

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

Whereas, in order to appoint qualified members to the board, this piece of legislation must take effect before the 90 days after 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. 5 MRSA §13080-B, sub-§4, as amended by PL 1993, c. 729, §4, is further amended to read:

4. Liability. The liability of the authority is governed by the Maine Tort Claims Act, Title 14, chapter 741. ~~Trustees serving on the board~~ A member of the authority, a member of a board of the authority and an employee of the authority may not be subject to any personal liability for having acted in the service of their duty as board members of the authority within the course and scope of membership or employment to carry out a power or duty under this chapter. The authority shall indemnify a member of the authority, a member of a board of the authority and an employee of the authority against expenses actually and necessarily incurred in connection with the defense of an action or proceeding in which the member or employee is made a party by reason of past or present association with the authority.

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

Effective April 10, 1997.

CHAPTER 72

S.P. 79 - L.D. 218

**An Act to Amend the Site Law
Concerning State and Local Review
of Transmission Lines**

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

Sec. 1. 38 MRSA §487-A, sub-§2, as amended by PL 1995, c. 704, Pt. A, §13 and affected by Pt. C, §2, is further amended to read:

2. Power generating facilities. In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying ~~±20~~ 100 kilovolts, or more, proposed to be

erected within this State by an electric utility or utilities, the proposed development, in addition to meeting the requirements of section 484, must also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that an electric utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the commissioner and in an amount not to exceed \$50,000. This bond or evidence of financial capacity must be conditioned to require the applicant to reimburse the department for its cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

Sec. 2. 38 MRSA §487-A, sub-§3, as amended by PL 1995, c. 704, Pt. A, §14 and affected by Pt. C, §2, is further amended to read:

3. Easement required; transmission line or gas pipeline. In the case of a gas pipeline or a transmission line carrying ~~±20~~ 100 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit must be obtained prior to any acquisition of land by eminent domain.

Sec. 3. 38 MRSA §488, first ¶, as amended by PL 1995, c. 704, Pt. A, §15 and affected by Pt. C, §2, is further amended to read:

This article does not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying ~~±20~~ 100 kilovolts or more, nor does it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

See title page for effective date.

CHAPTER 73

H.P. 299 - L.D. 363

**An Act to Clarify the Manner in
Which Decedents' Estates Are to Be
Distributed**

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

Whereas, Public Law 1995, chapter 525 adopted the Uniform Prudent Investor Act and made related and conforming changes in the Probate Code to be effective on January 1, 1997; and

Whereas, some provisions of Public Law 1995, chapter 525 as adopted conflict with other provisions of the Probate Code and may create unintended and burdensome income tax consequences for heirs and devisees; and

Whereas, the Legislature desires to correct the inconsistencies created by its adoption of Public Law 1995, chapter 525 by the 117th Legislature and to avoid the unintended tax consequences of that chapter; and

Whereas, an emergency exists because of the effective date of the earlier legislation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 18-A MRSA §3-703, sub-§(a), ¶(2), as enacted by PL 1995, c. 525, §1 and affected by §4, is amended to read:

(2) A Except as provided in section 3-906, subsection (a), paragraphs (1) and (2), a personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution.

Sec. 2. 18-A MRSA §3-703, sub-§(a), ¶(3), as enacted by PL 1995, c. 525, §1 and affected by §4, is repealed and the following enacted in its place:

(3) If all devisees whose devises are to be funded from the residue of an estate agree, in a written instrument signed by each of them and presented to the personal representative, on an investment manager to direct the investment of the estate's residuary assets, the personal representative may, but need not, rely on the investment advice of the investment manager so identified or delegate the investment management of the estate's residuary assets to such manager and, in either case, may pay reasonable

compensation to the manager from the residue of the estate. A personal representative who relies on the advice of, or delegates management discretion to, an investment manager in accordance with the terms of this section is not liable for the investment performance of the assets invested in the discretion of, or in accordance with the advice of, such investment manager.

Sec. 3. 18-A MRSA §3-906, sub-§(a), as amended by PL 1993, c. 371, §3, is further amended to read:

(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate ~~shall must~~ be distributed ~~in kind to the extent possible through application of the following provisions: as follows.~~

(1) ~~A specific devisee is entitled to distribution of~~ must receive the thing devised to ~~him~~ that devisee, and a spouse or child who has selected particular assets of an estate as provided in section 2-402 ~~shall must~~ receive the items selected.

(2) Any homestead or family allowance or pecuniary devise may be satisfied by value in kind ~~provided, in the personal representative's discretion, if:~~

(i) The person entitled to the payment has not demanded payment in cash;

(ii) The property distributed in kind is valued at fair market value as of the date of its distribution; and

(iii) No residuary devisee has requested that the asset in question to be distributed remain a part of the residue of the estate or if, a residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate, there are insufficient other assets to which no residuary devisee has made such a request to permit satisfaction of the estate's obligations and funding of all pecuniary devises made under the decedent's will.

(3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution; or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to

the date of distribution. For assets ~~which~~ that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate ~~must~~ may be distributed ~~in a manner that is equitable~~ by the personal representative in cash or in kind, in accordance with the best interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares; except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed.

Sec. 4. Retroactivity. This Act applies retroactively to January 1, 1997.

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

Effective April 10, 1997, unless otherwise indicated.

CHAPTER 74

H.P. 306 - L.D. 370

An Act to Establish a Commemorative Day Recognizing the Children of this State

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

Sec. 1. 1 MRSA §134 is enacted to read:

§134. Children's Day

In recognition of the value and importance of every child, the State designates the last Friday in September as Children's Day. The Governor shall annually issue a proclamation urging citizens, businesses and organizations to observe the day with appropriate celebration and activity.

See title page for effective date.

CHAPTER 75

H.P. 335 - L.D. 457

An Act to Discourage Frivolous Lawsuits by Prisoners

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

Sec. 1. 4 MRSA §1058 is enacted to read:

§1058. Prisoner application to proceed in forma pauperis

1. Prepayment of filing fee and certified copies required. A person who is confined in a federal, state, county or local correctional or detention facility may not bring a civil action arising under federal or state law in any court in this State with respect to a condition of that person's confinement or the effect of an action or inaction by a government official on the life of that person confined and may not appeal a judgment in such a civil action without prepayment of the filing fee unless, in addition to the in forma pauperis application and affidavit required by the Maine Rules of Civil Procedure, Rule 91, that person submits a certified copy of the facility account statement for that person for the 6-month period immediately preceding the filing of the action or appeal, obtained from the appropriate official of each facility at which that person is or was confined.

2. Waiver of prepayment of filing fee. If the court finds that the action or appeal is not frivolous and has been brought in good faith and that the person is without sufficient funds to pay the filing fee, it shall order that prepayment of the full amount of the filing fee be waived. If the court denies the in forma pauperis application, the action or appeal must be dismissed without prejudice, unless within 7 days after the denial the person pays the filing fee to the clerk of the court.

3. Full payment of filing fee required; initial partial filing fee. Notwithstanding subsection 2, the person shall pay the full amount of the filing fee. The court shall assess the person's financial status and, when funds exist, collect as a partial payment of the filing fee an initial partial filing fee of 20% of the greater of:

A. The average monthly deposits to the person's facility account for the 6-month period immediately preceding the filing of the action or appeal; or

B. The average monthly balance in the person's facility account for the 6-month period immediately preceding the filing of the action or appeal.