

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

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SECOND REGULAR SESSION
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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

than 7 days and the court shall suspend the defendant's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license for a period of one year, which penalties may not be suspended.

Sec. 4. 29 MRSA §1312-B, sub-§2, ¶D, as repealed and replaced by PL 1985, c. 412, §4, is amended to read:

D. In the case of a person having 2 or more previous convictions of ~~violations of former section 1312, subsection 10, former section 1312-B or this section~~ operating under the influence of intoxicating liquor or drugs, or a combination of liquor or drugs, or with an excessive blood-alcohol level within a 6-year period, the fine ~~shall may~~ not be less than \$750, the sentence ~~shall must~~ include a period of incarceration of not less than 30 days and the court shall suspend the defendant's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license for a period of 2 years, which penalties may not be suspended.

Sec. 5. 29 MRSA §1312-B, sub-§2, ¶H is enacted to read:

H. For the purposes of this section, a conviction of operating under the influence of intoxicating liquor or drugs, or a combination of liquor or drugs, or with an excessive blood-alcohol level includes:

(1) A conviction of a violation of former section 1312, subsection 10, of former section 1312-B or of this section;

(2) A conviction, in any jurisdiction that is or becomes a party to the driver license compact in chapter 7, subchapter III, of any offense described in the compact under section 634, subsection 1, paragraph B or of an offense that is similar to the offense provided in section 634, subsection 3;

(3) An adjudication or other determination made under the juvenile laws of this State or of another jurisdiction for conduct that, if committed by an adult, would have been a conviction included in this subsection, including the conduct under Title 15, section 3103, subsection 1, paragraph F; and

(4) A conviction in the tribal court of the Penobscot Nation or the Passamaquoddy Tribe, a court of the United States or a court of a state that is not a party to the driver license compact in chapter 7, subchapter III, provided that the punishment for the offense includes the possibility of

incarceration, whether or not actually imposed on that occasion, and the elements of the offense as provided in the law of that jurisdiction include operation or attempted operation of a motor vehicle while intoxicated, impaired or under the influence of intoxicating liquor or drugs, or a combination of liquor or drugs, or with a blood-alcohol level sufficient for conviction under the laws of that jurisdiction.

Sec. 6. 29 MRSA §1312-B, sub-§2-A, as amended by PL 1989, c. 872, §6, is further amended to read:

2-A. Aggravated punishment category. If the State pleads and proves that the actor, while operating a motor vehicle in violation of this section, ~~the actor~~ in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offense in subsection 1 is a Class C crime. The minimum penalties specified in subsection 2 apply, but the minimum period of suspension is 18 months unless a longer minimum period otherwise applies.

If the State pleads and proves that the actor, while operating a motor vehicle in violation of this section, ~~the actor had been previously convicted of 3 or more violations of former section 1312, subsection 10, former section 1312-B or this section~~ previous convictions of operating under the influence of intoxicating liquor or drugs, or a combination of liquor or drugs, or with an excessive blood-alcohol level within a 6-year period, the sentencing class for the offense in subsection 1 is a Class C crime. The minimum penalties specified in subsection 2 apply, but the minimum fine is \$1,000.

See title page for effective date.

CHAPTER 735

H.P. 1385 - L.D. 1884

An Act to Ensure Proper Funding of the Department of Environmental Protection

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

Sec. 1. 38 MRSA §342, sub-§16 is enacted to read:

16. Receipt of funds. Through the Department of Administrative and Financial Services, the commissioner may establish accounts as necessary for the

administration of funds held temporarily by the department and restricted to specific purposes by court order or otherwise, such as escrow funds, funds from court decrees and intervenor fees. The State Budget Officer may provide for allotment of the funds as requested. Funds received must be deposited with the Treasurer of State to the credit of the appropriate account and be invested, as provided by law, with interest credited to the account.

Sec. 2. 38 MRSA §352, sub-§2, ¶F is enacted to read:

F. Waste discharge license fees assessed under section 352 for facilities licensed under section 413 must be used to support activities for water quality control operations, including licensing, compliance evaluation, monitoring, data acquisition, data management and administration.

Sec. 3. 38 MRSA §352, sub-§5-A, as amended by PL 1993, c. 378, §2, is further amended by amending the first paragraph to read:

5-A. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions keep accurate and regular daily time records. These records must describe the matters worked on, services performed and the amount of time devoted to those matters and services, as well as amounts of money expended in performing those functions. Records must be kept for a sufficient duration of time as determined by the commissioner to establish to the commissioner's satisfaction that the fees are appropriate. This subsection is repealed ~~July 1, 1995~~ 90 days after adjournment of the Second Regular Session of the 117th Legislature.

