the licensed or certified bed capacity of the health care facility by more than 10% or more than 5 beds, whichever is less;

B. Increases or decreases the number of beds licensed or certified by the department to provide a particular level of care by more than 10% of that number or more than 5 beds, whichever is less; or

C. Relocates more than 10% of the health care facility's licensed or certified beds or more than 5 beds, whichever is less, from one physical plant to another;

7. Predevelopment activities. Any appropriately capitalized expenditure of \$150,000 or more for predevelopment activities proposed to be undertaken in preparation for any project which would itself require a certificate of need;

8. New health care facilities. The construction, development or other establishment of a new health care facility; and

9. Other circumstances. In the following circumstances:

A. Any proposed use of major medical equipment to serve inpatients of a hospital, if the equipment is not located in a health care facility and was acquired without a certificate of need, except acquisitions waived under section 308, subsection 4; or

B. If a person adds a health service not subject to review under subsection 4, paragraph A or C and which was not deemed subject to review under subsection 4, paragraph B at the time it was established and which was not reviewed and approved prior to establishment at the request of the applicant, and its actual 3rd fiscal year operating cost, as adjusted with an appropriate inflation deflator promulgated by the Health Facilities Cost Review Board pursuant to sections 360 and 366, exceeds the expenditure minimum for annual operating cost in the 3rd fiscal year of operation following addition of these services.

Sec. 17. 22 MRSA §304-B is enacted to read:

§304-B. Subsequent review

Where a certificate of need has been issued, and changes occur as specified in this section, a subsequent review is required.

1. Criteria for subsequent review. The following activities require subsequent review and approval, if the

department has previously issued a certificate of need and if within one year after the approved activity is undertaken;

A. There is a significant change in financing;

B. There is a change affecting the licensed or certified bed capacity as approved in the certificate of need;

C. There is a change involving the addition or termination of the health services proposed to be rendered by the facility;

D. There is a change in the site or the location of the proposed facility; or

E. There is a substantial change proposed in the design of the facility or the type of construction.

2. Procedures for subsequent review. Any person proposing to undertake any activity requiring subsequent review and approval shall file with the department, within 30 days of the time that person first has actual knowledge of the circumstances requiring subsequent review, a notice setting forth the following information:

A. The nature of the proposed change;

B. The rationale for the change including, where appropriate, an explanation of why the change was not set forth in the original application or letter of intent; and

C. Other pertinent detail subject to the procedures and criteria set forth in section 309.

The department shall, within 30 days of receipt of the information, advise that person in writing whether the proposed change is approved. If not approved, the application shall be treated as incomplete and reviewed in accordance with the application procedures in section 306-A, subsection 4. If approved, the department shall amend the certificate of need as appropriate. In either case, the department shall consult with the Health Systems Agency.

Sec. 18. 22 MRSA §306, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 19. 22 MRSA §306-A is enacted to read:

§306-A. Application process for a certificate of need

1. Letter of intent. Prior to filing an application for a certificate of need, an applicant shall file a letter of intent with the department no less than 30 days prior to the date on which the application is to be filed. The letter of intent shall form the basis for determining the applicability of this chapter to the proposed expenditure or action. A letter of intent shall be deemed withdrawn one year after receipt by the department, unless sooner superseded by an application; provided that the applicant shall not be precluded from resubmitting the same letter of intent.

2. Application filed. Upon a determination by the department, after consultation with the Health Systems Agency, that a certificate of need is required for a proposed expenditure or action, an application for a certificate of need shall be filed with the department if the applicant wishes to proceed with the project. Upon receipt of an application, the department shall immediately transmit a copy of the application to the Health Systems Agency.

3. Additional information required. Additional information may be required or requested as follows.

A. If, after receipt of an application, the department or the Health Systems Agency determines that additional information is necessary before the application can be considered complete, the department may:

(1) Require the applicant to respond to 2 sets of requests for additional information from the department, the Health Systems Agency or both, provided that a 2nd request is directly related to the first information request or to the information provided in response to the first request; and

(2) Request, but not require, the applicant to respond to additional sets of requests for information, provided that each request is directly related to the last request or to the information provided in response to the last request.

