

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

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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

CHAPTER 537

S.P. 481 - L.D. 1479

**An Act to Identify Laboratories
Subject to the Laboratory
Certification Program**

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

Whereas, the Maine Revised Statutes, Title 22, chapter 157-A requires the Department of Human Services and the Department of Environmental Protection to adopt rules establishing laboratory certification requirements and a certification fee schedule; and

Whereas, Title 22, chapter 157-A requires certification of any commercial, industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or hazardous waste or radiological samples for use in programs of either of the departments, subject to certain specified exceptions; and

Whereas, the departments have issued a proposed rule that would impose certification requirements that are substantial and certification fees that are significant on all laboratories conducting these analyses, regardless of the size and purpose of those laboratories; and

Whereas, this legislation exempts from the certification requirement wastewater laboratories that perform only certain routine tests; and

Whereas, unless the Legislature clarifies the applicability of Title 22, chapter 157-A before the adoption of rules by the departments, those rules may result in unintended burdens on those laboratories that are not intended to be subject to the mandatory certification requirements; 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. 22 MRSA §567, first ¶, as enacted by PL 1991, c. 499, §2 and affected by §26, is amended to read:

The laboratory director shall establish a laboratory certification program to ensure that all generated data of laboratories subject to the program is of

known and appropriate quality of precision and accuracy when utilized for departmental programs and programs administered by the Department of Environmental Protection.

Sec. 2. 22 MRSA §567, sub-§1, as enacted by PL 1991, c. 499, §2 and affected by §26, is amended to read:

1. Acceptable data. ~~Six~~ Except as provided in this subsection, 6 months after the adoption of rules specified in subsection 2, certification is required of any commercial, industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or hazardous waste, or radiological samples for the use of programs of the department or the Department of Environmental Protection, except as provided under chapter 411, the Maine Medical Laboratory Act; Title 26, chapter 7, subchapter III-A, Substance Abuse Testing; and Title 29, section 1312, subsection 6, administration of tests to determine blood-alcohol level or drug concentration. A laboratory operated by a waste discharge facility licensed pursuant to Title 38, section 413 may analyze waste discharges for total suspended solids, settleable solids, biological or biochemical oxygen demand, chemical oxygen demand, pH, chlorine residual, fecal coliform, E. coli, conductivity, color, temperature and dissolved oxygen without being certified under this section.

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

Effective March 25, 1994.

CHAPTER 538

H.P. 1308 - L.D. 1763

**An Act to Provide Enhanced
Enforcement Powers in the Maine
Banking Laws**

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

Whereas, there may exist situations within state-chartered financial institutions that may warrant officer or director removal; and

Whereas, there may exist situations within state-chartered financial institutions that may warrant closure and liquidation; and

Whereas, it is essential to align the state statutes with federal statutes and procedures in order to permit state regulators to act in concert with federal

regulators in developing a timely resolution to problematic situations; and

Whereas, current funding of the Bureau of Banking from semiannual assessments creates an uneven flow of revenue disproportionate with the operational costs of the bureau; and

Whereas, changing the frequency of assessment evens the flow of revenue to the Bureau of Banking to better coincide with the bureau's operational costs; and

Whereas, it is essential that the Bureau of Banking maintain enforcement tools and a funding mechanism in order to adequately supervise all state-chartered financial institutions; 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. 9-B MRSA §214, sub-§2, as amended by PL 1991, c. 669, §1 and affected by §2, is further amended to read:

2. Semiannual assessment on financial institutions.

A. To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title, including general regulatory costs, overhead, transportation and general office and administrative expenses, the superintendent shall assess ~~semiannually~~ each financial institution under the superintendent's supervision at the annual rate of at least 6¢ for each \$1,000 of the total of average assets, as defined by the superintendent. The frequency of assessment may coincide with the frequency of filing periodic financial reports with the bureau but may not be more frequent than quarterly. The superintendent may raise the minimum assessment rate of 6¢ for each \$1,000 of the total of average assets by promulgating rules pursuant to section 251 at such time as economic conditions warrant such an increase. In no event may the semiannual assessment be less than \$25.

