

# 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

**THIRD SPECIAL SESSION**

October 1, 1992 to October 6, 1992

**FOURTH SPECIAL SESSION**

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

**FIRST REGULAR SESSION**

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR  
FIRST REGULAR SESSION  
NON-EMERGENCY LAWS IS  
OCTOBER 13, 1993

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  
1993

---

**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**1993**

---

**Sec. 1. 35-A MRSA §107, sub-§2, ¶B**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

B. The compensation of the staff attorney, ~~seasonal legal researcher, financial and utility analyst, chief utility accountant and utility accountant~~ ~~III~~ positions shall be are fixed by the commission with the approval of the Governor, but the compensation shall ~~may~~ not in the aggregate exceed the total amount appropriated or allocated in the commission's budget.

**Sec. 2. 35-A MRSA §107, sub-§2, ¶C**, as amended by PL 1987, c. 631, §3, is further amended to read:

C. The salaries of the other subordinate officials and employees of the commission, other than those of the general counsel, the administrative director, the assistant administrative director, the administrative assistant to the administrative director, the director of finance, the director of technical analysis, the director of consumer assistance, the assistant to the director of consumer assistance and the staff attorney, ~~financial and utility analyst, chief utility accountant and utility accountant~~ ~~III~~ positions, shall be are subject to the Civil Service Law; ~~except as provided in paragraph D.~~

**Sec. 3. 35-A MRSA §107, sub-§2, ¶D**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

**Sec. 4. 35-A MRSA §116, sub-§4**, as amended by PL 1991, c. 9, Pt. E, §21, is further amended to read:

**4. Use of funds.** The Public Utilities Commission may use the revenues provided in accordance with this section to fund 69 employees ~~and 2 seasonal legal researchers~~ and to defray the costs incurred by the commission pursuant to this Title, including administrative expenses, general regulatory expenses, consulting fees and all other reasonable costs incurred to administer this Title.

See title page for effective date.

---



---

## CHAPTER 119

H.P. 686 - L.D. 927

### An Act to Include a Waiver Provision for the Advance Notice Required by the Public Utilities Commission for Energy Agreements and Contracts

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

**Sec. 1. 35-A MRSA §3133-A, sub-§1**, as enacted by PL 1987, c. 387, §4, is amended to read:

**1. Certificate of public convenience and necessity.**

Except as provided in subsection 3, no electric utility may enter into any significant agreement or contract, as defined in subsection 2, unless the commission has issued a certificate of public convenience and necessity approving the proposed agreement or contract. The utility shall must file a notice with the commission; no less than 2 months in advance of submitting its petition for a certificate of public convenience and necessity for the proposed agreement or contract. The commission may waive the requirement that at least 2 months' advance notice be given. The commission shall rule on any request for waiver within 60 days. The commission may require the petitioner to make available such additional information as it ~~deems~~ determines necessary. The petition shall must contain such information as the commission may by rule prescribe. The petition shall must be set down for public hearing. The commission shall issue its order within 12 months after the complete petition is filed. If there is then outstanding a long-range plan for the utility pursuant to section 3134, ~~which that~~ which includes the agreement or contract, the utility need not provide advance notice of its intent to file the petition and the commission shall issue its order within 9 months after the complete petition is filed.

In its order, the commission shall make specific findings with regard to the agreement or contract. If the commission finds that a need for it exists and it is reasonable and consistent with the public interest, the commission shall issue the certificate of public convenience and necessity.

The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance, the decision by the utility to enter into the agreement or contract was prudent.

See title page for effective date.

---



---

## CHAPTER 120

S.P. 389 - L.D. 1184

### An Act Concerning Independent Contractors and the Responsibilities of Landowners under the Workers' Compensation Laws

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

Whereas, the wood harvesting season is about to recommence; and

**Whereas**, unless this legislation is enacted as an emergency measure, numerous small logging contractors will be denied access to private lands and therefore will be unable to pursue their livelihoods; 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. 39-A MRSA §105**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**§105. Predetermination of independent contractor status**

**1. Predetermination permitted.** A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the ~~Department of Labor board~~ for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the ~~Department of Labor board~~ creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.

B. Nothing in this section requires a worker, an employer or a workers' compensation insurance carrier to request predetermination.

**2. Premium adjustment.** If it is determined that a predetermination does not withstand board or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.

**3. Predetermination submission.** A party may submit, on forms approved by the ~~Department of Labor board~~, a request for predetermination regarding the status of a person or job description as an employee or independent contractor. The status requested by a party is deemed to have been approved if the ~~Department of Labor board~~ does not deny or take other appropriate action on the submission within 14 days.

**4. Hearing.** A hearing, if requested by a party within 10 days of the ~~Department of Labor's board's~~ decision on a petition, must be conducted under the Maine Administrative Procedure Act.

**5. Certificate.** The ~~Department of Labor board~~ shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

**6. Rulemaking.** The ~~Commissioner of Labor board~~ is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable predetermination of employee and independent contractor status.

