

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

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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

by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a sanitary district to invest its funds.

Sec. 8. 38 MRSA §1255 is enacted to read:

§1255. Mutual funds

A sewer district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a sewer district to invest its funds.

See title page for effective date.

CHAPTER 652

H.P. 1441 - L.D. 1967

An Act to Amend the Probate Code to Provide Greater Due Process in Guardianship and Conservatorship Cases

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

Sec. 1. 18-A MRSA §5-303, sub-§§(b) and (c), as enacted by PL 1985, c. 440, §§1 and 13, are amended to read:

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person ~~has counsel of his own choice, unless it is indicated on the petition that the allegedly incapacitated person will attend the hearing or unless it is demonstrated that the appointment will serve no useful purpose~~ is already represented, the court shall appoint one or more of the following: A visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the

court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment shall of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated shall must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit his a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that ~~he the person~~ will reside if the requested appointment is made ~~and~~. The visitor or guardian ad litem shall submit his a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if he the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of his that person's own choice, the visitor or guardian ad litem shall so indicate in his the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon his the person's condition. He The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his the person's counsel so requests.

Sec. 2. 18-A MRSA §5-310, as amended by PL 1983, c. 620, is repealed.

Sec. 3. 18-A MRSA §5-310-A is enacted to read:

§5-310-A. Temporary guardians

(a) When a person alleged to be incapacitated has no guardian and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a guardian or may enter an ex parte order appointing a temporary guardian to address the emergency. A petition for temporary guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guard-

ian. In the order and in the letters of temporary guardianship, the court shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a), an expedited hearing must be held within 30 days of the signing of the court order exercising the powers of a guardian or appointing a temporary guardian. At the hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary guardianship continues to be necessary to address the emergency. Notice of the expedited hearing must be served as provided in section 5-309, except that the notice must be given at least 5 days before the expedited hearing. Unless the allegedly incapacitated person is already represented, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the ward wishes to contest any aspect of the temporary guardianship or to seek any limitation of the court's or the temporary guardian's powers, the court shall appoint an attorney to represent the ward. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available.

(c) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original 30-day period, for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary guardianship terminates on the date specified in the order or, if no date is specified in the order, at the end of the 6-month period following the expedited hearing, or at any prior time if the court determines the circumstances leading to the order for temporary guardianship no longer exist or if a hearing pursuant to section 5-303 has been held.

(d) If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).

(e) If an appointed guardian is not effectively performing that guardian's duties and the court finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person for a specified period not to exceed 6 months.

(f) A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may not seek the involuntary hospitalization of this ward in any institution outside the State. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this Code concerning guardians apply to temporary guardians.

(g) A petition for temporary guardianship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge, other than the judge of the county in which venue properly lies, acts on a petition for temporary guardianship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county, other than the county in which venue properly lies, is deemed to have been entered in the docket on the date and at the time endorsed upon it.

Sec. 4. 18-A MRSA §5-407, sub-§(b), as amended by PL 1985, c. 440, §§8 and 13, is further amended to read:

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, unless it is indicated on the petition the person to be protected will attend the hearing or unless it is demonstrated that the appointment will serve no useful purpose is already represented, the court shall appoint one or more of the following: A visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this the appointment shall of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the per-

son to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit ~~his~~ a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

Sec. 5. 18-A MRSA §5-407, sub-§(b-1), as enacted by PL 1985, c. 440, §§9 and 13, is amended to read:

(b-1) If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if he the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of his own choice is not already represented, the visitor or guardian ad litem shall so indicate in his the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon his the person's condition. He The person to be protected is entitled to be represented by counsel, to present evidence, to cross examine witnesses, including the physician and the visitor. The issue may be determined at a closed hearing if the person to be protected or his the person's counsel so request requests.

Sec. 6. 18-A MRSA §5-408, sub-§(1), as enacted by PL 1979, c. 540, §1, is amended to read:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for ~~his~~ the person's benefit or the benefit of his the person's dependents, in accordance with the procedures set forth in section 5-408-A.

Sec. 7. 18-A MRSA §5-408-A is enacted to read:

§5-408-A. Temporary conservator

(a) When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may

exercise the power of a conservator or may enter an ex parte order appointing a temporary conservator to preserve and apply the property of the person to be protected as may be required for that person's benefit or the benefit of that person's dependents. The petition must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed conservator. In the order and in the letters of temporary conservatorship, the court shall specify the powers and duties of the temporary conservator, limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), an expedited hearing must be held within 30 days of the signing of the court order exercising the powers of a conservator or appointing a temporary conservator. At that hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary conservatorship continues to be necessary to address the emergency. Notice of the expedited hearing must be served as provided in section 5-405, except that the notice must be given at least 5 days before the expedited hearing. Unless the protected person is already represented, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the protected person in the proceeding. If it comes to the court's attention that the protected person wishes to contest any aspect of the temporary conservatorship or to seek any limitation of the court's or the temporary conservator's powers, the court shall appoint an attorney to represent the protected person. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available.

(c) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original 30-day period, for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary conservatorship terminates on the date specified in the order or, if no date is specified in the order, at the end of the 6-month period following the expedited hearing, or at any prior time if the court determines the circumstances leading to the order for temporary conservatorship no longer exist or if a hearing pursuant to section 5-407 has been held.

(d) If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) without requesting an ex

parte order, the court may hold an expedited hearing pursuant to subsection (b).

(e) If an appointed conservator is not effectively performing that conservator's duties and the court finds that an emergency exists that requires the appointment of a temporary successor conservator in order to preserve and apply the property of the protected person for the protected person's benefit or the benefit of the protected person's dependents, it may appoint, with or without notice, a temporary successor conservator for the protected person for a specified period not to exceed 6 months.

(f) A temporary conservator has all the powers of a permanent conservator provided in this code, unless expressly limited by the court. A temporary successor conservator has the same powers as the previously appointed conservator, unless the court indicates otherwise in the letters of appointment. The authority of a previously appointed conservator is suspended as long as the temporary conservator has authority. A temporary conservator may be removed at any time. A temporary conservator shall account to the court at the termination of the temporary conservatorship.

Sec. 8. 22 MRSA §3481, sub-§2, as enacted by PL 1981, c. 527, §2, is amended to read:

2. Consent refused. When a private guardian or conservator of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for removal of the guardian pursuant to Title 18-A, section 5-307, or for removal of the conservator pursuant to Title 18-A, section 5-415. When a caretaker or guardian of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for temporary guardianship pursuant pursuant to Title 18-A, section ~~5-310~~ 5-310-A or for a protective arrangement pursuant to Title 18-A, section 5-409.

Sec. 9. 22 MRSA §3483, sub-§1, as enacted by PL 1981, c. 527, §2, is amended to read:

1. Action. When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title 18-A, section ~~5-310~~ 5-310-A, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the ward for the department. Necessary and reasonable action may include entering public or private property

with a warrant based on probable cause to believe that the ward is there.

See title page for effective date.

CHAPTER 653

H.P. 1476 - L.D. 2004

An Act to Revise the Salaries of Certain County Officers

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 Constitution 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.

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

Whereas, it has become necessary to revise the salaries of certain county officials; and

Whereas, it is desired to have these revisions retroactive to January 1, 1994; 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 MRSA §2, sub-§1, as amended by PL 1993, c. 349, §63 and repealed and replaced by c. 408, §1, is repealed.

Sec. 2. 30-A MRSA §2, sub-§1-B is enacted to read:

1-B. County officers' salaries. Notwithstanding other sections of this chapter, counties that are not required to obtain legislative approval of their budgets under section 702 are not required to obtain legislative approval of the salaries of county officers under this section. The county commissioners, treasurers, sheriffs, judges of probate, registers of probate and registers of deeds in those counties whose budgets require legislative approval under section 702 are entitled to receive in weekly, biweekly or monthly