

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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NON-EMERGENCY LAWS IS

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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
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

the content of a request for waiver and procedures for the expeditious processing of the request in certain circumstances.

10-B. Renewal of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section for which the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

Sec. 6. 35-A MRSA §3133-A, sub-§5, as enacted by PL 1987, c. 387, §4, is repealed.

Sec. 7. 35-A MRSA §3133-A, sub-§§5-A and 5-B are enacted to read:

5-A. Amendments, extensions and renewals. This section applies to any amendment, extension or renewal of any significant agreement or contract subject to this section, if the original contract was subject to approval by the commission. The commission may waive the approval requirements of this section with respect to a particular agreement or group of agreements upon request by the utility. The commission may also waive the 2-month notice requirement in subsection 1. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver in certain circumstances.

5-B. Amendments, extensions and renewals of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section when the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval is not required under this section.

Sec. 8. 35-A MRSA §3154, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Rate design and conservation improvements. The commission shall mandate, after notice and hearing on the proposed schedule, a scheduled phasing-in of the improvements in electric utility rate design and related regulatory programs submitted and approved under section ~~3153~~ 3153-A and is authorized to order utilities to implement electric utility rate design improvements approved by the commission on a temporary, pilot and experimental basis, affecting either a portion or all of any class of consumers of any utility as the commission may determine is appropriate to carry out the purposes of this subchapter, and order other energy conservation techniques, programs and innovations relating to electric util-

ity service that, in the commission's judgment, are practicable, just and reasonably related to fulfilling the purposes of this chapter. In ordering any rate design improvements or any other programs for implementing energy conservation techniques and innovations referred to in section ~~3153~~ 3153-A, the commission shall consider rate design stability and shall assure the revenue requirements of the utility.

Sec. 9. 35-A MRSA §6102, sub-§2, ¶D, as repealed and replaced by PL 1991, c. 52, §1, is amended to read:

D. Publish in a newspaper of general circulation in the service territory of the ~~consumer-owned~~ water utility a notice to customers that the information required in paragraphs A and B is available for public review at the location established pursuant to paragraph C and provide to each of the water utility's customers a direct written notice of the availability of that information; and

See title page for effective date.

CHAPTER 92

S.P. 320 - L.D. 973

An Act Related to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Act

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 departments and agencies will become due and payable on or immediately after July 1, 1993; and

Whereas, these provisions are intended to improve management, performance, organization, program delivery and fiscal accountability of agencies and independent agencies reviewed; and

Whereas, certain independent agencies will terminate unless continued by act of the Legislature prior to June 30, 1993; 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. 3 MRSA §927, sub-§1, ¶A, as amended by PL 1991, c. 376, §4, is further amended to read:

A. Agencies:

- (1) Department of ~~Finance~~ Administrative and Financial Services;
- (2) Office of Treasurer of State;
- (3) Department of Audit;
- (4) Department of Public Safety, but limited to the Bureau of Capitol Security;
- (5) Board of Emergency Municipal Finance;
- (6) Finance Authority of Maine; and
- (7) Maine Municipal Bond Bank.

Sec. 2. 3 MRSA §927, sub-§4, as amended by PL 1991, c. 837, Pt. A, §5, is further amended to read:

4. 2004.

A. Agency:

- (1) Department of Human Services; and
- (2) Department of Transportation.

B. Independent agencies ~~agency~~:

- ~~(1) State Board of Funeral Service;~~
- ~~(2) Board of Hearing Aid Dealers and Fitters;~~
- ~~(3) Advisory Commission on Radioactive Waste;~~
- (4) Maine Turnpike Authority;
- ~~(5) Capitol Planning Commission;~~
- (6) State Planning Office; ~~and~~;
- ~~(7) State Lottery Commission.~~

Sec. 3. 3 MRSA §927, sub-§5, ¶B, as corrected by RR 1991, c. 2, §3, is amended to read:

B. Independent agencies:

- (1) Board of Chiropractic Examination and Registration;
- (2) Board of Dental Examiners;

(3) Nursing Home Administrators Licensing Board;

(4) Board of Registration in Medicine;

(5) State Board of Nursing;

(6) State Board of Optometry;

(7) Board of Osteopathic Examination and Registration;

(8) Board of the Maine Children's Trust Fund;

(9) Examiners of Podiatrists;

(10) Maine Medical Laboratory Commission;

~~(11) State Planning and Advisory Council on Developmental Disabilities~~ Maine Developmental Disabilities Council;

(12) Maine Advisory Committee on ~~the Problems of the Mentally Retarded~~ Mental Retardation; ~~and~~

(13) Governor's Committee on Employment of People with Disabilities; ;

(14) Capitol Planning Commission; and

(15) Maine Turnpike Authority.