B. The department shall immediately transmit the response to any request for information to the Health Systems Agency. The Health Systems Agency shall have 10 business days from the date on which the application or response to any information request is filed with the department in which to comment to the department upon the completeness of the application, indicating specifically and in writing any additional information

which the Health Systems Agency requires before it can consider the application complete.

C. Within 15 business days after the filing of an application or response to any information request, whichever is applicable, with the department, the department shall, after considering the requirements of the Health Systems Agency, notify the applicant in writing that:

(1) The application contains all necessary information required and is complete; or

(2) Additional information is required by the department or by the Health Systems Agency. If, after receipt of the applicant's response to the 2nd or any subsequent request, the department determines that additional information is required, the notification shall also include a statement of the basis and rationale for that determination.

4. Review of incomplete application. Upon receipt of the 3rd or any subsequent notice described in subsection 3, paragraph C, subparagraph 2, the applicant must notify the department in writing that:

A. It will provide the additional information requested by the department. Following completion, it shall be entered into the next review cycle; or

B. That it is not able to or does not intend to provide the information requested and requests the application be entered into the next appropriate review cycle. In that case, the applicant shall be prohibited from submitting the information it had declined to provide into the record after the 25th day of the review cycle and the information shall not be considered in the determination to issue or to deny a certificate of need. If the applicant provides the information requested prior to the 25th day of the review cycle, the application may, at the discretion of the department, be returned to the beginning of the review cycle. Failure to submit additional information requested by the Health Systems Agency or the department may result in an unfavorable recommendation by the Health Systems Agency and may result in subsequent denial of the application by the department, as long as the denial is related to applicable criteria and standards.

5. Competitive reviews. In cases of competitive

reviews, applicants shall submit additional information requested by the Health Systems Agency or the department within 30 business days or within a longer period of time, provided that the department and all competing applicants agree.

6. Automatic withdrawal. Any incomplete application shall be deemed withdrawn if the applicant fails to respond to a request for additional required information within one year of the date such request was forwarded by the department.

Sec. 20. 22 MRSA §307, sub-§1, first sentence, as enacted by PL 1977, c. 687, §1, is amended to read:

Upon determination that an application is complete, or upon receipt of a notice under section 306-A, subsection 4, paragraph B, or upon grouping of the application with other pending applications, the department shall provide for written notification of the beginning of a review.

Sec. 21. 22 MRSA §307, sub-§1, as enacted by PL 1977, c. 687, §1, is amended by adding after the 2nd sentence a new sentence to read:

The notice shall be provided to all persons who have requested notification by means of asking that their names be placed on a mailing list maintained by the department for this purpose.

Sec. 22. 22 MRSA §307, sub-§1, ¶¶C and D, as enacted by PL 1977, c. 687, §1, are amended to read;

C. A statement that a public hearing will be held during the course of a review if requested by persons directly affected by the review and the date by which the requests must be received by the department; and

D. A description of the manner in which public notice will be given of a public hearing if one is to be held during the course of the review; and

Sec. 23. 22 MRSA §307, sub-§1, ¶E is enacted to read:

E. A statement of the manner and time in which persons may register as affected persons.

Sec. 24. 22 MRSA §307, sub-§2, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 25. 22 MRSA §307, sub-§§2-A and 2-B are enacted to read:

2-A. Certificate of Need Advisory Committee. There is established within the Department of Human Services a Certificate of Need Advisory Committee, which shall participate with the department in the public hearing process.

A. The committee shall be composed of 10 members, 9 of whom shall be appointed by the Governor. The Commissioner of Human Services shall name his designee to serve as an ex officio nonvoting chairman of the committee. The 9 members appointed by the Governor shall be selected in accordance with the following requirements.

(1) Four members shall be appointed to represent the following.

(a) One member shall represent the hospitals.

(b) One member shall represent the nursing home industry.

(c) One member shall represent major 3rd-party payors.

(d) One member shall represent physicians.

In appointing these representatives, the Governor shall consider recommendations made by the Maine Hospital Association, the Maine Health Care Association, the Maine Medical Association, the Maine Osteopathic Association and other representative organizations; and

(2) Five public members shall be appointed as consumers of health care. Neither the public members nor their spouses or children may, within 12 months preceding the appointment, have been affiliated with, employed by, or have had any professional affiliation with any health care facility or institution, health product manufacturer or corporation or insurer providing coverage for hospital or medical care, and provided that neither membership in or subscription to a service plan maintained by a nonprofit hospital and medical service organization, nor enrollment in a health maintenance organization, nor membership as a policyholder in a mutual insurer or coverage under such a policy, nor the purchase of or coverage under a policy issued by a stock insurer may disqualify a person from serving as a public member.

B. Appointed members of the committee shall serve for terms of 4 years. Members shall hold office until the appointment and confirmation of their successors. Of the members first appointed by the Governor, the member representing hospitals and 2 public members shall hold office for 4 years, the member from the nursing home industry and one public member shall hold office for 3 years, the member from the insurance field and one public member shall hold office for 2 years and the physician and one public member shall hold office for one year.

C. Vacancies among appointed members shall be filled by appointment by the Governor for the unexpired term. The Governor may remove any appointed member who becomes disqualified by virtue of the requirements of paragraph A, or for neglect of any duty required by law, or for incompetency or dishonorable conduct.

D. Each appointed member of the committee shall receive a per diem allowance of \$25 for each day that he is actively engaged in performing the work of the committee and each member shall be reimbursed for the actual and necessary traveling and other expenses incurred in the discharge of his duties.

E. Five members of the committee shall constitute a quorum. Actions of the committee shall be by majority vote.

2-B. Public hearing. A public hearing shall be held during the course of a review by either the Certificate of Need Advisory Committee or the Health Systems Agency, or both, if requested by persons directly affected by the review pursuant to subsection 1. Nothing in this section may be construed to prevent the department from holding informational meetings with applicants and interested and affected persons prior to the conduct of the hearing. In the event no hearing has been requested prior to an informational meeting or receipt of the preliminary staff report, the applicant or any directly affected persons may request a hearing within 10 days of either circumstance, provided that the review period shall be extended by 60 days if such a hearing is requested. In the case of grouped applications, the extension shall apply to all competing applications.

A. The committee or agency shall provide notice of its hearings in accordance with the procedure described in subsection 1.

B. Findings, recommendations, reports, analyses and

related documents prepared by the staff of the agency shall be in final form and be made available to affected persons at least 5 business days prior to its hearings. The department shall make its preliminary staff report available to the committee and affected persons at least 5 business days prior to a public hearing conducted by the committee.

C. In a hearing conducted by the committee, any person shall have the right to be represented by counsel or to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person directly affected by the matter may conduct reasonable questioning of persons who make relevant factual allegations.

D. The designated representative of the department on the Certificate of Need Advisory Committee shall serve ex-officio as a nonvoting presiding officer and, in consultation with the appointed members of the committee, shall rule on the relevance of argument and evidence and make determinations as to reasonable questioning. Appointed members of the committee may conduct reasonable questioning in the course of a hearing.

E. The department or agency shall record all hearings and any subsequent proceedings of the committee with respect to the application in a form susceptible to transcription. The department shall transcribe the recording when necessary for the prosecution of an appeal.

F. During the first 7 business days following the close of a public hearing conducted by the committee interested or affected persons may submit written comments concerning the review under consideration. The department shall provide copies of comments submitted in that manner to all persons registered as affected persons and to appointed members of the committee. In reviews where no hearing is held, interested or affected persons may submit comments 10 days after the submission of the preliminary staff report, but no later than the 70th day of a 90-day review cycle or the 130th day of a 150-day review cycle.

G. In the event that circumstances require the department to obtain further information from any source or to otherwise contact registered affected persons following the public hearing and submission of comments under paragraph F or, when no hearing is held, following the 80th day of a 90-day review cycle or the 140th

day of a 150-day review cycle, the department shall:

(1) Provide written notice to all registered affected persons who shall have at least 3 business days to respond; or

(2) Convene a public meeting with reasonable notice with participation of the committee at its discretion and affording directly affected persons the opportunity to conduct reasonable questioning.

In either event, notwithstanding any other provision of this chapter, the time period in which a decision is required shall be extended 20 days. Any written comments shall be forwarded to the committee.

