

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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J.S. McCarthy Company
Augusta, Maine
1993

distribute, administer and analyze lobster logbook requirements.

DEPARTMENT OF MARINE RESOURCES

TOTAL \$23,815

See title page for effective date.

CHAPTER 727

H.P. 1274 - L.D. 1718

An Act to Protect Maine Children from Child Pornography Contraband

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

Sec. 1. 17 MRSA §2923, sub-§3, as enacted by PL 1977, c. 628, §1, is amended to read:

3. Penalty. Dissemination of sexually explicit materials is a Class C crime, ~~except that any person convicted of this crime shall be sentenced by imprisonment for not less than 2 years. If the State pleads and proves a prior conviction under this section, then the crime is a Class B crime, except that any person convicted of this 2nd crime shall be sentenced by imprisonment for not less than 5 years. The court shall not suspend either minimum term of imprisonment unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well being of the minor, the history and character of the defendant, and shall only suspend the minimum term if it is of the opinion that the exceptional features of the case justify the imposition of another sentence.~~

Sec. 2. 17 MRSA §2924 is enacted to read:

§2924. Possession of sexually explicit materials

1. Definitions. As used in this section, the term "sexually explicit conduct" means any of the following acts:

- A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C;
- B. Bestiality;
- C. Masturbation;
- D. Sadomasochistic abuse for the purpose of sexual stimulation;

E. Lewd exhibition of the unclothed genitals, anus or pubic area of a person. An exhibition is considered lewd if the depiction is designed for the purpose of eliciting or attempting to elicit a sexual response in the intended viewer; or

F. Conduct that creates the appearance of the acts in paragraphs A to D and also exhibits any uncovered or covered portions of the genitals, anus or pubic area.

2. Offense. A person is guilty of possession of sexually explicit material if that person intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

A. The other person has not in fact attained the age of 14 years; or

B. The person knows or has reason to know that the other persons has not attained the age of 14 years.

3. Defense. It is a defense to a prosecution under this section that the person depicted was the spouse of the person possessing the sexually explicit material at the time the material was produced.

4. Age of person depicted. The age of the person depicted may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age of the person depicted.

5. Penalty. Possession of sexually explicit material is a Class D crime. If the State pleads and proves a prior conviction under this section, the crime is a Class C crime.

6. Contraband. Any material that depicts a person who has not attained the age of 14 years engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

See title page for effective date.

CHAPTER 728

H.P. 1312 - L.D. 1767

An Act to Establish the Public Access to Maine Waters Fund

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

Sec. 1. 5 MRSA c. 353, first 2 lines are repealed and the following enacted in their place:

CHAPTER 353

LAND FOR MAINE'S FUTURE BOARD

Sec. 2. 5 MRSA §6200, first ¶, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

The Legislature finds that Maine is blessed with an abundance of natural resources unique to the northeastern United States; that these natural resources provide Maine residents and visitors to the State with an ~~unparalleled~~ unparalleled diversity of outdoor recreation opportunities during all seasons of the year and a quality of life unmatched in this nation; that the continued availability of public access to these recreation opportunities and the protection of the scenic and natural environment are essential for preserving the State's high quality of life; that public acquisition programs have not kept pace with the State's expanding population and changing land use patterns so that Maine ranks low among the states in publicly owned land as a percentage of total state area; that rising land values are putting the State's real estate in shoreland and resort areas out of reach to most ~~Mainers~~ Maine citizens and that sensitive lands and resources of statewide significance are currently not well protected and are threatened by the rapid pace of development; and that public interest in the future quality and availability for all Maine people of lands for recreation and conservation is best served by significant additions of lands to the public domain.

Sec. 3. 5 MRSA §6201, sub-§3, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

3. Matching funds. "Matching funds" means any combination of public and private funds used in conjunction with the Land for Maine's Future Fund or the Public Access to Maine Waters Fund for the purpose of this chapter, including, but not limited to: ~~Private~~ private contributions of cash or securities; money from municipal or other public agencies; money from a federal matching program, subject to the limitations of applicable federal and state laws, in an amount authorized by the federal program; contributions of real property, or interest in real property, that serves the acquisition needs of the State as determined by the Land for Maine's Future Board; in-kind contributions; or any combination ~~thereof~~ of those funds. Contributions of land or interest in land ~~shall~~ must be valued, for purposes of this section, in the amount of their appraised value.

