

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

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  
1988

---

---

**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

---

---

Sec. 5. 30 MRSA §5901, sub-§7 is enacted to read:

7. Law enforcement. Law enforcement.

Sec. 6. 37-B MRSA §782, first ¶, as enacted by PL 1983, c. 460, §3, is amended to read:

A director shall be appointed for each local civil preparedness agency. A director of a civil emergency preparedness agency shall not be at the same time an executive officer or member of the executive body of a political subdivision municipality or interjurisdictional or regional agency of the State or a county commissioner. A director may be removed by the appointing authority for cause.

### PART C

**Savings clause.** Nothing in this Act may be construed to affect any substantive right or obligation gained by any person under the provisions of any law repealed or amended by this Act. All substantive rights and obligations created under the provisions of any law repealed or amended by this Act shall continue in effect. This Act does not apply to any action or proceeding pending on or filed after the effective date of this Act which arises out of any action or failure to act occurring before the effective date of this Act.

All actions taken before the effective date of this Act which were in compliance with provisions repealed or amended by this Act shall be deemed to have been taken in compliance with the provisions of this Act. All ordinances, regulations, bylaws or other official action taken under provisions repealed or amended by this Act shall continue in effect until repealed or amended, except for those which are contrary to the provisions of this Act.

All officers, officials or other persons elected, appointed, hired or otherwise selected to act in any capacity under provisions repealed or amended by this Act shall continue in that capacity under the provisions of this Act.

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

Effective February 26, 1988.

---



---

## CHAPTER 583

H.P. 384 — L.D. 506

### AN ACT to Clarify the Home Rule Authority of Municipalities.

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

Whereas, several court decisions have shown that

municipal home rule is not being implemented to the extent originally intended by the Legislature; and

Whereas, the effective implementation of municipal home rule is of vital importance to municipalities in the State, as well as, to the health, safety and well being of the citizens of the State; and

Whereas, a recodification of the local government laws of the State is pending, and it is desirable to enact legislation clarifying the home rule authority of municipalities before the recodification is enacted in order to provide a smooth transition under the recodification; 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,

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

Sec. 1. 23 MRSA §3651, sub-§1 is enacted to read:

1. Legal objects not defects. Trees, structures and other things which exist in accordance with municipal ordinances are not defects in a public way.

Sec. 2. 26 MRSA §612-A is enacted to read:

§612-A. Municipal licensing

This subchapter shall not be construed to prevent a municipality from acting under its home rule authority granted by Title 30, section 2151-A and by the Constitution of Maine, Article VIII, Part Second, to license or regulate the business of employment agencies or to require a bond.

Sec. 3. 26 MRSA §613, sub-§2, as enacted by PL 1985, c. 623, §1, is amended to read:

2. Civil action. An action may be brought by the injured party, the Attorney General, the Department of Labor or any municipality which has issued a license to the employment agency under Title 30, section 2601-A in accordance with section 612-A.

Sec. 4. 30 MRSA §1901, sub-§4-A is enacted to read:

4-A. Home rule authority. "Home rule authority" means the powers granted to municipalities under chapter 201-A, section 2151-A and the Constitution of Maine, Article VIII, Part Second.

Sec. 5. 30 MRSA §1903, first ¶, is amended to read:

A municipality may receive This section governs a municipality's receipt of money or other property in trust for any specified municipal, benevolent, religious or educational purpose.

**Sec. 6.** 30 MRSA §1904, first ¶, is amended to read:

A municipality may accept This section governs a municipality's receipt of a conditional gift for any specified municipal, benevolent, religious or educational purpose.

**Sec. 7.** 30 MRSA §1913, sub-§5, as amended by PL 1975, c. 329, §4, is further amended to read:

5. Hearings, reports, time limits. Within 30 days after its organizational meeting the charter commission shall hold a public meeting for the purpose of receiving information, views, comments and other pertinent material relative to its functions.

Within 9 months after its election, the charter commission shall prepare a preliminary report including the text of the charter or charter revision which the commission intends shall be submitted to the voters and any explanatory information the commission deems desirable, shall cause such report to be printed and circulated throughout the municipality, and shall provide sufficient copies of the preliminary report to the municipal clerk to permit its distribution to each voter requesting same.

Within 12 months after its election, the charter commission shall submit to the municipal officers its final report, which shall include the full text and an explanation of the proposed new charter or charter revision, such comments as the commission deems desirable, an indication of the major differences between the current and proposed charters and a written opinion by an attorney admitted to the bar of this State that the proposed charter or charter revision ~~is not in conflict with~~ does not contain any provision prohibited by the Constitution of Maine or the general laws. Minority reports if filed shall not exceed 1,000 words.

The time limits on the preparation and submission of preliminary and final reports of the charter commission may be extended by the municipal officers, but in no event for longer than 24 months after the election of the charter commission, if such extension shall be necessary to properly complete such reports, or to have them printed or circulated or to secure the written opinion of an attorney.

All public hearings before a charter commission shall be held within the municipality at such times and places as may be specified in a notice published at least 10 days prior to the hearing in a newspaper having general circulation in the municipality, but hearings may be adjourned from time to time without further published notice.

**Sec. 8.** 30 MRSA §1914, sub-§4, ¶B, as amended by PL 1981, c. 687, §3, is further amended to read:

B. Within 7 days after the public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the

final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment ~~is not in conflict with~~ does not contain any provision prohibited by the general laws or the Constitution of Maine or the Constitution of the United States. In the case of a committee report, a copy shall be filed with the municipal officers.