H. At its next meeting following the receipt of comments pursuant to paragraph F or G, or in the case of a public hearing pursuant to paragraph G, the committee shall make a recommendation of approval or disapproval with respect to the application or applications under consideration. The recommendation shall be determined by majority vote of the appointed members present and voting. Members of the committee may make additional oral comments or submit written comments, as they deem appropriate, with respect to the basis for their recommendations or their individual views. The committee recommendation and any accompanying comments shall be forwarded to the commissioner.

I. At the time the staff submits its final report to the commissioner, a copy of the report shall be sent to the applicant and a notification shall be sent to all registered affected persons. No further comments may be accepted.

J. There shall be no contact with respect to the application after a hearing commences between members of the committee or the department and affected parties or anyone acting on their behalf, except in accordance with the procedures set forth in this section.

Sec. 26. 22 MRSA §307, sub-§5, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 27. 22 MRSA §307, sub-§5-A is enacted to read:

5-A. Decision by the department. Decisions by the commissioner shall be made in accordance with the following procedures.

A. The department shall prepare its final staff report based solely on the record developed to date, as defined in paragraph C, subparagraphs (1) to (6).

B. After reviewing each application, the commissioner shall make a decision either to issue a certificate of need or to deny the application for a certificate of need. The decision of the commissioner shall be based on the informational record developed in the course of review as specified in paragraph C. Notice of the decision shall be sent to the applicant, the committee and the Health Systems Agency. This notice shall incorporate written findings which state the basis of the decision, including the findings required by section 309, subsection 1. If the decision is not consistent with the recommendations of the Health Systems Agency or the Certificate of Need Advisory Committee, the commissioner shall provide a detailed statement of the reasons for the inconsistency.

C. For purposes of this subsection, "informational record developed in the course of review" includes the following:

(1) All applications, filings, correspondence and documentary material submitted by applicants, interested or affected persons, or the Health Systems Agency prior to the termination of the public comment period under subsection 2-B, paragraph F or, if no hearing is held, prior to the 80th day of a 90-day review cycle and prior to the 140th day of a 150-day review cycle;

(2) All documentary material reflecting information generated by the department prior to termination of the public comment period or, if no hearing is held, prior to the 80th day of a 90-day review cycle and prior to the 140th day of a 150-day review cycle;

(3) Stenographic or electronic recording of any public hearing or meeting held during the course of review, whether or not transcribed;

(4) All material submitted or obtained in accordance with the procedures in subsection 2-B, paragraph G;

(5) The staff report of the agency, the preliminary staff report of the department and the recommendations of the committee;

(6) Officially noticed facts; and

(7) The final staff report of the department.

Documentary materials may be incorporated in the record by reference, provided that registered affected persons are afforded the opportunity to examine the materials.

Sec. 28. 22 MRSA §307, sub-§6, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 29. 22 MRSA §307, sub-§6-A is enacted to read:

6-A. Review cycles. The department shall establish review cycles for the review of applications. There shall be at least 6 review cycles for each calendar year, the dates for which shall be published at least 3 months in advance. An application shall be reviewed during the next scheduled review cycle following the date on which the application is either declared complete or submitted for review pursuant to section 306-A, subsection 4, paragraph B. The department may hold an application for up to 90 days following the commencement of the next scheduled review cycle if, on the basis of one or more letters of intent on file at the time the application is either declared complete or submitted for review pursuant to section 306-A, subsection 4, paragraph B, the department expects to receive within the additional 90 days one or more other applications pertaining to similar types of services, facilities or equipment affecting the same health service area. Pertinent health service areas shall be defined in regulations promulgated by the department pursuant to section 312, based on recommendations by the State Health Coordinating Council.

Sec. 30. 22 MRSA §308, sub-§4 is enacted to read:

4. Waiver of review of acquisitions of major medical equipment. The department may waive the review of an acquisition or proposed use of major medical equipment required pursuant to section 304-A if the equipment will be used to provide services to inpatients of a hospital only on a temporary basis in the case of:

A. A natural disaster;

B. A major accident; or

C. Equipment failure.

Sec. 31. 22 MRSA §309, sub-§1, ¶D, as enacted by PL 1977, c. 687, §1, is amended to read:

D. That the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State and are in accordance with standards, criteria or plans adopted and approved pursuant to the annual implementation plan, the health systems plan, and the state health plan and the state medical facilities plan developed by the Health Systems Agency and the department.