Sec. 4. 3 MRSA §927, sub-§6, ¶B, as amended by PL 1991, c. 837, Pt. A, §6, is further amended to read:

B. Independent agencies:

~~(1) Advisory Board for Licensure of Water Treatment Plant Operators;~~

(2) Saco River Corridor Commission;

(3) Acupuncture Licensing Board;

(4) Board of Licensing of Auctioneers;

(5) Board of Licensing of Dietetic Practice;

(6) Board of Commercial Driver Education; and

(7) Advisory Board for the Licensing of Taxidermists.

Sec. 5. 3 MRSA §927, sub-§8, ¶B, as enacted by PL 1989, c. 483, Pt. A, §§4 and 62, is amended to read:

B. Independent agencies:

- (1) Real Estate Commission;
- (2) Maine Athletic Commission;
- (3) State Claims Commission;
- (4) Board of Examiners on Speech Pathology and Audiology;
- (5) Maine State Board for Licensure of Architects and Landscape Architects;
- (6) State Board of Barbers;
- (7) State Board of Cosmetology;
- (8) Manufactured Housing Board;
- (9) State Board of Substance Abuse Counselors;
- (10) State Board of Licensure for Professional Foresters;
- (11) State Board of Certification for Geologists and Soil Scientists;
- (12) Board of Examiners in Physical Therapy;
- (13) Oil and Solid Fuel Board; ~~and~~
- (14) Plumbers' Examining Board; ;
- (15) State Board of Funeral Service; and
- (16) Board of Hearing Aid Dealers and Fitters.

Sec. 6. 3 MRSA §927, sub-§10, ¶B, as amended by PL 1991, c. 376, §12, is further amended to read:

B. Independent agencies:

- (1) Board of Trustees of the University of Maine System;
- (2) Board of Trustees of the Maine Maritime Academy;
- ~~(3) State Government Internship Program Advisory Committee;~~
- (4) Arborist Examining Board;
- (5) State Board of Examiners of Psychologists;

(6) Board of Commissioners of the Profession of Pharmacy;

(7) Alcohol and Drug Abuse Planning Committee; ~~and~~

(8) Maine Science and Technology Commission; ; and

(9) Advisory Commission on Radioactive Waste.

Sec. 7. 3 MRSA §927, sub-§11, ¶A, as amended by PL 1991, c. 376, §13, is further amended to read:

A. Agencies:

(1) Maine State Retirement System; and

(2) Department of Labor; ~~and~~,

~~(3) Department of Administration;~~

Sec. 8. 5 MRSA §1588 is enacted to read:

§1588. Department of Administrative and Financial Services coordination of Master Lease-purchase program

1. Authority of Department of Administrative and Financial Services; central records. The Department of Administrative and Financial Services may develop, negotiate and administer master lease-purchase financing programs to facilitate advantageous lease-purchase terms and economies of scale. Upon final legislative approval of agency lease-purchase proposals, state agencies, except for programs supported by the Highway Fund or the Federal Expenditure Fund in the Department of Transportation, shall participate in the Department of Administrative and Financial Services master lease-purchase program, unless participation is not feasible. The Department of Administrative and Financial Services, in conjunction with the relevant state agency, may negotiate and execute lease-purchase or financial contracts on behalf of the State. These master lease-purchase financing agreements may include the re-financing or consolidation of any state agency lease-purchase agreements. The Department of Administrative and Financial Services shall maintain central records on each lease-purchase financing agreement and each master lease-purchase program the department administers on behalf of a benefiting department or agency.

2. State agency participation. Except for the Department of Transportation when implementing a program supported by the Highway Fund or the Federal Expenditure Fund, all state agencies that seek to construct, improve or repair long-term capital assets or to acquire real property or equipment by a lease-purchase or other financing agreement shall notify the Commis-

sioner of the Department of Administrative and Financial Services and shall cooperate with the commissioner or a designee in developing the agency's proposal for submission to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Each requesting agency shall submit a justification for each proposal to the commissioner or to the commissioner's designee. The justification must include a benefit-cost analysis or cost-effective analysis in a form and content prescribed by the commissioner or the commissioner's designee. Programs supported by the Highway Fund or the Federal Expenditure Fund in the Department of Transportation may participate on the same terms as other agencies in any master lease-purchase financing agreement developed, negotiated and administered by the Department of Administrative and Financial Services.

3. Fund accounting protocol. Funds for master lease-purchase programs or specific lease-purchase arrangements approved by the Legislature in accordance with subsection 1 and section 1587 must be appropriated or allocated to an account or accounts established by the State Budget Officer with authorization for the transfer of other than General Fund resources from the account or accounts of the benefiting departments or agencies. Funds appropriated or allocated for this purpose may not lapse but must be carried forward from year to year to meet the principal and interest obligations of the master lease-purchase program or specific lease-purchase arrangement. Any appropriated or allocated balances remaining after the conclusion of a specific lease-purchase arrangement must lapse to the fund or account from which the lease-purchase obligations were appropriated or allocated.

Sec. 9. 5 MRSA c. 312, as amended, is repealed.

Sec. 10. 5 MRSA §12004-I, sub-§6-C is enacted to read:

6-C.	<u>Natural</u>	<u>Not</u>	<u>5 MRSA</u>
<u>Economic</u>	<u>Areas Advisory</u>	<u>Authorized</u>	<u>§13077</u>
<u>Development</u>	<u>Board</u>		

Sec. 11. 5 MRSA §12004-I, sub-§78, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. 12. 5 MRSA §13072, sub-§7, ¶D, as enacted by PL 1991, c. 622, Pt. F, §10, is amended to read:

D. The Coastal Zone Management Local Grants Program; and

Sec. 13. 5 MRSA §13072, sub-§7, ¶E, as enacted by PL 1991, c. 622, Pt. F, §10, is repealed.

Sec. 14. 5 MRSA §13074-A, as enacted by PL 1991, c. 622, Pt. F, §13, is repealed.

Sec. 15. 5 MRSA c. 383, sub-c. III, Art. 1-A is enacted to read:

Article 1-A

NATURAL AREAS

§13076. Natural Areas Program

1. Establishment. The Natural Areas Program is established within the Department of Economic and Community Development and is administered by the commissioner.

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

A. "Commissioner" means the Commissioner of Economic and Community Development.

B. "Critical area" means any natural area documented by the Natural Areas Program that is conserved or protected in its natural condition through voluntary action.

C. "Endangered plant" means any native plant species that is in danger of extinction throughout all or a significant portion of its range within the State or any species determined to be an endangered species pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

D. "Natural area" means any area of land or water, or both land and water, whether publicly or privately owned, that retains or has reestablished its natural character, though it need not be completely natural and undisturbed, and that supports, harbors or otherwise contains endangered, threatened or rare plants, animals and native ecological systems, or rare or unique geological, hydrological, natural historical, scenic or other similar features of scientific and educational value benefiting the citizens of the State.

E. "Register of Critical Areas" means the official listing of critical areas.

F. "Species" means any recognized taxonomic category of the biota including species, subspecies or variety.

G. "Threatened plant" means any species of native plant likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in the State or any species of plant determined to be a threatened species pursuant to the federal Endangered Species Act of 1973 as amended.

3. Functions of the Natural Areas Program. The Natural Areas Program shall perform the following functions.

A. The Natural Areas Program shall conduct an ongoing, statewide inventory of the State's natural areas, including, but not limited to, rare plants, animals, natural communities and ecosystems or other geological, hydrological, natural historical, scenic or other similar features, and may conduct investigations related to the population, habitat needs, limiting factors and other biological and ecological data to support the mandates of the Natural Areas Program or other cooperating agencies.

B. The Natural Areas Program shall maintain a biological and conservation data base that must contain data from inventories and other data sources and other relevant biological, ecological or other information about natural features described in paragraph A, and about ecologically significant sites that harbor these features. Information contained in the biological and conservation data base may be made available as necessary or appropriate for conservation and land use planning, environmental review, scientific research and inquiry, education or other appropriate use. For the purpose of this paragraph, an appropriate use is one that will not jeopardize sensitive species or habitats.

C. The Natural Areas Program may coordinate inventory and data management and planning activities with other appropriate state agencies or entities to maximize efficiency and increase communication among agencies and to provide appropriate data interpretation and technical services to support the mandates and programs of those agencies.

D. The Natural Areas Program may levy appropriate charges to those using, for commercial gain, the inventory and information services provided by the Natural Areas Program to recover the costs of providing the service and a reasonable portion of the costs associated with building and maintaining the biological and conservation data base. Charges must be fixed in a schedule prepared and revised as necessary by the Natural Areas Program, reviewed by the Natural Areas Advisory Board and supported and explained by accompanying information.

