

MAINE STATE LEGISLATURE

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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

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SECOND REGULAR SESSION

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1991

eral funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable, divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

§4-1507. Choice of law

(1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies.

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in subsection (1), paragraphs (a), (b) and (c) have made an agreement and selected the law of a particular jurisdiction to govern rights and obligations between them, the law of that jurisdiction governs those rights and obligations whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds transfer system rule may select the law of a particular jurisdiction to govern the rights and obligations:

(a) Between participating banks with respect to payment orders transmitted or processed through the system; or

(b) Of some or all parties to a funds transfer, any part of which is carried out by means of the system.

A choice of law made pursuant to paragraph (a) is binding on participating banks. A choice of law made pursuant to paragraph (b) is binding on the originator, other

sender or a receiving bank having notice that the funds transfer system may be used in the funds transfer and notice of the choice of law by the system, when the originator, other sender or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds transfer system may be used in the funds transfer and notice of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds transfer system and there is inconsistency between the choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Sec. 3. Legislative intent. This Act is the Maine enactment of the Uniform Commercial Code, Article 4A as adopted by the National Conference of Commissioners on Uniform State Laws. The text of that uniform act has been changed to conform to Maine statutory conventions. Unless otherwise noted in a Maine comment, the changes are technical in nature and it is the intent of the Legislature that this Act be interpreted as substantively the same as the uniform act.

See title page for effective date.

CHAPTER 813

S.P. 848 - L.D. 2159

An Act Related to Hydropower Relicensing Standards

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

PART A

Sec. A-1. 38 MRSA §464, sub-§9 is enacted to read:

9. Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and licensing of modifications under section 636, a hydropower project is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundments if:

A. The project is in existence on the effective date of this subsection;

B. The project creates an impoundment that remains classified under section 465-A after the effective date of this subsection;

C. The project creates an impoundment that is subject to water level fluctuations that have an effect on the habitat and aquatic life in the littoral zone so that the habitat and aquatic life differ significantly from that found in an unimpounded great pond; and

D. The existing impounded waters are able to support all species of fish indigenous to those waters and the structure and function of the resident biological community in the impounded waters is maintained.

All other hydropower projects with impoundments in existence on the effective date of this subsection that remain classified under section 465-A after the effective date of this subsection and that do not attain the habitat and aquatic life criteria of that section must, at a minimum, satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C.

When the actual water quality of the impounded waters attain any more stringent characteristic or criteria of those waters' classification under section 465-A that water quality must be maintained and protected.

Sec. A-2. Legislative findings and intent; impacts of existing great ponds impoundments. Section 1 of this Part clarifies the Legislature's intent that waters subject to significant level fluctuations in existing human-constructed great pond impoundments are not subject to habitat and aquatic life standards that were not intended to apply to such situations. In determining whether the habitat and aquatic life in any such impoundment meet the requirements of this Part, the Legislature intends that changes in the habitat and aquatic life caused by construction and operation of the impoundment must be recognized. Furthermore, the operation of other existing GPA-classified hydroelectric impoundments may affect habitat and aquatic life in a manner not experienced by natural great ponds. The Legislature recognizes that, in both of these cases, it is not feasible to restore the habitat and aquatic life in these impoundments to their original condition or to require changes in the operation of these projects that would result in attainment of the natural habitat standard for great ponds. Section 1 also clarifies the Legislature's intent to retain the designated use of hydroelectric generation while ensuring that the quality of water in these great pond impoundments does not prevent the other designated uses of those waters from being attained.

PART B

Sec. B-1. 38 MRSA §464, sub-§10 is enacted to read:

10. Existing hydropower impoundments managed under riverine classifications; habitat and aquatic life criteria. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and the licensing of modifications under section 636, hydropower projects in existence on the effective date of this subsection, the impoundments of which are classified under section 465, are subject to the provisions of this subsection in recognition of some changes to aquatic life and habitat that have occurred due to the existing impoundments of these projects.

A. Except as provided in paragraphs B and D, the habitat characteristics and aquatic life criteria of Classes A and B are deemed to be met in the existing impoundments classified A or B of those projects if:

(1) The impounded waters achieve the aquatic life criteria of section 465, subsection 4, paragraph C.

B. The habitat characteristics and aquatic life criteria of Classes A and B are not deemed to be met in the existing impoundments of those projects referred to in paragraph A if:

(1) Reasonable changes can be implemented that do not significantly affect existing energy generation capability; and

(2) Those changes would result in improvement in the habitat and aquatic life of the impounded waters.

If the conditions described in subparagraphs (1) and (2) occur, those changes must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

C. If the conditions described in paragraph B, subparagraphs (1) and (2) occur at a project in existence on the effective date of this subsection, the impoundment of which is classified C, the changes described in paragraph B, subparagraphs (1) and (2) must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

D. When the actual water quality of waters affected by this subsection attains any more stringent characteristic or criteria of those waters' classification under sections 465, 467 and 468, that water quality must be maintained and protected.

Sec. B-2. Legislative findings and intent; impacts of existing impoundments. Section 1 of this Part clarifies that waters classified A or B that are physically affected by existing human-constructed impoundments are not subject to habitat and aquatic life standards that were only intended to apply to unaffected, free-flowing water. The Legislature recognizes that it is not feasible to restore the habitat and aquatic life of the impounded waters to their original condition or to require significant changes in the operation of these projects that would result in attainment of the standards for free-flowing water. However, it is the intent of the Legislature that if reasonable project changes can be made that would not significantly affect energy generating capability and would improve habitat and aquatic life, those changes must be made. Such changes must also be made at existing projects with impoundments classified C. Section 1 clarifies the Legislature's intent to retain the designated use of hydroelectric generation while ensuring that the quality of water in these impoundments does not become a limiting factor in achieving the other designated uses of those waters.

Notwithstanding the applicability of this Part to water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, for purposes of any other proceeding involving FERC Project No. 2389, the "Edwards Dam," this part is not a legislative finding on the feasibility or desirability of restoring the habitat and aquatic life of the waters impounded by the Edwards Dam to their original condition.

PART C

Sec. C-1. 38 MRSA §464, sub-§11 is enacted to read:

11. Downstream stretches affected by existing hydropower projects. Hydropower projects in existence on the effective date of this subsection that are located on water bodies referenced in section 467, subsection 4, paragraph A, subparagraphs (1-A) and (5-A), and section 467, subsection 12, paragraph A, subparagraphs (6-B) and (6-D) are subject to the provisions of this subsection.

For the purposes of water quality certification of hydropower projects under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications to these hydropower projects under section 636, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream of and measurably affected by the projects listed in this subsection if the criteria contained in section 465, subsection 4, paragraph C are met.

Sec. C-2. Legislative findings and intent; downstream impacts of existing hydroelectric

projects. Section 1 of this Part clarifies that, for applicants seeking a license from the Federal Energy Regulatory Commission for certain existing hydroelectric or storage projects, specifically, the "Moosehead Project" FERC Docket No. 2671-002; the "Wyman Project" FERC Docket No. 2329-005; the "Bonny Eagle Project" FERC Docket No. 2519-005 and the "Skelton Project" FERC Docket No. 2527-002, and for applicants seeking a license for a structural modification of these existing hydropower projects, the waters immediately downstream of and measurably affected by the project are not subject to habitat and aquatic life standards that were intended to apply only to unaffected, free-flowing water. The Legislature recognizes that it is not feasible to restore the habitat and aquatic life of the listed downstream waters to their original condition or to require changes in the operation of these projects that would result in attainment of the standards for unaffected free-flowing water. Section 1 clarifies the Legislature's intent to retain the designated use of hydroelectric generation while ensuring that the quality of water in these stretches does not become a limiting factor in achieving the other designated uses of those waters.

PART D

Sec. D-1. 38 MRSA §464, sub-§4, ¶H is enacted to read:

H. A hydropower project, as defined by section 632, constructed after the effective date of this paragraph may cause some change to the habitat and aquatic life of the project's impoundment and the waters immediately downstream of and measurably affected by the project, so long as the habitat and aquatic life criteria of those waters' classification under sections 465, 465-A, 467, and 468 are met. This paragraph does not constitute any change in the criteria for habitat and aquatic life under sections 465 and 465-A.