Sec. 32. 22 MRSA §309, sub-§2, ¶A, as enacted by PL 1977, c. 687, §1, is amended to read:

A. The relationship of the health services being reviewed to the annual implementation plan, the health systems plan, and the state health plan and the state medical facilities plan;

Sec. 33. 22 MRSA §309, sub-§§3, 4 and 5 are enacted to read:

3. Health maintenance organizations. Notwithstanding subsections 1 and 2, if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, the department shall issue a certificate of need if it finds that:

A. Approval of the application is required to meet the needs of the members of the health maintenance organization and of the new members which the organization can reasonably be expected to enroll; and

B. The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost effective manner which is consistent with the basic method of operation of the organization and which makes the services available on a long-term basis through physicians and other health professionals associated with it. In assessing the availability of the proposed health services from other providers, the department shall consider only whether the services from these providers:

(1) Would be available under a contract of at least 5 years' duration;

(2) Would be available and conveniently accessible to physicians and other health professionals associated with the health maintenance organizations;

(3) Would cost no more than if the services were provided by the health maintenance organization; and

(4) Would be available in a manner which is administratively feasible to the health maintenance organization.

4. Required approvals. Approval of proposed capital expenditures shall comply with the following:

A. Except as provided in paragraph B, the department shall issue a certificate of need for a proposed capital expenditure if:

(1) The capital expenditure is required to eliminate or prevent imminent safety hazards, as defined by applicable fire, building or life-safety codes and regulations; to comply with state licensure standards; or to comply with accreditation or certificate standards which must be met to receive reimbursement under the United States Social Security Act, Title XVIII, or payments under a state plan for medical assistance approved under Title XIX of that Act; and

(2) The department has determined that the facility or service for which capital expenditure is proposed is needed; the obligation of the capital expenditure is consistent with the state health plan; and the corrective action proposed by the applicant is the most cost effective alternative available under the circumstances.

B. Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with licensure, certification or accreditation standards are subject to review in accordance with the criteria established under section 312.

5. Standards applied in certificate of need. The commissioner shall, in issuing a certificate of need, make his decision, to the maximum extent practicable, directly related to criteria established under federal laws and standards or criteria prescribed in regulations promulgated by the department pursuant to subsections 1 to 4 and section 312.

The commissioner shall not deny issuance of a certificate of need, or make his decision subject to fulfillment of a condition on the part of the applicant, except where the denial

or condition directly relates to criteria established under federal laws and standards or criteria prescribed in regulations promulgated by the department in accordance with subsections 1 to 4 and section 312, which are pertinent to the application.

Sec. 34. 22 MRSA §312, as enacted by PL 1977, c. 687, §1, is amended by adding after the first sentence a new sentence to read:

The department shall, to the extent applicable, take into consideration recommendations contained in the state health plan as approved by the Governor.

Sec. 35. 22 MRSA §316, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 36. 22 MRSA §316-A is enacted to read:

§316-A. Exemptions

Except as otherwise specifically provided, nothing in this Act shall be construed to preempt, replace or otherwise negate the requirements of any other laws or regulations governing health care facilities. The requirements of this Act shall not apply with respect to:

1. Health care facilities. Any health care facility:

A. Operated by religious groups relying solely on spiritual means through prayer for healing; or

B. For which any construction, modification or other change subject to this Act has been reviewed and has received approval pursuant to the United States Social Security Act, Section 1122, from appropriate agencies prior to the effective date of this Act;

2. Activities; acquisitions. Activities or acquisitions by or on behalf of a health maintenance organization or a health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National Health Planning and Resources Development Act of 1974, as amended and its accompanying regulations;

3. Home health care services. Home health care services offered by a home health care provider prior to 90 days after adjournment of the Second Regular Session of the 110th Legislature; and

4. Home health care providers. Home health care providers, as of the effective date of enactment of a home health care provider licensing law.

Sec. 37. 22 MRSA §317, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. 38. 22 MRSA §317-A is enacted to read:

§317-A. Scope of certificate of need

1. Application determinative. A certificate of need shall be valid only for the defined scope, premises and facility or person named in the application and shall not be transferable or assignable.

