

# MAINE STATE LEGISLATURE

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

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

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

**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**

to Title 17-A, section 1203, subsection 1 or section 1252, subsection 1.

Reimbursement for periods after June 30, 1987 may not be authorized until the reimbursable costs for the operations of the jail are agreed upon by the commissioner and the county commissioners for that county. Reimbursable costs for the operations of the jail must, to the extent practicable, be mutually agreed upon prior to the actual expenditures of funds for those costs. Prior approval of all capital expenditures is required for reimbursement of that expense item. If the commissioner and the county commissioners are unable to agree upon reimbursable costs, they shall jointly select an arbitrator to determine those costs. The arbitrator's decision is final and both the commissioner and the county commissioners are bound by that decision.

The obligation of the Department of Corrections to reimburse counties pursuant to this section may not exceed the actual amount appropriated during fiscal years 1993-94, 1994-95, 1995-96 and 1996-97.

Notwithstanding any other statutory provision, funds provided as reimbursement to counties for housing state prisoners must be used to reduce the assessment of each municipality within the county for their due proportion of any county tax payable during the municipal year for which municipal taxes are being raised. County commissioners shall deduct from the total amount required to be assessed for county purposes an amount equal to the amount that the county commissioners estimate will be received pursuant to this subsection.

**Sec. MM-2. 34-A MRSA §1210, sub-§2,** as amended by PL 1995, c. 449, §1 and affected by §2, is further amended to read:

**2. Reimbursement.** Except as provided in subsection 6-A, the department shall, under this section, reimburse each county quarterly for each actual day served at that county correctional facility by:

A. Persons convicted of a Class A, Class B or Class C crime sentenced after March 31, 1987 to serve a term of imprisonment pursuant to Title 17-A, section 1203, subsection 1, or section 1252, subsection 1; and

B. Persons convicted of a Class A, Class B or Class C crime sentenced after December 31, 1988 to serve a term of imprisonment pursuant to Title 17-A, section 1203, subsection 1 or section 1252, subsection 1.

Reimbursement for periods after June 30, 1987 may not be authorized until the reimbursable costs for the operations of the jail are agreed upon by the commis-

sioner and the county commissioners for that county. Reimbursable costs for the operations of the jail must, to the extent practicable, be mutually agreed upon prior to the actual expenditures of funds for those costs. Prior approval of all capital expenditures is required for reimbursement of that expense item. If the commissioner and the county commissioners are unable to agree upon reimbursable costs, they shall jointly select an arbitrator to determine those costs. The arbitrator's decision is final and both the commissioner and the county commissioners are bound by that decision.

The obligation of the Department of Corrections to reimburse counties pursuant to this section may not exceed the actual amount appropriated during fiscal years 1993-94, 1994-95, 1995-96 and 1996-97.

Notwithstanding any other statutory provision, funds provided as reimbursement to counties for housing state prisoners must be used to reduce the assessment of each municipality within the county for their due proportion of any county tax payable during the municipal year for which municipal taxes are being raised. County commissioners shall deduct from the total amount required to be assessed for county purposes an amount equal to the amount that the county commissioners estimate will be received pursuant to this subsection.

**Sec. MM-3. Effective date.** Section 2 of this Part takes effect July 1, 1997.

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

Effective April 11, 1996, unless otherwise indicated.

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**CHAPTER 666**

**H.P. 993 - L.D. 1404**

**An Act to Amend the Law Regarding the Lease of Submerged Lands**

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

**Sec. 1. 5 MRSA §12004-I, sub-§24-E** is enacted to read:

<u>24-E.</u>	<u>Submerged</u>	<u>Not</u>	<u>12 MRSA</u>
<u>Environment:</u>	<u>Lands</u>	<u>Autho-</u>	<u>558-C</u>
<u>Natural</u>	<u>Advisory</u>	<u>rized</u>	
<u>Resources</u>	<u>Board</u>		

**Sec. 2. 12 MRSA §557-A,** as enacted by PL 1991, c. 427, §2, is repealed.

**Sec. 3. 12 MRSA §557-B** is enacted to read:

**§557-B. Submerged Lands Fund**

**1. Fund established.** All revenues from the activities of the bureau under section 558-A must be deposited with the Treasurer of State to be credited to the Submerged Lands Fund, which is established as a nonlapsing, dedicated fund and referred to in this section as the "fund." Any interest earned on this money must be credited to the fund. The fund is administered by the bureau.

**2. Permissible uses.** Money credited to the fund may be used to manage submerged lands pursuant to section 558-A, provide grants to municipalities pursuant to section 558-B and remove abandoned watercraft pursuant to chapter 202-C.

**3. Expenditure of funds.** Money in the fund must be expended on the operating expenses of the bureau's submerged lands leasing program pursuant to section 558-A. Any funds available in excess of the amount needed for the bureau's submerged lands operating expenses must be expended in accordance with section 558-B and chapter 202-C.

