

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
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

A. A conviction of a violation of section 1312-B or of former section 1312, subsection 10, or of succeeding criminal provisions for such conduct;

B. A conviction, in any jurisdiction which is or becomes a party to the Driver License Compact of any offense described in the compact, article IV, subsection 1, paragraph B, or of an offense which is similar as provided by article IV, subsection 3;

C. An adjudication or other determination made under the juvenile law of this State or of another jurisdiction for conduct which, if committed by an adult, would have been a conviction included in this subsection, including the conduct to which Title 15, section 3103, subsection 1, paragraph F, refers; and

D. A conviction for such conduct in a court of the United States or a court of a state which is not a party to the compact, provided that the punishment for that offense includes the possibility of incarceration, whether or not actually imposed on that occasion, and the elements of the offense as provided in the law of that jurisdiction include operation or attempted operation of a motor vehicle while intoxicated, impaired or under the influence of alcohol, intoxicating liquor, drugs or with a level of blood-alcohol sufficient for conviction under the laws of that jurisdiction.

13. Prior conviction. For purposes of this section, a prior conviction has occurred within the 6-year period provided if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct which is penalized or for which the penalty is or may be enhanced.

14. Work-restricted license. Upon receipt by the Secretary of State of a petition for a restricted license for employment purposes by any person whose license or right to operate a motor vehicle has been suspended under subsection 1, paragraph B, following a first offense of a violation of section 1312-B, the Secretary of State may stay the suspension during the statutory period and issue a restricted license if no alternate means of transportation is available as follows: A work-restricted license may be issued and shall be conditioned upon a showing by a petitioner by clear and convincing evidence that such a license is necessary to operate a motor vehicle between the residence and place of employment or to operate a motor vehicle in the scope of employment, or both. The issuance of a work-restricted license under this subsection is contingent upon the completion of an alcohol treatment or rehabilitation program. The Secretary of State shall suspend, without preliminary hearing, the work-restricted license of any person who is adjudicated or convicted of any violation of this Title committed during the period when a work-restricted license has been issued or who violates any restriction or condition contained on the license.

Sec. 30. 29 MRSA §2292, sub-§1, ¶B, as amended by PL 1981, c. 468, §16, is further amended to read:

B. Operating or attempting to operate while under the influence of intoxicating liquor or drugs or with a blood-alcohol level of ~~0.10%~~ 0.08% or more;

Sec. 31. **Allocation.** The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1988-89

SECRETARY OF STATE, DEPARTMENT OF THE

Administration — Motor Vehicles

Positions	(1)
Personal Services	\$11,575
Capital Expenditures	400

Total \$11,975

Provides funds for one clerk typist III to administer the provisions of the reduced criteria for operating a motor vehicle under the influence of intoxicating liquor for first and subsequent offenders.

Effective August 4, 1988.

CHAPTER 792

H.P. 1933 — L.D. 2634

AN ACT to Require Application and Approval for Railroads to Receive Financial Assistance from the State and to Require Notice of Major Modifications in Rail Service.

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

Sec. 1. 23 MRSA §4211-A is enacted to read:

§4211-A. Application for financial assistance

1. Annual application and approval required. Any person, corporation, partnership or other business entity which provides railroad transportation for compensation in the State, or seeks to acquire or construct additional rail lines in the State, shall apply to the Department of Transportation for the privilege of receiving financial assistance from the State, for the year in question. Financial assistance from the State is defined as grants, loans, subsidies, tax exemptions, cost reimbursement for maintenance of railroad crossings or payments from other sources. The applicant may not receive the financial assistance unless the application is approved.

2. Criteria. In determining approval for an application under this section, the department shall consider, among other matters:

A. The need for this rail service;

B. The effect of the rail service upon the health, safe-

ty and general welfare of the people of the State; and

C. For any entity which already provides railroad transportation for compensation within the State, the department shall also consider the record of that railroad in investing within the State, maintaining track and rights-of-way within the State, use of funds from previous financial assistance from the State and the safety, reliability and efficiency of the service actually provided by that railroad within the State.

3. Procedure for entities seeking to acquire or construct additional rail lines. An entity seeking to acquire or construct an additional rail line or lines shall proceed in accordance with this subsection.

A. The applicant shall provide notice by:

(1) Publishing an accurate and understandable summary of the application in a newspaper of general circulation in each area affected by the rail service;

(2) Mailing a copy of its application to all shippers which used the rail line during any of the 12 months prior to the date the application was filed, as well as those shippers who may reasonably be expected to use that line within one year from the date of application;

(3) Mailing a copy of its application to the employee representatives of the employees of the railroad or who may be affected by a proposed rail service; and

(4) Mailing a copy of its application to any municipality served by the rail line or in which that service may be affected.

B. After receipt of a substantially complete application and compliance by the applicant with the notice requirements of this subsection, the department shall hold a public hearing on any application covered by this subsection, in accordance with its rules.

C. Any party affected by the application has the right to intervene in a proceeding under this section. Intervention of other parties shall be granted liberally in order that a complete record may be developed.

4. Procedure for existing operations. An entity which intends only to continue existing operations shall proceed in accordance with this subsection.

A. After receipt of a substantially complete application, the department shall provide notice of the application and opportunity for hearing on any application covered by this subsection by sending an accurate and understandable summary of the application to a newspaper of general circulation in each area affected by the rail service for publication at the applicant's expense.

B. The department may hold a public hearing on the

application and shall hold a hearing when a request for a hearing shows a substantial likelihood that the application may be denied or granted with qualifications under the criteria of subsection 2 and the hearing is requested by:

(1) A shipper or shippers whose traffic on the railroad line totaled 500 tons in the year preceding the application;

(2) Any municipality having a siding, terminal, station or agency station of the railroad line within its bounds; or

(3) A petition of 25 individuals who state that they are affected by the operation of the railroad.

The hearing shall be subject to the rules of the department.

5. Approval. At the conclusion of the proceedings and within 30 days of the conclusion of the public hearing, if any, the department shall:

A. Approve the application as filed;

B. Approve the application with such conditions as the department determines necessary to assure that the investment of state funds in providing assistance for the rail service will be consistent with the public interest; or

C. Deny the application.

Approval shall be valid for a year. In the case of denial, reapplication shall be in accordance with the rules of the department. Approval may be revoked in case of non-compliance with any conditions.

6. Temporary approval. When the commissioner determines that the public interest requires immediate financial assistance from the State to a railroad, the department may issue temporary approval for a period not to exceed 90 days without notice or hearing.

7. Appeal. Any applicant or intervenor aggrieved by the decision of the department under subsection 5 has a right to judicial review in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

8. Rules. The department shall promulgate rules concerning the implementation and enforcement of this section.

9. Existing operations; temporary approval. Any operation ongoing as of the effective date of this section, as long as the ownership or management of that operation is not transferred to another entity, shall be deemed approved until March 1, 1989.

10. Consolidation of hearings. The Department may

consolidate any hearing under this section with another hearing concerning railroad service by the same entity in the same area.

Sec. 2. 23 MRSA c. 615 is enacted to read:

CHAPTER 615

RAIL SERVICE

§7101. Major modifications in rail service

1. Findings. The Legislature finds that it is in the public interest that the State be promptly informed of any proposed major modifications to the rail service in this State.

2. Notice required. Any railroad which files a petition or proposal with the United States Interstate Commerce Commission concerning the sale, merger, abandonment or embargo of any railroad line in this State shall concurrently file a copy of the petition or proposal with the department. Any person, corporation or other entity which proposes to acquire or construct an additional railroad line in this State or provide rail transportation over or by means of an extended or additional railroad line and which files a petition or proposal with the United States Interstate Commerce Commission to do so shall concurrently file a copy of the petition or proposal with the department, and shall include information on the fitness and ability, including management, financial condition and employee complement, of the entity proposing to provide the rail service to provide safe, efficient and reliable rail service.

3. Review; report. The department shall review any petition or proposal for major modification to the rail service in the State filed under subsection 2. Upon conclusion of its review, the department shall report to the Governor and the Legislature if the proposal has a major effect on rail service in the State.

4. Failure to notify. Any entity which fails to file notice with the department required by this section, shall not be approved to receive financial assistance from the State, as defined in section 4211-A, subsection 1, for one year next following the date the notice is required to be filed.

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

TRANSPORTATION, DEPARTMENT OF

<u>Railroad Assistance Program</u>		
Personal Services		\$21,000
All Other		1,700
Total		\$22,700

Provides funds for a half-time project attorney position to promulgate rules in accordance with the Maine Administrative Procedure Act, Maine Revised Statutes, Title 5, chapter 375.

Effective August 4, 1988.

CHAPTER 793

H.P. 1799 — L.D. 2463

AN ACT to Fund a Supplemental Highway Program and to Establish a Program to Fund the Construction of Extraordinary Bridges.

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

Whereas, the State is experiencing an unanticipated loss of federal highway construction funds of approximately \$20,000,000 this biennium due to federal budget cuts; and

Whereas, the State's highway system is in need of considerable improvements to reach safe, modern standards; and

Whereas, the State is faced with the need to construct or reconstruct several bridges of unusual size and complexity; 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:

PART A

Sec. 1. 5 MRSA §1513, sub-§4, as enacted by PL 1987, c. 349, Pt. H, §4, is amended to read:

4. Exception. Notwithstanding any other provision of law, for the period starting July 1, 1988, and ending June 30, 1989, the fund may exceed \$25,000,000 but not more than \$48,000,000 and expenditures may be appropriated from the fund by the 2/3 vote of the Legislature upon recommendation of the Governor only for the purpose of paying to the Maine State Retirement System such amounts as may be deemed appropriate after the conclusion of the study authorized in Public Law 1987, chapter 68 and for purposes set out in subsection 2. In addition, during the period starting July 1, 1987 and ending June 30, 1988, the sum of \$13,200,000 may be appropriated from the fund by the 2/3 vote of the Legislature only for the purpose of paying to the Department of Transportation \$12,000,000 for highway and bridge construction and \$1,200,000 to fund state as-