Sec. 4. 38 MRSA §352, sub-§5-A, that part designated "Table I" is amended to read:

TABLE I
MAXIMUM FEES IN DOLLARS

TITLE 36 SECTION	PROCESSING FEE	CERTIFICATION FEE
656, sub-§1, ¶E, Pollution Control Facilities		
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760,	\$250	\$20

sub-§29, water pollution control facilities
 B. Air pollution control and §1760, sub-§30, air pollution control facilities

TITLE 38 SECTION	PROCESSING FEE	LICENSE FEE
344, sub-§7, Permit by rule	\$50	\$0
362-A. Experiments	175	175
413, Waste discharge li- ense licenses		
A. Residential (10-year term)	225 450	75 150
B. Commercial (10-year term)		
1. Flow of less than 2,000 gallons per day	2,400 4,800	640 1,280
2. Flow of 2,000 to 20,000 gallons per day inclusive	2,400 4,800	2,000 4,000
3. Flow of greater than 20,000 gallons per day	2,400 4,800	4,800 9,600
C. Industrial minor (based upon EPA list of major and minor source discharges)		
1. Discharges of cooling water, sanitary wastewater or treated storm water only	1,500	480
2. All others	1,500	6,000
D. Industrial major (based upon EPA list of major source discharges)		
1. Discharge of cooling water or sanitary wastewater only	4,800	3,000
2. All others	4,800	8,800
E. Publicly owned treatment works		
1. Flow of less than or equal to 50,000 gallons per day and no significant industrial component	100	400

2. Flow of greater than 50,000 gallons per day, but less than 0.5 million gallons per day and no significant industrial component	100	1,400	<u>C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource</u>	<u>.015/sq. ft. alteration</u>	<u>.005/sq. ft. alteration</u>
3. Flow of at least 0.5 million gallons per day, but less than 5 million gallons per day and no significant industrial component	100	3,600	<u>D. Any alteration of a coastal sand dune</u>	3,500	1,500
4. Flow of at least 5 million gallons per day or a significant industrial component	300	5,400	<u>E. Condition compliance</u>	84	0
F. Special discharges			<u>F. Minor modification</u>	184	0
1. Aquatic pesticides	130	75	485-A, Site location of development		
2. Dredge spoils	130	75	<u>A. Affordable housing subdivisions</u>	50/lot	50/lot
418, Log storage	55	25	<u>A-1. Other subdivisions with public water and sewers</u>	175/lot	175/lot
451, Mixing zones	1,200	2,200	<u>A-2. Other subdivisions</u>	250/lot	250/lot
451-A, Time schedule variances	25	25	<u>B. Structures</u>	4,000	2,000
480-E, Natural resources protection			<u>C. Mining</u>	1,500	1,000
A. Great ponds	75	50	<u>D. Other</u>	1,000	1,000
B. Alteration of rivers, streams or brooks	150	50	<u>A. Residential subdivisions</u>		
C. Freshwater wetlands	400	50	<u>1. Affordable housing</u>	134/lot	50/lot
D. Coastal wetlands and sand dunes	3,500	1,500	<u>2. On public water or sewer</u>	320/lot	175/lot
A. Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of alteration of the resource	140	50	<u>3. All others</u>	460/lot	250/lot
B. Any alteration of a coastal wetland causing less than 20,000 square feet of alteration of the resource	240	60	<u>B. Industrial parks</u>	460/lot	460/lot
			<u>C. Mining, except metallic mineral mining. The owner or operator of a licensed mining operation, excluding metallic mineral mining, must pay an annual fee of \$620 by March 1st of each year, beginning the year following the calendar year the license is issued</u>	3,600	1,800
			<u>D. All other developments</u>	5,600	2,000
			<u>E. Condition compliance</u>	100	0
			<u>F. Minor modification</u>	184	0
			<u>G. Transfer</u>	100	0
			543, Oily waste discharge	40	160
			560, Vessels at anchorage	125	100

587, Ambient air quality or emissions standards variances	5,050	50
590, Air emissions licenses	See section 353-A	
633, Hydropower projects		
A. New or expanded generating capacity	450/MW	50/MW
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	50
1101, Sanitary districts	150	50
33 United States Code, Chapter 26, Water Quality Certifications, in conjunction with applications for hydropower project licensing or relicensing		
A. Initial consultation	1,000	0
B. Second consultation	1,000	0
C. Application		
1. Storage	1,000	0
2. Generating	300/MW	50/MW
1304, Waste management		
A. Septage disposal		
1. Site designation	50	25
B. Land application of sludges and residuals program approval		
1. Industrial sludge	400	400
2. Municipal sludge	300	275
3. Bioash	300	275
4. Wood ash	300	75
5. Food waste	300	75
6. Other residuals	300	175
C. Landfill		
1. Closing plans for nonmunicipal landfills	1,500	1,500
2. Closing plans for municipal landfills	500	500
3. Variance requests for attenuation landfills	175	175
4. Preliminary information reports	175	175

5. License transfers	500	175
6. Special waste disposal		
a. One-time disposal of quantities of 6 cubic yards or less	50	50
b. One-time disposal of quantities greater than 6 cubic yards	100	100
c. Program approval for routine disposal of a special waste	300	300
D. Incineration facility		
1. Fuel substitution activities	1,575	1,500
2. License transfer	175	175
E. License transfer other than for landfills and incinerators	100	100

Sec. 5. 38 MRSA §352, sub-§5-B, as amended by PL 1993, c. 356, §4; c. 370, §2; c. 378, §3; c. 410, Pt. G, §1; c. 632, §2 and affected by c. 410, Pt. G, §2, is repealed.