2. Maximum expenditure. In issuing a certificate of need, the department shall specify the maximum capital expenditures which may be obligated under this certificate. The department shall, by regulations promulgated pursuant to section 312, prescribe the method to be used to determine capital expenditure maximums, establish procedures to monitor capital expenditures obligated under certificates and establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

3. Periodic review. After the issuance of a certificate of need, the department shall periodically review the progress of the holder of the certificate in meeting the timetable for making the service or equipment available or for completing the project specified in the approved application. A certificate of need shall expire if the project for which the certificate has been issued is not commenced within 12 months following the issuance of the certificate. The department may grant an extension of a certificate for an additional specified time not to exceed 12 months if good cause is shown why the project has not commenced. The department may require evidence of the continuing feasibility and availability of financing for a project as a condition for extending the life of certificate. In addition if on the basis of its periodic review of progress under the certificate, the department determines that the holder of a certificate is not otherwise meeting the timetable and is not making a good faith effort to meet it, the department may, after considering any recommendation made by the Health Systems Agency, and after a hearing, withdraw the certificate of need. The department shall in accordance with section 312 promulgate the necessary procedures for withdrawal of certificates of need.

Sec. 39. 22 MRSA §323 is enacted to read:

§323. Relationship to the United States Social Security Act, Section 1122

1. Administration of Section 1122 reviews. The department shall, in reviewing those capital expenditures which require review under section 304-A and the United States Social Security Act, Section 1122, and regulations promulgated thereunder, allow the maximum flexibility permitted under the United States Social Security Act, Section 1122, consistent with this chapter.

2. Thresholds for review. The department shall waive review of proposed capital expenditures by health care facilities under the United States Social Security Act, Section 1122, and regulations promulgated thereunder, unless those expenditures are subject to review under section 304-A.

3. Procedures. The department shall, pursuant to section 312, modify its United States Social Security Act, Section 1122 Procedures Manual as required by this section, and shall promulgate the revised manual as a regulation on or before January 1, 1983.

Sec. 40. 22 MRSA §324 is enacted to read:

§324. Review

If the National Health Planning and Resources Development Act of 1974, Public Law 93-641, is repealed or significantly altered, but no later than December, 1986, the legislative joint standing committee having jurisdiction over health and institutional services shall review the continuing feasibility of this chapter and shall make a report to the Legislature and the Governor on its findings, together with any accompanying legislation.

The committee shall study all dollar amounts stated in this chapter as part of its review.

Sec. 41. 22 MRSA §325 is enacted to read:

§325. Health Systems Agency

The Legislature intends that, without regard to the termination or substantial diminution of federal funding for the Maine Health Systems Agency prior to the effective date of this Act, the department shall continue to administer a certificate of need program otherwise consistent with the

provisions of the Maine Certificate of Need Act.

Sec. 42. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

	<u>1982-83</u>
<u>HUMAN SERVICES,</u>	
<u>DEPARTMENT OF</u>	
Personal Services	\$31,192
All Other	19,500
Capital Expenditures	<u>3,000</u>
 Total	 \$53,692

Sec. 43. Effective date. This Part shall take effect on January 1, 1983, except that the provisions of Title 22, section 303, subsection 7 and subsection 11-A, and section 316-A, which pertain to home health care providers, and Title 22, section 325, which pertains to the Health Systems Agency, shall take effect on July 1, 1982.

PART W
INDENTIFICATION OF FRESHWATER WETLANDS

Sec. 1. 38 MRSA c. 3, sub-c. 1, Art. I-C is enacted to read:

ARTICLE I-C

FRESHWATER WETLANDS

§406. Definitions

For the purposes of this Article, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Wetland. "Wetland" means freshwater swamps, marshes, bogs and similar areas of 10 or more contiguous acres that have been designated as freshwater wetlands under section 407.

2. Wetland soils. "Wetland soils" means soils that have been classified as Atherton, Biddeford, Burnham, fresh water marsh, Halsey, muck, peat and muck, Saco, Scarboro, Washburn, Whately or Whitman soil types.

3. Wetland vegetation. "Wetland vegetation" means

carex, rushes, redtop, reed grasses, manna grasses, prairie cordgrass, mints, plume grass, rice cut-grass, sedges, giant burweed, cattails, arrowheads, pickerelweed, smartweeds, spike rushes, wild rice, pondweeds, duckweeds, coontail, spatterdock, wild celery, water milfoil, water lilies, alder, dogwood, willow, buttonbush, sweet gale, labrador tea, leatherleaf, cranberries, cotton grass, sphagnum moss, stunted black spruce and stunted tamarack; provided that such vegetation is growing in generally waterlogged areas or water-covered areas.

§407. Identification of freshwater wetlands

1. Study. The commissioner shall conduct a study to identify freshwater wetlands in the portion of the State not subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A. Within one year of the effective date of this Article, the commissioner shall publish the results of this study in the form of proposed maps delineating the boundaries of wetlands that meet the criteria of this section. The department may use inventories of the Department of Inland Fisheries and Wildlife, State Soil and Water Conservation Commission and other available information as guides in designating freshwater wetlands.

2. Criteria. Areas identified as freshwater wetlands shall be limited to areas:

A. Which are of 10 or more contiguous acres;

B. Which are characterized predominantly by wetland soils and vegetation; and

C. Are not subject to the jurisdiction of sections 391 to 396, sections 471 to 478 or Title 12, sections 7776 to 7780.

These areas may contain small inclusions of land that does not conform to the criteria of this subsection.

3. Assistance. The Department of Agriculture, Food and Rural Resources, Department of Conservation, Department of Inland Fisheries and Wildlife and the State Planning Office shall assist the department in identifying freshwater wetlands.

4. Procedures. The identification of freshwater wetlands shall be subject to the rule-making requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, except as provided in this section.

A. Upon completion of proposed maps delineating the boundaries of wetlands, the commissioner shall send the maps of each municipality to the respective municipal officers. The municipal officers, or their designees, shall review these maps for accuracy, and verify that areas identified meet the criteria of this section.

B. Upon receipt of the proposed maps, the municipal officers of each municipality shall:

(1) Post notice that the maps are available for review;

(2) Send a notice by mail to each person who is recorded as owning land that has been tentatively identified as a wetland;

(3) Hold a public meeting to discuss the identification and delineation of wetland; and

(4) Take any other action they deem appropriate to increase public participation in this identification and delineation.

The commissioner shall publish a notice in newspapers of general circulation throughout the State that the proposed maps have been completed and that they are available for public inspection at the department's offices in Augusta and at municipal offices.

Municipal officers and members of the general public shall have 6 months from the date of receipt of the maps to comment to the department.

C. The commissioner may hold public hearings on the identification of wetlands to resolve problems identified by municipal officers or their designees. Within one year of the completion of the proposed maps and after the comment period in paragraph B has expired, the commissioner shall adopt final maps delineating the boundaries of wetlands.

Sec. 2. Legislative intent. It is the intent of the Legislature that the maps produced under section 1 of this Part be submitted for review to the joint standing committee of the Legislature having jurisdiction over natural resources. The committee shall review these maps and determine whether a regulatory program should be instituted, and how any such regulatory program would be coordinated with existing permit requirements. The committee shall report its findings and recommendations to the First Regular Session of the 112th Legislature.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1982-83

ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

All Other \$30,000

Emergency clause. This Act shall take effect when approved except for Parts C, F, I, J, K, M, N, O, R, U and W which will become effective July 1, 1982; Part G which will become effective as designated in sections 17 and 18 of that Part; Part L which will become effective on January 6, 1983; and Part V which will become effective as designated in section 43 of that Part.

Effective May 4, 1982, unless otherwise indicated.

CHAPTER 706

H.P. 2406 - L.D. 2149

**AN ACT Providing for Administrative Changes
in the Maine Tax Laws.**

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

Sec. 1. 9-B MRSA §161, sub-§2, ¶H is enacted to read:

H. The making of reports to the State Tax Assessor required under Title 36, section 3851 and the examination of the financial records authorized by Title 36, section 112.

Sec. 2. 36 MRSA c. 2, as enacted by PL 1981, c. 312, is repealed.

Sec. 3. 36 MRSA §186, 4th sentence, as enacted by PL 1981, c. 180, §1, is repealed as follows: