

# 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**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

E. A marine worm dealer's license issued under section 6853 expires on March 31st of each year;

F. A marine worm dealer's supplemental license issued under section 6853 expires on March 31st of each year;

G. A retail seafood license issued under section 6852 expires on March 31st of each year;

H. A wholesale seafood license with a lobster permit issued under section 6851 expires on March 31st of each year;

I. A wholesale seafood license issued under section 6851 expires on March 31st of each year;

J. A wholesale seafood license with a sea urchin buyer's permit issued under section 6851 expires on March 31st of each year;

K. A wholesale seafood license with a sea urchin processor's permit issued under section 6851 expires on March 31st of each year;

L. A wholesale seafood supplemental license issued under section 6851 expires on March 31st of each year;

M. A shellfish transportation license issued under section 6855 expires on March 31st of each year;

N. A shellfish transportation supplemental license issued under section 6855 expires on March 31st of each year;

O. A lobster meat permit issued under section 6857 expires on March 31st of each year;

P. A lobster transportation license issued under section 6854 expires on March 31st of each year; and

Q. A lobster transportation supplemental license issued under section 6854 expires on March 31st of each year.

**Sec. 4. 12 MRSA §6505** is enacted to read:

**§6505. Eel fishing license**

**1. License required.** It is unlawful for any person to engage in the activities authorized by this license under this section without a current eel fishing license or other license under this Part authorizing the activities.

**2. Licensed activity.** The holder of an eel fishing license may fish for or take eels or possess, ship, transport or sell eels that the license holder has taken.

**3. Eligibility.** An eel fishing license may only be issued to an individual.

**4. Fees.** Fees for eel fishing licenses are:

A. Thirty-three dollars for a person who is a resident; and

B. Three hundred and thirty-four dollars for a person who is a nonresident.

**Sec. 5. Transition clause.** All licenses listed in the Maine Revised Statutes, Title 12, section 6301, subsection 2, paragraphs E to Q issued for the licensing year beginning January 1, 1995 are valid until March 31, 1996.

See title page for effective date.

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**CHAPTER 493**

**H.P. 989 - L.D. 1397**

**An Act to Amend Certain Laws Affecting the Department of Environmental Protection**

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

**Whereas,** the United States Environmental Protection Agency has promulgated new ambient air quality increments for particulate matter less than or equal to 10 micrometers in diameter under the Prevention of Significant Deterioration regulations; and

**Whereas,** the United States Environmental Protection Agency requires the State to revise its Prevention of Significant Deterioration regulations by March 1995 to reflect the changes in federal law; 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. 38 MRSA §352, sub-§5-A,** as amended by PL 1995, c. 173, §1, is further amended in that part designated "TABLE I" in that part relating to "TITLE 38, SECTION 485-A" by repealing and replacing paragraph D to read:

<u>D. Structures</u>	<u>4,000</u>	<u>2,000</u>
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**Sec. 2. 38 MRSA §413, sub-§2-G**, as enacted by PL 1993, c. 333, §1, is repealed and the following enacted in its place:

**2-G. Exemptions; oil and hazardous substances spill response.** A license is not required under this section for the following discharges:

A. A discharge to groundwaters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if discharge complies with the instructions of the commissioner or the commissioner's designee; or

B. A discharge to surface waters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if the discharge complies with the instructions of the commissioner or the commissioner's designee and, where applicable, an on-scene coordinator pursuant to 40 Code of Federal Regulations, Part 300.

**Sec. 3. 38 MRSA §438-A, sub-§4**, as amended by PL 1991, c. 346, §5, is further amended to read:

**4. Failure to adopt ordinances.** If the commissioner determines, after notice to a municipality, that the municipality has failed to adopt ordinances as required under this article or that an ordinance ~~which~~ that the municipality has adopted does not satisfy the requirements and purposes under this article, and that the commissioner is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, then the commissioner shall request and the board may adopt, acting in accordance with Title 5, chapter 375, subchapter II, suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission, which abut those waters. Following adoption by the board, these ordinances or provisions are effective and binding within the municipality and must be administered and enforced by that municipality. The board may adopt modifications to ordinances adopted pursuant to this subsection. Preparation and notice of proposed modifications, prior to consideration by the board, may be initiated by the commissioner.

**Sec. 4. 38 MRSA §480-Q, sub-§17** is enacted to read:

**17. Displacement or bulldozing of sediment within a lobster pound.** Displacement or bulldozing of sediment within a lobster pound, provided the sediment is not removed from the area inundated as a result of the impoundment.

**Sec. 5. 38 MRSA §482, sub-§5, ¶E**, as repealed and replaced by PL 1993, c. 680, Pt. A, §35, is amended to read:

E. Unless intended to circumvent this article, the following transactions may not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer if those lots are not further divided or transferred to a person not so related to the developer within a 5-year period, except as provided in this subsection;

(2) Personal, nonprofit transactions, such as the transfer of lots by gift ~~or devise~~, if those lots are not further divided or transferred within a 5-year period or the transfer of lots by devise or inheritance; or

(3) Grant of a bona fide security interest in the whole lot or subsequent transfer of the whole lot by the original holder of the bona fide security interest or that person's successor in interest;

**Sec. 6. 38 MRSA §488, sub-§10**, as enacted by PL 1993, c. 383, §26 and affected by §42, is amended to read:

**10. Roads and railroad tracks.** A structure consisting only of a road or a road together with the structure area within a residential lot, as described in subsection 17 is exempt from the requirements of this article. Railroad tracks other than tracks within yards or stations are exempt from review under this article.

**Sec. 7. 38 MRSA §488, sub-§§16 to 18** are enacted to read:

**16. Waste facilities.** Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X are exempt from review under this article. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

**17. Structure area within residential lots.** Buildings, roads, paved areas or areas to be stripped or graded and not revegetated that are located within lots used solely for single-family residential housing are not counted toward the 3-acre threshold described in

section 382, subsection 6, paragraph B for purposes of determining jurisdiction. A road associated only with such lots is also not counted toward the 3-acre threshold. For purposes of this subsection, "single-family residential housing" does not include multi-unit housing such as condominiums and apartment buildings.

**18. Roundwood and lumber storage yards.** A roundwood or lumber storage yard and any road associated with the yard is exempt from review under this article, as provided in this subsection.

A. A roundwood or lumber storage yard and any road associated solely with the yard, constructed on or after the effective date of this subsection, is exempt from review under this article provided it is constructed and operated in accordance with the erosion and sedimentation control standards and storm water management standards contained in board rules. The person conducting these activities shall file a notice of intent to comply with the department prior to clearing and construction.

B. A roundwood or lumber storage yard and any road associated solely with the yard, constructed prior to the effective date of this subsection, is exempt from review under this article provided the following requirements are met.

(1) Within one year after the effective date of this subsection, a notice of intent to comply must be provided to the department.

(2) Within 2 years of the effective date of this subsection, construction and operation of the yards and roads must be in compliance with the erosion and sedimentation control standards and storm water standards contained in board rules.

(3) Any expansion or alteration of such facilities must meet the requirements of paragraph A.

C. Notice of intent filed under this subsection must be complete, submitted on forms approved by the department and mailed by certified mail, return receipt requested. The notice must include a fee of \$250.

D. For guidance in complying with board rules regarding erosion and sedimentation control standards and storm water management standards, a person may consult "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) and "Stormwater Management for Maine: Best Management Practices" as revised (1995).

E. For purposes of this subsection only, "roundwood" means logs, bolts and other round sections of wood as they are cut from the tree.

**Sec. 8. 38 MRSA §489-A, first ¶**, as amended by PL 1993, c. 383, §27 and affected by §42, is further amended to read:

The commissioner may register municipalities for authority to substitute permits issued pursuant to Title 30-A, chapter 141 or 187, ~~subchapter IV~~, for permits required by section 485-A under the following conditions.

**Sec. 9. 38 MRSA §489-C**, as renumbered by RR 1993, c. 1, §122, is amended to read:

#### **§489-C. Rescission**

The commissioner shall rescind a permit upon request and application of the permittee if no outstanding permit violation exists, the development is not continued or completed and the following requirements are met:

**1. Development other than a subdivision.** The permittee has not constructed or caused to be constructed, or operated or caused to be operated, a development other than a subdivision as defined at the time of permit issuance; ~~or~~

**2. Subdivision.** If the development is a subdivision, the permittee has not sold or leased or caused to be sold or leased more than 4 lots; or

**3. Reclamation following borrow, clay or topsoil mining.** If the permittee has constructed or caused to be constructed, or operated or caused to be operated a development consisting of an excavation of more than 5 acres of land for borrow, topsoil, clay or silt, whether alone or in combination, and the department determines that:

A. The affected area has been successfully reclaimed;

B. There are not continuing requirements; and

C. There will be no additional mining for borrow, clay or topsoil by the permittee or any transferee at any time as provided by deed covenants enforceable by the department.

A rescission is considered a minor revision.

**Sec. 10. 38 MRSA §564, sub-§2-A**, as amended by PL 1993, c. 732, Pt. A, §§2 and 3, is further amended by amending the last blocked paragraph to read:

The requirements in paragraphs A and B do not apply to the following tanks provided the associated piping

has secondary containment or a suction pump product delivery system or another leak detection system approved by the commissioner and provided that the tank and associated piping have been installed and are operated in accordance with the requirements of this subchapter, including rules adopted under this subchapter: tanks providing product to a generator; double-walled tanks with continuous interstitial space monitoring; and existing tanks constructed of fiberglass, cathodically protected steel or another commissioner-approved noncorrosive material that are monitored ~~continuously~~ for a leak by a method able to detect a product loss or gain of 0.1 gallons or less per hour.

**Sec. 11. 38 MRSA §582, sub-§9-D** is enacted to read:

**9-D. PM10.** "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 Code of Federal Regulations, Part 50, Appendix J and designated in accordance with 40 Code of Federal Regulations, Part 53.

**Sec. 12. 38 MRSA §584-B, sub-§1,** as enacted by PL 1979, c. 381, §7, is amended to read:

**1. PM10.** In regards to ~~particulate matter~~ PM10:

A. An increase in the annual ~~geometric arithmetic~~ mean at any location not to exceed ~~5~~ 4 micrograms per cubic meter; and

B. An increase in concentration for any 24-hour period at any location not to exceed ~~10~~ 8 micrograms per cubic meter; and

**Sec. 13. 38 MRSA §584-C, sub-§1,** as corrected by RR 1993, c. 1, §127, is amended to read:

**1. PM10.** In regards to ~~particulate matter~~ PM10:

A. An increase in the annual ~~geometric arithmetic~~ mean at any location not to exceed ~~19~~ 17 micrograms per cubic meter; and

B. An increase in concentration for any 24-hour period at any location not to exceed ~~37~~ 30 micrograms per cubic meter;

**Sec. 14. 38 MRSA §584-D, sub-§1,** as corrected by RR 1993, c. 1, §129, is amended to read:

**1. PM10.** In regards to ~~particulate matter~~ PM10:

A. An increase in the annual ~~geometric arithmetic~~ mean at any location not to exceed ~~37~~ 34 micrograms per cubic meter; and

B. An increase in concentration for any 24-hour period at any location not to exceed ~~75~~ 60 micrograms per cubic meter;

**Sec. 15. 38 MRSA §585-E** is enacted to read:

**§585-E. Gasoline station vapor recovery requirements**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A. "Stage II vapor recovery system"** means a system for gasoline vapor recovery of emissions from the fueling of motor vehicles as described in Section 182(b)(3) of the federal Clean Air Act, 42 United States Code, Section 7511a(b)(3) (1995).

**B. "Volatile organic compound 15% reduction plan" or "15% reduction plan"** means the plan for reasonable further progress required in Section 182(b)(1) of the federal Clean Air Act, 42 United States Code, Section 7511a(b)(1) (1995).

**2. Stage II rule adoption.** The board may adopt a rule requiring installation of Stage II vapor recovery systems in gasoline stations in Cumberland, York and Sagadahoc counties. The rule may impose the requirements only on stations that sold 1,000,000 gallons of gasoline or more in calendar year 1994 or a subsequent calendar year, unless department information gathering indicates that a threshold of 1,000,000 gallons is insufficient to provide emission reduction credits needed to meet the volatile organic compound 15% reduction plan requirement. The department shall confer with the joint standing committee of the Legislature having jurisdiction over natural resource matters at least one week before the public hearing on any rule that proposes a threshold lower than 1,000,000 gallons per calendar year.

**3. Status report.** On or before February 1, 1996, the commissioner shall submit a status report to the Governor and to the joint standing committee of the Legislature having jurisdiction over natural resource matters on the following matters:

**A. The status of United States Environmental Protection Agency approval, disapproval, review or comment on the State's volatile organic compound 15% reduction plan, including inventory of sources and credits for proposed control programs;**

**B. The status of the State's request to be exempt from the auto emissions inspection program requirement;**

C. The status of the State's requests for redesignation of air planning areas; and

D. A description of federal regulations for which the United States Environmental Protection Agency will allow the State to take credit in its volatile organic compound 15% reduction plan.

**4. Conference with legislative committee.** The Governor shall confer with the joint standing committee of the Legislature having jurisdiction over natural resource matters no later than March 1, 1996 to discuss the commissioner's report submitted under subsection 3 and to review whether the Stage II vapor recovery system rule should be amended or repealed.

