

MAINE STATE LEGISLATURE

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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
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Twin City Printery
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PUBLIC LAWS

OF THE

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AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

spouse is entitled to a retirement benefit which is 1/2 of the amount being paid at the time of the officer's death. The payment shall continue for the remainder of the surviving spouse's lifetime or until he becomes the dependent of another person.

For the purpose of this paragraph, "surviving spouse" means the person the retired officer was married to at the time of retirement or, if the retired officer is divorced or widowed and remarried, the term means the person legally married to the officer at the time of the officer's death.

Sec. 3. 5 MRSA §17852, sub-§6, ¶B, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Upon the death of a law enforcement officer of the Department of Marine Resources who is receiving a retirement benefit after qualifying under section 17851, subsection 6, without optional modification, or is retired under article 3, the surviving spouse is entitled to a retirement benefit which is 1/2 of the amount being paid at the time of the officer's death. The payment shall continue for the remainder of the surviving spouse's lifetime or until he becomes the dependent of another person.

For the purpose of this paragraph, "surviving spouse" means the person the retired officer was married to at the time of retirement or, if the retired officer is divorced or widowed and remarried, the term means the person legally married to the officer at the time of the officer's death.

Sec. 4. **Application.** This new draft shall apply to all members retiring after September 30, 1985, and to the determination of spousal benefits in a case where a member retired prior to September 30, 1985, but dies after September 30, 1985.

Effective August 4, 1988.

CHAPTER 653

H.P. 1854 — L.D. 2537

AN ACT to Provide for Effective and Timely Public Notice of Hearings Conducted by State Boards and Agencies.

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

Whereas, public representation at hearings conducted by state boards and agencies is essential in resolving matters directly affecting the public health and welfare; and

Whereas, public participation is limited by ineffective public notification practices; and

Whereas, newspaper notices required by law are often in small print and buried in the legal section of the newspaper; and

Whereas, inadequate mailing lists maintained by state boards and agencies, combined with short notice periods further limit effective and timely notice; 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. 5 MRSA §9051-A is enacted to read:

§9051-A. Notice of environmental agency adjudicatory proceedings

Whenever adjudicatory hearings are held by the Department of Conservation, the Department of Environmental Protection and the Board of Pesticides Control, the hearings shall be held in accordance with the provisions of this section.

1. Notice of opportunity for hearing; license applications with substantial public interest. When the applicable law or the Constitution of Maine requires that an opportunity for a hearing be provided or an agency deems in any proceeding that a substantial public interest is involved, notice shall be given as follows.

A. Notice of the pending license application shall be provided 30 days next prior to the date of the expected date of an agency decision. Notice shall be provided by mail to:

(1) The person or persons whose legal rights, duties or privileges are at issue;

(2) The municipality or municipalities affected by the license application, as determined by the agency or board to the best of its ability;

(3) The county, if the affected locality as determined by the agency or board to the best of its ability is an unorganized territory;

(4) The Legislators of the geographic area or areas affected by the issue; and

(5) Persons who have made timely requests to be notified of an agency deliberation of a specific license application.

Interested persons may prepare and submit evidence and argument to the agency and request a hearing on the issue.

2. Hearing required. When a hearing is required by the Constitution of Maine, the applicable law or by agency regulation or has been requested pursuant to subsection 1, notice of the hearing shall be provided 30 days next prior to the scheduled initial hearing.

A. The notice shall be provided by mail to:

- (1) The person or persons whose legal rights, duties or privileges are at issue;
- (2) The municipality or municipalities affected by the license application, as determined by the agency or board to the best of its ability;
- (3) The county, if the affected locality as determined by the agency or board to the best of its ability is an unorganized territory;
- (4) The Legislators of the geographic area or areas affected by the issue;
- (5) Intervenors;
- (6) Persons who have made timely requests to be notified of a specific hearing; and
- (7) Persons who have filed a written request, within the calendar year, to be notified of hearings.

In the event that new hearings on a pending license application or an existing license are required, notice shall be provided 30 days next prior to the scheduled hearing as herein provided. When hearings are continued with respect to a license application, this 30 days' notice shall not apply.

3. Notice to the public. Notice to the public shall be given by:

A. Publication twice in a newspaper of general circulation in the area of the proposed activity and in areas affected by the license application as determined by the agency or board to the best of its ability.

- (1) Notice shall be published in plain and clear English which can be readily understood by the general public.
- (2) The notice shall be published in the legal notices section in a form readily noticeable to the general public.
- (3) With respect to notice of an opportunity for a hearing pursuant to subsection 1, the date of the first publication shall be 30 days next prior to the date of the expected agency decision on the license application.
- (4) With respect to notice of a hearing pursuant to subsection 2, the date of the first publication shall be 30 days next prior to the hearing.

(5) With respect to notice of an opportunity for a hearing pursuant to subsection 1, the date of the second publication shall be at least 7 days and no more than 13 days before the date of the expected agency decision on the license application.

(6) With respect to notice of an opportunity for a hearing pursuant to subsection 2, the date of the second publication shall be at least 7 days and no more than 13 days before the date of the hearing;

B. The issuance of press releases describing the date, place, time and nature of the hearing. The press releases shall be sent at least 7 days and no more than 13 days before the date of the expected agency decision or the scheduled hearing to the news desks of television stations and newspapers of general circulation in the area of the proposed activity; and

C. Public service radio and television announcements. The first announcement shall be provided to radio and television stations 21 days next prior to the first hearing and the 2nd announcement shall be provided no less than 7 and no more than 10 days prior to the first scheduled hearing.

Sec. 2. 5 MRSA §9052, sub-§5 is enacted to read:

5. Cancellation or change of hearing. If a scheduled hearing is cancelled or postponed to a later date, the agency shall provide timely notice to the persons described in section 9051 and, if applicable, to the persons and localities listed in section 9051-A and other persons the agency is required to notify or customarily notifies of hearings.

Sec. 3. 5 MRSA §9052-A is enacted to read:

§9052-A. Holding of hearings

Whenever an agency, including environmental agencies, holds a hearing pursuant to this subchapter, the agency shall strive to hold a hearing in the area or areas of the State which are significantly affected by the license application or which are concerned about the issue.

Sec. 4. 12 MRSA §685-B, sub-§3, as amended by PL 1977, c. 694, §§228 to 231, is repealed and the following enacted in its place:

3. Hearings and procedures. Hearings and procedures conducted pursuant to this section shall be subject to the provisions of this subsection.

A. Any person aggrieved by a decision of the commission or its staff concerning any matter upon which no hearing was held may petition the commission for a hearing, within 30 days of that decision. The commission shall respond within 30 days of receipt of the request by notifying the petitioner in writing of the date, time and place set for the requested hearing or of the denial of the request.

B. The commission may determine on its own motion to hold a hearing on an application, in which event it shall hold the hearing within 45 days of receiving the application.

C. Within 45 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order granting or denying approval to the applicant to construct, develop or operate the structure, subdivision or development as proposed or granting such approval upon such reasonable terms and conditions as the commission determines appropriate.

D. If the commission determines to act upon an application for approval without hearing, the commission, as expeditiously as possible, shall approve, with such terms and conditions as deemed necessary, or disapprove the application. In the event of a decision for disapproval, the commission shall notify the applicant and specify the grounds of disapproval and inform the applicant of any right to request a hearing.

E. All hearings and procedures conducted pursuant to this section shall be subject to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, including the notice requirements in section 9051-A.

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

Effective April 1, 1988.

CHAPTER 654

S.P. 953 — L.D. 2525

AN ACT to Include Certain Prisoners Within the Provisions of the Workers' Compensation Act.

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

Sec. 1. 39 MRSA §2, sub-§5, ¶E, as enacted by PL 1987, c. 210, is repealed and the following enacted in its place:

E. The term "employee" does not include any person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered by the prisoner during incarceration and while the prisoner is:

(1) A prisoner in a county jail under final sentence of 72 hours or less and is assigned to work outside of the county jail;

(2) Employed by a private employer;

(3) Participating in a work release program; or

(4) Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261.

Sec. 2. 39 MRSA §102-A, as enacted by PL 1987, c. 559, Pt. B, §43, is repealed and the following enacted in its place:

§102-A. Incarceration of employee

1. Compensation while incarcerated. No compensation for incapacity under section 54-B or 55-B may be paid to any person during any period in which that person is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered during incarceration and while the prisoner is:

A. Employed by a private employer;

B. Participating in a work release program; or

C. Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261.

2. Compensation forfeited. All compensation which is not payable under subsection 1 is forfeited.

Sec. 3. Application. This Act shall apply only to injuries which occur after the effective date of this Act.

Effective August 4, 1988.

CHAPTER 655

H.P. 1853 — L.D. 2536

AN ACT to Clarify the Authority of Harbor Masters.

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

Whereas, the Legislature passed last year comprehensive legislation dealing with regulation of harbors; and

Whereas, there is some question of interpretation of a key provision in the Maine Revised Statutes, Title 38, section 7; and

Whereas, last year's legislation is to take effect April 1, 1988; and

Whereas, this date will have gone by before the necessary clarification can be made unless legislation is passed on an emergency basis; and

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