

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

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FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

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J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

(5) ATV's may be operated on streets and public ways during a period of emergency when the emergency has been so declared by a police agency having jurisdiction and when travel by conventional motor vehicles is not practicable; ~~and~~

(6) ATV's may be operated on streets and public ways in special events of limited duration conducted according to a prearranged schedule, under a permit from the governmental unit having jurisdiction; ~~and~~

(7) An ATV may be operated on a public way on the extreme right of the traveled way by a law enforcement officer for the sole purpose of traveling between the place where the ATV is usually stored and an area to be patrolled by the law enforcement officer.

See title page for effective date.

CHAPTER 27

H.P. 198 - L.D. 260

An Act to Require the Use of Standardized Evidence Kits for Cases of Gross Sexual Assault

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

Sec. 1. 30-A MRSA §287, sub-§4 is enacted to read:

4. Standardized kit for evidence collection in cases of gross sexual assault. The Department of Public Safety shall determine by rule what constitutes a standardized kit for evidence collection in cases of gross sexual assault. A physician or other health care professional who conducts a physical examination of an alleged victim of gross sexual assault shall use a standardized evidence collection kit that meets the requirements established by rule of the Department of Public Safety.

Evidence collection results may not be excluded as evidence in any proceeding before any court of this State as a result of the failure to use the standardized evidence collection kit required by this subsection.

See title page for effective date.

CHAPTER 28

H.P. 303 - L.D. 391

An Act to Repeal the Statutory Provisions Formerly Governing Unfunded State Mandates

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

Sec. 1. 30-A MRSA §5684, as amended by PL 1991, c. 847, §4, is repealed.

See title page for effective date.

CHAPTER 29

S.P. 63 - L.D. 125

An Act to Prohibit the Board of Land Surveyors from Enacting Continuing Education Rules

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

Sec. 1. 32 MRSA §13903, sub-§2, as enacted by PL 1989, c. 346, §3, is amended to read:

2. Rules. The board may, in accordance with procedures established by the Maine Administrative Procedure Act, Title 5, chapter 375, adopt rules ~~as may be reasonably~~ necessary for the proper performance of its duties and the administration of this chapter. The board may not adopt rules requiring a specific program of continuing education to qualify for relicensure.

Sec. 2. Study.

1. Definitions. As used in this section, the following terms have the following meanings.

A. "Board" means the Board of Licensure for Professional Land Surveyors.

B. "Commissioner" means the Commissioner of Professional and Financial Regulation.

C. "Committee" means the Committee to Study Continuing Education for Land Surveyors.

D. "Department" means the Department of Professional and Financial Regulation.

2. Committee appointed. The commissioner shall, within 15 days of the effective date of this Act, appoint the Committee to Study Continuing Education for Land Surveyors to consist of 6 licensed professional land surveyors and the commissioner or the commissioner's designated representative who, if not a member of the department, must be a public member as defined in the Maine Revised Statutes, Title 5, section 12004-A. The 6 licensed members must include 2 persons who favor the current board rule regarding continuing education, 2 who favor no continuing education requirement and 2 who favor a continuing education requirement other than that in board rules. Prior to making these appointments, the

commissioner shall review the letters submitted to the board in conjunction with the adoption of the continuing education rules.

The commissioner or the commissioner's designee shall act as chair of the committee and shall call the first meeting for no later than 30 days after the effective date of this Act.

This committee shall prepare recommendations as to whether continuing education should be a requirement for relicensure as a surveyor and, if so, what the specifics of the requirement should be.

3. Subjects. The committee shall include responses to the following questions in its report.

A. Are there currently any things related to the competence of surveyors practicing in this State that represent a threat to the safety or welfare of the citizens of Maine?

B. Which, if any, of the following would result in lessening the threat described in paragraph A, to what degree, in what priority order, and at what cost:

(1) Better control of unlicensed practice. How should this be accomplished? The committee shall explore the possibility of the board bringing an action to enjoin such practice utilizing one of the options indicated in subparagraph (2);

(2) Improving the board's authority and ability relative to revoking or denying reissuance of a license. The committee shall include in its study legislation that would permit the following:

(a) The board to utilize its own attorney or that of the department;

(b) A nonattorney board member to bring an action in Administrative Court; or

(c) The board to have the power itself to revoke or refuse to renew a license;

(3) A relicensing examination. Should this be for everyone, for those who have not practiced extensively in the previous biennium, in lieu of continuing education, for those who have had practice problems, as one segment of a continuing education requirement or as a guide for the applicant in structuring the applicant's continuing education program;

(4) Peer review, including review of plans in the registry of deeds;

(5) Better communication between the board and the licensees. Would it help if the deadline for relicensing notification was such that the regulatory agenda for the coming year could be included?;

(6) Better board standards of practice. The committee report must include a response to the recommendations made in the testimony of Louis Edward Pare to the Joint Standing Committee on Business Legislation dated February 2, 1993;

(7) More representative board membership; for example, membership in proportion to the number of members and nonmembers of the Maine Society of Land Surveyors; and

(8) Continuing education. In recommending continuing education, the committee shall make an effort to provide factual evidence that continuing education has been shown to maintain competency. If this is not possible, the committee shall recommend a program for evaluating the results of a continuing education program once implemented.