Sec. 4. 5 MRSA §6203, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

§6203. Land for Maine's Future Fund

1. Fund established. There is established a ~~fund to be known as~~ the Land for Maine's Future Fund, ~~hereinafter called the "fund."~~ that is administered by the board. ~~The fund shall consist~~ Land for Maine's Future Fund consists of the proceeds from the sale of any bonds authorized for the purposes ~~of this chapter set forth in subsection 3~~ and any funds received as contributions from private and public sources for those purposes. ~~The fund shall~~ Land for Maine's Future Fund must be held separate and apart from all other money, funds and accounts. Eligible investment earnings credited to the assets of the ~~fund~~ shall Land for Maine's Future Fund become part of the ~~fund~~ fund assets of that fund. Any balance remaining in the ~~fund~~ Land for Maine's Future Fund at the end of any fiscal year ~~shall~~ must be carried forward for the next fiscal year.

2. Fund available. ~~The fund shall be~~ Land for Maine's Future Fund is available to state agencies and designated cooperating entities upon authorization of the ~~Land for Maine's Future Board~~ board for the purposes identified in subsection 3.

3. Fund proceeds. The proceeds of the ~~fund~~ Land for Maine's Future Fund may be applied and expended to:

A. Acquire property or an interest in property ~~which~~ that is determined by the board to be of state significance under the guidelines of this chapter; and

B. Fund minor capital improvements on lands acquired ~~lands~~ by proceeds from the Land for Maine's Future Fund to improve accessibility, as long as these improvements do not exceed 5% of the appraised value of the acquired property.

Sec. 5. 5 MRSA §6203-A is enacted to read:

§6203-A. Public Access to Maine Waters Fund

1. Fund established. There is established the Public Access to Maine Waters Fund that is administered by the board. The Public Access to Maine Waters Fund consists of the proceeds from the sale of bonds authorized for the purposes set forth in subsection 3 and funds received as contributions from private and public sources for those purposes. The Public Access to Maine Waters Fund must be held separate and apart from all other money, funds and accounts. Eligible investment earnings credited to the assets of the Public Access to Maine Waters Fund become part of the assets of that fund. Any balance remaining in the Public Access to Maine Waters Fund at the end of a fiscal year must be carried forward for the next fiscal year.

2. Fund available. The Public Access to Maine Waters Fund is available to state agencies and designated cooperating entities upon authorization of the board for the purposes identified in subsection 3.

3. Fund proceeds. The proceeds of the Public Access to Maine Waters Fund may be applied and expended to:

A. Acquire property or interests in property abutting fresh or coastal waters when public access to those waters does not exist or when the board determines that existing points of public access are not sufficient; and

B. Provide minor capital improvements on lands acquired by proceeds from the Public Access to Maine Waters Fund to provide public access or improve accessibility, as long as these improvements do not exceed 5% of the appraised value of the acquired property.

Sec. 6. 5 MRSA §6204, as amended by PL 1989, c. 502, Pt. B, §2, is further amended to read:

§6204. Board composition

1. Composition. The board shall consist consists of 11 members, 6 of whom shall be appointed who are private citizens and 5 of whom shall be who are permanent members. The permanent members shall be are the Commissioner of Conservation; the Commissioner of Inland Fisheries and Wildlife; the Commissioner of Marine Resources; the Commissioner of Agriculture, Food and Rural Resources; and the Director of the State Planning Office.

2. Appointments. The 6 appointed private citizen members shall be citizens are appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resources matters and to confirmation by the Legislature.

3. Qualifications. The 6 appointed members shall private citizens must be selected based on for their knowledge of the State's natural resources and landscape and their demonstrated commitment to land conservation. Appointments shall be made to must provide broad geographic representation.

4. Terms; compensation. The appointed private citizen members shall be are appointed to staggered 4-year terms. The initial appointments shall be as follows are: Two members for 2-year terms; 2 members for 3-year terms; and 2 members for 4-year terms. Appointed private citizen members may not serve no more than 2 consecutive 4-year terms. The appointed members shall receive the legislative per diem pursuant to chapter 379.

5. Chair. The chairman Governor shall appoint the chair of the Land for Maine's Future Board shall be appointed by the Governor board.

6. Assistance. The Department of Conservation; the Department of Inland Fisheries and Wildlife; the Department of Transportation; the Department of Agriculture, Food and Rural Resources; and the State Planning Office; and all other state agencies shall provide staff support and assistance as deemed considered necessary by the board to fulfill the objectives established by of this chapter. If agency assistance is not available, consultants may be hired from the proceeds of either the Land for Maine's Future Fund or the Public Access to Maine Waters Fund to assist the board in carrying out its responsibilities.

