

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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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
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A. The agency adopts it within 120 days of the final date by which data, views or arguments may be submitted to the agency for consideration in adopting the rule; and

B. This adopted rule is approved by the Attorney General as to form and legality, as required by section 8056, within 150 days of the final date by which those comments may be submitted.

The final date for comments may be extended if notice of doing so is published ~~before that final date~~ within 14 days after the most recently published comment deadline, in the consolidated notice referred to in section 8053.

Sec. 4. 5 MRSA §8053, sub-§1, as amended by PL 1985, c. 39, §2, is further amended to read:

1. Notice of rulemaking without hearing. At least 20 days prior to the ~~adoption~~ comment deadline of any rule without hearing, the agency shall deliver or mail written notice to:

A. Any person specified by the statute authorizing the rulemaking;

B. Any person who has filed within the past year a written request with the agency for notice of rulemaking; and

C. Any trade, industry, professional, interest group or regional publication that the agency ~~deems~~ considers effective in reaching the persons affected.

Notification to subscribers under paragraph B ~~shall~~ must be by mail or otherwise in writing to the last address provided to the agency by that person. Subscribers under paragraph B may request to receive a copy of each proposed rule with the written notice. The agency shall provide the copy at the same time the notice is sent.

Written notice ~~shall~~ must also be given to the Secretary of State, by the deadline established by ~~him~~ the Secretary of State, for publication in accordance with subsection 5.

Sec. 5. 5 MRSA §8053, sub-§3-A, as enacted by PL 1981, c. 524, §8, is amended to read:

3-A. Copies of proposed rules available upon request. At least 20 days prior to hearing on any proposed rule and at least 20 days prior to the ~~adoption~~ comment deadline of any rule without a hearing, the agency shall make copies of the proposed rule available to persons upon request.

Sec. 6. 5 MRSA §8056, sub-§1, ¶B, as amended by PL 1985, c. 39, §3, is further amended to read:

B. File ~~a certified copy of the original rule as signed by the Attorney General or an assistant attorney general and the authorized representative of the agency~~, and the statement required by section 8052, subsection 5, with the Secretary of State in a form prescribed by the Secretary of State, which form ~~shall be~~ is susceptible to frequent and easy revision;

Sec. 7. 5 MRSA §8056, sub-§3, ¶A, as amended by PL 1991, c. 554, §1, is further amended to read:

A. Maintain and make available at the Secretary of State's office, for inspection at no charge and for copying or purchase ~~at actual cost~~, current copies of complete rules for all agencies filed in accordance with subsection 1, paragraph B;

See title page for effective date.

CHAPTER 374

S.P. 459 - L.D. 1255

An Act to Create the Northern New England Passenger Rail Authority

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

Whereas, the promotion of passenger rail service is essential to the economy and well-being of the State; and

Whereas, there is an immediate need to create the Northern New England Passenger Rail Authority; 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 §12004-F, sub-§16 is enacted to read:

<u>16. Northern New</u>	<u>Legislative Per</u>	<u>23</u>
<u>England Passenger Rail</u>	<u>Diem</u>	<u>MRSA</u>
<u>Authority</u>		<u>§8111</u>

Sec. 2. 23 MRSA c. 615, sub-c. III, as amended, is repealed.

Sec. 3. 23 MRSA c. 621 is enacted to read:

CHAPTER 621**PASSENGER RAIL SERVICE****SUBCHAPTER I****GENERAL PROVISIONS****§8001. Short title**

This chapter may be known and cited as the "Passenger Rail Service Act."

§8002. Definitions

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

1. Authority. "Authority" means the Northern New England Passenger Rail Authority and any successors to that authority.

2. Government agency. "Government agency" includes any department, agency, commission, bureau, authority, instrumentality and political subdivision of:

- A. The Federal Government;
- B. The State;
- C. Any other state; and
- D. The Dominion of Canada and any of its provinces.

3. Railroad line. "Railroad line" or "lines" means the right-of-way, track, track appurtenances, ties, bridges, station houses and other appurtenant structures.

§8003. Initiation and establishment of passenger rail service

1. Establishment of service. The authority is directed to take all actions that are reasonably necessary to initiate, establish or reinstate regularly scheduled passenger rail service between points within this State and points within and outside this State. These actions may include, but are not limited to, the acquisition, holding, use, operation, repair, construction, reconstruction, rehabilitation, modernization, rebuilding, relocation, maintenance and disposition of railroad lines, railway facilities, rolling stock, machinery and equipment, trackage rights, real and personal property of any kind and any rights in or related to that property.

2. Acquisition of properties; rights. The authority may acquire any of the properties or rights listed in subsection 1 through purchase, lease, lease-purchase, gift, devise or otherwise. In making these

acquisitions the authority may exercise the power of eminent domain following the same procedure set forth in section 7154, subsection 5; except that any notice of condemnation must be filed in the registry of deeds for the county or counties, or registry division or divisions, in which the property is located, in the case of real property, and with the office of the Secretary of State in the case of personal property.

§8004. Contracts; studies

In order to implement section 8003 and the purposes of this chapter, the authority is directed to:

1. Conduct studies. Conduct or cause to be conducted any studies that the authority determines necessary or proper;

2. Enter into contracts. Enter into and fulfill any contracts and agreements the authority determines necessary or proper;

3. Acquire property. Acquire property, including, but not limited to, railroad lines, both within and outside of this State; and

4. Cooperate with government agencies. Cooperate and enter into agreements, contracts and compacts with any government agency, the National Railroad Passenger Corporation and any other person, public or private.

§8005. Initial funding

1. Funds for implementation. The authority is directed to seek and use funds necessary for the implementation of this chapter, in an amount not less than \$40,000,000, exclusive of any interest or other debt service or expenses paid for funds borrowed through bond issues or otherwise.

2. Expenditure of funds. These funds must be spent first to reinstate, on or before December 31, 1995 regularly scheduled passenger rail service between Portland, Maine and Boston, Massachusetts, and points between. Any funds that exceed those necessary to reinstate service between those points must be spent by the authority to extend, to the extent practicable, regularly scheduled passenger rail service to other points within and outside of this State.

§8006. Additional funding

The authority is directed to use any revenues it receives from the operation of the passenger rail service established pursuant to this chapter to pay the operational expenses of that service. The authority is directed to seek and use funds necessary to pay all operational expenses of this passenger rail service that are not met by fares and other funds or revenues. For the purposes of this section, "operational expenses" include, but are not limited to, all additional capital

expenses necessary to maintain the passenger rail service.

§8007. Federal funds

The authority may take all actions consistent with this chapter necessary to qualify for, accept and disburse any money that the Federal Government may grant or loan to the authority to fund any actions required of the authority under the terms of this chapter.

§8008. Government agencies

Any government agency may allocate money and take other actions that may aid in the implementation of this chapter. The authority may provide funds, including loans and matching grants, to government agencies in order to encourage their participation in implementing this chapter.

§8009. Reasonable fares

Fares for the passenger rail service established pursuant to this chapter must be set at reasonable levels to encourage use of this service.

§8010. Satisfaction of operating deficits

The authority is directed to obtain all additional funds, through borrowing, revenues or other means, necessary to satisfy operating deficits arising from expenses, including capital expenditures, necessary to ensure the continuation of passenger rail service established pursuant to this chapter.

§8011. Rules of construction

This chapter must be construed liberally to effectuate the purposes of this chapter. Any amount of money set forth in this chapter is intended to represent a minimum amount that may be spent to effect those purposes. The State may appropriate to the authority, and the authority may expend, additional amounts for those purposes.