~~B. For the period ending the last day of June in each year the assessment must be made on or before the first day of August next following and for the period ending the last day of December in each year the assessment must be made on or before the first day of February next following.~~

~~The superintendent shall immediately notify the financial institution of the assessment. The assessment so made must be paid semiannually to the Treasurer of State within 10 days next following the first days of August and February in each year. An assessment pursuant to paragraph A may be made on or before the assessment date for the period prescribed as follows:~~

	<u>Period ending</u>	<u>Assessment date</u>
<u>Quarterly</u>	<u>March 31st</u>	<u>May 1st</u>
	<u>June 30th</u>	<u>August 1st</u>
	<u>September 30th</u>	<u>November 1st</u>
	<u>December 31st</u>	<u>February 1st</u>
<u>Semiannually</u>	<u>June 30th</u>	<u>August 1st</u>
	<u>December 31st</u>	<u>February 1st</u>

~~The superintendent shall immediately notify the financial institution of the assessment. The assessment must be paid to the Treasurer of State within 10 days following the assessment date.~~

Sec. 2. 9-B MRSA §232, sub-§1, as enacted by PL 1975, c. 500, §1, is repealed and the following enacted in its place:

1. Grounds for removal. The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution if:

A. In the opinion of the superintendent, that officer or director has directly or indirectly:

- (1) Violated a law, rule, regulation or cease and desist order that has become final;
- (2) Engaged in or participated in any unsafe or unsound practice; or
- (3) Committed or engaged in any act, omission, or practice that constitutes a breach of the fiduciary duty of the officer or director;

B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

- (1) The financial institution has suffered or will probably suffer financial loss or other damage;
- (2) The interests of the financial institution's depositors have been or could be prejudiced; or
- (3) The officer or director has received financial gain or other benefit by reason of

the violation, practice or breach of fiduciary duty;

C. The violation, practice or breach of fiduciary duty described in paragraph A involves personal dishonesty on the part of the officer or director or demonstrates willful or continuing disregard by the officer or director for the safety or soundness of the financial institution; and

D. In the opinion of the superintendent, that officer or director has evidenced personal dishonesty and unfitness to continue as an officer or director of the financial institution by conduct with respect to another business entity that resulted, or is likely to result, in substantial financial loss or other damage.

Sec. 3. 9-B MRSA §368-A is enacted to read:

§368-A. Federal Deposit Insurance Corporation; acquisition of stock

The superintendent may waive the provisions of section 314; section 315, subsection 4; section 1013; and section 1015 when common or preferred stock, including stock warrants or stock rights for common or preferred stock, is issued to or acquired by the Federal Deposit Insurance Corporation in settlement of any liability, fixed or contingent, of a financial institution to the Federal Deposit Insurance Corporation or in connection with the insolvency or liquidation of the financial institution.

Sec. 4. 9-B MRSA §1018, as enacted by PL 1975, c. 500, §1, is amended to read:

§1018. Exclusion

The superintendent may promulgate regulations ~~excluding~~ exclude financial institution holding companies or other companies from the provisions of this chapter, under conditions comparable to those provided in either the Bank Holding Company Act of 1956 or section 408 of the National Housing Act, where when control of a Maine financial institution arises out of the acquisition of shares in a fiduciary capacity, or in connection with an underwriting of securities or proxy solicitation, or in securing or collecting a debt. When control of a Maine financial institution arises in connection with securing or collecting a debt, the acquiring institution or company may be excluded from the provisions of this chapter if the acquiring institution or company divests the securities within 2 years of acquisition. The superintendent may grant requests for up to 3 one-year extensions.

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

Effective March 25, 1994.

CHAPTER 539

H.P. 1280 - L.D. 1728

An Act to Establish Retirement Equity for Full-time Adult Education Teachers

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

Sec. 1. 5 MRSA §17762, as amended by PL 1989, c. 700, Pt. A, §25, is repealed.

Sec. 2. Application. This Act applies to any qualifying teacher who was eligible for retirement on or after January 1, 1993.

See title page for effective date.

CHAPTER 540

S.P. 678 - L.D. 1858

An Act to Streamline the Department of Transportation's Permitting Procedure for Aboveground Facilities

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

Sec. 1. 35-A MRSA §2503, sub-§16, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

16. Rules. The Department of Transportation may adopt reasonable rules to administer this section. These rules may include procedures for application and issue of permits and the conduct of hearings.

The department may adopt rules authorizing public utilities to install facilities on or over the surface of public ways for which the department is the licensing authority. The rules must set forth the following:

A. General terms and conditions regarding the location of the facilities; and

B. Reasonable requirements determined necessary to protect public safety and to permit unobstructed public travel along the affected public way.