C. What are the answers to the following questions concerning continuing education?

(1) Should continuing education credit be given for professional memberships and practice of the profession? The committee shall familiarize itself with the recommendations of the American Congress on Surveying and Mapping, the National Society of Professional Surveyors, the National Council of Examiners for Engineering and Surveying and the International Association for Continuing Education and Training.

(2) Should it be a requirement that some part of the continuing education requirement be through classroom instruction?

(3) Should the board have a list of approved providers and courses, should it review the applicant's proposed continuing education program or should it approve the continuing education submitted on an after-the-fact basis?

(4) Will the continuing education be sufficiently available in all areas of the State so as not to inflict a hardship on any applicant?

4. Compensation. Committee members serve without per diem or expenses.

5. Report. The committee shall make a report of its findings and recommendations, including any neces-

sary draft legislation, to the Joint Standing Committee on Business Legislation with a copy to the Executive Director of the Legislative Council by January 1, 1994. If committee recommendations are not unanimous, the committee shall also provide a minority report, together with majority response.

See title page for effective date.

CHAPTER 30

H.P. 91 - L.D. 121

An Act Relating to the Protection of Public Water Supplies

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

Sec. 1. 35-A MRSA §6113 is enacted to read:

§6113. Water supply protection fund

1. Water supply protection fund. A consumer-owned water utility may establish a water supply protection fund to which a sum may be credited annually from surplus funds. The annual credit may not exceed 5% of the prior year's total revenue. If the utility has established a contingency reserve fund pursuant to section 6112, the utility may not credit any amount to the water supply protection fund unless the contingency reserve fund has reached its maximum pursuant to section 6112, subsection 2.

2. Water supply protection fund maximum. Except as provided in subsections 5 and 7, the maximum amount that may be accumulated in a water supply protection fund is 15% of the most recent year's annual revenue of the utility or \$100,000, whichever is greater. When the water supply protection fund is at the maximum amount permitted, credit may not be made to the fund from surplus funds.

3. Use of water supply protection fund. Except as provided in subsection 4, a water supply protection fund may be used by a consumer-owned water utility only for the acquisition of interests in real property reasonably necessary for the protection of a public water supply, including, but not limited to, the acquisition of conservation easements, access easements, other permanent interests in land or long-term leases of at least 99 years. For purposes of this subsection "protection of public water supply" includes watershed protection, groundwater protection or well-head protection reasonably necessary to minimize the potential for contamination of the consumer-owned water utility's water supply. If the consumer-owned water utility has adopted a watershed control program pursuant to 40 Code of Federal Regulations, Section 141.71 and that program has been approved by the

Department of Human Services, any expenditures from the water supply protection fund pursuant to this section for the purposes of watershed protection must be in conformity with that watershed control program.

4. Withdrawal of money from the fund. A consumer-owned water utility that has accumulated money in its water supply protection fund may remove money from the fund and return that money to the unappropriated retained earnings account if the utility determines that the removal would be in the best interest of the utility's customers.

5. Commission review. If a consumer-owned water utility needs to accumulate more than the maximum amount allowed in the water supply protection fund to acquire interests as provided in subsection 3, the utility shall obtain the approval of the commission before any sum may be allotted to the fund that would cause the fund to exceed the maximum.

6. Accounting treatment of fund. Money in a water supply protection fund is not considered unappropriated retained earnings for the purpose of section 6112, subsection 5, nor is such money considered in determining reasonable revenue requirements under section 310 or 6104.

7. Interest. Except as provided in subsection 4, interest earned on money in a water supply protection fund must remain in the fund and be used solely for the purposes of the fund, notwithstanding the maximum amount permitted in the fund.

See title page for effective date.

CHAPTER 31

H.P. 364 - L.D. 467

An Act to Allow Emergency Interruption of Telephone Service for Law Enforcement Purposes

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

Sec. 1. 35-A MRSA §7507 is enacted to read:

§7507. Emergency interruption of service for law enforcement purposes

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. Critical incident. "Critical incident" means a situation in which there is probable cause to believe that a person is holding a hostage while committing a crime or who is barricaded and resisting