**5. Controls needed for 15% reduction plan.** If the State receives written notice from the United States Environmental Protection Agency disapproving the State's 15% reduction plan, or otherwise disallowing reduction credits necessary for approval, the board shall adopt rules to provide additional controls of emissions of volatile organic compounds as needed to meet the 15% reduction plan requirement, which may include revision or readoption of the Stage II vapor recovery system rule. The department shall confer with the joint standing committee of the Legislature having jurisdiction over natural resource matters before it proposes revision or readoption of a Stage II vapor recovery system rule at a threshold lower than 1,000,000 gallons per year.

**Sec. 16. 38 MRSA §2304, sub-§1, ¶B,** as amended by PL 1993, c. 355, §63, is further amended to read:

B. The following facilities are exempt from the planning and reporting requirements for toxics use:

- (1) Drinking water supply treatment facilities;
- (2) Municipal wastewater treatment facilities; ~~and~~
- (3) Wholesale distributors of chemicals; and
- (4) Hazardous substance transporters.

**Sec. 17. 38 MRSA §2304, sub-§2, ¶B,** as amended by PL 1993, c. 355, §64, is further amended to read:

B. The following exemptions apply to toxics releasers.

- (1) The following facilities are exempt from the planning, reporting, fee and reduction requirements for toxics release:

(a) Drinking water supply treatment facilities;

(b) Municipal wastewater treatment facilities;

(c) Retail and wholesale motor fuel and heating oil distributors; and

(d) Agricultural activities.

(2) To qualify for an exemption from the toxic release reduction requirements under this paragraph, a toxics releaser must demonstrate to the commissioner that all practicable reductions have been implemented or scheduled for implementation. The commissioner may establish alternate toxics release reduction goals for the facility when appropriate.

(a) A toxics releaser must receive an exemption from the requirement of meeting state reduction goals from the commissioner if the toxics releaser proves that:

(ii) All practicable reductions or actions have been previously implemented or are being implemented and will be completed on a schedule acceptable to the commissioner;

(iii) Practicable steps necessary to reduce toxics release would have an unreasonable adverse impact on product quality or quantity;

(iv) Practicable means of measuring a toxics release do not exist; or

(v) Legal or contractual obligations prohibit steps necessary to reduce toxics release.

(b) The commissioner shall review exemptions under this paragraph at 3-year intervals. Renewals must be granted for toxics releasers that demonstrate that they still meet the requirements set forth in division (a), subdivisions (i) to (iv). If an exemption has been granted based on legal or contractual obligations, the exemption is only for the term of that obligation. An exemption or renewal for a new or renewed legal or contractual obligation may not be granted by the

commissioner. A toxics releaser that has received an exemption based on legal or contractual obligations may apply for a renewal based on division (a), subdivision (i), (ii), (iii) or (iv).

**Sec. 18. 38 MRSA §2304, sub-§3, ¶B,** as enacted by PL 1991, c. 520, §13, is amended to read:

B. The following exemptions apply to hazardous waste generators:

(1) The following are exempt from the planning, reporting, fee and reduction requirements for hazardous waste:

- (a) Commercial hazardous waste treatment or storage facilities;
- (b) Pilot plants or pilot production units;
- (c) Hazardous waste transporters;
- (d) Hazardous waste generated as a result of remedial or corrective actions or facility closures required by law or undertaken to protect employee health and safety, public health and safety or the environment;
- (e) Households; ~~and~~
- (f) Agricultural activities;
- (g) Wholesale motor fuel and heating oil distributors.

(2) To qualify for an exemption from the hazardous waste reduction requirement under this paragraph, a generator must demonstrate to the commissioner that all practicable reductions have been implemented or scheduled for implementation. The commissioner may establish alternate hazardous waste reduction goals for the facility when appropriate.

(a) A generator must receive an exemption from the requirement of meeting state reduction goals from the commissioner if the generator proves that:

- (i) Practicable hazardous waste reduction methods do not exist;
- (ii) All practicable reductions or actions have been previously implemented or are being implemented and will be completed

on a schedule acceptable to the commissioner;

(iii) Practicable steps necessary to reduce hazardous waste would have an unreasonable adverse impact on product quality or quantity; or

(iv) Legal or contractual obligations prohibit steps necessary to reduce hazardous waste generation.

(b) The commissioner shall review exemptions under this paragraph at 3-year intervals. Renewals may be granted for hazardous waste generators that demonstrate that they still meet the requirements set forth in division (a), subdivisions (i) to (iii). If an exemption has been granted based on legal or contractual obligations, the exemption is only for the term of that obligation. An exemption or renewal for a new or renewed legal or contractual commitment may not be granted by the commissioner. A generator that has received an exemption based on legal or contractual obligations may apply for a renewal based on division (a), subdivision (i), (ii) or (iii).

**Sec. 19. 38 MRSA §2311, sub-§1,** as amended by PL 1993, c. 309, §1, is further amended to read:

**1. Hazardous waste generators.** ~~Except as provided in this subsection, all owners or operators of facilities that generate hazardous waste other than households and agricultural activities shall register annually with the commissioner. Registration forms, if required, and the fee required by this subsection are due to the commissioner by April 15, 1994 and annually thereafter after that date.~~ For facilities that generate 100 kilograms or more of hazardous waste in a calendar month for more than 3 months of the year, the fee is \$100 per facility. For all other generators, the fee is \$50 per facility.

~~Registration is not required for owners or operators that generate less than 100 kilograms of hazardous waste in a calendar month for more than 3 months of the year if, during the preceding calendar year, some or all of that generator's hazardous waste was transported and manifested pursuant to the provisions of this Title. This exception does not apply to the requirement to pay the fee.~~

**Sec. 20. Legislation authorized.** If the Department of Environmental Protection or the



Governor is required to confer with the Joint Standing Committee on Natural Resources pursuant to the Maine Revised Statutes, Title 38, section 585-E, the Joint Standing Committee on Natural Resources is authorized to report out a committee bill relating to the requirement for the installation of Stage II vapor recovery systems, if a majority of the committee votes to report out a bill.

**Sec. 21. Retroactivity.** That section of this Act that enacts the Maine Revised Statutes, Title 38, section 413, subsection 2-G applies retroactively to October 13, 1993. That section of this Act that enacts Title 38, section 488, subsection 16 applies retroactively to September 14, 1993. Those sections of this Act that amend Title 38, section 488, subsection 10 and enact Title 38, section 488, subsection 17 apply retroactively to any residential subdivision or amendment or revision to any residential subdivision approved by the Environmental Improvement Commission, the Commissioner of Environmental Protection, the Board of Environmental Protection, the Department of Environmental Protection, the Maine Land Use Regulation Commission or any municipal planning board on or after May 9, 1970.

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

Effective July 3, 1995.

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## CHAPTER 494

### I.P. 3 - L.D. 717

#### An Act to Establish the Maine Outdoor Heritage Fund

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

**Sec. 1. 2 MRSA §6, sub-§10** is enacted to read:

**10. Range 80.** The salaries of the following state officials and employees are within salary range 80:

Executive Director, Maine Outdoor Heritage Fund Board.

**Sec. 2. 5 MRSA §942-A** is enacted to read:

#### **§942-A. Maine Outdoor Heritage Fund Board**

The position of Executive Director is a major policy-influencing position within the Maine Outdoor Heritage Fund Board. Notwithstanding any other

provision of law, this position and its successor position are subject to this chapter.

**Sec. 3. 5 MRSA §12004-G, sub-§29-B** is enacted to read:

<u>29-B.</u>	<u>Maine</u>	<u>Legislative</u>	<u>12</u>
<u>Natural</u>	<u>Outdoor</u>	<u>Per Diem</u>	<u>MRSA</u>
<u>Resources</u>	<u>Heritage</u>	<u>and Travel</u>	<u>§7788</u>
	<u>Fund Board</u>	<u>Expenses for</u>	
		<u>Appointed</u>	
		<u>Members</u>	

**Sec. 4. 8 MRSA §374, sub-§5** is enacted to read:

**5. Wildlife lottery game.** No later than January 30, 1996, the Maine State Lottery Commission, in consultation with the Maine Outdoor Heritage Fund Board, shall develop and initiate a wildlife lottery game designed to raise funds for the Maine Outdoor Heritage Fund established pursuant to Title 12, chapter 714. The Maine State Lottery Commission shall provide the net proceeds of this wildlife lottery game to the Maine Outdoor Heritage Fund annually. The Maine State Lottery Commission shall change the wildlife game ticket periodically throughout the year.

**Sec. 5. 8 MRSA §387, sub-§1,** as enacted by PL 1987, c. 505, §2, is amended to read:

**1. Appropriation.** The money in the State Lottery Fund ~~shall~~ may be appropriated only:

A. For the payment of prizes to the holders of winning lottery tickets or shares;

B. For the expense of the division in its operation of the lottery; ~~and~~

C. For payment to the General Fund; and

D. For payment to the Maine Outdoor Heritage Fund pursuant to Title 12, section 7782.

**Sec. 6. 12 MRSA c. 714** is enacted to read:

## CHAPTER 714

### MAINE OUTDOOR HERITAGE FUND

#### §7781. Definitions

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

**1. Acquisition.** "Acquisition" means fee ownership, easement, lease, right-of-way and other less-than-fee interests in land.