E. The Natural Areas Program may enter into cooperative agreements with federal or state agencies, political subdivisions of this State or private persons or organizations to receive or disburse funds for the purposes of this article.

§13077. Natural Areas Advisory Board

1. Establishment. The Natural Areas Advisory Board is established in section 12004-I, subsection 6-C

and is referred to in this article as the "board." The Natural Areas Advisory Board shall advise the commissioner in administering the functions of the Natural Areas Program.

2. Membership. The Natural Areas Advisory Board consists of the commissioner or a designee and 8 additional members, appointed by the commissioner and including private citizens, landowners or land managers. Areas of expertise to be represented on the board, either through vocation or avocation, must include, but are not limited to, rare plant or animal biology; ecology or taxonomy; landscape or natural community ecology; conservation biology or natural areas conservation; natural resources policy; earth sciences; or other similar natural or physical sciences, except that at no time may the board contain fewer than 3 members with expertise in rare plant biology or taxonomy or landscape ecology.

3. Terms of membership. The commissioner shall serve for the duration of the commissioner's term in office. All other members serve for a term of 2 years, except that initially 2 serve for 3 years, 3 serve for 2 years and 3 for one year. All members, except the commissioner, are eligible for 2 reappointments to board membership for a maximum of 6 years.

4. Officers. The board shall select annually from among its members a chair and a secretary.

5. Quorum required; recordkeeping. A quorum of the board for the transaction of business is 4 members. The secretary of the board shall keep a record of all proceedings. That record is a public record.

6. Rules. The board may adopt informal rules governing the conduct of its business.

7. Compensation prohibited. Members of the board are not entitled to per diem or compensation for expenses.

§13078. Responsibilities of commissioner

The commissioner has the following responsibilities pertaining to natural areas.

1. Conservation of natural areas. The commissioner shall promote conservation of natural areas by:

A. Making available current and accurate information to all appropriate entities to interpret, educate or otherwise inform so as to support planning and conservation activities in this State;

B. Promoting voluntary action to conserve and protect natural areas in this State;

C. Entering into agreements with landowners of natural areas and registered critical areas to promote appropriate and effective management of

these areas in order to maintain and enhance the natural value of these areas; and

D. Developing and disseminating educational or technical materials for the purpose of informing the general public and other interested persons or institutions about natural areas and the value of those areas. The commissioner may charge a reasonable fee for these materials. All income received by the commissioner from the sale of these publications and materials must be credited to a nonlapsing, dedicated revenue account and used for the purposes of this paragraph.

2. Register of critical areas. The commissioner, with the advice of the board, shall maintain a register of critical areas that must contain natural areas classified as critical areas as follows.

A. In determining the classification of an area or site as a registered critical area, the commissioner shall consider:

- (1) The unique or exemplary natural qualities of the area or site;
- (2) The intrinsic fragility of the area or site and sensitivity to alteration or destruction;
- (3) The voluntary commitment to conserve or protect the area or site;
- (4) The present or future threat of alteration or destruction; and
- (5) The economic implications of inclusion of an area or site on the register.

The commissioner, with the advice of the board, may remove a registered critical area from the register if the commissioner determines that the area or site no longer qualifies as a critical area.

B. Each registered critical area must be documented with at least the following information:

- (1) A general description of the area or site;
- (2) A list of the endangered or threatened species or other unique or exemplary natural features occurring at the area or site, and reasons for inclusion in the register;
- (3) The size and location of the area or site; and
- (4) The name or names of the property owner or owners, contingent upon the consent of the owner or owners.

C. The commissioner shall notify owners of natural areas of the natural value of their land and the implications of voluntary conservation. Subsequently a natural area may be placed upon the Register of Critical Areas with at least 60 days' notice before registration and the consent of the landowner.

3. Endangered plants. The commissioner has the following responsibilities related to endangered plants.

A. The commissioner shall establish and maintain the official list of native endangered and threatened plants of the State. The purpose of the list is informational and may be provided on an informational basis to public agencies, private institutions or individuals for environmental assessment, land management or educational purposes.

B. The commissioner may establish procedures to substantiate the identification of endangered and threatened native plant species. In determining and revising the list, the commissioner shall use the rare plant data base of the Natural Areas Program, the advice of the Natural Areas Advisory Board and the knowledge of botanists in the State. In addition, the commissioner shall consult with federal agencies, interested state agencies, other states or provinces having a common interest and other interested persons and organizations. The commissioner shall determine criteria for each category. When establishing the list, the commissioner shall consider aspects of plant biology that contribute to a species rarity such as:

- (1) Endemism. The plant species or subspecies may be geographically restricted to the State or areas immediately adjacent to the State;
- (2) Scarcity. A plant species or subspecies may be numerically scarce throughout its distribution in North America and occur in only a few locations in the State;
- (3) Special habitat. A plant species or subspecies may require habitat that is scarce in the State;
- (4) Limit of range. A plant species or subspecies in the State may be at the edge of its distribution or disjunct from its main distribution; and
- (5) Population decline or vulnerability. A plant species or subspecies may be threatened or seriously declining due to habitat modification or destruction or from overcollection for commercial, recreational or educational purposes.

C. The commissioner shall conduct at least one public hearing to allow for public comment before establishing or revising the list.

D. The commissioner shall review the list biennially and add or delete species based on new botanical inventory data, taxonomic or other scientific studies or other documentation.

4. Sensitive information. The commissioner may withhold specific information on the location of a species or natural area and its component features if, in the judgment of the commissioner, disclosure of this information would threaten the existence of that species or natural area. The commissioner may not deny a landowner or landowner's designee information about species or natural areas occurring on the landowner's property or withhold this information from usual environmental review procedures of local, state or federal regulatory agencies.

§13079. Natural Areas Conservation Fund

The Natural Areas Conservation Fund is established as a nonlapsing separate account to be administered by the commissioner. Income from gifts, bequests, devises, grants, fees and other sources may be deposited in this fund. All money in the fund and earnings on that money must be used for the investigation, conservation and management of native plants, natural communities, ecosystems or other significant features as described in this chapter and for administrative and personnel costs for the purposes of this section. The commissioner may make grants from the fund to any person, organization, state agency or other entity to undertake inventory and research about rare plants, natural communities, ecosystems or other features of natural areas.

Funds in the Natural Areas Conservation Fund may not be deposited in the General Fund or any other fund except as provided by law. All funds of the Natural Areas Conservation Fund are subject to allocation by the Legislature.

Sec. 16. 5 MRSA §13111, sub-§10, as corrected by RR 1991, c. 2, §17, is repealed.

Sec. 17. 38 MRSA §1453, sub-§7, as enacted by PL 1985, c. 309, §6, is repealed.

Sec. 18. Transition provisions.

1. The Register of Critical Areas and the official list of native endangered and threatened plants of the State, as well as all existing rules and procedures in effect, in operation or adopted by the Critical Areas Program of the State Planning Office and the Maine Natural Heritage Program of the Department of Economic and Community Development or any of its administrative units or officers, are continued in effect until rescinded, revised or amended by the proper authority.

2. All existing contracts, leases, agreements, compacts and grants issued by the Critical Areas Program of the State Planning Office and the Maine Natural Heritage Program of the Department of Economic and Community Development before the effective date of this Act, continue to be valid under the terms of issuance either until expiration or rescision, amendment or revocation and are transferred to the Natural Areas Program within the Department of Economic and Community Development on the effective date of this Act.

3. The Commissioner of Economic and Community Development on behalf of the Natural Areas Program has the authority to enter into contracts or agreements or to apply for grants, modification to grants or money as may be necessary to conduct the work of the Natural Areas Program within the Department of Economic and Community Development. This Act may not be construed to violate any requirements of a granting agency.

4. All balances of funds, transfers, revenues or other available funds in an account or subdivision of an account of the Critical Areas Program of the State Planning Office or the Natural Heritage Program of the Department of Economic and Community Development must be reallocated or reappropriated to the Natural Areas Program within the Department of Economic and Community Development by the State Controller.

5. Subject to the Civil Service Law, any positions authorized and allocated to the Maine Natural Heritage Program of the Department of Economic and Community Development are transferred to the Natural Areas Program within that same department and may continue to be authorized.

6. All records, property, and equipment previously belonging to or allocated for the use of the Critical Areas Program of the State Planning Office or the Maine Natural Heritage Program of the Department of Economic and Community Development become the property of the Natural Areas Program on the effective date of this Act.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except sections 9 to 14 and 16 take effect on July 1, 1993.

Effective May 6, 1993, unless otherwise indicated.

CHAPTER 93

H.P. 208 - L.D. 270

An Act to Mandate Suspension of a Minor's Operator's License for Possession of Alcohol in a Motor Vehicle