

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
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J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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1989

within 21 days of issuance of the finding of the state-certified arbitration.

In the event that any state-certified arbitration resulting in an award of a refund or replacement is upheld by the court, recovery by the consumer may include continuing damages up to the amount of \$25 per day for each day subsequent to the day the motor vehicle was returned to the manufacturer, pursuant to section 1163, that the vehicle was out of use as a direct result of any nonconformity, not issuing from owner negligence, accident, vandalism or any attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its agent or authorized dealer, provided that the manufacturer did not make a comparable vehicle available to the consumer free of charge.

In addition to any other recovery, any prevailing consumer shall be awarded reasonable attorney's fees and costs. If the court finds that the manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the court shall double the amount of the total award to the consumer.

6. Consumer's rights if arbitrator denies relief.

The provisions of this chapter shall not be construed to limit or restrict in any way the rights or remedies provided to consumers under this chapter or any other state law. In addition, if any consumer is dissatisfied with any finding of state-certified arbitration, the consumer shall have the right to apply to the manufacturer's informal dispute settlement procedure, if the consumer has not already done so, or may appeal that finding to the Superior Court of the county in which the sale occurred, within 21 days of the decision.

7. Disclosure of consumer lemon law rights. A clear and conspicuous disclosure of the rights of the consumer under this chapter shall be provided by the manufacturer to the consumer along with ownership manual materials. The form and manner of these notices shall be prescribed by rule of the Department of the Attorney General. The notice disclosures shall not include window stickers.

8. Manufacturer's failure to abide by arbitrator's decision. The failure of a manufacturer either to abide by the decision of state-certified arbitration or to file a timely appeal shall entitle any prevailing consumer who has brought an action to enforce this chapter to an award of no less than 2 times the actual award, unless the manufacturer can prove that the failure was beyond the manufacturer's control or can show it was the result of a written agreement with the consumer.

9. Consumer request for information. Upon request from the consumer, the manufacturer or dealer shall provide a copy of all repair records for the consumer's motor vehicle and all reports relating to that motor vehicle, including reports by the dealer or manufacturer concerning inspection, diagnosis or test-drives of that vehicle and any technical reports, bulletins or notices issued by the manufacturer regarding the specific make and model of the consumer's new motor vehicle as it pertains to any material, feature, component or the performance of the motor vehicle.

10. Penalties. It shall be prima facie evidence of an unfair trade practice under Title 5, chapter 10, for a manufacturer, within 21 days of receipt of any finding in favor of the consumer in state-certified arbitration, to fail to appeal the finding and not deliver a refund or replacement vehicle or not receive from the Department of the Attorney General an extension of time for delivery of the replacement vehicle.

11. New car arbitration account. To defray the costs of this program, a \$1 arbitration fee shall be collected by the authorized dealer from the purchaser as part of the new motor vehicle sale agreement. Pursuant to rules adopted by the Secretary of State, this fee shall be forwarded annually by the dealer or its successor to the Secretary of State and deposited in the General Fund. At the end of each fiscal year, the Department of the Attorney General shall prepare a report listing the annual money generated and the expenses incurred in administering this arbitration program.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
ATTORNEY GENERAL, DEPARTMENT OF THE		
Positions	(2)	(2)
Personal Services	\$33,264	\$46,860
All Other	13,500	18,000
Capital Expenditures	4,000	
DEPARTMENT OF THE ATTORNEY GENERAL TOTAL	\$50,764	\$64,860

See title page for effective date.

CHAPTER 571

S.P. 284 - L.D. 730

An Act Making Appropriations from the General Fund for the Expenditures of State Government for the Fiscal Years Ending June 30, 1990, and June 30, 1991, and Changing Certain Provisions of Law Necessary for the Proper Operation of State Government

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

Whereas, certain obligations and expenses incident to the operation of certain departments will become due and payable on or immediately after July 1, 1989; 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 §3304, sub-§3, 1A, as amended by PL 1989, c. 501, Pt. DD, §7, is further amended to read:

A. Appoint and remove the staff of the office and prescribe their duties as may be necessary to implement the purposes of this chapter. Professional employees authorized by this chapter shall be hired as unclassified employees, ~~shall serve at the pleasure of the director and shall be paid salaries at rates of pay comparable to those of state employees with equivalent responsibilities in other state agencies.~~ All other employees shall be subject to those civil service and personnel policies established for state employees generally and shall be paid salaries at rates of pay comparable to those of state employees with equivalent responsibilities in other state agencies.

(1) The State Planning Director is authorized to employ professional planning personnel competent by education, training and experience in fields such as economics, local and regional planning, public policy and natural resources.

(2) The director is authorized to employ such statistical, clerical and other office help as required and authorized by the budget;

Sec. 2. 15 MRSA §3205 is enacted to read:

§3205. Juvenile in adult-serving jails

No juvenile may be committed or detained in an adult-serving jail after December 31, 1991, except when bound over as an adult.

Sec. 3. 35-A MRSA §116, sub-§8 is enacted to read:

8. Public Advocate assessment. Every utility subject to assessment pursuant to this section shall be subject to an additional assessment on its intrastate gross operating revenues to produce no more than \$189,000 in revenues in fiscal year 1989-90. The Public Advocate shall develop a method for accounting for staff time within the Office of Public Advocate. All professional and support staff shall account for such time in such a way as to identify the percentage of time that is devoted to public utility regulation and the percentage of time that is devoted to other duties that may be required by law. The revenues produced from this assessment shall be transferred to the account of the Office of Public Advocate and shall be used by the Public Advocate solely for the purpose of representing the using and consuming public in accordance with chapter 17. These funds shall be raised by the Public Utilities Commission and accounted for by the Public Advocate in accordance with the provision of this section in a separate Public Advocate Regulatory Fund. The assessments charged to utilities under this sub-

section shall be deemed just and reasonable operating costs for rate-making purposes.

This assessment shall sunset on June 30, 1990. Any additional resources that may be required shall be from the General Fund.

Sec. 4. 36 MRSA §1760, sub-§9-D, as amended by PL 1989, c. 501, Pt. U, is further amended to read:

9-D. Fuel and electricity used at a manufacturing facility. Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. The sales or use tax rate applicable to 95% of the sale price of such fuel and electricity shall be progressively reduced to 0 according to the following schedule:

Date of purchase	Sales or use tax rate
July 1, 1987, to June 30, 1988	4%
July 1, 1988, to June 30, 1989	3%
July 1, 1989, to December 31, 1994 1990	2%
January 1, 1991, to June 30, 1991	1%
July 1, 1991, and thereafter	0%

Each year prior to the effective date of the next reduction, after the reduction beginning July 1, 1987, the joint standing committee of the Legislature having jurisdiction over taxation shall review the effect of this subsection and report to the Legislature.

Sec. 5. PL 1989, c. 501, Pt. A, §1, under that part designated "HUMAN SERVICES, DEPARTMENT OF" under the 3rd occurrence of State Supplemental to Federal Supplemental Security Income, 4th to 9th lines are repealed and the following enacted in their place:

Provides funds for 16 reimbursement beds in boarding care facilities in the Sanford area primarily for older residents.

Sec. 6. PL 1989, c. 501, Pt. A, §1, under that part designated "MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF" under the 8th occurrence of Mental Health Services - Children, 3rd to 9th lines are repealed and the following enacted in their place:

Provides \$60,000 each year to expand services to 20 identified families with children with autism in Penobscot, Piscataquis, Aroostook and Washington Counties. Also provides \$20,000 each year to expand services to clients in southern Maine.

Sec. 7. PL 1989, c. 501, Pt. D, under that part designated "HUMAN SERVICES, DEPARTMENT OF" under the 2nd occurrence of Aid to Families with Dependent Children, 2nd to 7th lines are repealed and the following enacted in their place:

All Other	<u>\$912,081</u>	<u>\$1,737,750</u>
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Provides funds to increase the Aid to Families with Dependent Children standard of need by 3%, effective January 1, 1990.

Sec. 8. PL 1989, c. 501, Pt. D, under that part designated "HUMAN SERVICES, DEPARTMENT OF" under the 5th occurrence of Medical Care - Payments to Providers, 2nd to 7th lines are repealed and the following enacted in their place:

All Other	<u>\$82,620</u>	<u>\$162,010</u>
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Provides funds for increased medical payments resulting from increasing the Aid to Families with Dependent Children standard of need.

Sec. 9. PL 1989, c. 501, Pt. D, under that part designated "HUMAN SERVICES, DEPARTMENT OF" last 2 lines are repealed and the following enacted in their place:

DEPARTMENT OF HUMAN SERVICES TOTAL	<u>\$1,761,744</u>	<u>\$2,842,322</u>
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Sec. 10. PL 1989, c. 501, Pt. D, last 2 lines are repealed and the following enacted in their place:

PART D TOTAL	<u>\$3,052,484</u>	<u>\$3,070,988</u>
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Sec. 11. PL 1989, c. 501, Pt. DD, §47, sub-§2, is amended to read:

2. Personnel and employment benefits transferred.

All employees of the Office of Energy Resources or any subunit of that office are transferred to the State Planning Office or the Department of Economic and Community Development, as required by the assignment of responsibilities in this Act. Upon transfer, incumbents in classified positions shall retain their classified status.