Sec. 7. 5 MRSA §6205, as amended by PL 1989, c. 503, Pt. B, §22, is further amended to read:

§6205. Board meetings; rules and administrative proceedings

1. Meetings. The board shall meet at least 4 times each year at the. The chair shall call of the chairman meetings of the board.

2. Rules. The board, acting in accordance with Title 5, section 8052, may adopt rules it deems considers necessary for the conduct of its business.

3. Compensation. Appointed members shall are entitled to receive compensation equal to legislative per diem and travel expenses as allowed under Title 5, section 12004-G, subsection 29; while engaged in board activities.

4. Quorum. A quorum of the board for the transaction of business shall be is 7 members.

5. Personal bias. Upon filing in good faith by a party of a timely If a charge of bias or personal financial interest, direct or indirect, of is filed against a member in a proceeding requesting that member to disqualify himself withdraw from a proceeding of the board, that member shall determine the matter as a whether or not to withdraw and shall make that determination part of the record of that proceeding.

Sec. 8. 5 MRSA §6206, as repealed and replaced by PL 1987, c. 858, §4, is amended to read:

§6206. Board responsibilities

1. Responsibilities. The purpose of the board is to shall:

A. By June 1988, complete Complete an assessment of the State's public land acquisition needs and develop a strategy and guidelines, based on this that assessment, for use in allocat-

ing the proceeds of the Land for Maine's Future Fund and the Public Access to Maine Waters Fund. Both the assessment and the development of a strategy and guidelines shall ~~must~~ be conducted with opportunities for participation by ~~the Maine Advisory Commission on Outdoor Recreation~~, interested state agencies and the public;

~~B. By September 1988, report the board's findings, strategy and guidelines to the joint standing committee of the Legislature having jurisdiction over natural resources;~~

C. Receive and review funding requests from state agencies and cooperating entities for acquisition projects meeting state guidelines;

D. ~~Authorize~~ In accordance with the strategy and guidelines developed under paragraph A, authorize distribution of proceeds from the ~~fund~~ Land for Maine's Future Fund and the Public Access to Maine Waters Fund for ~~land~~ acquisitions in accordance with the approved strategy of property or interests in property; and

E. ~~Report biennially~~ On January 1, 1995 and on January 1st every 2 years thereafter, report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on expenditure of the fund expenditures from the Land for Maine's Future Fund and the Public Access to Maine Waters Fund and revisions to the strategies and guidelines.

Sec. 9. 5 MRSA §6206-A, as amended by PL 1989, c. 607, is further amended to read:

§6206-A. Nominations

Prior to taking an action to designate land for negotiation for acquisition, the board shall send by certified mail or otherwise deliver a notice of this intention to the owner or owners of land within the area proposed by the board for acquisition, as the identity and address of such owner or owners is shown on the tax maps or other tax records of the municipality in which the land is located. ~~In the event that~~ If the land is located within the unorganized territory, ~~such~~ notice shall ~~must~~ be sent to the owner or owners as shown on the tax maps or other tax records of the State Tax Assessor. After the completion of negotiations, the board shall ~~also~~ publish a notice of its intent to designate land for acquisition in a newspaper or newspapers of general circulation ~~which that~~ identifies the land proposed by the board for acquisition and ~~which that~~ notifies the residents of the area that the board will accept public comments on the proposed acquisition.

Any owner of land, ~~which that~~ has been nominated for acquisition and is subject to the notice

requirements of this section, may submit a properly sworn affidavit to the board indicating the owner's unwillingness to sell. ~~Such an~~ The affidavit is notice to the board that continued evaluation of that land is inappropriate and, unless the board intends to acquire an interest in the land through the use of eminent domain pursuant to section 6207-A, the board may not consider that land for acquisition.

Sec. 10. 5 MRSA §6207, as amended by PL 1989, c. 876, Pt. B, §1, is further amended to read:

§6207. Acquisition criteria

1. Distribution of funds. The board shall authorize the distribution of funds from the Land for Maine's Future Fund and the Public Access to Maine Waters Fund to state agencies and cooperating entities ~~as set forth in section 6203, subsection 3,~~ for the acquisition of natural lands ~~which that~~ meet the criteria set forth in this chapter.

2. Determination of state significance. In determining whether a proposed acquisition shall ~~must~~ be funded, in full or in part, by the Land for Maine's Future Fund or the Public Access to Maine Waters Fund, the board shall consider whether the site is of state significance and:

A. Contains recreation lands, prime physical features of the Maine landscape, areas of special scenic beauty, farmland or open space, undeveloped shorelines, wetlands, fragile mountain areas or lands with other conservation or recreation values;

B. Is habitat for plant or animal species or natural communities considered rare, threatened or endangered in the State; or

C. Provides public access to recreation opportunities or those natural resources identified in this section.

3. Priorities. Whenever possible, the ~~fund shall~~ Land for Maine's Future Fund and the Public Access to Maine Waters Fund ~~must~~ be used for land acquisition projects when matching funds are available from cooperating entities, provided that the proposed acquisition meets all other criteria set forth in this chapter. ~~Priority~~ For acquisitions funded by the Land for Maine's Future Fund, the board shall also be given ~~give priority to those projects which that~~ conserve lands with multiple outstanding resource or recreation values or a single exceptional value, provide geographic representation and build upon or connect existing holdings.

4. Nonqualifying expenditures. The board ~~shall may~~ not fund:

A. Facilities for organized recreational activities, including, but not limited to, ballparks, tennis courts or playgrounds;

B. ~~Capital~~ Except as provided in section 6203, subsection 3, paragraph B and section 6203-A, subsection 3, paragraph B, capital improvements on any publicly owned facilities, ~~except for those lands acquired with fund money and then only for necessary access improvements up to a maximum of 5% of the particular property's appraised value;~~ and

C. The acquisition of land of which the primary use value has been and will be as commercially harvested or harvestable forest land.

Sec. 11. 5 MRSA §6207-A, as repealed and replaced by PL 1989, c. 603, §2, is amended to read:

§6207-A. Use of eminent domain

The board may expend funds to acquire an interest in land obtained by the use of eminent domain only if the expenditure or acquisition has been approved by the Legislature or is with the consent of the owner or owners of ~~such the~~ land, as the identity and address of ~~such the~~ owner or owners is shown on the tax maps or other tax records of the municipality in which ~~such the~~ land is located. ~~In the event that~~ If the land is located within the unorganized territory, for purposes of this section the identity of the owner or owners ~~shall~~ **must** be as shown on the tax maps or other tax records of the State Tax Assessor.

Sec. 12. 5 MRSA §6208, as amended by PL 1989, c. 603, §3, is further amended to read:

§6208. Municipal approval

1. Approval. Approval by the elected municipal officials ~~shall be~~ is required when more than 1% of a municipality's state valuation is considered for acquisition under ~~the~~ a bond issue.

2. Transactions. Any acquisition by eminent domain funded by the board, when the land exceeds either 50 acres or \$100,000 in assessed value, ~~shall be~~ is subject to approval of the municipality in which the land is located. ~~Such That~~ approval may be obtained either from the elected municipal officials or, ~~in the event that such~~ if those officials do not approve, by vote of the town meeting or by referendum of the electorate. ~~In the event that~~ If the land involved is located within the unorganized territory, this requirement ~~shall~~ **does** not apply.

Sec. 13. 5 MRSA §6209, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

§6209. Ownership; title; management

1. Uses of funds. The ~~fund board~~ may be used ~~for the acquisition of~~ use the Land for Maine's Future Fund and the Public Access to Maine Waters Fund to acquire real property in both fee and less-than-fee simple interest, including, but not limited to, conservation easements, access easements, scenic easements, other permanent interests in land and long-term leases of at least 99 years, provided that those acquisitions are primarily natural lands meeting the criteria set forth in this chapter.

2. Title. Title to all lands acquired pursuant to this chapter ~~shall~~ **must** be vested solely in the State. Management responsibilities for the acquired lands may be contracted by the land-owning state agency to cooperating entities, subject to appropriate lease arrangements, upon the recommendation of the agency's commissioner and approval of the board.

3. Matching funds. ~~For projects when~~ When matching funds for a project include cash not derived from a bond request, an allocation of up to 20% of the appraised value of the acquired land or the amount of cash, whichever is less, may be put into the stewardship account of the state agency holding title to the land.

4. Payments. Payments from the fund may be made to cooperating entities for qualifying lands acquired on behalf of the State, provided that a state agency has issued to the cooperating entity a letter of intent requesting assistance in the acquisition. Upon submission to the state agency of a cooperating entity's direct expenses for acquisition and related costs of an authorized acquisition, the board shall authorize payment of those expenses, provided that the total of all expenses does not exceed the appraised value of the acquired property. Expenses ~~shall~~ **must** be paid at intervals during the acquisition process, as determined by the board.

5. Land evaluated. All lands acquired with ~~fund~~ money ~~shall from the Land for Maine's Future Fund or the Public Access to Maine Waters Fund~~ must be evaluated for rare, threatened or endangered species of plants and animals, exemplary natural communities, features of historic significance and other high priority natural features and ecologic functions as determined by the board, with reference to the best inventory data available to the State. Subsequent management by state agencies holding properties found to have such important features and functions ~~shall~~ **must** reflect the objective of maintaining and protecting those features and functions.

6. Legislative approval. ~~No lands~~ Land acquired under this chapter ~~shall may not~~ be sold or used for purposes other than those stated in this

chapter, unless approved by a 2/3 majority of the Legislature.

See title page for effective date.

CHAPTER 729

H.P. 1275 - L.D. 1723

An Act to Increase the Jurisdiction of the Loring Development Authority of Maine

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

Sec. 1. 5 MRSA §13080, as enacted by PL 1993, c. 474, §1, is repealed and the following enacted in its place:

§13080. Loring Development Authority of Maine established

The Loring Development Authority of Maine is established as a body corporate and politic and a public instrumentality of the State to carry out the provisions of this article and shall take title, acquire and manage the properties within the geographical boundaries of Loring Air Force Base in the name of the State.

Sec. 2. 5 MRSA §13080-A, sub-§7, as enacted by PL 1993, c. 474, §1, is amended to read:

7. Operating revenues. "Operating revenues" means funds available to the authority from fees, fares, rental or sale of property and miscellaneous revenue and interest ~~not otherwise pledged or dedicated~~ generated by the airport and collected in accordance with the provisions of the Surplus Property Act, 49 United States Code App. Section 2210 and Federal Aviation Administration Order 5190.6A.

Sec. 3. 5 MRSA §13080-B, sub-§1, ¶¶F, L and M, as enacted by PL 1993, c. 474, §1, are amended to read:

F. Charge and collect fees, charges and rents for the use of the properties and other services and use the proceeds of those fees, charges and rents for the purposes provided in this article, both subject to and in accordance with any agreement with bondholders that may be made as provided in this article. Fees, charges and rents collected from properties contained in the public benefit transfer or otherwise generated by the airport must be used to support the development, maintenance and operation of aeronautical facilities and in accordance with Federal Aviation Administration Order 5190.6A;

L. Provide from operating revenues for the maintenance, construction or reconstruction of facilities to ensure the public safety for which the authority has not otherwise provided and in keeping with limitations set forth in paragraph F;

M. Use operating revenues to provide payment of obligations, if any, due to the United States to implement the readjustment or reuse of the facility. Use of operating revenues for this purpose must be in accordance with the provisions of the Surplus Property Act, 50 United States Code App. Section 1622 et seq. and Federal Aviation Administration Order 5190.6A;

Sec. 4. 5 MRSA §13080-B, sub-§4, as enacted by PL 1993, c. 474, §1, is amended to read:

4. Liability. The liability of the authority is governed by the Maine Tort Claims Act, Title 14, chapter 741. Trustees serving on the board of the authority may not be subject to any personal liability for having acted in the service of their duty as board members of the authority.

Sec. 5. 5 MRSA §13080-C, sub-§1, as enacted by PL 1993, c. 474, §1, is repealed and the following enacted in its place:

1. Use of revenue. Operating revenue generated from property transferred in the Federal Aviation Administration public benefit transfer or otherwise generated by the airport must be used to support the development, maintenance and operation of aeronautical facilities, operating costs of the airport and costs substantially related to the actual air transportation of passengers or property. Revenues generated from other properties granted to the authority in subsequent or different transfers must be used as the authority determines appropriate within the powers established by this article.

Sec. 6. 5 MRSA §13080-F, sub-§3, as enacted by PL 1993, c. 474, §1, is amended to read:

3. Zoning. The authority may not adopt zoning or land-use ordinances but may coordinate zoning and land-use regulation with interested primary impact communities. The authority shall secure rights-of-way, easements and zoning rules needed to adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, lighting or otherwise mitigating existing airport hazards. The authority shall endeavor, to the extent reasonable, to ensure compatible use of land adjacent to or in the immediate vicinity area of the airport as provided in the Maine Aeronautics Act, Title 6, section 122.

Sec. 7. 5 MRSA §13080-G, sub-§2, ¶B, as enacted by PL 1993, c. 474, §1, is amended to read: