

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Sec. 19. 21-A MRSA §858, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 20. 21-A MRSA §858-A is enacted to read:

§858-A. Counting procedure for absentee ballots

1. Warden to review notes of clerk. Unless a request to inspect applications and envelopes is made pursuant to subsection 8, the warden shall review the notes of the clerk on each return envelope.

2. Accepted if correct. If the warden finds that the affidavit is properly completed, that the clerk has verified that the signature on the envelope matches the signature on the application where applicable and that the person is registered and enrolled where necessary, the warden or another election official designated by the warden shall then announce the name of each absentee voter to an election clerk who shall verify on the incoming voting list that the voter has not voted in person and after verification write "AV" next to the absentee voter's name on the incoming voting list. The warden or the warden's designee shall then remove each ballot from its envelope without destroying the envelope.

3. Rejected if incorrect. The warden may not open the envelope and shall write "Rejected" on it, the reason why and the warden's own initials if the warden finds that:

A. The signatures do not appear to have been made by the same person and the discrepancy is not the result of the voter's having obtained assistance under section 753, subsection 4 or section 754-A, subsection 3 in cases when an application is required;

B. The affidavit is not properly completed;

C. The person is not registered or enrolled where necessary;

D. The voter has voted in person; or

E. The ballot was received by the clerk after the deadline.

4. Primary election provisions. At a primary election when the warden removes a ballot from its envelope, the warden shall check its color to be sure it is the ballot of the party in which the voter is enrolled. If it is not, the warden shall immediately replace it in its envelope, reseal the envelope and write "Rejected" on it, the reason why and the warden's own initials.

5. Rejected ballots separate. The warden shall place the return envelopes containing rejected ballots in a separate lot.

6. Ballots counted. As soon as the absentee ballots have been processed, they must be counted in the same manner as regular ballots. Rejected ballots may not be counted.

7. Processing before close of polls. If notice is given following the procedure in section 621 that the clerk intends to begin processing after 2 p.m. on election day, the warden or the warden's designee may review the notes of the clerk on each return envelope and process the ballots.

8. Inspection after polls close. If a candidate notifies the warden before 8 p.m. that the candidate wishes to inspect absentee ballot applications and envelopes after the polls close, the warden shall allow the candidate to inspect the applications and envelopes of ballots that have not yet been opened for 30 minutes after the polls close.

See title page for effective date.

CHAPTER 448

H.P. 117 - L.D. 158

An Act to Change the Scallop Harvesting Season

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

Sec. 1. 12 MRSA §6956 is enacted to read:

§6956. Diver's down flag required

A person licensed to harvest a marine species by hand must display a diver's down flag when using a self-contained underwater breathing apparatus to harvest that species. For the purposes of this section, "diver's down flag" means the International Code Flag "A" as defined in navigation rules adopted by the United States Coast Guard.

See title page for effective date.

CHAPTER 449

H.P. 244 - L.D. 323

An Act to Continue the Franklin County Budget Committee

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitu-

tion of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 30-A MRSA §876, as enacted by PL 1991, c. 495, is repealed.

See title page for effective date.

CHAPTER 450

S.P. 292 - L.D. 862

An Act to Clarify Mandatory Waiver Authority Concerning Construction Requirements

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

Sec. 1. 5 MRSA §4594-D, sub-§9, as amended by PL 1993, c. 410, Pt. X, §2, is further amended to read:

9. Waivers; variance. Builders of facilities governed by subsection 7 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If the representative of the Office of the State Fire Marshal determines in cases covered by mandatory plan review that compliance with this section and its rules is not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to persons with physical disability, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

Requests for waivers or variances for buildings covered by mandatory plan review are heard by a designee of the Office of the State Fire Marshal. A decision must be provided in writing to the party requesting the waiver or variance.

Sec. 2. 5 MRSA §4594-E is enacted to read:

§4594-E. Waivers for existing buildings

Owners of places of public accommodation built, renovated, remodeled or enlarged between September 1, 1974 and January 1, 1991 may apply to the Office of the State Fire Marshal until September 30, 1994 for a waiver or variance from the standards of construction for accessibility requirements. If the Office of the State Fire Marshal determines that compliance with applicable requirements is not technologically feasible or will result in excessive and unreasonable cost in terms of current dollars without any substantial benefit to persons with physical

disabilities, it may provide for modification of or substitution of standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

A request for a waiver or variance under this subsection must be processed and may be appealed in the same manner as waivers and variances under section 4594-D, subsections 9 and 10.

The Commissioner of Public Safety shall adopt, in accordance with requirements of the Maine Administrative Procedure Act, a schedule of fees for the examination of requests for waivers pursuant to this section and section 4594-D. The fees must be credited to the State Fire Marshal to defray the expenses of that office. Any balance of the fees may not lapse, but must be carried forward for the same purpose.

See title page for effective date.

CHAPTER 451

H.P. 224 - L.D. 292

An Act to Provide a Deterrent to Child Sexual Abuse

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

Sec. 1. 17-A MRSA §254, sub-§3, as enacted by PL 1975, c. 499, §1, is amended to read:

3. Sexual abuse of minors is a Class D crime, except that sexual abuse of minors is a Class C crime when:

A. The actor is more than 10 years older than the other person;

B. The actor knows the other person is related within the 2nd degree of consanguinity; or

C. The actor has 2 or more prior Maine convictions for violations of this section. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same day. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of an offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

Sec. 2. 17-A MRSA §255, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read: