

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

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**SECOND REGULAR SESSION**  
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**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**

## CHAPTER 641

H.P. 1212 - L.D. 1662

**An Act to Correct a Technical Error  
Relating to the Research Expense  
Tax Credit**

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

**Whereas,** delay in making a technical change to Maine's new research expense tax credit would make that credit worthless for the majority of taxpayers; and

**Whereas,** legislative action is immediately necessary in order to ensure that the original intent behind the research expense tax credit is fulfilled; 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. 36 MRSA §5122, sub-§1, ¶G,** as amended by PL 1995, c. 368, Pt. GGG, §1, is further amended to read:

G. Pick-up contributions paid by the taxpayer's employer on the taxpayer's behalf to the Maine State Retirement System as defined in Title 5, section 17001, subsection 28-A; and

**Sec. 2. 36 MRSA §5122, sub-§1, ¶H,** as amended by PL 1995, c. 368, Pt. GGG, §2, is further amended to read:

H. The absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, that arises from an S Corporation with total assets for the year of at least \$1,000,000 and that pursuant to the United States Internal Revenue Code, Section 172 is being carried back for federal income tax purposes to the taxable year by the taxpayer; and.

**Sec. 3. 36 MRSA §5122, sub-§1, ¶I,** as enacted by PL 1995, c. 368, Pt. GGG, §3, is repealed.

**Sec. 4. 36 MRSA §5200-A, sub-§1, ¶H,** as amended by PL 1995, c. 368, Pt. GGG, §4, is further amended to read:

H. The absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 1989 but before January 1, 1993 that, pursuant to the United States Internal Revenue Code, Section 172, is being carried back for federal income tax purposes to the taxable year by the taxpayer; and

**Sec. 5. 36 MRSA §5200-A, sub-§1, ¶I,** as amended by PL 1995, c. 368, Pt. GGG, §5, is further amended to read:

I. Interest or dividends on obligations or securities of any state or of a political subdivision or authority, other than this State and its political subdivisions and authorities; and.

**Sec. 6. 36 MRSA §5200-A, sub-§1, ¶J,** as enacted by PL 1995, c. 368, Pt. GGG, §6, is repealed.

**Sec. 7. Application.** This Act applies to any tax year beginning on or after January 1, 1996.

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

Effective April 10, 1996.

## CHAPTER 642

H.P. 1222 - L.D. 1672

**An Act to Amend Certain Laws  
Administered by 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,** certain lakes may experience severe algae bloom conditions that can not be controlled through known restoration methods rendering them unfit for drinking water and recreational purposes; and

**Whereas,** temporary treatments to alleviate these bloom conditions may need to be made before the 90-day term following adjournment; 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 §341-D, sub-§3, ¶¶E and F**, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, are amended to read:

E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license; ~~or~~

F. The licensee has violated any law administered by the department; ~~or~~

**Sec. 2. 38 MRSA §341-D, sub-§3, ¶G** is enacted to read:

G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

**Sec. 3. 38 MRSA §352, sub-§5-A**, as amended by PL 1995, c. 493, §1, 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 90 days after adjournment of the Second Regular Session of the ~~117th~~ 118th Legislature.

**Sec. 4. 38 MRSA §361-A, sub-§6**, as enacted by PL 1971, c. 470, §1, is repealed and the following enacted in its place:

**6. Transfer of ownership.** "Transfer of ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the department.

**Sec. 5. 38 MRSA §414-A, sub-§1-C** is enacted to read:

**1-C. License for the use of algicides in Class GPA waters.** The commissioner may issue a license to a municipality for the discharge of copper compounds or other materials registered by the Department of Agriculture, Food and Rural Resources to control excessive algae growth in Class GPA waters when the commissioner has determined that:

A. A lake restoration plan to reduce algae growth has been designed and implemented in cooperation with the department;

B. That plan has been found by the department to have failed to achieve the desired level of restoration in a reasonable period of time;

C. Because of technical or financial limitations, there is no further plan for restoration;

D. The affected water has a recent history of severe algae blooms of less than one meter Secchi disk transparency;

E. A watershed plan to further reduce phosphorus loading to the affected water is being implemented by responsible parties including the department and all affected municipalities; and

F. The Department of Inland Fisheries and Wildlife has found that the discharge will not have an adverse impact on the fishery management plan of that water body.

This license allows for no more than one application of copper compounds or other registered algicides per year for a period not to exceed 5 years. Algicides must be applied in an amount and in a manner that minimizes risk to nontarget organisms. The individual conducting the treatment must be certified by the Board of Pesticides Control for the use of aquatic pesticides. Application of an algicide may only occur after the Secchi disk transparency of the water is less than 2 meters. Relicensing is contingent upon an assessment of the water quality and the effectiveness of the phosphorus reduction plan for the watershed.

**Sec. 6. 38 MRSA §486-A, sub-§3**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §94, is further amended to read:

**3. Findings of fact; order.** After the department adjourns any hearing held under this section, the department shall make findings of fact and issue an order granting or denying permission to the person proposing the development to construct or operate the development, as proposed, or granting that permission upon such terms and conditions as the department considers advisable to protect and preserve the environment and the public's health, safety and general welfare, ~~except in the case of any low-level radioactive waste storage or disposal facility, in which case the board shall act in accordance with section 1478.~~

**Sec. 7. 38 MRSA §584-A, sub-§5**, as enacted by PL 1971, c. 570, is repealed.

**Sec. 8. 38 MRSA §1310-F, sub-§6** is enacted to read:

**6. Contract enforcement.** At the request of a recipient of state funds under this section, the commissioner may provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into by or for the benefit of the recipient in connection with a landfill closure and remediation project assisted by these funds. When state funds have been disbursed pursuant to this section, the State, acting through the Attorney General, has a direct right of action against the recipient of the funds, or a contractor, subcontractor, architect, engineer or manufacturer of equipment purchased with the funds, to recover the funds which may be properly awarded as actual damages in an action alleging negligence or breach of contract.

**Sec. 9. 38 MRSA §1310-N, sub-§6-D,** as enacted by PL 1993, c. 680, Pt. A, §37, is amended to read:

**6-D. Solid waste facilities licensed under rules valid on or after May 24, 1989.** A solid waste facility license issued under applicable solid waste management rules valid on or after May 24, 1989 remains in effect unless modified, revoked or suspended under section 341-D, subsection 3. These licensees must:

- A. Comply with applicable operating rules adopted by the board;
- B. Comply with annual facility reporting rules adopted by the board; and
- C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility.

Notwithstanding the terms of this subsection, sludge or residual utilization licenses may be voluntarily surrendered by the license holder upon department approval.

**Sec. 10. 38 MRSA §1318-B, sub-§1,** as repealed and replaced by PL 1991, c. 208, §2, is amended to read:

**1. Reporting.** Except as provided in this subsection, the responsible party or person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Commissioner of Environmental Protection and the public safety agency of the municipality in which the discharge takes place. Upon submission to the commissioner of a written spill prevention control and clean-up plan that meets the criteria of section 1318-C, subsection 1, a discharge containing a hazardous matter that is covered by the plan must be

reported only if the discharge equals or exceeds the applicable reportable quantity for that particular hazardous matter as specified in Code of Federal Regulations, Title 40, Parts 302.4, 302.5 and 302.6 (b)(1), revised as of July 1, 1990 1994, or when the discharge extends or spreads beyond the area on the site covered by the spill prevention control and clean-up plan.

**Sec. 11. 38 MRSA §1318-B, sub-§4** is enacted to read:

**4. Limited liability for responders.** A person who voluntarily, without expectation of monetary or other compensation, assists or advises the commissioner in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous matter is not liable for removal costs, damages, injuries, civil liabilities or penalties that result from actions taken or omitted in the course of rendering assistance or advice in accordance with the directions of the commissioner. This liability limitation does not apply:

- A. If the person is grossly negligent or engages in willful misconduct; or
- B. To a person who caused the discharge or threatened discharge or otherwise is determined to be a responsible party.

**Sec. 12. 38 MRSA §1319-I, sub-§4-B,** as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §260, is further amended to read:

**4-B. Fee on hazardous materials transported by railroad.** Any person who transports more than 25 tons of certain hazardous materials as specified in this subsection at any one time by rail shall register annually with the commissioner. Fees for the transportation of hazardous materials by rail are imposed on the registrant who first transports the materials in the State by rail. Fees for the transportation of hazardous materials are determined by one of the following methods:

- A. Fifteen cents per ton of hazardous materials transported by the registrant during the period of registration paid quarterly by the registrant on the basis of records certified to the commissioner; or
- B. Twenty-five thousand dollars paid at the time of registration.

The registrant shall select the method of payment at the time of registration. Fees are paid to the department and upon receipt credited to the Maine Hazardous Waste Fund. ~~Any~~ A registrant selecting quarterly payments ~~shall be~~ is automatically subject to the \$25,000 annual registration fee if the fee for any ~~one~~

quarter has not been paid to the Maine Hazardous Waste Fund within 60 days after the fee becomes due. Hazardous materials subject to the requirements of this subsection ~~mean~~ are those substances identified pursuant to the federal Hazardous Materials Transportation Act, Public Law 93-633 listed in 49 Code of Federal Regulations, Part 172.101, Subpart B, 1994, except that, for purposes of this subsection, "hazardous materials" ~~do~~ does not include oil as defined in Title 38, section 542, subsection 6. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the hazardous materials transported by the registrant during the period of registration.

**Sec. 13. 38 MRSA §1453-A, sub-§2,** as amended by PL 1995, c. 333, §3, is further amended by amending the first paragraph to read:

**2. Membership; appointment.** The commission consists of ~~16~~ 15 members, appointed as follows:

**Sec. 14. 38 MRSA §1453-A, sub-§2, ¶A,** as enacted by PL 1993, c. 664, §15 and affected by §21, is repealed.

**Sec. 15. 38 MRSA §1478,** as amended by PL 1993, c. 383, §§39 and 40, is repealed.

**Sec. 16. 38 MRSA §1478-A,** as enacted by PL 1993, c. 383, §41, is repealed.

**Sec. 17. 38 MRSA §1479,** as amended by PL 1985, c. 705, §4, is further amended to read:

**§1479. Legislative approval of facilities required**

~~No~~ A low-level radioactive waste disposal or storage facility may not be established in the State, unless the Legislature has, by Private and Special Act, approved the establishment of that facility ~~pursuant to the provisions of this subchapter.~~ The Legislature shall act expeditiously on any recommendation of the board under section 1478 after a decision by the United States Nuclear Regulatory Commission to approve a facility, but shall may not act until after the conclusion of any judicial review of the recommendation decision and any resulting administrative proceedings.

~~Approval under this subchapter constitutes approval under the site location of development laws, but does not replace any other license required by law.~~

Approval under this subchapter section does not replace any other license required by law and is in addition to the voter approval required by subchapter IV section 1493.

**Sec. 18. 38 MRSA §1480,** as enacted by PL 1983, c. 500, §5, is repealed.

**Sec. 19. 38 MRSA §1480-A,** as enacted by PL 1983, c. 500, §5, is amended to read:

**§1480-A. Joint hearings; intervention**

~~The board~~ Department of Human Services or the State Planning Office may ~~hold joint hearings with the United States Nuclear Regulatory Commission and~~ intervene in any federal licensing proceeding to carry out the purpose of this chapter.

**Sec. 20. 38 MRSA §1482, sub-§4,** as enacted by PL 1985, c. 705, §5, is amended to read:

**4. Licensing.** ~~Any~~ A low-level radioactive waste disposal facility developed in the State ~~shall~~ must be licensed by the United States Nuclear Regulatory Commission ~~or, in the event the State becomes an agreement state, by the State.~~ The facility must be recommended by the Board of Environmental Protection and approved by the Legislature in accordance with this subchapter section 1479 and approved by the voters in accordance with subchapter IV section 1493.

**Sec. 21. 38 MRSA §1493,** as amended by PL 1987, c. 769, Pt. B, §9, is further amended to read:

**§1493. Low-level radioactive waste disposal referendum**

~~No~~ A low-level radioactive waste disposal or storage facility may not be constructed or operated ~~within in~~ in the State of ~~Maine~~ the State unless ~~such~~ the construction ~~and or~~ operation ~~are~~ is approved by a majority of the voters voting ~~thereon~~ on the construction or operation in a statewide election. ~~Such~~ The election ~~shall~~ must be held in the manner prescribed by law for holding a statewide election and in accordance with the procedures set forth in Title 35-A, section 4302. The voters ~~shall~~ must be asked to vote on the acceptance or rejection of construction or operation by voting on the following question:

"Do you approve (insert construction or operation) of a low-level radioactive waste (insert disposal or storage) facility as proposed for (insert location)?"

This question ~~shall~~ must be submitted to the legal voters of the State at the next following statewide election after ~~review and issuance of an order recommending permission for construction or operation of the facility by the Board of Environmental Protection pursuant to section 1478, provided that no a decision by the United States Nuclear Regulatory Commission to approve a low-level radioactive waste facility.~~ The construction or operation of any the facility may not commence prior to such the election.

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

Effective April 10, 1996.

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## CHAPTER 643

H.P. 1238 - L.D. 1698

### An Act to Make Changes to the Disability Plans Administered by the Maine State Retirement System and to Establish a Process for Further Improvements

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

**Whereas,** the Maine State Retirement System was directed by Private and Special Law 1995, chapter 38 to devise a proposed methodology and plan that would consolidate the disability plans currently administered by the Maine State Retirement System into a single pooled plan modeled after the plan set out in the Maine Revised Statutes, Title 5, chapter 423, subchapter V, article 3-A and chapter 425, subchapter V, article 3-A, and present that methodology and proposed legislation to the joint standing committee of the Legislature having jurisdiction over labor matters before adjournment of the Second Regular Session of the 117th Legislature; and

**Whereas,** interested parties to the single pooled plan have had inadequate time to understand and endorse the single plan idea; and

**Whereas,** the Board of Trustees of the Maine State Retirement System continually strives to make improvements in the administration of its disability plans; and

**Whereas,** Public Law 1993, chapter 595 directs the Maine State Retirement System to study and analyze the experience of the disability plans amended to meet the requirements of the federal Older Workers Benefit Protection Act and report possible options for compliance with the federal Older Workers Benefit Protection Act that protect benefits for employees without additional cost to the State and participating local districts; and

**Whereas,** provisions in the law establishing the benefit amount to be received by persons having elected to be covered under the retirement system disability plan applicable to the member as that plan was amended to meet the requirements of the federal Older Workers Benefit Protection Act will expire on June 30, 1996; and

**Whereas,** the benefit amount to be received by such persons after June 30, 1996 must be established beginning July 1, 1996; 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. 3 MRSA §734,** as enacted by PL 1985, c. 507, §1, is amended to read:

#### §734. Medical board

~~The Medical Board~~ A medical board of the Maine State Retirement System ~~shall be established in section 17106, subsection 1 is the Medical Board~~ medical board of the Maine Legislative Retirement System. The medical board shall arrange for and pass upon all medical examinations required under this chapter with respect to disability retirements and shall report; in writing to the executive director; its conclusions and recommendations upon all the matters referred to it. ~~If required, The board of trustees may designate other physicians may be employed to report on special~~ provide medical consultation on legislative disability cases.

**Sec. 2. 4 MRSA §1234,** as amended by PL 1983, c. 863, Pt. B, §§14 and 45, is further amended to read:

#### §1234. Medical board

~~The Medical Board~~ A medical board of the Maine State Retirement System ~~shall be established in section 17106, subsection 1 is the Medical Board~~ medical board of the Maine Judicial Retirement System. The medical board shall arrange for and pass upon all medical examinations required under this chapter with respect to disability retirements and shall report in writing to the Supreme Judicial Court; its conclusions and recommendations upon all the matters referred to it. ~~If required, The board of trustees may designate other physicians may be employed to report on special~~ provide medical consultation on judicial disability cases.

**Sec. 3. 4 MRSA §1353, sub-§2,** as amended by PL 1993, c. 595, §1, is further amended to read:

**2. Amount.** Until July 1, 1996, the amount of a disability retirement allowance is 59% of the member's average final compensation. ~~Any member entitled to this benefit who was serving as a judge on November 30, 1984 may elect to have that member's~~