

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 FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

than the degree of "Doctor of Medicine" from prefixing the letters "Dr." to his that person's name, if ~~he~~ that person is not engaged, and does not engage, in the practice of medicine or surgery or the treatment of any disease or human ailment. Nothing in this chapter ~~shall~~ may be so construed as to affect or prevent the practice of the religious tenets of any church in the ministrations to the sick or suffering by mental or spiritual means.

Sec. 18. 37-B MRSA §§1005 and 1006, as enacted by PL 1983, c. 460, §3, are amended to read:

§1005. Intentional injury or interference with property

Whoever intentionally destroys, impairs, injures, interferes or tampers with real or personal property with reasonable grounds to believe that ~~their~~ that person's act will hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution thereof under chapter 13 ~~is guilty of~~ commits a Class B crime. ~~If that person acts with the intent to hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution thereof under chapter 13, the minimum sentence shall be imprisonment for not less than one year.~~

§1006. Intentional defects

Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that the article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or for war, or for the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution of those preparations and plans under chapter 13, or that the article or thing is one of a number of similar articles or things, some of which are intended so to be used, ~~is guilty of~~ commits a Class B crime. ~~If that person acts or fails to act with the intent to hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or with preparations and plans for civil emergency preparedness, or with the execution of those preparations or plans under chapter 13, the minimum sentence shall be imprisonment for not less than one year.~~

See title page for effective date.

CHAPTER 798

S.P. 930 - L.D. 2385

An Act to Amend the Process for Collecting for Costs of Services of the Maine Labor Relations Board, the Panel of Mediators and the State Board of Arbitration and Conciliation

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 will not terminate until at least July 15, 1992; and

Whereas, the Maine Labor Relations Board is faced with an immediate problem of being unable to make timely payments for services provided by members of the board, the Panel of Mediators and the State Board of Arbitration and Conciliation and clarification is necessary as to whether the Executive Director of the Maine Labor Relations Board is authorized to estimate and collect the costs of these services from the parties using them prior to delivery of the services; 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. 13 MRSA §1958-B, sub-§1, as amended by PL 1991, c. 622, Pt. O, §1, is further amended to read:

1. Voluntary mediation. At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation; and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of

providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. Voluntary mediation may not last for more than 3 days for annual crops; voluntary mediation for all other commodities may not last more than 5 days. Mediation may be extended by mutual agreement by the bargaining parties.

Sec. 2. 26 MRSA §892, as amended by PL 1991, c. 622, Pt. O, §2, is further amended to read:

§892. Panel

~~A panel of mediators~~ The Panel of Mediators, as established by Title 5, section 12004-B, subsection 3, ~~to consist consisting~~ of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term ~~are must be~~ filled for the unexpired term. Members of the panel are entitled to compensation according to Title 5, chapter 379. The costs for services rendered and expenses incurred by the panel; and any applicable state cost allocation program charges; must be shared equally by the parties to mediation and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board

and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

Sec. 3. 26 MRSA §931, first ¶, as amended by PL 1991, c. 622, Pt. O, §3, is further amended to read:

The State Board of Arbitration and Conciliation, in this subchapter called the "board," consists of 3 members appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member is must be an employer of labor or selected from some association representing employers of labor, and another ~~is must be~~ an employee or selected from some bona fide trade or labor union. The 3rd member ~~represents must represent~~ the public interests of the State and ~~shall serve serves~~ as chair. Vacancies occurring during a term must be filled for the unexpired term. Members of the board are entitled to receive \$75 a day for their services for the time actually employed in the discharge of their official duties. They are entitled to receive their traveling and all other necessary expenses. The costs for services rendered and expenses incurred by the State Board of Arbitration and Conciliation; and any state allocation program charges; must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by the State Board of Arbitration and Conciliation is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. The ~~Executive Director executive~~ director shall, annually, on or before July 1st, make a

report of the activities of the State Board of Arbitration and Conciliation to the Governor. The board shall from time to time adopt rules of procedure as it determines necessary.

Sec. 4. 26 MRSA §965, sub-§2, ¶C, as amended by PL 1991, c. 622, Pt. O, §4, is further amended to read:

~~C. A panel of mediators~~ The Panel of Mediators, to consist consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term ~~are~~ must be filled for the unexpired term. Members of the panel are entitled to \$100 a day beginning July 1, 1988, for services for the time actually employed in the discharge of their official duties and also are entitled to traveling and all other necessary expenses. The costs for services rendered and expenditures incurred by members of the panel ~~of mediators~~ and any state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

Sec. 5. 26 MRSA §965, sub-§6, as amended by PL 1991, c. 622, Pt. O, §6, is further amended to read:

6. Arbitration administration. The cost for services rendered and expenses incurred by the ~~Maine State~~ Board of Arbitration and Conciliation, as defined in section 931,; and any state cost allocation program charges; must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

Sec. 6. 26 MRSA §968, sub-§1, as amended by PL 1991, c. 622, Pt. O, §8, is further amended to read:

1. Maine Labor Relations Board. The Maine Labor Relations Board, established by Title 5, section 12004-B, subsection 2, consists of 3 members and 6 alternates ~~to be~~ appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and to confirmation by the Legislature. The Governor, in making appointments, shall name one member and 2 alternates to represent employees, one member and 2 alternates to represent employers and one member and 2 alternates to represent the public. The member representing the public ~~shall be~~ serves as the board's chair and the alternate representing the public ~~shall be~~ serves as an alternate chair. Members of the board are entitled to compensation according to the provisions of Title 5, chapter 379. The alternates are entitled to compensation at the same per diem rate as the member that the alternate replaces. The term of each member and each alternate is 4 years; ~~provided, except that of the members and alternates first appointed, one member and 2 alternates are appointed for a term of 4 years, one member and 2 alternates are appointed for a term of 3 years and one member and 2 alternates are appointed for a term of 2 years. The mem-~~

bers of the board, its alternates and its employees are entitled to receive necessary expenses. Per diem and necessary expenses for members and alternates of the board, as well as state cost allocation program charges, must be shared equally by the parties to any proceeding at which the board presides; and must be paid into a special fund administered by the board from which all costs must be paid. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. At its discretion, the board may allocate all costs to a party that presents a frivolous complaint or defense or that commits a blatant violation of the applicable collective bargaining law. When the board meets on administrative or other matters that do not concern the interests of particular parties or when any board member presides at a prehearing conference, the members' per diem and necessary expenses must be paid from the board's regular appropriation for these purposes. The executive director and legal or professional personnel employed by the board are members of the unclassified service.

Sec. 7. 26 MRSA §1026, sub-§5, as amended by PL 1991, c. 622, Pt. O, §11, is further amended to read:

5. Costs. The following costs must be shared equally by the parties to the proceedings: the costs of the fact-finding board, including, if any, per diem expenses and actual and necessary travel and subsistence expenses ~~and~~; the costs of the neutral arbitrator or arbitrators, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the Federal Mediation and Conciliation Service or the American Arbitration Association; and the costs of hiring the premises where any fact-finding or arbitration proceedings are conducted. All other costs must be assumed by the party incurring them. The services of the Panel of Mediators and the ~~Maine~~ State Board of Arbitration and Conciliation; and any state allocation pro-

gram charges; must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the Panel of Mediators and the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing or the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

Sec. 8. 26 MRSA §1285, sub-§8, as amended by PL 1991, c. 622, Pt. O, §13, is further amended to read:

8. Arbitration administration. The cost of services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as defined in section 931, and any applicable state cost allocation program charges; must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount

collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

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

Effective April 3, 1992.

CHAPTER 799

H.P. 1714 - L.D. 2399

An Act to Reestablish the Mining Excise Tax Trust Fund Board of Trustees

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

Sec. 1. 5 MRSA §451, as enacted by PL 1981, c. 711, §2, is repealed.

Sec. 2. 5 MRSA §452, as enacted by PL 1981, c. 711, §2, is amended to read:

§452. Mining Excise Tax Trust Fund

There is created a separate trust fund to be known as the Mining Excise Tax Trust Fund, referred to in this chapter as the "fund," to replace the loss to the State of a nonrenewable natural resource, to protect the State's environment and to protect municipalities from any adverse impact resulting from mining of metallic minerals.

1. Nonlapsing fund. The fund shall ~~may~~ not lapse.

2. Investment. The Treasurer of State shall invest the fund in accordance with section 138.

3. Principal limit. ~~The principal amount of the fund shall not exceed \$10,000,000.~~

Sec. 3. 5 MRSA §453-A is enacted to read:

§453-A. Board of trustees

The Mining Excise Tax Trust Fund Board of Trustees, as established in section 12004-G, subsection 33-B and referred to in the chapter as the "board," consists of 5 members, at least one of whom must be a resident of the unorganized territory.

1. Appointment. The members of the board are appointed by the Governor and are subject to review by the joint standing committee of the Legislature having jurisdiction over taxation matters and to confirmation by the Legislature.

2. Terms. Of the initial members one serves a term of one year, one serves a term of 2 years, one serves a term of 3 years, one serves a term of 4 years and one serves a term of 5 years. Upon the expiration of the initial terms, members are appointed to serve 5-year terms. Members may be reappointed. Members serve until their successors are appointed and qualified.

3. Vacancies. A vacancy is filled for the expiration of the term to which the member has been appointed.

Sec. 4. 5 MRSA §454, as enacted by PL 1981, c. 711, §2, is repealed.

Sec. 5. 5 MRSA §454-A is enacted to read:

§454-A. Powers and duties of board

1. Authorize expenditures. The board may authorize any expenditure of the fund. An expenditure of funds or transfer of responsibility may be made only with the concurrence of at least 3 members of the board.

2. Employ staff as necessary. The board may employ staff necessary to carry out the purposes of this chapter.

3. Reinvestment of funds. The board may direct the Treasurer of State to reinvest any portion of the income earned by the fund with the principal of the fund. Earned income that is reinvested is not considered principal of the fund under section 455, subsection 1, paragraph B.

4. Expenditures from excise tax revenues. The board is responsible for expenditures from excise tax revenues in accordance with Title 36, chapter 371. The board shall reimburse municipalities for any lost property taxes pursuant to this chapter and Title 36, chapter 371.

5. Biennial report and annual plan. The board shall prepare:

A. A biennial report to be submitted to the Governor and the Legislature. The report must include an audited financial statement of the fund and a listing of activities undertaken by the board in the preceding biennium. The report must be submitted 30 days prior to the convening of each first regular session of the Legislature; and

B. An annual general plan of expenditures and activities of the coming year. The general plan