All accrued fringe benefits, including vacation and sick leave, health and life insurance and retirement of these personnel shall remain with them. No employee's pay or promotional rights and opportunities may be adversely affected due to this transfer.

Sec. 12. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
CORRECTIONS, DEPARTMENT OF		
Maine State Prison		
Positions	(-1)	(-1)
Personal Services	(\$28,453)	(\$30,385)
Deletes one Nurse II.		
Downeast Correctional Facility		
Positions	(1)	(1)
Personal Services	\$22,826	\$32,657
Adds one Nurse III.		
Administration		
Positions		(-1)
Personal Services		(\$16,901)
Deletes one Information Systems Manager.		
Administration		
Positions		(1)
Personal Services		\$23,508
Adds one Correctional Plans Analyst.		
Maine Correctional Center		
Positions	(-1)	(-1)
Personal Services	(\$8,887)	(\$28,704)
Deletes one Teacher.		
Administration		
Positions	(1)	(1)
Personal Services	\$12,647	\$21,692
Adds one Account Clerk II.		
DEPARTMENT OF CORRECTIONS		
TOTAL	<u>(\$1,867)</u>	<u>\$1,867</u>

Sec. 13. Allocation of the Public Advocate Regulatory Fund. Income to the Public Advocate Regulatory Fund for the fiscal year from July 1, 1989, to June 30, 1990, shall be segregated, apportioned and disbursed as designated in the following schedule:

	1989-90
Office of Public Advocate	
Positions	(4)
Personal Services	\$115,000
All Other	74,000
Allocates funds from the Public Advocate Regulatory Fund.	
OFFICE OF PUBLIC ADVOCATE	
TOTAL	<u>\$189,000</u>

Sec. 14. Adjustments to allocation of the Public Advocate Regulatory Fund. Allocations may be increased or adjusted by the State Budget Officer with the approval of the Governor to specifically cover those adjustments determined necessary under any salary plan approved by the Legislature and those reclassifications or range changes that have been approved by the Department of Administration and submitted for legislative review prior to the effective date of this Act.

Sec. 15. Use of Public Advocate Revenue Fund. The Public Advocate may use the revenues provided in accordance with this Act to fund 4 employees and to defray the costs incurred by the Public Advocate pursuant to the Maine Revised Statutes, Title 35-A, chapter 17.

PART B

Sec. 1. 5 MRSA c. 353, first 2 lines, as enacted by PL 1987, c. 506, §1, are repealed and the following enacted in their place:

PART 15-A

LAND FOR MAINE'S FUTURE FUND

CHAPTER 353

LAND FOR MAINE'S FUTURE FUND

Sec. 2. 5 MRSA Pt. 15-B is enacted to read:

PART 15-B

WATER RESOURCES MANAGEMENT BOARD

CHAPTER 355

WATER RESOURCES MANAGEMENT BOARD

§6301. Board created; duties

There is established in section 12004-G the Water Resources Management Board. The board is a temporary, 2-year commission created to examine and make recommendations to the Legislature regarding the appropriate role of the State in managing water supplies and the institutional structures necessary for efficient and effective state involvement. The board shall:

1. Permanent structure. Recommend a permanent bureaucratic structure for centralized and coordinated conduct of the role of the State in water supply management;

2. Extent of regulation. Recommend the appropriate extent and level of state regulation of water use;

3. Data. Implement a strategy for coordinated collection of water supply and use data and compile that data in a readily accessible and usable form;

4. Strategy for coordination. Develop a strategy for coordination of all state and local agencies involved with water supply management;

5. Dispute resolution process. Recommend a process for adjudication of disputes over the right to use water and over the establishment of water levels for water supply ponds;

6. Review of water rights. Review the methods by which water rights are obtained under existing law and recommend appropriate changes;

7. Recommend priorities. Recommend priority uses for preferential access to water supplies when supplies are inadequate to meet all demands;

8. Catalog publicly granted water rights. Catalog publicly granted water rights by having staff request information from water utilities and others;

9. Water diversion policy. Recommend a policy regarding water diversion which addresses the implications of diversion from the State and regions and subbasins within the State;

10. Conservation. Recommend ways to improve and encourage conservation of water resources; and

11. Technical assistance. Develop technical assistance programs for municipalities, communities or individuals adversely affected by water use decisions.

§6302. Board membership; chair

The board shall have the following 16 members: the Director of the State Planning Office or the director's designee; the Chair of the Public Utilities Commission or the chair's designee; the Commissioner of Environmental Protection or the commissioner's designee; the Commissioner of Human Services or the commissioner's designee; the Commissioner of Conservation or the commissioner's designee; the Commissioner of Economic and Community Development or the commissioner's designee; the Commissioner of Agriculture, Food and Rural Resources or the commissioner's designee; the Commissioner of Inland Fisheries and Wildlife or the commissioner's designee; a representative, appointed by the Governor, of a water utility regulated by the Public Utilities Commission; a representative, appointed by the Governor, of a municipal government; a representative, appointed by the Governor, of a commercial user of water; a representative, appointed by the Governor, of an industrial user of water; a representative, appointed by the Governor, of recreational users; a representative, appointed by the Governor, of a hydropower producer; a representative, appointed by the Governor, of a natural resources advocacy organization; and a member of the public appointed by the Governor. The chair of the board shall be the State Planning Office representative, the Director of the State Planning Office or the director's designee. Appointments shall be made within 30 days of the effective date of this Part.

§6303. Board compensation

The board's members shall be compensated as provided in chapter 379.

§6304. Meetings; staff

1. Meetings. The board chair shall convene the first meeting of the board no later than 30 days after the effective date of this Part. The board shall meet at least once each month and as often as necessary to carry out its responsibilities.

2. Staff. A person knowledgeable about the technical, economic and environmental aspects of water resource management, under a 2-year contract with the State Planning Office, shall provide full-time staff assistance to the board. All state agencies shall provide information and support requested by the board to the extent practicable.

§6305. Report; reporting deadline

The board shall submit a report summarizing its findings and recommendations, including any suggested legislation, to the Legislature by January 1, 1991.

§6306. Repeal

This Part is repealed October 1, 1991.

Sec. 3. 5 MRSA §12004-G, sub-§29-A is enacted to read:

<u>29-A. Natural Resources</u>	<u>Water Resources Management Board</u>	<u>Expenses Only</u>	<u>5 MRSA §6301</u>
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Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1989.

Effective July 1, 1989.

CHAPTER 572

H.P. 891 - L.D. 1235

An Act to Require the Licensure of Ambulatory Surgical Facilities

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

Sec. 1. 22 MRSA §1811, as amended by PL 1967, c. 231, §1, is further amended to read:

§1811. License required; definitions

No person, partnership, association or corporation, nor any state, county or local governmental units, ~~shall may~~ establish, conduct or maintain in the State any hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility or other institution for the hospitalization or nursing care of human beings without first

obtaining a license therefor. Hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility and other related institution, within the meaning of this chapter, ~~shall mean~~ means any institution, place, building or agency in which any accommodation is maintained, furnished or offered for the hospitalization of the sick or injured or care of any aged or infirm persons requiring or receiving chronic or convalescent care. Nothing in this chapter ~~shall may~~ apply to hotels or other similar places that furnish only board and room, or either, to their guests or to such homes for the aged or blind as may be subject to licensing under any other law.

Sec. 2. 22 MRSA §1812-E is enacted to read:

§1812-E. Ambulatory surgical facility

1. Definition. As used in this chapter, unless the context otherwise indicates, "ambulatory surgical facility" has the same meaning as in section 303.

2. Standards. The department shall establish standards for the licensure of ambulatory surgical facilities effective January 1, 1990. The standards shall provide that ambulatory surgical facilities that are certified for the federal Medicare and Medicaid programs are deemed to be eligible for state licensure.

Sec. 3. 22 MRSA §1813, as amended by PL 1967, c. 231, §3, is further amended to read:

§1813. Existing hospitals must obtain licenses

No person, partnership, association or corporation, nor any state, county or local governmental units, may continue to operate an existing hospital, sanatorium, convalescent home, rest home ~~or~~, nursing home or ambulatory surgical facility, nor open a hospital, sanatorium, convalescent home, rest home ~~or~~, nursing home or ambulatory surgical facility unless ~~such~~ the operation ~~shall have been~~ is approved and regularly licensed by the State.

Sec. 4. 22 MRSA §1815, as amended by PL 1981, c. 703, Pt. A, §12, is further amended to read:

§1815. Fees

Each application for a license to operate a hospital, convalescent home or nursing home shall be accompanied by a nonrefundable fee of \$50 for facilities less than 50 beds in size, a fee of \$100 for facilities 51 to 100 beds in size, and a fee of \$200 for facilities larger than 100 beds in size \$10 for each bed contained within the facility. Each application for a license to operate an ambulatory surgical facility shall be accompanied by the fee established by the department. The department shall establish the fee for an ambulatory surgical facility, not to exceed \$250, on the basis of a sliding scale representing size, number of employees and scope of operations. ~~No such fee shall be refunded.~~ All licenses issued shall be renewed annually upon payment of a like fee. The ~~state's~~ State's share of all fees received by the department under this chapter shall be deposited in the General Fund. No