SUBCHAPTER II

NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY

§8111. Purpose

The Northern New England Passenger Rail Authority, as established by Title 5, section 12004-F, subsection 16, is a body both corporate and politic in the State established for the general purpose of promoting passenger rail service as set forth in subchapter I. It is declared that the purposes of this chapter are public and that the authority shall be regarded as performing a governmental function in carrying out this chapter. The authority, as successor

in interest of the Department of Transportation and to its rights, privileges and liabilities as set forth in subchapter I, shall receive any federal and state funds previously authorized to the department for that purpose, and upon creation of the authority all such rights, privileges and liabilities of the department cease.

§8112. Directors

1. Board of directors. The authority consists of a board of 5 directors appointed by the Governor each to serve for 5 years; except for those first appointed one director is appointed for one year, one director for 2 years, one director for 3 years and one director for 4 years. Immediately after their appointments, the directors of the authority shall enter upon their duties. The Governor shall name one of the appointed members as chair of the authority. The directors shall elect a treasurer and a secretary who need not be members of the authority and any other officers as the board of directors from time to time considers necessary. Any vacancy must be filled for the unexpired term by the Governor. A vacancy in the authority does not impair the right of a quorum of the directors to exercise all the rights and perform all the duties of the authority. The Governor may remove a member from the authority for misconduct.

2. Meetings of directors; compensation. All the powers of the authority may be exercised by the board of directors in lawful meeting and a majority of the directors are necessary for a quorum. Regular meetings of the board of directors may be established by bylaw and notice need not be given to the directors of the regular meeting. Each director is entitled to compensation according to the provisions of Title 5, chapter 379.

§8113. Conflict of interest

A director, officer or employee of the authority may not acquire any interest, direct or indirect, in any contract or proposed contract of the authority. A director, officer or employee may not participate in any decision on any contract entered into by the authority if that individual has any interest, direct or indirect, in any firm, partnership, corporation or association that will be party to such a contract or financially involved in any transaction with the authority; except this prohibition does not apply to the execution of agreements by banking institutions for the deposit or handling of authority funds in connection with any contract or to utility services, the rates for which are fixed or controlled by a governmental agency.

§8114. Powers

The authority may:

1. Suit. Sue and be sued;

2. Seal. Have a seal and alter the seal at pleasure;

3. Bylaws; rules. Adopt from time to time and amend bylaws covering its procedure and rules for the purposes set forth in this chapter; develop and adopt rules in accordance with the Maine Administrative Procedure Act; publish bylaws and rules as necessary or advisable; and cause records of its proceedings to be kept;

4. Employees. Employ such assistants, attorneys, experts, inspectors and such other employees and consultants as the authority considers necessary or desirable for its purposes;

5. Department of Transportation. Utilize the services of the State's Department of Transportation that are available and expedient and all charges for services provided by the department may be paid to it by the authority as mutually agreed upon; and

6. Other action. Take all lawful action necessary and incidental to effectuate the purposes set forth in this chapter.

§8115. Obligations of the authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. The records and correspondence relating to negotiations, trade secrets received by the authority and estimates of costs on projects to be put out to bid are confidential and the authority is deemed to have a lawyer-client privilege.

§8116. Report to the Legislature; departmental review

1. Annual report. Beginning January 1, 1996, on an annual basis, the authority shall present its report to the Legislative Council and send copies to the joint standing committee of the Legislature having jurisdiction over transportation matters and the Commissioner of Transportation. The report shall include a description of the authority's activities for

the preceding fiscal year, including a report of its receipts and expenditures from all sources.

2. Operating budget. Beginning January 31, 1996, on an annual basis, the authority shall present the operating budget of the authority for the next fiscal year beginning July 1st to the Commissioner of Transportation for approval. The authority may only make expenditures in accordance with allocations approved by the commissioner. Any balance of an allocation that at any time may not be required for the purpose named in that allocation may be transferred at any time prior to the closing of the books to any other allocation for the use of the authority for the same fiscal year subject to review and approval by the commissioner. Fiscal statements describing a transfer must be submitted by the authority to the commissioner 30 days before the transfer is to be implemented. These fiscal statements must include information specifying the accounts that are affected, amounts to be transferred, a description of the transfer and a detailed explanation as to why the transfer is needed.

§8117. Fair practices; affirmative action

The authority is subject to and shall comply with Title 5, chapter 65.

§8118. Property of the authority

1. Property of the authority. All property of the authority pursuant to the provisions of this chapter is exempt from levy and sale by virtue of any execution and an execution or other judicial process is not a valid lien upon its property held pursuant to the provisions of this chapter. The authority may use its property only for the purposes set forth in this chapter.

2. Entry upon lands. The authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as it determines necessary or convenient for the purpose of this chapter and the entry may not be deemed a trespass nor is the authority liable for the discovery of any form of waste or environmental contamination.

3. Authority for transfer of interest in land to the authority. Any county, municipality or other political subdivision, any public agency or commission of the State and any public service corporation or district, notwithstanding any contrary provisions of law, may lease, lend, grant or convey to the authority, upon its request and upon such terms and conditions as the proper authorities of the political subdivision, agency, commission, public service corporation or district determine reasonable and fair, any real or personal property or rights in the property that are necessary or convenient to the effectuation of the

authorized purposes of the authority, including real and personal property or rights in the property already devoted to public use. As used in the subsection, the term "public service corporation" includes a public utility as defined in Title 35-A, section 102, subsection 13 and a corporation referred to in Title 13-A.

§8119. Exemption from taxes

Because the accomplishment by the authority of the authorized purpose stated in this chapter is for the benefit of the people of the State and for the improvement of their commerce and prosperity and is the performance of essential governmental functions, the authority may not be required to pay any taxes or assessment on any property acquired or used by it for the purposes provided in this chapter; except that service facilities leased or rented by the authority to business entities are subject to taxation and assessments must be made against the tenant in possession based upon the value of the leasehold interest, both real and personal. The authority may not be required to pay any tax upon its income except as may be required by the laws of the United States.

Sec. 4. Transfer of funds from the State's Department of Transportation to the Northern New England Passenger Rail Authority.

The State's Department of Transportation is authorized to transfer up to \$3,000,000 allocated to railroad and airport improvements by Private and Special Law 1991, chapter 113, Part B, section 6 to the Northern New England Passenger Rail Authority.

Sec. 5. Authority expenditures. Before July 1, 1996, the Northern New England Passenger Rail Authority may make expenditures only upon the review by and approval of the Commissioner of Transportation.

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

Effective June 29, 1995.

CHAPTER 375

S.P. 561 - L.D. 1528

An Act Concerning Reports of Material Transactions and Other Provisions of the Maine Insurance Code

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

PART A

Sec. A-1. 24-A MRSA §423-C is enacted to read:

§423-C. Reports of material transactions

1. Report required. Every domestic insurer must file a report with the superintendent, on or before the 15th day of each month, if it has engaged in a material investment or reinsurance transaction during the preceding month that has not already been separately reported to the superintendent or submitted to the superintendent for prior review.

2. Material transactions defined. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Material investment transaction" means an acquisition or disposition of an asset or the aggregate of a series of related acquisitions or related dispositions during a 30-day period that is nonrecurring, not in the ordinary course of business and involving more than 5% of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the superintendent. Asset acquisitions and dispositions include without limitation a purchase, sale, lease, exchange, merger, consolidation, succession, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment or destruction. Asset acquisition does not include the construction or development of real property for the use of the reporting insurer or the acquisition of materials for such construction or development.

B. "Material reinsurance transaction" means:

(1) A transaction involving property and casualty business, including accident and health business written by a property and casualty insurer, that involves more than 50% of either the insurer's total ceded written premium or the insurer's total ceded indemnity and loss adjustment reserves;

(2) A transaction involving life, annuity or accident and health business that causes a change, either positive or negative, in the current total reserve credit taken for all life, annuity and accident and health business of more than 50% from the total reserve credit taken for such business in the insurer's most recent annual statement. "Total reserve credit" includes reserve credit taken for unearned premiums, reserve credit taken other than for unearned premiums and amounts recoverable on paid and unpaid losses for all reinsurance ceded;