**Sec. 4. 12 MRSA §558-A, sub-§2, ¶A**, as amended by PL 1991, c. 430, §2 and affected by §3, is further amended by amending subparagraph (1), division (f) to read:

(f) A reduction factor of ~~40%~~ 2% for upland uses and fill. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or ~~which that~~ are not essential to the operation of the marine industry. ~~Such~~ These facilities include, but are not limited to, residences, offices, restaurants and parking lots. Fill must include the placement of solid material other than pilings or other open support structures upon submerged lands.

**Sec. 5. 12 MRSA §558-A, sub-§2, ¶D**, as repealed and replaced by PL 1989, c. 878, Pt. A, §30, is amended to read:

D. The director may establish a reasonable minimum rent to which any lease is subject, but it ~~shall~~ may not exceed \$75 \$100 per year.

**Sec. 6. 12 MRSA §558-A, sub-§2, ¶E** is enacted to read:

E. Beginning January 1, 1997, the maximum rent to which any lease is subject may not exceed \$1,200 per year.

**Sec. 7. 12 MRSA §558-A, sub-§2-A** is enacted to read:

**2-A. Lease renewal.** A lessee who is in compliance with all terms of that person's lease may apply at any time to renew the lease. The director shall approve the lease renewal if the existing lease complies with, or can be amended to comply with, all applicable laws, rules and public trust principles in effect at the time of renewal application. This subsection applies to all leases in effect on the effective date of this subsection and to all leases executed on or subsequent to the effective date of this subsection.

**Sec. 8. 12 MRSA §558-A, sub-§3**, as amended by PL 1989, c. 338, §3, is further amended to read:

**3. Easements.** The director may grant, upon such terms and conditions as the director ~~deems~~ considers reasonable, assignable easements for a term of years not exceeding 30 for the use of submerged and intertidal lands for the purposes permitted in subsection 2. The ~~lessee~~ grantee shall pay an administrative fee of \$50 for each easement at the time of processing and a registration fee of ~~\$25~~ \$50 due every 5 years. The director may refuse to grant an easement for the use of submerged lands if the director determines the easement will unreasonably interfere with customary or traditional public access ways to, or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands. The director may grant an easement for submerged lands if a structure:

A. Is for the exclusive benefit of the abutting upland owner for charitable purposes as defined in the United States Internal Revenue Code, Section 501, (c) (3);

B. Occupies a total of not more than 500 square feet of submerged land for any lawful purpose and is permanent; or

C. Occupies a total of not more than 2,000 square feet of submerged land for the exclusive purpose of commercial fishing activities and is permanent.

**Sec. 9. 12 MRSA §558-A, sub-§6**, as repealed and replaced by PL 1989, c. 338, §4, is amended to read:

**6. Constructive easements.** The owners of all structures actually upon submerged and intertidal lands on October 1, 1975, ~~shall be~~ are deemed to have been granted a constructive easement for a term of 30 years on the submerged land directly underlying the structure. Beginning on January 1, 1991, the bureau shall undertake a registration program for all

structures granted constructive easements. Constructive easements ~~shall be~~ are subject to administrative and registration fees for easements pursuant to subsection 3. The director shall develop procedures, rules and registration forms necessary to accomplish the purposes of this subsection. The bureau shall complete the registration of constructive easements on or before December 31, ~~1995~~ 1996.

**Sec. 10. 12 MRSA §558-A, sub-§11**, as renumbered by RR 1991, c. 2, §36, is amended to read:

**11. Revenues.** All revenues from the bureau's activities under this section accrue to the Submerged Lands Fund established in section ~~557-A~~ 557-B.

**Sec. 11. 12 MRSA §558-C** is enacted to read:

**§558-C. Submerged Lands Advisory Board**

**1. Appointment and composition.** The Submerged Lands Advisory Board, referred to in this section as the "board" and established by Title 5, section 12004-I, subsection 24-E, consists of 8 members. The director shall serve as an ex officio, nonvoting member. The 7 other members are appointed by the Governor as follows:

A. One member who is a submerged land lessee or grantee;

B. One member who represents the general public;

C. One member who represents anglers, hunters and recreational boaters;

D. One member who represents municipalities;

E. One member with expertise in the subject of public trust, as it pertains to the State's submerged lands;

F. One member who represents commercial fishing; and

G. One member who represents marinas.

**2. Terms.** Members of the board serve for 3 years and continue serving until a successor is duly appointed and qualified. When a vacancy occurs, the Governor shall fill the vacancy by appointing a member from the same category, listed in subsection 1, as the member who vacated the board and that member serves on the board for the remainder of the term.

**3. Compensation.** Board members serve without compensation.

**4. Purpose.** The board shall provide to the director advice and information on the management of submerged lands, including, but not limited to, the following:

A. A fee structure for the leasing of submerged lands that becomes effective when constructive easements expire;

B. The submerged lands lease application process; and

C. An appeals process for the director's decisions relating to submerged lands leases and easements.

**5. Chair and officers.** The board shall annually choose one of its appointed members to serve as chair for a one-year term. The board may select other officers and designate their duties. The director may not serve as chair or as an officer.

**6. Meetings.** The board shall meet at least 2 times a year. The board may also meet at other times at the call of the chair or the chair's designee, or the director or the director's designee.

**7. Staffing.** The bureau shall provide staffing services to the board.

**Sec. 12. 12 MRSA §594, sub-§5**, as enacted by PL 1991, c. 427, §5, is amended to read:

**5. Disposal of watercraft.** If the director removes a watercraft from coastal waters under this section, the director may sell the watercraft. Any proceeds from the sale must first be applied to the costs to the State directly related to the expense of removal of the watercraft. The money may then be applied to any liens against the watercraft. Any money that remains must accrue to the Submerged Lands Fund established under section ~~557-A~~ 557-B.

**Sec. 13. Effective date.** Those sections of this Act that amend the Maine Revised Statutes, Title 12, section 558-A, subsection 2, paragraphs A and D and subsection 3 take effect January 1, 1997.

**Sec. 14. Transition provisions; advisory board.** When making initial appointments to the Submerged Lands Advisory Board pursuant to the Maine Revised Statutes, Title 12, section 558-C, the Governor shall make the appointments in accordance with the following: The Governor shall appoint to one-year terms one person who is a submerged land lessee or grantee and one person who represents the general public; the Governor shall appoint to 2-year terms one person who represents anglers, hunters and recreational boaters and one person who represents municipalities; and the Governor shall appoint to 3-year terms one person with expertise in the subject of

public trust, as it pertains to the State's submerged lands, one person who represents commercial fishing and one person who represents marinas. Subsequent appointments for the positions held by these members must be for 3-year terms. The purpose of these initial appointments is to stagger the terms of council members.

See title page for effective date, unless otherwise indicated.

**CHAPTER 667**

**S.P. 637 - L.D. 1645**

**An Act to Revise Certain Fish and Wildlife Laws**

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

**Whereas,** confusion exists as to the application of certain laws administered by the Department of Inland Fisheries and Wildlife; and

**Whereas,** this confusion poses difficulties for the sporting public and those charged with enforcement of these laws; and

**Whereas,** it is vitally necessary that this confusion be resolved to prevent any injustice or hardship to the hunters, anglers, trappers and recreational vehicle owners of the State; 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:**

**PART A**

**Sec. A-1. 5 MRSA §12004-G, sub-§20,** as amended by PL 1989, c. 782, §1, is further amended to read:

<b>20.</b>	Inland Fisheries and Wildlife Advisory Council	<del>\$25/Day</del> <u>\$50/Day</u>	12 MRSA §7033-A
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**Sec. A-2. 12 MRSA §7001, sub-§7,** as amended by PL 1995, c. 415, §1, is further amended to read:

**7. Endangered species.** "Endangered species" means any species of fish or wildlife that has been determined by the ~~Secretary of the Interior of the United States pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended,~~ commissioner to be in danger of extinction throughout all or a significant portion of its range ~~or listed and that is listed as a state endangered species~~ under section 7753, subsection 3.

**Sec. A-3. 12 MRSA §7001, sub-§36,** as enacted by PL 1979, c. 420, §1, is amended to read:

**36. Threatened species.** "Threatened species" means any species of fish or wildlife ~~which is that has been determined by the commissioner as~~ likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and that is listed as a state threatened species under section 7753, subsection 3.

**Sec. A-4. 12 MRSA §7034, sub-§1,** as amended by PL 1993, c. 574, §5, is further amended to read:

**1. Appointment of deputy.** The commissioner shall appoint, to serve at the commissioner's pleasure, a Deputy Commissioner of Inland Fisheries and Wildlife, who must be qualified by training and experience in fisheries and wildlife management ~~and~~ or conservation law enforcement. Under the commissioner's direction, the deputy commissioner shall assist in the administration of the department. The deputy commissioner shall serve as the commissioner if the commissioner is disabled or absent or if the office of the commissioner becomes vacant. The commissioner may appoint an appropriate administrative officer in the department to perform the functions of the commissioner if both the commissioner and deputy commissioner are disabled or absent.

**Sec. A-5. 12 MRSA §7035, sub-§8,** as amended by PL 1991, c. 591, Pt. KK, §1, is further amended to read:

**8. Sale of publications.** If the commissioner determines it advisable for the more effective dissemination of factual information, information of public interest or information tending to promote better public relations, the commissioner may fix the price, if any, of certain publications and materials of the department, and sell and deliver them. Publications and materials included within this authority are all publications, articles, biological and statistical data, professional and technical service reports by departmental personnel and other materials in the department's possession and pertaining to the department, except publications of the laws in whatever form. These publications may not carry any advertising of a political nature, but may carry