**Sec. 2. 39-A MRSA §401, sub-§4**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**4. Liability of landowner.** A landowner subject to this Act who contracts to have wood harvested from the landowner's property by a contractor who, as an employer, is subject to this Act and who has not complied with the provisions of this section and who does not comply with the provisions of this section prior to the date of an injury or death for which a claim is made is liable to pay to any person employed by the contractor in the execution of the work any compensation under this Act that the landowner would have been liable to pay if that person had been immediately employed by the landowner.

A landowner is not liable for compensation if at the time the landowner enters into the contract with the contractor, the landowner applies for and receives a predetermination of the independent status of the contractor as set forth in section 105, or the landowner requests and receives a certificate of insurance, issued by the contractor's insurance carrier, certifying that the contractor has obtained the required coverage and indicating the effective dates of the policy, and if the landowner requests and receives at least annually similar certificates indicating continuing coverage during the performance of the work. A landowner who receives a predetermination of the contractor's status as independent contractor is only relieved of liability under this paragraph if the contract for wood harvesting expressly states that the independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner.

Notwithstanding section 105, subsection 1, paragraph A, a predetermination under section 105 related only to parties subject to this subsection is a conclusive presumption that the determination is correct and section 105, subsection 2 does not apply to that determination. Each party involved in or affected by the predetermination must be provided information on the workers' compensation laws and the effect of independent contractor status in relation to those laws. A predetermination under section 105 related to parties subject to this subsection is effective for one calendar year or the duration of the contract, whichever is shorter.

A landowner required to pay compensation under this section is entitled to be indemnified by the contractor and may recover the amount paid in an action against that contractor. A landowner may demand that the contractor enter into a written agreement to reimburse the landowner for any loss incurred under this section due to a claim filed for compensation and other benefits. The employee is not entitled to recover at common law against the landowner for any damages arising from such injury if the employee takes compensation from that landowner.

Landowners willfully acting to circumvent the provisions of this section by using coercion, intimidation, deceit or other means to encourage persons who would otherwise be considered employees within the meaning of this Act to pose as contractors for the purpose of evading this section are liable subject to the provisions of section 324, subsection 3. Nothing in this section may be construed to prohibit an employee from becoming a contractor subject to the provisions of section 102, subsection 13.

**Sec. 3. Review by Workers' Compensation Board.** The Workers' Compensation Board shall review the effects of this Act and submit a report, including any recommended changes, to the Joint Standing Committee on Labor by November 1, 1993. This report must include the number of predeterminations made under this Act, the manner in which the predeterminations were made, the number of cases investigated or prosecuted for willfully acting to circumvent the liability imposed by the Maine Revised Statutes, Title 39-A, section 401, subsection 4 and the disposition of those cases under section 324, subsection 3.

**Sec. 4. PL 1993, c. 65** is repealed.

**Sec. 5. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
<b>WORKERS' COMPENSATION BOARD</b>		
<b>Workers' Compensation Board</b>		
Positions	(1.0)	(1.0)
Personal Services	\$48,379	\$52,830
All Other	5,700	5,700
Provides authorization for one Staff Attorney position and allocations for general operating costs necessary to administer predetermination cases.		
<b>WORKERS' COMPENSATION BOARD TOTAL</b>	<b>\$54,079</b>	<b>\$58,530</b>

**Sec. 6. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 39-A, section 105 and that section of this Act that repeals Public Law 1993, chapter 65 take effect on July 1, 1993.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective May 12, 1993, unless otherwise indicated.

---



---

## CHAPTER 121

### H.P. 287 - L.D. 374

#### An Act to Assist Policy Makers in Establishing Health Care Policy

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

**Sec. 1. 22 MRSA §395-A, sub-§§1 and 2,** as enacted by PL 1989, c. 565, §11, are amended to read:

**1. Development of health care information systems.** In addition to the commission's authority to obtain information to carry out the specific provisions of this subchapter, the commission may require providers of health care to furnish information with respect to the nature and quantity of services provided to the extent necessary to develop proposals for the modification, refinement or expansion of the systems of information disclosure established under this subchapter. The commission's authority under this subsection includes the design and implementation of pilot information reporting systems affecting selected categories of providers of health care or representative samples of providers. Pilot information reporting systems established under this subsection may be implemented on a statewide basis.

**2. Demonstration project.** The commission may establish a demonstration project requiring the submission of data from all providers with respect to services listed in subsection 3 in nonhospital settings. The demonstration project may be implemented on a statewide basis. The demonstration project shall must be designed to test the usefulness of data to consumers, the value of the data in determining whether hospital-based health care costs and services are shifting to nonhospital-based settings, the feasibility of using standard claim forms for the submission of data, how the cost of data collection is balanced with the value of the data, whether patient-specific or aggregate data can best address the purposes for which the data is sought, and whether providers should be compensated for providing the data. By January 1, 1997, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over human resources matters a report that addresses each of these criteria. The report must include