Sec. D-2. Legislative findings and intent; permissible water quality impact. The Legislature recognizes that there is a range of impact on habitat and aquatic life permissible under each of the water quality classifications as long as the substantive requirements of the narrative standards for habitat and aquatic life for each classification are fully achieved. These requirements are increasingly stringent as one moves from the lowest classes to the highest classes. By the enactment of this Part, the Legislature intends no substantive change in any of these narrative criteria.

PART E

Sec. E-1. 38 MRSA §467, sub-§4, ¶A, as repealed and replaced by PL 1989, c. 228, §2, is amended to read:

4. Kennebec River Basin.

A. Kennebec River, main stem.

~~(1) From Moosehead Lake, including east and west outlets, to a point 1,000 feet below the lake - Class A.~~

(1-A) From the east outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(1-B) From the west outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(2) From a point 1,000 feet below Moosehead Lake to its confluence with Indian Pond - Class AA.

(3) From Harris Dam to a point located 1,000 feet downstream from Harris Dam - Class A.

(4) From a point located 1,000 feet downstream from Harris Dam to its confluence with the Dead River - Class AA.

(5) From its confluence with the Dead River to the ~~Route 201A bridge in Anson-Madison except for Wyman Lake~~ confluence with Wyman Lake, including all impoundments - Class A.

(5-A) From the Wyman Dam to its confluence with the impoundment formed by the Williams Dam - Class A.

(5-B) From the confluence with the Williams impoundment to the Route 201A bridge in Anson-Madison, including all impoundments - Class A.

(6) From the Route 201A bridge in Anson-Madison to the Fairfield-Skowhegan boundary, including all impoundments - Class B.

(7) From the Fairfield-Skowhegan boundary to its confluence with Messalonskee Stream, including all impoundments - Class C.

(8) From its confluence with Messalonskee Stream to the Sidney-Augusta boundary, including all impoundments - Class B.

(9) From the Sidney-Augusta boundary to the Father John J. Curran Bridge in Augusta, including all impoundments - Class C.

(10) From the Father John J. Curran Bridge in Augusta to a line drawn across the tidal estuary of the Kennebec River due east of

Abagadasset Point - Class C. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use ~~shall~~ must be maintained.

(11) From a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, to a line across the southwesterly area of Merrymeeting Bay formed by an extension of the Brunswick-Bath boundary across the bay in a northwesterly direction to the westerly shore of Merrymeeting Bay and to a line drawn from Chop Point in Woolwich to West Chop Point in Bath - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use ~~shall~~ must be maintained.

Sec. E-2. 38 MRSA §467, sub-§4, ¶E, as repealed and replaced by PL 1989, c. 228, §2, is amended to read:

E. Messalonskee Stream Drainage.

(1) Messalonskee Stream, main stem.

(a) From the outlet of Messalonskee Lake to its confluence with the Kennebec River, including all impoundments except Rice Rips Lake - Class C.

(2) Messalonskee Stream, tributaries - Class B.

Sec. E-3. 38 MRSA §467, sub-§12, ¶A, as amended by PL 1991, c. 499, §17, is further amended to read:

A. Saco River, main stem.

(1) From the Maine-New Hampshire boundary to its confluence with the impoundment of the Swan's Falls Dam - Class A.

(2) From its confluence with the impoundment of the Swan's Falls Dam to a point located 1,000 feet below the Swan's Falls Dam - Class A.

(3) From a point located 1,000 feet below the Swan's Falls Dam to its confluence with the impoundment of the Hiram Dam - Class AA.

(4) From its confluence with the impoundment of the Hiram Dam to a point located 1,000 feet below the Hiram Dam - Class A.

(5) From a point located 1,000 feet below the Hiram Dam to its confluence with the Little Ossipee River - Class AA.

~~(6) From its confluence with the Little Ossipee River to its confluence with Swan Pond Stream - Class A.~~

(6-A) From its confluence with the Little Ossipee River to the West Buxton Dam, including all impoundments - Class A.

(6-B) From the West Buxton Dam to its confluence with the impoundment formed by the Bar Mills Dam - Class A.

(6-C) From its confluence with the impoundment formed by the Bar Mills Dam to the confluence with the impoundment formed by the Skelton Dam - Class A.

(6-D) From Skelton Dam to its confluence with the impoundment formed by the Cataract Project Dams - Class A.

(6-E) From the confluence with the impoundment formed by the Cataract Project Dams to its confluence with Swan Pond Stream, including all impoundments - Class A.

(7) From its confluence with Swan Pond Stream to tidewater - Class B.

Sec. E-4. 38 MRSA §467, sub-§15, ¶C, as repealed and replaced by PL 1991, c. 66, Pt. A, §15, is amended by amending subparagraph (2) to read:

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Route 161 bridge in Stockholm - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Garfield Plantation-Ashland boundary - Class AA.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its

confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above its confluence with, but not including, the North Branch of the Presque Isle Stream - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

~~(i) Squa Pan Stream and its tributaries above the B&A Railroad bridge - Class A.~~

~~(i) The Legislature recognizes that at certain times the waters of Squa Pan Stream may not meet either the antidegradation standards of section 464, subsection 4, paragraph F, or the water quality classification standards of section 465 due to the operation of the Squa Pan Hydro Project as a generator of hydroelectric peaking power. The Legislature further finds that there are currently no available modifications or alterations to the operation of this existing hydro project that would allow water quality standards to be met while allowing the Squa Pan Hydro Project to continue as a source of peaking power or to be altered and otherwise used as a source of power. Accordingly, the board may not consider the impact to the waters of the Squa Pan Stream caused by the operation of Squa Pan Hydro Project in the production of hydroelectric power in determining whether those waters satisfy any designated uses of water quality standards set forth in section 464, subsection 4, paragraph F or section 465. As used in this subdivision, "operation of the Squa Pan Hydro Project" means the actual, established use of that project's operation since January 4, 1965.~~

(j) Squa Pan Stream from the outlet of Squa Pan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

Sec. E-5. 38 MRSA §467, sub-§16, ¶A, as enacted by PL 1985, c. 698, §15, is amended to read:

A. Salmon Falls River, main stem.

(1) From the outlet of Great East Lake to tidewater, those waters lying within the State, including all impoundments - Class B.

Sec. E-6. 38 MRSA §468, sub-§8, as repealed and replaced by PL 1989, c. 764, §21, is amended to read:

8. Washington County. Those waters draining directly or indirectly into tidal waters of Washington County, including impoundments of the Pennamaquan River, with the exception of the Dennys River Basin, the East Machias River Basin, the Machias River Basin, the Narraguagus River Basin and the Pleasant River Basin - Class B unless otherwise specified.

A. Jonesboro.

(1) Chandler River and its tributaries above the highway bridge on Route 1 - Class A.

B. Whiting.

(1) Orange River and its tributaries above the highway bridge on Route 1 - Class A.

Sec. E-7. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to all proceedings pending before the Department of Environmental Protection on or after March 29, 1992.

See title page for effective date.

CHAPTER 814

S.P. 882 - L.D. 2254

An Act to Facilitate Cooperative Agreements among Maine Hospitals

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

Sec. 1. 22 MRSA c. 405-D is enacted to read:

CHAPTER 405-D

HOSPITAL COOPERATION ACT

§1881. Short title

This chapter may be known and cited as the "Hospital Cooperation Act of 1992."

§1882. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Cooperative agreement. "Cooperative agreement" means an agreement among 2 or more hospitals for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals.

2. Hospital. "Hospital" means:

A. Any acute care institution required to be licensed as a hospital under section 1811; or

B. Any nonprofit parent of a hospital, hospital subsidiary or hospital affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services.

§1883. Certification for cooperative agreements

1. Authority. A hospital may negotiate and enter into cooperative agreements with other hospitals in the State if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

2. Application for certificate. Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the Attorney General and to the department at the same time.

3. Procedure for department review. The department shall review the application in accordance with the standards set forth in subsection 4 and may hold a public hearing in accordance with rules adopted by the department. The department shall grant or deny the applica-