

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

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

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
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Sec. 3. 5 MRSA §1742, sub-§23 is enacted to read:

23. Inventory of land. To periodically inventory all land owned by any state agency and, together with other state agencies, determine land that is needed by state agencies for other uses and land that is surplus. Prior to offering any land for sale, the commissioner shall review with the Maine State Housing Authority and other state agencies the information derived from the inventory.

A. By February 1, 1988, the commissioner shall provide an initial report on the status of the land inventory to the joint standing committees of the Legislature having jurisdiction over economic development; state and local government; and appropriations and financial affairs.

B. Notwithstanding any other provision of law, the procedure for the distribution of surplus state property for the purpose of this subsection shall take priority over any other procedure for the disbursement of surplus state land.

C. Nothing in this subsection shall be construed to pertain to public reserved lands which are exempt from this subsection.

Sec. 4. 30 MRSA c. 239, sub-c II, article 8 is enacted to read:

ARTICLE 8

STATE-OWNED LAND FOR HOUSING

§4791. State-owned land for construction of housing

1. Study of the inventory of state-owned land. The Maine State Housing Authority, following completion of the inventory of state-owned land pursuant to Title 5, section 1742, subsection 23, shall determine sites that will be suitable for the construction of affordable housing to meet the needs of the State, particularly housing for low-income persons.

2. Develop plan. The authority shall develop a plan by which the purpose in subsection 1 can be met.

3. Report to Legislature. The authority shall report the results of its study and the plan, including any necessary implementing legislation, to the joint standing committee of the Legislature having jurisdiction over economic development by January 6, 1989.

Effective September 29, 1987.

CHAPTER 408

Unassigned number

CHAPTER 409

H.P. 1350 — L.D. 1844

AN ACT Relating to Independent Contractors under the Workers' Compensation Act.

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

Sec. 1. 39 MRSA §2, sub-§5, ¶A, as amended by PL 1985, c. 819, Pt. A, §44, is further amended to read:

A. "Employee" includes officials of the State, counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States; and persons operating as sternmen as defined in Title 36, section 5102, subsection 8-A;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire fighters' association, as defined in Title 30, section 3771; volunteer emergency medical services' persons, as defined in Title 32, section 83, subsection 12; and policemen shall be deemed employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services' person, the average weekly wage shall be taken to be the earning capacity of the injured employee in the occupation in which he is regularly engaged. Employers who hire workmen within this State to work outside the State may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such an agreement. Any reference to an employee who has been injured shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable;

(3) Notwithstanding any other provisions of this Act any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in con-

formity with subchapter II; and the executive officer shall remain an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract shall cause the officer to be an employee of the corporation under this Act;

(4) Any person who states in writing to the commission that he waives all the benefits and privileges provided by the workers' compensation laws, provided that the commission shall have found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which he is employed and that this waiver was not a prerequisite condition to employment.

Any person may revoke or rescind his waiver upon 30 days' written notice to the commission and his employer. The parent, spouse or child of a person who has made a waiver under the previous sentence may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commissioner finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation which employs the person who has made the first waiver;

(5) The parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commission finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 1-A; or

(7) An independent contractor; or

(8) If a person employs an independent contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. No insurance company may charge a premium to any person for any employee excluded by this subparagraph.

Sec. 2. 39 MRSA §2, sub-§13 is enacted to read:

13. Independent contractor. "Independent contractor" means a person who performs services for another

under contract, but who is not under the essential control or superintendence of the other person while performing those services. In determining whether such a relationship exists, the commission shall consider the following factors:

A. Whether or not a contract exists for the person to perform a certain piece or kind of work at a fixed price;

B. Whether or not the person employs assistants with the right to supervise their activities;

C. Whether or not the person has an obligation to furnish any necessary tools, supplies and materials;

D. Whether or not the person has the right to control the progress of the work, except as to final results;

E. Whether or not the work is part of the regular business of the employer;

F. Whether or not the person's business or occupation is typically of an independent nature;

G. The amount of time for which the person is employed; and

H. The method of payment, whether by time or by job.

In applying these factors, the commission shall not give any particular factor a greater weight than any other factor, nor shall the existence or absence of any one factor be decisive. The commission shall consider the totality of the relationship in determining whether an employer exercises essential control or superintendence of the person.

Effective September 29, 1987.

CHAPTER 410

S.P. 477 — L.D. 1440

AN ACT to Expand the Authority of the Board of Underground Storage Tank Installers.

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

Sec. 1. 32 MRSA c. 105, first 2 lines, as enacted by PL 1985, c. 496, Pt. A, §2, are repealed and the following enacted in their place:

CHAPTER 104-A

UNDERGROUND OIL AND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLERS

Sec. 2. 32 MRSA §10001, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read: