

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
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TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

one year. All sites given emergency designation under this section ~~shall~~ must be posted against unauthorized excavation. Notice of the designation ~~shall~~ must be filed with the registrar of deeds in the county in which the site is located.

See title page for effective date.

CHAPTER 147

S.P. 422 - L.D. 1145

An Act to Require Unanimous Approval by the Hancock County Commissioners to Change the Recommendations of the Budget Committee

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

Sec. 1. 30-A MRSA §765, as amended by PL 1993, c. 227, §2, is further amended to read:

§765. Budget estimate; submission to advisory committee

The Hancock County commissioners shall submit a budget estimate to the budget advisory committee no later than October 1st for the coming year. The budget advisory committee shall review the budget estimate and make recommendations to the commissioners before November 15th. In order to deviate from any recommendation made by a recorded 2/3 majority vote of the full membership of the budget advisory committee, the county commissioners must unanimously approve that change. The county commissioners shall act on the budget no later than December 15th of the budget year.

See title page for effective date.

CHAPTER 148

H.P. 988 - L.D. 1396

An Act to Abolish the Local Government Records Board and to Assign Its Functions to the Archives Advisory Board

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

Sec. 1. 3 MRSA §927, sub-§3, ¶B, as repealed and replaced by PL 1993, c. 600, Pt. A, §1, is amended to read:

B. Independent agencies:

- (1) Maine State Pilotage Commission;
- (2) State Board of Registration for Professional Engineers;
- (3) Board of Licensure for Professional Land Surveyors;
- ~~(4) Local Government Records Board;~~
- (5) Maine High-Risk Insurance Organization. This subparagraph is repealed January 1, 1997;
- (6) Driver Education and Evaluation Programs; and
- (7) State Soil and Water Conservation Commission.

Sec. 2. 5 MRSA §92, as enacted by PL 1973, c. 625, §16, is amended to read:

§92. Declaration of policy

The Legislature declares that it is the policy of the State to make the operations of State Government and local government more efficient, more effective and more economical through current records management; and, to the end that the people may derive maximum benefit from a knowledge of state affairs, preserve its noncurrent records of permanent value for study and research.

Sec. 3. 5 MRSA §92-A, sub-§2-A is enacted to read:

2-A. Local government. "Local government" means a municipality, school district or other special-purpose district or multi-purpose district.

Sec. 4. 5 MRSA §92-A, sub-§§4 and 5, as enacted by PL 1991, c. 837, Pt. A, §8, are amended to read:

4. State agency or agency. "State agency" or "agency" means any unit of State Government or local government, including any state board or commission, except the Legislature and its committees and subcommittees, the Judicial Department, the University of Maine System, the Maine Technical College System and the Maine Maritime Academy.

5. Record. "~~State record~~" "Record" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of the State and has been received or prepared for use in connection with the transaction of public or governmental business or contains informa-

tion related to the transaction of public or governmental business.

Sec. 5. 5 MRSA §93, first ¶, as repealed and replaced by PL 1977, c. 674, §2, is amended to read:

The Secretary of State shall appoint a State Archivist subject to review by the ~~Joint Standing Committee on State Government~~ joint standing committee of the Legislature having jurisdiction over state and local government and to confirmation by the Legislature. ~~He~~ The State Archivist shall be chosen without reference to party affiliation and solely on the ground of professional competence to perform the duties of ~~his~~ that office. ~~He~~ The State Archivist shall hold office for a term of 6 years from the date of ~~his~~ the appointment and until ~~his~~ a successor has been appointed and qualified. The compensation of the State Archivist shall be fixed by the Governor.

Sec. 6. 5 MRSA §95, sub-§§2 and 3, as amended by PL 1991, c. 837, Pt. A, §9, are further amended to read:

2. Examination of public records. To have the right of reasonable access to and examination of all state and local government records in Maine;

3. Rules. To adopt such rules as are necessary to effectuate the purposes of this chapter. No restrictions or limitations may be imposed on the use of records that are defined by law as state and local government records or as records open to public inspection, unless necessary to protect and preserve them from deterioration, mutilation, loss or destruction. Restrictions or limitations imposed by law on the examination and use of ~~state~~ records transferred to the archives under subsection 7, paragraph C and subsection 8 remain in effect until the records have been in existence for 50 years, unless removed or relaxed by the State Archivist with the concurrence in writing of the head of the agency from which the records were transferred or the successor in function, if any. The State Archivist shall adopt rules governing the transfer of ~~state~~ records from the custody of one agency to that of another subject to any applicable provision of law;

Sec. 7. 5 MRSA §95, sub-§7, as amended by PL 1991, c. 837, Pt. A, §9, is further amended to read:

7. Records management program. To establish and administer in the executive branch of State Government an active, continuing program for the economical and efficient management of state and local government records, and for the proper disposition of local government records. Upon request, the State Archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of State Government and shall, as required by them, provide program services similar to those available to the executive

branch. The State Archivist shall, with due regard for the functions of the agencies concerned:

A. Provide standards, procedures and techniques for effective management of state and local government records in the conduct of current business;

B. Recommend improvements in current records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing state and local government records;

C. Establish schedules, in consultation with the heads of state agencies and local government agencies, under which each ~~state~~ agency shall retain ~~state~~ records of continuing value, and dispose, as provided by this chapter, of ~~state~~ records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping for current business; and

D. Obtain such reports from state or local government agencies as are required for the administration of the program;

The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of ~~the state~~ any records of ~~the state~~ agency in compliance with the standards, procedures and regulations issued by the State Archivist.

Sec. 8. 5 MRSA §95, sub-§§9 and 10-B, as amended by PL 1991, c. 837, Pt. A, §9, are further amended to read:

9. Destruction of state records. To authorize and receive confirmation of the destruction of the state records of any state or local agency that, in the opinion of the head of the agency, are no longer of value to the state or local government agency, and that, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the State;

10-B. Permanent state records of agency administration. To establish such standards concerning the establishment, maintenance and operation of state or local government administered computerized and auxiliary automated information handling as are necessary to ensure the preservation of adequate and permanent ~~state~~ records of the organization, functions, policies, procedures, decisions and essential transactions of the agencies of State Government or local government;

Sec. 9. 5 MRSA §95-A, sub-§§1 to 3, as enacted by PL 1989, c. 283, are amended to read:

1. Notice and demand of return. Whenever the State Archivist has reasonable grounds to believe that documents or records belonging to the State or to a local government or any agency of the State or to which the State or its agencies have a lawful right of possession are in the possession of the person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those documents or records, the State Archivist may issue a written notice and demand to that person or entity for the immediate return of the documents or records. The notice and demand ~~shall~~ must be sent by certified or registered mail, return receipt requested. The notice and demand ~~shall~~ must identify the documents or records claimed to belong to the State or local government with reasonable specificity. Upon receipt of the notice and demand, the person or entity in the possession of documents or records claimed to belong to the State ~~shall~~ or local government may not destroy, alter, transfer, convey or otherwise alienate those documents or records unless authorized in writing by the State Archivist or by an order issued by a court of competent jurisdiction. The notice and demand ~~shall~~ must specifically state that any transfer, conveyance or other alienation of the documents or records after receipt of the notice and demand ~~shall constitute~~ constitutes a Class E crime in violation of section 97.

2. Petition; hearing. Following the issuance of a notice and demand in accordance with subsection 1, the State Archivist, with the assistance of the Attorney General, may petition the Superior Court of Kennebec County or the Superior Court in the county in which documents or records are located, for the return of state documents or records that are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those documents or records. After hearing, the court shall order the ~~state~~ documents or records to be delivered to the State Archivist, or other custodian designated by the State Archivist, upon a finding that the materials in question are ~~state~~ documents or records and that the documents or records are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or provision of law to possess the documents or records. The court may issue all orders necessary to protect ~~state~~ the documents or records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the materials and may also order the person or entity in possession of the ~~material~~ materials to surrender the documents or records into the custody of the State Archivist pending the court's decision on the petition.

3. Presumption. In any proceeding pursuant to subsection 2, there ~~shall be~~ is a rebuttable presumption that documents or records that were once in the custody of the State or a local government were not lawfully alienated from that custody.

Sec. 10. 5 MRSA §95-B is enacted to read:

§95-B. Local government records

The following provisions apply to local government records.

1. Omissions or errors corrected. When omissions or errors exist in local government records, those records must be corrected under oath by the person who was responsible for those local government records, whether or not that person remains in office.

A. If an original town meeting warrant is lost or destroyed, the return may be made or amended on a copy of it.

2. Safe or vault for preservation. Each local government shall provide a fireproof safe or vault for the preservation of all records that are not current records. The official having responsibility for those records shall deposit them in the safe or vault where those records must be kept except when required for use.

3. Attestation. The records of a local government official may be attested by volume. Each document is sufficiently attested when the volume in which it is recorded bears the attestation with the written signature of the official.

4. Delivery to successor in office. Local government officials shall deliver the records of their office to their successors in office upon the expiration of the officials' terms.

5. Records available for public use. Each local government official shall make records available for public use under that official's supervision at reasonable times unless the use of the records is otherwise restricted by law.

6. Protection of records. Local government officials shall carefully protect and preserve the records of their office from deterioration, mutilation, loss or destruction.

7. Disposition of records. Records may not be destroyed or otherwise disposed of by any local government official, except as provided by the Archives Advisory Board. Records that have been determined by the board to possess sufficient archival value must be preserved by the municipality or deposited with the State Archivist.

8. Regulations of Archives Advisory Board. Each local government official shall comply with the standards, procedures and regulations issued by the Archives Advisory Board.

Sec. 11. 5 MRSA §12004-I, sub-§55-A, as enacted by PL 1989, c. 304, §2, is repealed.

Sec. 12. 30-A MRSA c. 15, as amended, is repealed.

See title page for effective date.

CHAPTER 149

H.P. 592 - L.D. 802

An Act to Amend the General Sentencing Provisions

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

Sec. 1. 17-A MRSA §1151, sub-§8, as repealed and replaced by PL 1983, c. 480, Pt. B, §24, is amended to read:

8. To permit sentences ~~which that~~ do not diminish the gravity of offenses, with reference to the ~~factor~~ factors, among others, of ~~the age of the victim;~~

A. The age of the victim; and

B. The selection by the defendant of the person against whom the crime was committed or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability or sexual orientation of that person or of the owner or occupant of that property.

See title page for effective date.

CHAPTER 150

H.P. 207 - L.D. 266

An Act to Revise the Security Deposit and Reinsurance Requirements for Individual Self-insurers

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

Whereas, the 90-day period may not terminate in time to allow the Superintendent of Insurance to exercise the powers granted to the Superintendent of Insurance through this legislation in matters involving certain self-insurance applications; and

Whereas, current law may deny the Superintendent of Insurance the discretion contemplated by

this legislation with regard to the posting of bonds by self-insurers under certain circumstances; and

Whereas, the posting of bonds may involve considerable expense that might otherwise be avoided under the limited circumstances contemplated by this 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. 39-A MRSA §403, sub-§8, ¶A, as amended by PL 1993, c. 491, §1, is further amended to read:

A. The bond or security deposit required of an individual self-insurer must be at least an amount determined by the following formula or \$50,000, whichever is larger. The bond or security deposit must be in an amount equal to the loss and loss adjustment expense portion of the annual standard premium for the prospective fiscal coverage period or the outstanding loss reserves minus recoveries from all excess carriers and subrogation reduced to net collections plus 25% of annual standard premiums for the prospective fiscal coverage period, whichever is larger. The percentage factor used to determine the portion of annual standard premium allocated for loss and loss adjustment expenses must be acceptable to the Superintendent of Insurance. For the purposes of this paragraph, "annual standard premium" is as defined in section 404, subsection 4.

For individual self-insurers who have a net worth equal to or in excess of \$10,000,000; who have had positive net earnings demonstrated by certified statements of financial condition audited by a certified public accountant for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years; and whose mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, the minimum security deposit or bond must be an amount determined by the formula in this paragraph or as adjusted for applicable levels of working capital funds.

An employer meeting the standards of this paragraph may deduct from the penal value of its surety bond or from the market value of securities deposited an amount not exceeding demonstrated working capital in such current statement