

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985
Chapters 384-End

AND AT THE

FIRST SPECIAL SESSION

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PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
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J.S. McCarthy Co., Inc.
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

CHAPTER 480

H.P. 1128 - L.D. 1637

AN ACT to Adjust Bridge Capital and Maintenance Responsibilities.

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

Sec. 1. 23 MRSA c. 9, sub-c. III, as amended, is repealed.

Sec. 2. 23 MRSA c. 9, sub-c. IV, as amended, is repealed.

Sec. 3. 23 MRSA c. 9, sub-c. V, first 2 lines are repealed and the following enacted in their place:

SUBCHAPTER V

BRIDGES OF HISTORIC SIGNIFICANCE

Sec. 4. 23 MRSA §601, as amended by PL 1971, c. 593, §22, is repealed.

Sec. 5. 23 MRSA §§602 and 603 are enacted to read:

§602. Finding of fact

The Legislature finds that it is in the best interest of the State that bridges with historic significance be maintained or improved as necessary by the State. These bridges are of historic importance due to their unique construction combined with their antiquity. Should it become necessary to bypass any of these structures or to replace them with modern structures, the Legislature further finds that the provisions of subchapter I and subchapter VII shall apply.

§603. Management

The State shall be responsible for the management of and all costs for maintenance and rehabilitation for the following historic bridges: Lovejoy Bridge, Andover; Robyville Bridge, Corinth; Hemlock Bridge, Fryeburg; Bennett Bridge, Lincoln Plantation; Watson's Bridge, Littleton; Artist's Bridge, Newry; Lowe's Bridge, Sangerville-Guilford; Babb's Bridge, Windham-Gorham; Wire Bridge, New Portland; Porter

Bridge, Porter-Parsonsfield; and Bailey Island Bridge, Harpswell.

The commissioner shall, from time to time, make recommendations to the Legislature relating to additions to or deletions from the list in this section. The commissioner may establish such guidelines as may be necessary and may make recommendations either on his own initiative or upon petition by any party.

Sec. 6. 23 MRSA c. 9, sub-c. VI, as amended, is repealed.

Sec. 7. 23 MRSA c. 9, sub-c. VII is enacted to read:

SUBCHAPTER VII

LOCAL BRIDGES

§608. Findings of fact

The Legislature makes a finding of fact that there are many bridges on town ways for which the State has responsibility and many bridges on state-aid highways for which towns have responsibility. The Legislature finds that it is in the best interest of the State that responsibility for bridges should coincide with the responsibility for adjacent roadway.

The Legislature makes a further finding of fact that bridge capital improvement programs, for which the towns have a logical responsibility, should reflect the town's ability to pay, the relative use of bridges and the protection of investment in bridges.

The Legislature makes a further finding of fact that towns lack the technological capability to adequately maintain major bridges. Towns should maintain all minor bridges and all unimproved major bridges that exist on town roads. The State should maintain all state bridges and all improved town major bridges having reasonable levels of traffic.

§608-A. Definitions

As used in this subchapter, unless otherwise indicated, the following terms have the following meanings.

1. Bridge. "Bridge" means a structure designed to convey a public road or highway over a physical barrier or obstacle such as other roads, highways,

railroads or water. "Bridge" shall be limited to structures designed principally for the use of carrying motor vehicles and must be larger than culverts.

2. Capital improvement. "Capital improvement" means to create, add to or restore structural or functional capacity. The actual work activities of bridge capital improvement are often referred to as construction for a new bridge, replacement of an existing bridge, and rehabilitation of an existing bridge. Rehabilitation differs from maintenance in that it makes comprehensive structural or functional improvements that impact service ability for a relatively long period of time, whereas similar maintenance is restricted to noncomprehensive repairs to individual members or isolated areas. Capital improvement shall include the cost of project development, construction, inspection and related supervision and administration. Capital improvement also includes the costs necessary for the removal or elimination of unnecessary structures.

3. Culvert. A "culvert" means any structure whose span is less than 10 feet. Multiple culverts with a combined opening of less than 80 square feet shall also be defined as culverts and those with a combined opening of 80 square feet or greater shall be defined as a bridge.

4. Local bridges. "Local bridges" means bridges located on town ways or state-aid highways. Excluded from this subchapter are railroad bridges, bridges over the Maine Turnpike, the Interstate Highway System and bridges on federally designated highways.

5. Logarithm. "Logarithm" means common or base ten.

6. Maintenance. "Maintenance" means the work activity necessary to preserve the structure to its existing structural or functional capacity and integrity and to arrest deterioration of its components. Maintenance is not intended to increase or fully restore structural or functional capacity. Maintenance is performed to insure safety of the user or the structure in response to vehicular accident damage, flood damage, ice damage or unanticipated component failure. More often maintenance is scheduled for routine operations or to address limited deficiencies found in periodic inspections.

7. Major bridge. A "major bridge" means any bridge larger than a minor bridge.

8. Minor bridge. A "minor bridge" means any bridge with combined spans of less than 25 feet, except in the case of concrete T-beam bridges and steel stringer bridges where structures with spans of less than 20 feet shall be considered minor bridges.

9. Responsibility. "Responsibility" for capital improvement or maintenance shall be determined based upon the historic records relating to the original construction of individual bridges maintained by the department and upon the guidelines established by the department in section 608-B. In the event that responsibility cannot be determined from records, or is in dispute, responsibility shall be the same as the responsibility for the adjacent roadway.

10. Span. "Span" means to distinguish among major bridges, minor bridges and culverts. "Span" shall always be measured perpendicular to the centerline of the bridge opening. For structures with supports, "span" means the greatest horizontal distance between front faces of extreme abutments. For ring structures, "span" means the greatest horizontal opening. For arches, "span" means greatest horizontal distance between springing lines.

When the proper capital improvement for a structure is judged to be replacement, the "span" used to determine town responsibility shall be that of the replacement structure.

11. Time of approval. "Time of approval" means the date on which the town approves the preliminary design and authorizes the improvement.

12. Town. "Town" means any unit of municipal government, including, towns, cities, plantations and unorganized townships. With the exception of the Maine Turnpike Authority, departments or bureaus of State Government and quasi-independent agencies or boards who are responsible for bridges on public highways shall be treated as towns and for the purposes of determining cost sharing in section 609-B the average town valuation in the State shall be used.

13. Valuation. "Valuation" means valuation based upon 100% of the current market value as certified and filed by the State Tax Assessor and in effect at the time of approval by the town.

§608-B. Transfer

On and after July 1, 1986, bridges determined to

be of satisfactory condition shall become the responsibility of the unit of government that is responsible for the adjacent roadway, except for the exceptions in section 603. The State shall be responsible for all such bridges on state and state-aid highways and towns shall be responsible for all such bridges on town ways, except for bridges over the Maine Turnpike and Interstate Highway System.

The guidelines for determining satisfactory condition shall be determined by the department. Prior to adoption of these guidelines, the department shall offer an opportunity for a public hearing or hearings.

The department shall inform each town or county in writing of its determination regarding satisfactory condition of bridges. Within 30 days of receipt of this notice, the town or county may petition the department to hold a public hearing and after the hearing the department shall issue its decision which shall be final.

§608-C. Capital improvement candidates

On and after July 1, 1986, the department shall biennially prepare lists of bridges eligible for improvement under this subchapter, arranged in priority order. The department shall offer to the towns an opportunity to improve bridges based inasmuch as is practical on those lists. Any town, county or the State may petition to the department, based on the lists prepared under this section, to improve a bridge under this subchapter.

§608-D. Preliminary engineering

The department shall make surveys and investigations it determines necessary for improving any bridge under this subchapter and shall be the sole arbiter as to whether and in what manner any bridge shall be improved. The department shall conduct the preliminary engineering necessary to estimate the cost for the improvement.

§609. Approval to proceed

The department shall inform the town or county of the estimated cost of the bridge improvement, including their estimated share of the cost. The town may either cancel the improvement request or issue approval to proceed. Approval to proceed shall be accompanied by initial funding. Town and county percentages of cost become fixed at this time. After

town officials are authorized to raise the local share of the estimated cost of the bridge improvement, the department shall proceed with the necessary engineering and other work. The department shall select the appropriate construction procedure in accordance with standard procedures.

§609-A. County commissioners authorized to borrow

County commissioners are authorized to raise funds by borrowing reasonable sums as may be necessary to carry out this subchapter. Any loan entered into by the county commissioners shall be a legal debt of the county whose credit is pledged under this law. All loans made by the county commissioners under this law are excepted from the laws of the State limiting the borrowing capacity of counties.

§609-B. Cost sharing

1. Cost. The cost of all capital improvements for bridges on the state-aid system for which the State is responsible shall be borne by the State. The cost of all capital improvements for bridges on the town-way system shall be borne jointly by the State and the town and, at times, the county. The cost of initial capital improvements for bridges on the state-aid system for which the town is responsible and found to be not in satisfactory condition shall be borne jointly by the State and the county. The effect of federal funds shall be used to uniformly reduce state and local cost.

2. Procedure to determine percentages paid by towns. The following procedure shall be applied to determine the percentages paid by the town or towns.

A. To provide county assistance for the more significant bridges on the town-way system, the town's share for bridge improvements as calculated for bridges on the town-way system shall be based on 80% of the estimated cost of the improvement in those cases where all of the following criteria are met:

(1) The bridge is a major bridge as defined in this subchapter;

(2) Traffic on the bridge exceeds the median average traffic for bridges on townways; and

(3) The tax rate exceeds 10 mills, caused

by dividing the total cost of the capital improvement by the town valuation.

B. The county in which the town is located shall bear a fixed 20% of the cost of any bridges in paragraph A, but not to exceed twice the town's share. In the event that the bridge exists in 2 or more counties, each county's share shall be proportional to its valuation.

C. The town percentage share of a capital improvement constructed under this subchapter shall be determined by multiplying a factor that measures ability to pay by a factor that measures relative use of the structure.

D. The factor that measures ability to pay shall be:

<u>TAX RATE</u>	<u>TOWN ABILITY TO PAY FACTOR</u>
<u>1 1/4 mill or</u>	<u>65%</u>
<u>less</u>	
<u>2 1/2 mills</u>	<u>60%</u>
<u>3 3/4 mills</u>	<u>55%</u>
<u>5 mills</u>	<u>50%</u>
<u>7 1/2 mills</u>	<u>45%</u>
<u>10 mills</u>	<u>40%</u>
<u>15 mills</u>	<u>35%</u>

Provided that:

(1) For tax rates between those shown, the town ability to pay factor shall be determined by linear proportion between adjacent factors.

(2) Notwithstanding any other provisions of law, the tax rate shall be determined based upon the most recent valuation made by the State Tax Assessor.

(3) In no case, may the town share exceed 1/2 of 1% of the town valuation.

E. The factor that measures relative use of a structure shall be a traffic ratio. The traffic ratio shall be logarithmic in nature. It shall be constructed as the logarithm of the median annual average daily traffic for all townway bridges divided by the logarithm of the average daily traffic on the bridge in question. The basic town percentage shall then be determined as

the product of the ability to pay factor and the relative use factor. In no case, may the town share exceed 65% of the project cost or 1/2 of 1% of the town valuation.

F. After the basic percentage in paragraph E is determined, an adjustment may be made for special circumstances. The town's portion shall be reduced by 1% for every 2 town-way bridges over 5. Bridges which cross the boundary line between 2 or more towns shall count as 1/2 bridge for each town.

G. For those bridges on the state-aid system for which the town is responsible, the county shall pay the town's portion of any capital improvement necessary to bring that structure to a satisfactory condition. Adjustments for multiple bridges and county assistance to towns shall not apply. Upon completion of the initial improvement for any bridge, the county shall be absolved of any further responsibility for the capital improvement of the bridge and any subsequent improvements shall be the sole responsibility of the State.

H. The effect of federal funds shall next be used to reduce all county and town percentages. The reduction factor shall be applied in proportion to the availability of federal funds. The reduction afforded may differ among program years to reflect availability of federal funds and needs, but otherwise the effect of the reduction factor shall be applied uniformly to all projects.

I. Each local percentage shall be rounded to the nearest full percent, however, the minimum town share shall be 1% of the cost of the project, but not more than 1/2 of 1% of the town's valuation. In those cases where county participation is required, the minimum county share shall be one percent of the cost of the project.

§609-C. Payment of town and county costs

The portions of the cost payable by the town or the county shall be due as follows: Twenty-five percent at the time of approval by the town, 50% upon the commencement of the improvement and the remainder upon the substantial completion of the improvement as certified by the department. The department shall prepare the final bill within 6 months after the substantial completion of all work items.

In the event that the actual improvement cost exceeds the estimated cost, the town or county shall not pay more than 110% of their estimated cost. The foregoing notwithstanding, major change in scope of the improvement after the time of approval will require that a new estimate and town share be determined.

In case any town neglects or refuses to pay into the State Treasury its proportional part of the cost of improvement which may be due and payable under this subchapter or its proportional part of the excess cost of improvement above the estimated cost, then the Treasurer of State shall, out of any funds in the State Treasury due the town from the Local Road Assistance Program, pay such proportional part and deduct the amount so paid. In the event that the proportional share due from the town exceeds the funds available to the town under the Local Road Assistance Program, the Treasurer of State may proceed with a civil action against the delinquent town to recover any sum due the State, but these remedies shall be in addition to, and not exclusive of, other remedies afforded by law for the proper enforcement of this subchapter.

§609-D. Bridges crossing boundary line; apportionment of costs

When a bridge crosses the boundary line of the State, the costs to be shared shall be that portion of the cost determined to be the responsibility of units of State Government.

When a town bridge to be improved is on a townline, the valuation of the towns shall be combined to determine the ability to pay factor. The basic total town percentages shall be determined as the product of that ability to pay factor and the use factor. The resulting combined town percentage shall then be apportioned to the individual towns based on their individual valuations. The apportioned amounts shall be restricted to 1/2 of 1% of the towns' valuations and shall also be eligible for the reductions in section 609-B.

When a bridge on the state-aid system crossing a boundary line is to receive initial improvement, the total basic county shares shall be determined using the respective towns' valuation in this section. The resulting combined percentages shall be apportioned based on the respective county valuations.

§610. State not liable for damage

The State and the Department of Transportation shall not be liable to any person, corporation or entity for damages arising out of any activities performed pursuant to this subchapter.

§610-A. Capital allocation

The department shall allocate total funds available for bridge capital improvements among the categories of state bridges on the state and state-aid highway systems, town bridges on the state-aid system, state bridges on town ways and town bridges on town ways. The allocation shall be reflected in the department's biennial Capital Improvement Program, and shall be determined on the basis of a formula that considers at a minimum the condition, the use and the protection of the investment associated with each category of bridges. The relative weight of each factor considered in the formula shall be established by the department. Prior to the adoption of this formula, the department shall offer an opportunity for a public hearing or hearings.

In the event that there are insufficient applications to utilize funds allocated to any of these categories, the commissioner may direct that funds be utilized for bridges in other categories.

§610-B. Priority of improvements

The department shall place bridge projects in priority within each category of bridges in section 610-A. Within each category, priorities will be determined by use of formulas which consider, at a minimum, inadequacy and use of each bridge. Inadequacy shall be determined based upon the biennial inventory and inspection of bridges as developed by the department. Use shall be determined based upon traffic surveys and estimates conducted by the department. These formulas shall be established by the department. Prior to the adoption of formulas, the department shall offer an opportunity for public hearing or hearings.

§610-C. Emergency improvements

In the event of an emergency, the commissioner may initiate any bridge capital improvement under this subchapter.

§610-D. Salvage

Such material as may be reasonably salvaged from

an existing bridge improved under this subchapter may become the property of the current owner of the bridge, provided that all such salvage shall be requested prior to the issuance of the approval to proceed.

§610-E. Supervision

The department shall have supervision of all construction work under this subchapter.

§610-F. Maintenance of structures

On and after July 1, 1986, maintenance responsibility for bridges certified by the department as having a satisfactory condition, as defined in section 608-B, shall be the same as responsibility for the adjacent roadway, except that the State shall be responsible for the maintenance of all major bridges in satisfactory condition on town ways with average annual daily traffic of at least 25 vehicles. The department shall determine the guidelines for establishing average annual daily traffic. Prior to the adoption of the procedure, the department shall offer an opportunity for a public hearing or hearings.

No general prescription may be made of the activities that are properly called maintenance for unusual bridge types and locations. Special arrangements for the state maintenance of qualifying town bridges with unusual features will need to be made before the State assumes maintenance responsibility. The department will develop such general guidelines as may prove necessary to prescribe or limit bridge maintenance activity, or both. Consultation with town representatives shall be a part of the development of guidelines.

Maintenance responsibility for bridges not certified as having a satisfactory condition shall not be transferred, except that state maintained bridges on town ways shall be transferred to the town when an "offer to improve," as defined in section 608-C, has been made by the department and the offer is not accepted by the town within 4 years.

§610-G. Local bridges on federal systems

Bridges that otherwise qualify for the provisions of this subchapter but which are on federally designated highway systems shall be eligible for state maintenance under the conditions of this subchapter and, at the option of the town government, be eligible for the provisions for capital improvements, in-

cluding cost sharing, as an alternative to federal-town financing.

Sec. 8. 29 MRSA §903, as amended by PL 1979, c. 397, §2, is further amended by adding after the first paragraph a new paragraph to read:

Whenever necessary, the Department of Transportation shall take action to protect public safety and public investment by posting bridges for which the State is responsible. In addition, the Department of Transportation shall provide information to the officers of all municipal and county governments regarding the advisability of posting any bridges under the control of these officers. For this purpose, the department shall, where necessary, determine the capacity of any bridges and notify local officials promptly of its findings. The department shall complete this initial process by July 1, 1987, and shall periodically repeat the process.

Sec. 9. 29 MRSA §1753, as amended by PL 1971, c. 593, §22, is further amended to read:

§1753. Restriction of heavy objects for bridges

Notwithstanding any loads authorized in this Title upon any bridge, officials or corporations charged with the repair and maintenance thereof may shall limit the ~~lead~~ combined weight of the vehicle and load or any axle, or the number or speed of vehicles permitted on any bridge to such ~~weight~~ limits as they deem necessary for the safety of life or property or the maintenance of such bridge. Upon the failure or neglect of such local officials or corporations to prescribe such weights for any bridge, the Department of Transportation may fix such ~~limit of weight~~ limits as it deems proper. Such regulations shall be in effect when notice thereof is conspicuously posted at each end of the bridge affected.

Such limits as may be prescribed by local officials shall be in accordance with the advice of the Department of Transportation or upon that of a registered professional civil engineer retained for the purpose of inspecting and determining the safe capacity of bridges. In the event of an emergency, nothing in this paragraph may prevent local officials from prescribing such limits as they may deem proper for the structural capacity or the maintenance of the bridge. As soon as is reasonably possible, the local officials shall seek the advice of the Department of Transportation.

Sec. 10. Effective Date. Sections 1 to 7 of this Act shall become effective July 1, 1986. Any local bridge projects that have progressed to the time of approval under the Maine Revised Statutes, Title 23, chapter 9, subchapter III or VI, prior to July 1, 1986, shall be completed under the provisions of the laws that were in effect at the time of their approval.

Sec. 11. Program evaluation. Prior to January 1, 1990, the Commissioner of Transportation shall conduct an evaluation of the Local Bridge Program. He shall report his findings and any recommendations for proposed legislation to the joint standing committee of the Legislature having jurisdiction over transportation prior to the Second Regular Session of the 114th Legislature.

Effective September 19, 1985, unless otherwise indicated.

CHAPTER 481

S.P. 637 - L.D. 1653

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

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 may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of departments and agencies will become due and payable on or immediately after July 1, 1985; and

Whereas, certain independent agencies will terminate unless continued by the Legislature prior to June 30, 1985; and

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