

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

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. 7. Report. The Department of Environmental Protection shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters by January 15th of 1994, 1995, 1996 and 1997 on the implementation of this Act. Each report must show total fees received by the department during the previous calendar year from borrow pit operators who filed a notice under this Act, expenditures of the department in the previous calendar year to administer and enforce this Act, a summary of actions taken by the State to enforce this Act, a list of the municipalities that choose to assume sole jurisdiction for borrow pit regulation under the provisions of this Act and any other information useful in assessing the implementation of this Act.

Sec. 8. Use of funds. All fees paid to the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 490-J must be retained and used by the department to carry out the purposes of this Act.

Sec. 9. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Land Quality Control		
Positions	(3.0)	(3.0)
Personal Services	\$79,235	\$107,182
All Other	11,250	15,000
Provides for the allocation of funds to authorize one Environmental Specialist IV position, 2 additional Environmental Specialist II positions and general operating costs to administer the regulation of certain borrow pits.		
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL		
	\$90,485	\$122,182

See title page for effective date.

CHAPTER 351

H.P. 574 - L.D. 779

An Act to Implement the Constitutional Requirement for State Funding of Mandates Imposed on Local Units of Government

Mandate implementation preamble. Whereas, this measure constitutes legislation implementing the Con-

stitution of Maine, Article IX, Section 21 and requires the vote of two thirds of all of the members elected to each House for approval; and

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

Whereas, Article IX, Section 21 of the Constitution of Maine, which was approved by the voters effective November 23, 1992, prohibits the imposition of mandates on local units of government unless 90% of the costs of those mandates are funded by the State or unless the mandates are approved by a 2/3 vote in each House of the Legislature; and

Whereas, implementing legislation is immediately necessary to carry out the intent of the constitutional amendment; 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. 30-A MRS §5685 is enacted to read:

§5685. Funding for required activities

1. Definitions. As used in this section and in the Constitution of Maine, Article IX, Section 21, unless the context otherwise indicates, the following terms have the following meanings.

A. "Local revenues" means revenues generated by local units of government, including property taxes, other locally levied taxes and user fees and other revenues, such as excise taxes collected and retained by local units of government pursuant to statutory authority.

B. "Local unit of government" or "local unit" means a municipality, as defined in this Title; a plantation, as governed by chapter 301; a county; a school administrative unit, as defined in Title 20-A, section 1; or a governmental entity that is:

- (1) Created or authorized by special act of the Legislature or authorized to be created by a general purpose unit of government under a general act of the Legislature;
- (2) Established to provide public services;
- (3) Funded by local revenues;

(4) Governed by a locally elected body or a body appointed by a municipality or county; and

(5) Not an agency of State Government or other entity having statewide authority, jurisdiction or purpose.

C. "Mandate" means any law, rule or executive order of this State enacted, adopted or issued after November 23, 1992 that requires a local unit of government to expand or modify that unit's activity so as to necessitate additional expenditures from that unit's local revenues. "Mandate" includes laws, rules or executive orders that primarily affect the performance of a local unit's governmental activities.

D. "Mandate payment distribution schedule" means a schedule for distribution of state payments required by the Constitution of Maine, Article IX, Section 21, to be made to local units of government during the state fiscal year.

E. "Required state mandate funds" means those state funds required to be paid to local units of government under the Constitution of Maine, Article IX, Section 21.

2. Requirement for state funding. The State may not impose a mandate on a local unit of government unless the State provides annually at least 90% of the funding for those expenditures from state funds not previously appropriated, allocated or otherwise designated for payment to that local unit of government. The Legislature may impose a mandate on a local unit of government without providing 90% funding as an exception to the provisions of the Constitution of Maine, Article IX, Section 21 if enacted upon the votes of 2/3 of all members elected to the Senate and the House of Representatives.

3. Implementation. In implementing this section and the provisions of the Constitution of Maine, Article IX, Section 21, the following provisions apply.

A. The State may not meet its obligation to provide required state mandate funds by authorizing a local unit of government to levy fees or taxes not previously levied by that local unit of government.

B. The State may not meet its obligation to provide required state mandate funds by requiring a local unit of government to spend funds previously appropriated to that local unit of government.

C. Reduction of state funds that are the State's share of the cost of mandates that have been suspended or reduced does not preclude imposition of a new mandate if the required state mandate funds are provided for that new mandate.

D. Required state mandate funds do not include the costs incurred by local units of government to comply with a federal law or regulation or to become eligible for the receipt of federal funds, except to the extent that the State imposes requirements or conditions that exceed the federal requirements.

E. Required state mandate funds do not include for the costs to local units of government of implementing laws, rules, executive orders or judicial decisions or orders that are required to comply with the following provisions of the Constitution of Maine:

(1) The reapportionment requirements of Article IV, Part First, Section 2 and Article IV, Part Second, Section 2;

(2) The constitutional referenda provisions of Article X, Section 4;

(3) The people's veto of legislation provisions of Article IV, Part Third, Section 17; and

(4) The direct initiative of legislation provisions of Article IV, Part Third, Section 18.

F. Legislation, even though enacted by a 2/3 vote of each House of the Legislature, may not be construed to override the funding requirements of the Constitution of Maine, Article IX, Section 21, unless the legislation contains specific language indicating that it is the intent of the Legislature to create an exception to the Constitution of Maine.

4. Local units of government not bound. A local unit of government is not bound by any mandate unless funded or exempted from state funding in accordance with this section and the Constitution of Maine, Article IX, Section 21.

5. Appropriation and payment of state funds. The State must appropriate, allocate or otherwise designate for payment in each state fiscal year a sum sufficient to meet at least 90% of the cost of each mandate imposed on local units of government.

A. The state agency to which state funds are appropriated, allocated or otherwise designated for payment to fund a mandate, referred to in this subsection as the "agency," shall pay to each local unit of government in each state fiscal year the required state mandate funds. The agency need not pay to local units of government the entire amount at the beginning of each fiscal year. However, the agency must make payments to local units of government in accordance with the mandate payment distribution schedule.

B. A mandate payment distribution schedule describes the number of annual payments, the time of each payment and the amount of each payment to be made during the state fiscal year to ensure that the State pays local units of government the required state mandate funds prior to the local units of government having to make expenditures required by a mandate.

C. A mandate payment distribution schedule must be established for each mandate that requires state funding under this section. The agency shall establish a mandate payment distribution schedule for a mandate by consulting with the affected local unit or units of government or with a representative sample of affected local units of government. If necessary, different mandate payment distribution schedules may be established for a single mandate.

D. Following public hearing and in accordance with the Maine Administrative Procedure Act, the State Controller shall adopt rules necessary to implement this subsection. At a minimum, those rules must include a process for establishing mandate payment distribution schedules for distribution of payments under this subsection, including the provision of public notice and an opportunity for comment on the schedules by local units of government and other affected persons.

E. Following public hearing and in accordance with the Maine Administrative Procedure Act, the State Auditor shall adopt rules establishing a process for oversight of local unit of government compliance with mandates and use of state funds provided under this subsection.

F. In accordance with the Maine Administrative Procedure Act, a local unit of government may appeal the number, amount and timing of payments under this section to the agency making payments. Decisions on appeals from the number, amount and timing of payments awarded under the schedule constitute final agency action.

6. Collection of data; report. A state agency making payments to local units of government under this section shall submit a report to the Department of Administrative and Financial Services by September 1st each year. The report must identify specific mandates administered by the agency during the previous fiscal year, describe the payment schedule developed by the agency for each mandate and contain any other information requested by the department. The Department of Administrative and Financial Services shall compile that information and shall issue a report annually not later than January 15th to the Governor and the Legislature summarizing state agency activities under this section.

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

Effective June 16, 1993.

CHAPTER 352

H.P. 1101 - L.D. 1488

An Act to Clarify the Process for a Direct Initiative of Legislation and to Simplify Questions Presented to the Voters at a Referendum

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

Sec. 1. 21-A MRSA §901, as amended by PL 1991, c. 862, §8, is further amended to read:

§901. Petitions

~~On a voter's written application, signed in the office of the Secretary of State on a form designed by the Secretary of State, the Secretary of State shall furnish enough petition forms to enable the voter to invoke the initiative procedure or the referendum procedure provided in the Constitution of Maine, Article IV, Part Third. This application must contain the names and addresses of 5 voters who shall receive any notices in proceedings under this chapter.~~

To initiate proceedings for a people's veto referendum or the direct initiative of legislation, provided in the Constitution of Maine, Article IV, Part Third, Sections 17 and 18, a voter shall submit a written application to the Department of the Secretary of State on a form designed by the Secretary of State. The application must contain the names and addresses of 5 voters who are designated to receive any notices in proceedings under this chapter. For a direct initiative, the application must contain the full text of the proposed law. The voter submitting the application shall sign the application in the presence of the Secretary of State or the Secretary of State's designee.

On receipt, the Secretary of State, or the Secretary of State's designee shall review the application and determine the form of the petition to be submitted to the voters.

1. Limitation on petitions. An application for a people's veto referendum petition must be filed in the office Department of the Secretary of State within 10 working days after adjournment of the legislative session at which the Act in question was passed. A direct initiative of legislation must meet the filing deadlines specified in the Constitution of Maine, Article IV, Part Third, Section 18.