

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
Augusta, Maine
1995

PUBLIC LAWS OF THE STATE OF MAINE
AS PASSED AT
THE FIRST REGULAR SESSION OF THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
1995

CHAPTER 1

H.P. 59 - L.D. 57

**An Act to Extend the Reporting Date
of the Committee to Study
Organizational and Tax Issues in
Public Schools**

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

Whereas, the Committee to Study Organizational and Tax Issues in Public Schools has completed its study and reached consensus but needs additional time to draft and review its final comprehensive report; 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. PL 1993, c. 684, §5 is amended to read:

5. Report. The committee shall report its findings and recommendations to the Governor and to the joint standing committee of the Legislature having jurisdiction over education matters by ~~January 15, 1995~~ February 13, 1995.

Sec. 2. Retroactivity. This Act applies retroactively to January 15, 1995.

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

Effective January 13, 1995.

CHAPTER 2

H.P. 10 - L.D. 4

**An Act to Continue the Fee on the
Handling of Milk**

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

Whereas, the recent decision in Cumberland Farms, Inc. v. LaFaver terminated the collection of revenue from the handling of milk by invalidating the Maine Dairy Farm Stabilization Tax; and

Whereas, the tax provided an average of more than \$2,000,000 per year in revenues to the State at a time when the State and its citizens are experiencing economic difficulties and significant fiscal problems; and

Whereas, such revenues are necessary to the State's ability to address such difficulties and problems; 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. 7 MRSA §2954, sub-§1, as repealed and replaced by PL 1991, c. 824, Pt. A, §8, is amended to read:

1. Commission empowered to establish prices; public hearing. The commission is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State. The commission shall hold a public hearing prior to the establishing or changing of such minimum prices. The commission may proceed, however, under the emergency rule-making provisions of Title 5, section 8054 without making findings of

emergency when the only changes to be made in the minimum prices are to conform with the orders of any federal or other agency duly authorized by law to establish or negotiate producer prices or are to respond to other conditions affecting prevailing Class I, Class II and Class III prices in southern New England, or reflect the ~~Maine Dairy Farm Stabilization Milk Handling Tax~~ as determined by Title 36, chapter ~~708-A 716~~. Title 5, section 8054, subsection 3, the 2nd sentence, does not apply to minimum prices adopted under the previous sentence. Due notice of the public hearing must be given by publishing notice as provided in Title 5, chapter 375. The commission shall hold such a public hearing not less frequently than once every 12 months to determine whether the minimum wholesale and retail prices then established should be changed. In addition to the data received through the implementation of the information gathering procedures of its rules as a basis for its determinations, the commission shall solicit and seek to receive oral and written testimony at hearings to determine whether the minimum wholesale and retail prices then established should be changed and whether the proposed minimum wholesale and retail prices are just and reasonable.

Sec. 2. 7 MRSA §2954, sub-§2, ¶B, as amended by PL 1991, c. 526, §2, is further amended to read:

B. The minimum wholesale prices paid to dealers must be established to reflect the lowest prices at which milk purchased from producers in this State at minimum prices in the State can be received, processed, packaged and distributed within the State at a just and reasonable return, and in addition must include the amount of any tax determined by Title 36, chapter ~~708-A 716~~.

Sec. 3. 7 MRSA §2954, sub-§13, as enacted by PL 1991, c. 526, §3, is amended to read:

13. Report to State Tax Assessor. The Maine Milk Commission shall report before the first of each month to the State Tax Assessor the basic price of milk established for that month as defined in Title 36, chapter ~~708-A 716~~.

Sec. 4. 36 MRSA c. 708-A, as amended, is repealed.