Sec. 6. 38 MRSA §352, sub-§6, as amended by PL 1989, c. 890, Pt. B, §12, is further amended to read:

6. Reporting requirements. The commissioner shall report, before February 1st of each year, to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the effects of the license fee increases on department efficiency and license and permit processing time. That report must include a summary for the previous fiscal year of revenues and expenses by activity within the Maine Environmental Protection Fund.

Sec. 7. 38 MRSA §353, sub-§2, as amended by PL 1993, c. 410, Pt. G, §3, is further amended to read:

2. Processing fee. Except for annual air emission fees pursuant to section 353-A, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing

the application results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection ~~5-B~~ 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner may not refund the processing fee if the application is denied by the board or the commissioner. If the application is withdrawn by the applicant within 30 days of the start of processing, the processing fee must be refunded, except in the case of nonferrous metal mining applications. If an application for nonferrous metal mining is withdrawn by the applicant within 30 days of the date of filing, 1/2 of the application fee must be refunded.

Sec. 8. Transfer of funds in fiscal year 1994-95. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, section 1585, the Commissioner of Environmental Protection shall transfer \$184,000 from the Ground Water Oil Clean-up Fund to the Maine Environmental Protection Fund program during fiscal year 1994-95.

Sec. 9. Transfer of funds in fiscal year 1995-96. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, section 1585, the Commissioner of Environmental Protection shall transfer \$184,000 from the Maine Environmental Protection Fund program to the Ground Water Oil Clean-up Fund during fiscal year 1995-96.

Sec. 10. General Fund request. The Commissioner of Environmental Protection shall submit a General Fund request for fiscal year 1995-96 for an amount of \$184,000 to be placed in the Maine Environmental Protection Fund program to ensure funding for 3 water quality positions and operating expenses. The commissioner shall make recommendations to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters by February 1, 1995 regarding changes of fees and positions to ensure the appropriate continuance of the water quality and land quality licensing programs.

Sec. 11. Allocation. The following funds are allocated from the Federal Expenditure Fund to carry out the purposes of this Act.

1994-95

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Water Quality Control

Positions	(-5.5)
Personal Services	(\$187,297)

All Other	(3,839)
TOTAL	(\$191,136)

Provides for the deallocation of funds for the transfer from the Federal 106 Water Quality Control Program of 3 part-time Conservation Aide positions, one Environmental Specialist III position, one Assistant Environmental Engineer position and one Environmental Specialist IV position to the Maine Environmental Protection Fund program and one Environmental Specialist II position and one Environmental Specialist III position to the General Fund as provided in other legislation; and the transfer of 2 part-time Biologist I positions from the Maine Environmental Protection Fund program to the Federal 106 Water Quality Control Program.

Water Quality Control

Positions	(-1.5)
Personal Services	(\$29,721)
All Other	(594)
TOTAL	(\$30,315)

Provides for the deallocation of funds for the transfer of one Conservation Aide position and one part-time Conservation Aide position from the Federal 604(b) Water Quality Program to the Maine Environmental Protection Fund program.

Oil and Hazardous Materials Control

Positions	(1.0)
Personal Services	\$31,810
All Other	563

TOTAL \$32,373

Provides for the allocation of funds for the transfer of one former Oil and Hazardous Materials Specialist I position, upgraded to an Environmental Specialist II position, from the Maine Environmental Protection Fund program to the Federal Defense Facilities Clean-up Program.

Provides for the allocation of funds for the consolidation of air licensing fees expenditure authority.

Maine Environmental Protection Fund

Personal Services (\$54,900)

Provides for the deallocation of funds for the transfer of one Conservation Aide position, 4 part-time Conservation Aide positions, one Assistant Environmental Engineer position, one Environmental Specialist III position and one Environmental Specialist IV position to the Maine Environmental Protection Fund program from federal funds; the transfer of 2 Environmental Specialist II positions and 2 Environmental Specialist III positions from the Maine Environmental Protection Fund to the General Fund as provided in other legislation; and the transfer of 2 part-time Biologist I positions and one former Oil and Hazardous Materials Specialist I position, downgraded to an Environmental Specialist II position, from the Maine Environmental Protection Fund program to federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL

(\$189,078)

Sec. 12. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1994-95

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Air Quality Control

Positions (-21.0)
 Personal Services (\$766,480)
 All Other (252,972)
 Capital Expenditures (380,511)

TOTAL (\$1,399,963)

Provides for the deallocation of funds for the consolidation of this dedicated fund program with the air activity function within the Maine Environmental Protection Fund program.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

TOTAL (\$54,900)

Maine Environmental Protection Fund

Positions (21.0)
 Personal Services \$766,480
 All Other 252,972
 Capital Expenditures 380,511

TOTAL \$1,399,963

Sec. 13. Effective date; retroactivity. Section 4 of this Act takes effect on July 1, 1995, except that those changes in section 4 of this Act pertaining to fees for residential and commercial waste discharge licenses issued under the Maine Revised Statutes, Title 38, section 413 take effect retroactively beginning July 1, 1993.

See title page for effective date, unless otherwise indicated.