**Sec. 9.** 30 MRSA §1917, as enacted by PL 1969, c. 563, is repealed.

**Sec. 10.** 30 MRSA §1995-B, sub-§1, as enacted by PL 1985, c. 765, §5, is amended to read:

1. Expenses. The governing bodies of the member governments may appropriate funds under their home rule authority to meet the expenses of the council. Services of personnel, use of equipment and office space and other necessary services may be accepted from members as part of their financial support.

**Sec. 11.** 30 MRSA §2060, first ¶, is amended to read:

The Unless otherwise provided by charter, the following provisions apply to the choice and qualifications of town officials:

**Sec. 12.** 30 MRSA §2151, as amended by PL 1983, c. 802, §§1-4, is repealed.

**Sec. 13.** 30 MRSA §2151-A, is enacted to read:

§2151-A. Ordinance power

Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.

2. Presumption of authority. There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.

3. Standard of preemption. The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section, unless the municipal ordinance in question would frustrate the purpose of any state law.

4. Penalties accrue to municipality. All penalties established by ordinance shall be recovered on complaint to the use of the municipality.

Sec. 14. 30 MRSA §2151-B is enacted to read:

§2151-B. Ordinance requirements

The power to enact ordinances under section 2151-A is subject to the following provisions.

1. Limitation on affecting municipal officials. No change in the composition, mode of election or terms of office of the municipal legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

2. Parking ordinances. The following provisions apply to any parking ordinance enacted by a municipality.

A. Illegal parking of a vehicle in violation of any ordinance is a traffic infraction.

B. The fact that any vehicle is illegally parked or is in a metered space when the time signal on the parking meter for that space indicates no parking permitted without the deposit of a coin or coins is prima facie evidence that the vehicle has been parked illegally by the person in whose name the vehicle is registered.

C. The revenue collected from parking meters shall be used:

- (1) To purchase, maintain and police the meters;
- (2) To construct and maintain public ways;
- (3) To acquire, construct, maintain and operate public parking areas; and
- (4) For no other purpose.

D. The municipality's charges for metered parking must be reasonable.

E. Any motor vehicle registered by a handicapped person is exempt from any parking meter fare when that vehicle properly displays special designating plates or a placard issued under Title 29, sections 252 and 252-A, and may park a length of time which does not exceed twice the time limit otherwise applicable.

3. Use of public ways for sidewalks. The following provisions apply to any ordinance enacted by a municipality setting off portions of its public ways for sidewalks and regulating their use; providing for the removal of snow and ice from the sidewalks by the owner, occupant or agent having charge of the abutting property; establishing crosswalks and safety zones for pedestrians; or regulating pedestrian traffic in the public ways.

A. Any violation of any such ordinance is a traffic infraction.

4. Handicapped parking ordinances. The following provisions apply to any ordinance enacted by a municipi-

ality providing for the establishment of parking spaces for handicapped persons.

A. The number of spaces set aside must be adequate and any on-street spaces must be in appropriate locations for the use of handicapped persons.

B. The municipality must post one of the following signs adjacent to and visible from each handicapped parking space:

(1) A sign consisting of a profile view of a wheelchair with an occupant in white on a blue background with a printed inscription. The inscription shall read: "Handicapped Parking: Special Plate Required. Unauthorized vehicles are subject to a fine"; or

(2) A sign consisting of a profile view of a wheelchair with an occupant in white on a blue background which may bear an inscription.

C. Any new sign erected or any sign replaced after April 11, 1983, must conform to the signs described in paragraph B. Any existing posted signs that do not comply with paragraph B and which were erected before April 11, 1983, are valid for enforcement purposes.

D. Any vehicle parked in a parking space designated by a municipality as a handicapped parking space that does not bear a special registration plate or placard issued under Title 29, section 252, or a similar plate issued by another state, shall be cited for a penalty of \$25 unless otherwise established by local ordinance.

E. Owners of off-street parking may enter into agreements with local or county law enforcement agencies for the policing of stalls and spaces dedicated for handicapped persons' vehicles, under which agreements unauthorized vehicles will be tagged. Where service facilities are established on the Maine Turnpike and on the interstate highway system in this State, the State Police shall enforce any handicapped parking restrictions at those facilities.

5. Buildings, structures, mobile homes, travel trailers and equipment. The following provisions apply to any ordinance enacted by a municipality concerning buildings, structures, mobile homes, travel trailers intended to be used for human habitation or equipment.

A. Any building, structure, mobile home or travel trailer intended to be used for human habitation and travel trailer parking facility or equipment existing in violation of such an ordinance is a nuisance.

6. Falling ice and snow. The following provisions apply to any ordinance enacted by a municipality to protect persons and property from injury by requiring building owners or lessees to install roof guards to prevent the fall of snow and ice from the roofs of their buildings.

A. The municipal officers shall send a written notice to the owner or lessee who fails to comply with such an ordinance.

B. If the owner or lessee does not install effective roof guards within 14 days after notice is sent, he is liable for all injury caused by his failure to do so.

C. After the 14-day period expires, the municipal officers may have proper roof guards installed at the municipality's expense, the reasonable charges for which may be recovered from the owner or lessee by special assessment as provided by Title 25, section 2393.

D. Any building existing in violation of such an ordinance is a nuisance.

7. Regulation of retail sales. The following provisions apply to any ordinance enacted by a municipality regulating the business of hawking and peddling of merchandise at retail.

A. No such ordinance may apply to persons selling merchandise by sample, list or catalogue for future delivery; farm, dairy, orchard, fish and forest products of their own production; or newspapers and religious literature.

8. Pension system. The following provisions apply to any ordinance enacted by a municipality to establish and maintain a general system of contributory pensions for the benefit of its officials and employees.

A. Money appropriated by any municipality for the operation of a pension system together with money contributed by any person eligible to participate in the system shall be administered by a board created for that purpose and shall be kept in a separate fund to be invested and disbursed by the board.

B. A municipality which establishes such a system may contract with any insurance company licensed to do business in the State for the payment of pension benefits.

C. Any pension funds held by a municipality or by a board established by it are exempt from attachment or trustee process.

9. Public telephones. The following provisions apply to any ordinance enacted by a municipality or contract entered into under such an ordinance which regulates the placing and maintenance of public pedestal telephones along the public ways within the compact or built-up section of the municipality as defined in Title 23.

A. The contracts may be made for terms not exceeding 3 years.

B. Pedestal telephones shall be located in accord-

ance with applicable municipal ordinances and within areas covered by municipal parking ordinances.

C. Telephones located in accordance with these ordinances and contracts are not defects in public ways.

D. Telephone booths may be located in the manner provided for pedestal phones, provided that they be placed on sidewalks at least 4 feet from any curb.

E. Revenues received from telephone contracts shall be credited to general funds.

Sec. 15. 30 MRSA §2152, as amended by PL 1973, c. 680, §4, is repealed.

Sec. 16. 30 MRSA §2152-C is enacted to read:

§2152-C. Authority of municipal officers to enact ordinances

1. Authority to enact ordinances. The municipal officers may enact ordinances in the following areas.

A. The municipal officers may establish a method by which persons charged with the violation of ordinances governing pedestrian traffic on the public ways may waive all court action by payment of specified fees within stated periods of time.

B. The municipal officers may provide for the regulation of motor vehicles as defined in Title 29, section 1, subsection 7, on icebound inland lakes during the hours from sunset to sunrise of the following day. The Maine Land Use Regulation Commission shall regulate motor vehicles on icebound inland lakes which are completely encompassed by unorganized territories. A village corporation and a plantation shall have the same powers and duties as a municipality under this subsection. Motor vehicles on icebound inland lakes which are abutted by an unorganized territory and either one or more municipalities, village corporations or plantations, in any combination, shall be regulated by those municipalities, village corporations or plantations, as provided in subparagraphs (1) and (2).

No ordinance authorized by this paragraph is valid unless:

(1) Each municipality abutting a lake has enacted an identical local ordinance, in which case the ordinance of any municipality is in effect on the entire lake and any law enforcement officer from any of those municipalities may enforce the ordinance on any portion of the lake; or

(2) In cases where a lake is divided by an easily identifiable boundary into 2 or more nearly separate bodies, each municipality abutting one of the distinguishable portions of the lake has enacted an identical local ordinance. The ordinance of any municipality is in effect only on that distinguishable

portion of the lake and any law enforcement officer from any of those municipalities may enforce the ordinance anywhere on that portion of the lake.

2. Exclusive authority. The municipal officers have the exclusive authority to enact ordinances in the following areas.

A. The municipal officers may regulate the operation of all vehicles in the public ways and on publicly owned property.

(1) The municipal officers may establish a method by which persons charged with the violation of parking regulations may waive all court action by payment of specified fees within stated periods of time.

(2) The municipal officers may establish specially designated parking areas for motor vehicles operated by handicapped persons.

(3) The violation of any ordinance authorized by this paragraph is a traffic infraction.

B. The municipal officers may regulate or establish a licensing authority which may regulate rates of fare, routes and standing places of vehicles for hire, except where jurisdiction rests with the Public Utilities Commission and may require an owner or operator of a vehicle for hire to carry a liability insurance policy in amount and form satisfactory to the licensing authority as a condition precedent to the granting of a license to operate.

C. A village corporation shall have the same powers and duties as a municipality under this subsection.

3. Method of enactment. When enacting ordinances under this section, the municipal officers shall give 7 days' notice of the meeting at which the ordinances are to be proposed in the manner provided for town meetings. Unless otherwise provided, these ordinances take effect immediately.

Sec. 17. 30 MRSA §2156, sub-§2, as amended by PL 1973, c. 788, §137, is further amended to read:

2. Adoption and amendment of codes by reference. Any municipality may adopt or repeal an ordinance which incorporates adopted or repealed by a municipality under its home rule authority may incorporate by reference any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of such code in full. At least 3 copies of such code, portion or amendment, which is incorporated or adopted by reference, shall be filed in the office of the clerk of the municipality and there kept available for public use, inspection and examination. The filing requirements prescribed shall not be deemed to be complied with unless the required copies of such codes, portion or amendment or public record are filed with the clerk of such municipality for a period of 30 days prior

to the adoption of the ordinance which incorporates such code, portion or amendment by reference. If such a code, portion or amendment is promulgated by a metropolitan or regional agency, the adopting municipality must be within the territorial boundaries of the agency. The filing requirements for ordinances adopted pursuant to the Mandatory Shoreland Zoning and Subdivision Control Act shall be deemed to be met if said codes are on file in the office of municipal clerk by July 1, 1974.

Sec. 18. 30 MRSA §2253, sub-§4 is enacted to read:

4. Home rule authority. Under its home rule authority, a municipality may apply different provisions governing the existence of vacancies in municipal offices and the method of filling those vacancies as follows:

A. Any change in the provisions of this section relating to municipal officers or a school committee must be accomplished by charter; and

B. Any change in the provisions of this section relating to any other municipal office may be accomplished by charter or ordinance.

Sec. 19. 30 MRSA §2256, as amended by PL 1983, c. 664, is further amended to read:

#### §2256. Municipal functions

In addition to those offices and departments required by general law, a municipality may provide, ~~by ordinance,~~ under its home rule authority for the performance of ~~all~~ necessary ~~any~~ municipal functions ~~function.~~ Except where specifically provided by statute, municipal charter or municipal ordinance, the municipal officers shall appoint all town officials and employees required by general law, by municipal charter or by municipal ordinance and may remove such officials and employees for cause, after notice and hearing. Except as specifically provided otherwise by charter or ordinance, any reference to cause and hearing in this Title shall only apply to an employee who has completed a reasonable period of probation as established by the municipality. Such periods of probation shall never exceed 6 calendar months or the length of time in effect in a municipality on January 1, 1984, whichever is greater. Unless otherwise specified, the term of all municipal officials shall be one year.

Sec. 20. 30 MRSA §2315, as enacted by PL 1969, c. 438, §1, is repealed.

Sec. 21. 30 MRSA §2352, last ¶, is amended to read:

~~A If a municipality may provide provides~~ provides for a salary to be paid to the clerk as full compensation, ~~in which case~~ the fees accrue to the municipality.

Sec. 22. 30 MRSA §2361, sub-§1, as amended by PL 1979, c. 104, is further amended to read:

1. Appointment. Except as provided in municipal



charter, municipal ordinance or section 2317, subsection 1, paragraph F, the municipal officers may appoint for a definite term, control and fix the compensation of police officers, ~~unless the municipality has provided otherwise under section 2152, subsection 2.~~ Police officers, including chiefs of police, may be removed for cause after notice and hearing.

**Sec. 23.** 30 MRSA §2361, sub-§2, as amended by PL 1987, c. 106, §1, is further amended to read:

2. **Powers.** Police officers shall be empowered to serve criminal and traffic infraction processes and to arrest and prosecute offenders of the law. Except for the purpose of retaking a prisoner whom he has arrested and who has escaped, or for the purpose of taking a person before the District Court, or for the purpose of executing a mittimus given to him by such court, or for the purpose of pursuing a person who has gone into another municipality and for whose arrest a police officer has a warrant, or as provided for in section 2366, no police officer may have any authority in criminal or traffic infraction matters beyond the limits of the municipality in which he is appointed. A police officer has all the statutory powers of a constable, except as limited by municipal ordinance or charter.

**Sec. 24.** 30 MRSA §2362, as amended by PL 1979, c. 115, is further amended to read:

#### §2362. Special police officers

Special police officers of limited jurisdiction may be appointed for a term of not more than one year and as provided in section 2361, subsection 1 and shall have all powers of a police officer, except as specifically provided by municipal ordinance, charter or the certificate of appointment. A constable's certificate of appointment shall state whether or not he is allowed to carry a weapon, concealed or unconcealed, in the performance of his duties. If a constable is restricted in carrying a weapon, this prohibition shall not be affected by any weapon's license the individual may possess.

**Sec. 25.** 30 MRSA §2411, sub-§1, as amended by PL 1979, c. 218, §3, is further amended to read:

1. **Establishment.** A municipality may establish a board of appeals under its home rule authority and, unless provided otherwise by municipal charter or ordinance, the municipal officers shall appoint the members and determine their compensation. It is intended that all boards of appeals established subsequent to September 23, 1971 be governed by this section.

**Sec. 26.** 30 MRSA §2411, sub-§2, ¶E, as amended by PL 1975, c. 770, §165, is further amended to read:

E. Municipalities may by ordinance provide under their home rule authority for a board of appeals with associate members not to exceed 3 in number. In the event there are 2 or 3 associate members, the chair-

man shall designate which shall serve in the stead of the absent member.

**Sec. 27.** 30 MRSA §2411, sub-§4, as amended by PL 1977, c. 501, §2, is further amended to read:

4. **Jurisdiction.** Any municipality establishing a board of appeals ~~under this section~~ may vest the board with the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, rule or failure to act of any officer, board, agency or other body where such appeal is necessary, proper or required. No board ~~created under this section~~ may assert jurisdiction over any matter unless the municipality has by ordinance or charter specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board. Any board of appeals ~~operating under this section~~ shall hear any appeal submitted to the board in accordance with Title 28, section 702.

**Sec. 28.** 30 MRSA §2454, sub-§5, as amended by PL 1985, c. 305, is further amended to read:

5. **Rules and regulations.** No permit may be granted for an automobile graveyard or junkyard that is not in conformity with the rules promulgated under section 2459; municipal officers or county commissioners as provided for in section 2452 may apply more stringent restrictions, limitations and conditions in considering whether to grant or to deny any permit for an automobile graveyard or junkyard adjacent to any highway. Nothing in this chapter may be construed to ~~prevent a municipality from enacting~~ limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards and junkyards which concern such other standards as the municipality determines reasonable, including, but not limited to: Conformance with state and federal hazardous waste regulations; fire safety; traffic safety; levels of noise which can be heard outside the premises; distance from existing residential or institutional uses; and the effect on ground water and surface water, provided that municipal ordinances on ground water are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection concerning automobile graveyards and junkyards. Municipal officers or county commissioners may consider compliance with these local ordinances in deciding whether to grant or deny a permit for an automobile graveyard or junkyard and in attaching conditions of approval to the grant of a permit.

**Sec. 29.** 30 MRSA c. 215, sub-c. I-A, is enacted to read:

#### SUBCHAPTER I-A

#### MUNICIPAL LICENSING AUTHORITY

#### §2471. Municipal licensing authority

The municipal officers are the licensing authority of

a municipality, unless otherwise provided by charter or ordinance or by law.

Sec. 30. 30 MRSA c. 215, sub-c. I-B is enacted to read:

SUBCHAPTER I-B

REGULATION OF BUILDINGS

§2481. Permits for buildings

This subchapter applies to any municipal ordinance requiring a permit in connection with:

1. Construction, demolition, improvement or alteration. The construction, demolition, improvement or alteration of any building;

2. Safety features, light, ventilation and sanitation facilities. The maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of any building;

3. Sanitation and parking facilities for mobile homes and travel trailers. The sanitation and parking facilities for mobile homes, travel trailers intended to be used for human habitation and travel trailer parking facilities;

4. Equipment in or connected to buildings. The installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; and

5. Occasional use; public assembly. The operation of a building which is used occasionally or regularly for public assembly.

A. As used in this subsection, "building used for public assembly" means a room or space in or on any structure which is used for the gathering of 100 or more persons for any purpose, and includes any connecting room or space on the same level, above or below, which has a common entrance.

§2482. Nuisance

Any building, structure, travel trailer parking facility or equipment existing in violation of an ordinance subject to this subchapter is a nuisance.

§2483. Permits

The provisions of this section apply to any ordinance described in section 2481.

1. Applicability. The provisions of the ordinance which pertain to buildings apply equally to all structures including, wharves, piers and pilings and parts of them.

2. Licensing authority. The building inspector is the licensing authority, unless otherwise provided by the municipality.

3. Application; issuance of permit. An application for a permit must be in writing and shall be signed by the applicant and directed to the building inspector. The failure of the building inspector to issue a written notice of his decision, directed to the applicant, within 30 days from the date when the application is filed constitutes a refusal of the permit. The building inspector may not issue any permit for a building or use for which the applicant is required to obtain a license under Title 38, section 413 until the applicant has obtained that license; nor may the building inspector issue any permit for a building or use within a land subdivision, as defined in section 4956, unless that subdivision has been approved in accordance with that section.

4. Powers and duties of enforcement officers. Ordinances defining the duties of the building inspector and other enforcement officers, not contrary to Title 25, chapter 313, may be enacted under a municipality's home rule authority. All enforcement officers designated by ordinance shall be given free access at reasonable hours to all parts of buildings regulated by ordinance.

5. Appeal. An appeal may be taken from any order issued by the building inspector or from the licensing authority's refusal to grant a permit to the municipal officers or to a board of appeals established under section 2411.

A. On an appeal in writing to the municipal officers, they shall at their next meeting affirm, modify or set aside the decision of the building inspector according to the terms of the pertinent ordinance. They may permit a variance from the terms of an ordinance where necessary to avoid undue hardship, provided that there is no substantial departure from the intent of the ordinance. They may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the municipality. The failure of the municipal officers to issue a written notice of their decision, directed to the appellant, within 30 days from the date of filing of the appeal constitutes a denial of the appeal. If a municipality has by ordinance required that all such appeals be taken to a board of appeals, the procedure shall be the same as in appeals directed to the municipal officers, unless the municipality has provided otherwise.

B. A further appeal may, within 30 days, be taken by any party to Superior Court from any order, relief or denial in accordance with Maine Rules of Civil Procedure, Rule 80B. The hearing before the Superior Court shall be a trial de novo without a jury.

§2484. Public building violation; liability

1. Written order sent. The building inspector shall send a written order to the owner or lessee of a building used for public assembly, requiring any conditions which exist in violation of an ordinance to be corrected within 30 days after the order is sent.

2. Liability. After the expiration of the 30-day period, the owner or lessee is liable for all injury caused by his failure to correct any conditions cited in the order under subsection 1, and the building inspector shall or der the building vacated.

Sec. 31. 30 MRSA §2555, first ¶ is amended to read:

The governing body of any city or any town, at a town meeting duly called therefor, may provide by resolution or ordinance under its home rule authority for the inspection of electrical installations within the limits of such municipality and may appoint an electrical inspector who shall enforce this subchapter and any applicable resolution or ordinance within his jurisdiction. Any city or town may join with one or more other cities or towns in paying for the services of said electrical inspector, provided said cities or towns have duly authorized the appointment of such inspector. Said ordinance or resolution shall declare whether the electrical inspection in said town or city shall be applicable to all or any of the following:

Sec. 32. 30 MRSA c. 215, sub-c. IV as amended is repealed.

Sec. 33. 30 MRSA §3221, sub-§1, as repealed and replaced by PL 1985, c. 612, §4, is amended to read:

1. Municipal ordinances. Municipalities may adopt and, if adopted, shall enforce ordinances under their home rule authority which are more restrictive than rules governing plumbing or subsurface waste water disposal systems adopted by the Department of Human Services. The department may provide technical assistance to municipalities in the development and adoption of ordinances under this subchapter. The municipality shall enforce any such ordinance.

Sec. 34. 30 MRSA §3221, sub-§4, as repealed and replaced by PL 1985, c. 612, §4, is amended to read:

4. Subsurface waste water disposal system. "Subsurface waste water disposal system" means any system for disposing of wastes or waste waters on or beneath the surface of the earth, including, but not limited to, septic tanks, drainage fields, grandfathered cesspools, holding tanks or any other fixture, mechanism or apparatus used for those purposes, but does not include any discharge system licensed under Title 38, section 414, surface waste water disposal system or any municipal or quasi-municipal sewer or waste water treatment system.

No person may erect a structure that requires a subsurface waste water disposal system until documentation has been provided to the municipal officers that the disposal system can be constructed in compliance with regulations promulgated under Title 22, section 42, and this section.

For purposes of this section, "expansion" means the enlargement or change in use of a structure using an ex-

isting subsurface waste water disposal system that brings the total structure into a classification that requires larger subsurface waste water disposal system components under regulations promulgated by Title 22, section 42, and this section.

No person may expand a structure using a subsurface waste water disposal system until documentation has been provided to the municipal officers and a notice of the documentation recorded in the appropriate registry of deeds that, in the event of a future malfunction of the system, the disposal system can be replaced and enlarged to comply with the rules promulgated under Title 22, section 42, and any municipal ordinances ~~promulgated under this section governing subsurface waste water disposal systems.~~ No requirements of these rules and ordinances may be waived for an expanded structure. The department shall prescribe the form of the notice to be recorded in the registry of deeds. The notice shall include a site plan showing the exact location of the replacement system, the approximate location of lot lines and the exact location of existing wells serving the lot on which the replacement system will be located and those located on abutting lots. Copies of the notice shall be sent by certified mail, return receipt requested, to all owners of abutting lots. The person seeking to expand a structure shall be responsible for providing that notice. Following recording of notice as provided in this subsection, it is a violation of this section for any abutting landowner to install a well on his property in a location which would prevent the installation of the replacement septic system. The owner of the lot on which the replacement system will be installed may not erect any structure on the proposed site of the replacement system or conduct any other activity which would prevent the use of the designated site for the replacement system. Any person who violates this section shall be penalized in accordance with section 4966. The municipality or the department may seek to enjoin violations of this section. In the prosecution of a violation by a municipality, the court may award reasonable attorneys' fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

Sec. 35. 30 MRSA §3552 is repealed.

Sec. 36. 30 MRSA §3601 is repealed.

Sec. 37. 30 MRSA §3751, as amended by PL 1979, c. 545, §6, is repealed.

Sec. 38. 30 MRSA §3751-A is enacted to read:

§3751-A. Municipal forests

Under its home rule authority, a municipality may acquire lands for the purpose of forestation, or for reclaiming and planting forest trees on those lands.

Sec. 39. 30 MRSA §§3752, 3753 and 3754 are repealed.

Sec. 40. 30 MRSA §3755, as repealed and replaced by PL 1983, c. 634, is repealed.

Sec. 41. 30 MRSA §3756 is repealed.

Sec. 42. 30 MRSA §3773, sub-§1, as enacted by PL 1973, c. 680, §5, is amended to read:

1. Term; compensation. Unless otherwise provided by contract or, municipal ordinance, or charter, fire chiefs shall be appointed for an indefinite term. The compensation of the fire chief shall be determined by the municipal officers.

Sec. 43. 30 MRSA §3773, sub-§2, ¶B, as enacted by PL 1973, c. 680, §5, is amended to read:

B. Unless otherwise provided by administrative ordinance or charter, be authorized to employ all municipal firefighters, appoint a deputy and other officers in a municipal fire department; and remove them for cause after notice and hearing;

Sec. 44. 30 MRSA §3777, as enacted by PL 1973, c. 680, §5, is amended to read:

§3777. Fire aid to other municipalities

Unless otherwise provided by municipal ordinance or charter, the municipal officers may authorize the municipal fire department to aid in extinguishing fires in other municipalities. Municipal and volunteer firefighters when assisting other municipalities shall have the same privileges and immunities as when acting in their own municipality. Any municipality may compensate an aiding municipality or incorporated volunteer fire associations for damage to the aiding department or associations' property and to any firefighter or to his widow or dependents on account of injury or death sustained in the course of rendering aid to that municipality.

Sec. 45. 30 MRSA §3801, as amended by PL 1965, c. 203, §1, is repealed.

Sec. 46. 30 MRSA §3851, first ¶, as amended by PL 1977, c. 52, §1, is further amended to read:

Municipalities Unless otherwise provided under their home rule authority, municipalities may establish conservation commissions as provided in this section. The municipal officers may appoint not less than 3, nor more than 7 conservation commissioners. The terms of office initially shall be one, 2 and 3 years, such that the terms of approximately 1/3 of the members shall expire each year, or until the appointment of their successors, and their successors shall be appointed for terms of 3 years each. Any commissioner presently serving a term greater than 3 years may serve until his term expires. The appointment of his successor shall be for a term of 3 years. Such commission may have the care and superintendence of the public parks and, subject to the approval of the municipal officers, direct the expenditure of all moneys

appropriated for the improvement of the same. Such commission shall conduct research, in conjunction with the planning board, if any, into the local land areas and shall seek to coordinate the activities of conservation bodies organized for similar purposes and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary. It shall keep an index of all open areas, publicly or privately owned, within the municipality, including open marsh lands, swamps and other wet lands, for the purpose of obtaining information pertinent to proper utilization, protection, development or use of such open areas and may recommend to the municipal officers or any municipal body or board, or any body politic or public agency of the State of Maine a program for the better utilization, protection, development or use of such areas, which may include the acquisition of conservation easements. Any body politic or public agency of the State of Maine conducting planning operations with respect to open areas within a municipality having a conservation commission shall notify such conservation commission of all plans and planning operations at least 30 days prior to the implementation of any action thereunder. A conservation commission may acquire land in the name of the municipality for any of the purposes set forth in this section with the approval of the legislative body. A commission may receive gifts in the name of the municipality for any of its purposes and shall administer the same for such purposes subject to the terms of the gift. It shall keep records of its meetings and activities and shall make an annual report to the municipality to be published as part of the annual municipal report.

Sec. 47. 30 MRSA §3861, first ¶, as enacted by PL 1981, c. 122, is repealed and the following enacted in its place:

Unless otherwise provided under their home rule authority, municipalities may establish energy commissions as provided in this section.

Sec. 48. 30 MRSA §3902, as amended by PL 1971, c. 378, is repealed.

Sec. 49. 30 MRSA §4257, as repealed and replaced by PL 1985, c. 612, §14, is amended to read:

§4257. Sewer connections

As may be required by municipal ordinance under a municipality's home rule authority, the owner of each lot or parcel of land upon which a building has been constructed which abuts upon a street or public way containing a sewer shall connect that building with the sewer and shall cease to use any other method for the disposal of waste water. All such connections shall comply with the applicable municipal ordinance which may provide for a reasonable charge for making the connections.

Sec. 50. 30 MRSA §4263, as repealed and replaced by PL 1967, c. 429, §5, is amended to read:

§4263. Alternative method

This chapter shall not be construed to limit a municipality's home rule authority. Sections 4251 to 4262 shall be deemed considered to provide an additional and alternative method for the doing of the things authorized described and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided the issuance of revenue bonds or revenue refunding bonds under said sections need not comply with the requirements of any other general or special law applicable to the issuance of bonds.

Sec. 51. 30 MRSA §4962, sub-§1, as amended by PL 1983, c. 170, is further amended to read:

1. Terms. Any zoning ordinance, or provision thereof, adopted pursuant to the home rule power granted to all municipalities under the Constitution, Article VIII, Part Second and chapter 201-A, specifically section 1917, under a municipality's home rule authority shall be subject to the following. In the preparation of a zoning ordinance the public shall be given an adequate opportunity to be heard.

A. Such ordinance or provision shall be pursuant to and consistent with a comprehensive plan adopted by its legislative body.

B. A zoning map describing each zone established or modified shall be adopted as part of the zoning ordinance or incorporated therein. Any conflict between said zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

C. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only where on petition, notice and public hearing the Public Utilities Commission has determined that such exemption is reasonably necessary for public welfare and convenience.

D. County and municipal governments, and districts shall be governed by the provisions of any zoning ordinance.

E. Any zoning ordinance shall be advisory with respect to the State.

F. Any property or use existing in violation of any zoning ordinance is a nuisance.

G. Any zoning ordinance may provide that when a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality, if the petitioner fails

to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

H. For the purposes of this subchapter, "zoning" is defined as the division of a municipality into districts and the prescription and reasonable application of different regulations in each district.

I. Any zoning ordinance may include provisions for conditional or contract zoning. For the purposes of this subchapter, "conditional zoning" means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned. "Contract zoning" means the process by which the property owner, in consideration of the rezoning of his property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties. All rezoning under this paragraph shall:

- (1) Be consistent with the municipal comprehensive plan;
- (2) Establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and
- (3) Only include conditions and restrictions which relate to the physical development or operation of the property.

The municipal reviewing authority, as defined in section 4956, subsection 2, shall conduct a public hearing prior to any property being rezoned under this paragraph. Notice of this hearing shall be posted in the municipal office at least 14 days prior to the public hearing and shall be published in a newspaper of general circulation within the municipality at least 2 times, the date of the first publication to be at least 7 days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

Sec. 52. 30 MRSA §4963, sub-§3, as amended by PL 1977, c. 630, §6, is further amended to read:

3. Variance. A variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:

- A. That the land in question cannot yield a reasonable return unless a variance is granted;
- B. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

C. That the granting of a variance will not alter the essential character of the locality; and

D. That the hardship is not the result of action taken by the applicant or a prior owner.

A Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may only be granted for a use permitted in a particular zone.

Sec. 53. 30 MRSA §5101 is amended to read:

§5101. General authority

A municipality may raise or appropriate money for any public purpose, including, but not limited to, the purposes specified in sections 5102 to 5108.

Sec. 54. 30 MRSA §5106, sub-§2, ¶A, is repealed.

Sec. 55. 30 MRSA §5106, sub-§5, ¶A, is repealed.

Sec. 56. 30 MRSA §5106, sub-§8, ¶A, is repealed.

Sec. 57. 30 MRSA §5109, first ¶, as repealed and replaced by PL 1975, c. 389, §2, is repealed and the following enacted in its place:

A municipality's acceptance of grants is governed by this section.

Sec. 58. 30 MRSA §5621, as enacted by PL 1977, c. 390, §4, is amended to read:

§5621. Planning, zoning and subdivision control

Plantations may exercise the powers enact planning and zoning ordinances, subject to the same guidelines and standards which are granted apply to municipalities in chapter 239, subchapters V and VI, and shall adopt ordinances or regulations necessary to exercise and enforce these powers including the adoption of ordinances providing for the regulation of buildings and equipment. Such ordinances shall comply with the provisions in section 5622.

Sec. 59. 30 MRSA §§5623 to 5629 are enacted to read:

§5623. Licensing ordinance power

A plantation has the same power to enact ordinances with respect to licenses or permits issued under chapter 215 as a municipality.

§5624. Recreation

A plantation may acquire and maintain real estate and personal property for recreational purposes, and may establish and conduct a recreational program.

1. Joint operation. A plantation may act jointly with another plantation or a municipality to establish and conduct a recreational program and may contract with another plantation or a municipality for its operation.

§5625. Employment of historian

A plantation may appoint a historian and determine his duties and compensation.

§5626. Plantation forest

A plantation may acquire land by purchase, gift or bequest for the purpose of forestation or to reclaim and plant forest trees upon that land. The assessors may appoint a forester whose duties are to make and enforce all necessary regulations and to care for and maintain the land as a forest producing area. A plantation may establish a plantation forest reserve account to fund the operation and maintenance of the forest in accordance with sections 5201 and 5202.

§5627. Devises and gifts for open areas, public parks and playgrounds

Any plantation may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of public parks and playgrounds and open areas, as defined in section 3851, by plantation meeting vote. If any plantation receives any such bequest or gift, and that plantation is later incorporated into a town, the bequests and gifts and their proceeds fully vest in that town.

§5628. Conservation and energy commissions

Plantations may provide for a conservation commission or an energy commission as described in sections 3851 and 3861.

§5629. Sewers and drains

A plantation may enact ordinances with respect to sewers and drains subject to the restrictions that apply to municipalities under chapter 237.

Sec. 60. 38 MRSA §401, as amended by PL 1985, c. 465, §1, is further amended by adding at the end a new paragraph to read:

This article is not intended to limit a municipality's power to enact ordinances under Title 30, section 2151-A, to protect and conserve the quality and quantity of ground water.

Sec. 61. Savings clause. Nothing in this Act may be construed to affect any substantive right or obligation gained by any person under the provisions of any law repealed or amended by this Act. All substantive rights and obligations created under the provisions of any law repealed or amended by this Act continue in effect.

This Act shall not apply to any action or proceeding pending on or filed after the effective date of this Act and which arises out of any action or failure to act occurring before the effective date of this Act.

All actions taken before the effective date of this Act which were in compliance with provisions repealed or amended by this Act shall be deemed to have been taken in compliance with the provisions of this Act. All ordinances, regulations, bylaws or other official action taken under provisions repealed or amended by this Act shall continue in effect until repealed or amended, except for those which are contrary to the provisions of this Act.

All officers, officials or other persons elected, appointed, hired or otherwise selected to act in any capacity under provisions repealed or amended by this Act shall continue in that capacity under the provisions of this Act.

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

Effective February 26, 1988.

## CHAPTER 584

H.P. 1461 — L.D. 1972

**AN ACT to Add the Commissioner of Public Safety to the Alcohol and Drug Abuse Planning Committee.**

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

**Sec. 1.** 22 MRSA §7131, sub-§2, ¶¶C and D, as enacted by PL 1983, c. 464, §19, are amended to read:

C. The Commissioner of Human Services; and

D. The Commissioner of Mental Health and Mental Retardation; and

**Sec. 2.** 22 MRSA §7131, sub-§2, ¶E is enacted to read:

E. The Commissioner of Public Safety.

Effective August 4, 1988.

## CHAPTER 585

S.P. 729 — L.D. 1988

**AN ACT Relating to the Powers of the Maine Youth Center Employees.**

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

Whereas, the authority provided by this bill is necessary to help preserve the public peace; 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,

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

34-A MRSA §3813 is enacted to read:

### §3813. Power of center employees

The Maine Youth Center employees have the same power as sheriffs in their respective counties to search for and apprehend escapees from the center, when authorized to do so by the superintendent.

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

Effective February 26, 1988.

## CHAPTER 586

H.P. 1491 — L.D. 2041

**AN ACT to Amend Reporting Deadlines under the Therapeutic Pharmaceutical Monitoring Panel.**

**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 expire until after the reporting deadline has passed; and

Whereas, it is imperative that the Therapeutic Pharmaceutical Monitoring Panel be given sufficient time to prepare its report to the Legislature; 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,

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

32 MRSA §2428, sub-§6, as enacted by PL 1987, c. 439, §15 and c. 542, Pt. K, §§15 and 20, is amended to read:

6. Report to the Legislature and Governor. The panel shall prepare and submit reports to the Governor, the President of the Senate, the Speaker of the House, the State Board of Optometry and the State Board of Registration in Medicine. The reports shall summarize the