Sec. 5. 36 MRSA c. 716 is enacted to read:

CHAPTER 716

MILK HANDLING TAX

§4771. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Basic price. "Basic price" means the minimum Class I price of milk established pursuant to Title 7, chapter 603 including that part of the Class I price that exceeds the applicable Class I price established pursuant to the New England Milk Marketing Order, except that part of the Class I price established by the Maine Milk Commission to reflect the cost factors provided in Title 7, section 2954, subsection 2 or the increased costs of production pursuant to Title 7, section 2954, subsection 2, paragraph A.

2. Handler. "Handler," with respect to a particular container of packaged milk, means the wholesale handler or, if none, the retail handler.

3. Milk. "Milk" has the same meaning as in Title 7, section 2951, subsection 6.

4. Packaged milk. "Packaged milk" means milk that has been processed and placed in containers for ultimate sale to consumers.

5. Person. "Person" means any individual, partnership, firm, corporation, association or other unit and the State and all political subdivisions or agencies of the State.

6. Retail handler. "Retail handler" means any person who handles packaged milk in this State that is next sold in this State subject to the retail minimum prices established pursuant to Title 7, chapter 603.

7. Tax period. "Tax period" means the period beginning on the Sunday closest to the first day of the month and continuing through the Saturday prior to the Sunday closest to the first day of the subsequent month.

8. Wholesale handler. "Wholesale handler" means any person who handles packaged milk in this State that is next sold in this State subject to the minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603.

§4772. Milk Handling Tax

1. Tax. An excise tax is levied and imposed at the rate established in subsection 2 on the handling in this State of packaged milk for sale in this State. With respect to the handling in this State of a particular container of packaged milk for sale in this State, the tax must be paid by the wholesale handler or, if there is no wholesale handler with respect to that container of packaged milk, by the retail handler. There is no tax on the handling in this State of packaged milk for

sale in containers that are less than one quart or 20 or more quarts in volume, or packaged milk that is sold to an institution that is owned and operated by the State or Federal Government.

2. Rate. The rate of the tax levied under this chapter is established for each tax period on the basis of the basic price of milk in effect on the Sunday following the first Sunday of the tax period in accordance with the following chart:

<u>Basic Price</u>	<u>Rate of Milk Handling Tax</u>
<u>\$16.50 per hundredweight and above</u>	<u>0¢ per quart</u>
<u>\$16.00 to \$16.49 per hundredweight</u>	<u>1¢ per quart</u>
<u>\$15.50 to \$15.99 per hundredweight</u>	<u>2¢ per quart</u>
<u>\$15.00 to \$15.49 per hundredweight</u>	<u>3¢ per quart</u>
<u>\$14.50 to \$14.99 per hundredweight</u>	<u>4¢ per quart</u>
<u>\$14.00 to \$14.49 per hundredweight</u>	<u>5¢ per quart</u>
<u>below \$14.00 per hundredweight</u>	<u>6¢ per quart</u>

For any container other than a quart, the tax is computed on a quart-equivalent basis.

3. Calculation of tax. Handlers shall pay the tax for each tax period on all milk subject to the tax, sold during the tax period, and either:

- A. Subject to the minimum wholesale prices paid to dealers established by the Maine Milk Commission pursuant to Title 7, chapter 603; or
- B. Not subject to minimum wholesale prices paid to dealers but subject to minimum retail prices established by the Maine Milk Commission pursuant to Title 7, chapter 603.

In calculating the amount of packaged milk handled for sale in this State each tax period, the handler shall deduct any packaged milk returned to the handler during that tax period.

4. Tax as additional. Any tax imposed and collected under this chapter is in addition to any other taxes imposed or collected under any other law of the State.

5. Records, reports and administration. Every handler subject to the tax imposed under subsection 1 shall register with the State Tax Assessor within 5 business days of becoming subject to the tax

and annually thereafter on forms provided by the State Tax Assessor. The list of handlers so registered is available to the public. By the 25th day of each calendar month, every handler subject to the tax imposed under subsection 1 shall report to the State Tax Assessor the quantity of packaged milk handled in this State for sale in this State during the preceding tax period, the quantity of packaged milk handled that was subject to the Milk Handling Tax and any other information the State Tax Assessor determines necessary or useful in the administration of this chapter and enforcement of the Milk Handling Tax.

6. Due dates. Handlers shall pay to the State Tax Assessor the tax due for the preceding tax period not later than the 25th day of each calendar month and submit any information required by the State Tax Assessor on the forms provided.

7. Presumption. In any proceeding against a retail handler for collection of the tax with respect to any particular container of packaged milk, there is a rebuttable presumption that that retail handler did not purchase that container in a transaction subject to the minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603. The burden is on the retail handler to show that the retail handler purchased that container of packaged milk in a transaction subject to minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603.

8. General Fund. The State Tax Assessor shall immediately pay all funds received from the Milk Handling Tax to the Treasurer of State to be deposited in the General Fund.

§4773. Repeal

This chapter is repealed on August 1, 1996.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1994-95

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Bureau of Taxation

All Other	\$10,000
Provides funding to cover the initial costs of the Bureau of Taxation to administer the Milk Handling Tax.	

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

Effective January 17, 1995.

CHAPTER 3

H.P. 118 - L.D. 153

An Act to Facilitate the Confirmation Process

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

Whereas, the 117th Legislature has made changes in the numbers and jurisdictions of joint standing committees of the Legislature; and

Whereas, some statutory references to committees with responsibility for reviewing appointments by the Governor are no longer correct; and

Whereas, review of nominations must be completed before the regular effective date of nonemergency legislation; 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. 5 MRSA §17102, sub-§1, ¶D, as amended by PL 1993, c. 410, Pt. L, §17, is further amended to read:

D. Four persons appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over ~~aging, veterans and retirement~~ matters and to confirmation by the Legislature:

(1) At least 2 of whom must be qualified through training or experience in the field of investments, accounting, banking or insurance or as actuaries;

(2) One of whom must be selected from a list of 3 nominees submitted by the Maine Retired Teachers' Association; and

(3) One of whom must be the recipient of a retirement allowance through the retirement system and be selected from a list or lists of

nominees submitted by retired state employees, retired participating local district employees or a committee comprised of representatives of these groups; and

Sec. 2. 12 MRSA §683, first ¶, as amended by PL 1991, c. 76, is further amended to read:

The Maine Land Use Regulation Commission, as established by Title 5, section 12004-D, subsection 1 to carry out the purposes stated in section 681, is created within the Department of Conservation, and in this chapter called the "commission." The commission is charged with implementing this chapter in all of the unorganized and deorganized areas of the State. The commission consists of 7 public members, none of whom may be state employees, who must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over ~~energy and natural resources~~ conservation matters and to confirmation by the Legislature, for staggered 4-year terms. Among the public members, there must be 4 who must be knowledgeable in at least one of each of the following areas: commerce and industry; fisheries and wildlife; forestry; and conservation. Of the potential appointees to the commission, the Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and to persons residing on unorganized coastal islands. At least 2 members must be residents within the commission's jurisdiction.

Sec. 3. 12 MRSA §5011, first ¶, as amended by PL 1993, c. 685, Pt. B, §1, is further amended to read:

There is created and established the Department of Conservation to preserve, protect and enhance the land resources of the State of Maine; to encourage the wise use of the scenic, mineral and forest resources of the State of Maine and ensure that coordinated planning for the future allocation of lands for recreational, forest production, mining and other public and private uses is effectively accomplished; and to provide for the effective management of public lands in the State of Maine. The Department of Conservation consists of a Commissioner of Conservation, referred to in this Part as the "commissioner," appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over ~~energy and natural resources~~ conservation matters and to confirmation by the Legislature, to serve at the pleasure of the Governor; and the following entities as previously created or established are incorporated into the Department of Conservation:

Sec. 4. 34-A MRSA §1401, sub-§1, as enacted by PL 1983, c. 459, §6, is amended to read: