

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

nance organizations related to self-referrals of chiropractic care under the Maine Revised Statutes, Title 24-A, section 4236. The report must include the total amount of claims paid for chiropractic services by health maintenance organizations, the total amount of claims paid for self-referred chiropractic services, the total number of self-referrals for chiropractic care, the average cost of those claims and the number of complaints received by the Bureau of Insurance regarding access to chiropractic care in health maintenance organization managed care plans.

See title page for effective date.

CHAPTER 100

H.P. 85 - L.D. 110

An Act to Exempt Certain Loaned Federal Vehicles from Certificates of Title

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

Whereas, American Legion Post #77 in Lincoln has obtained a vehicle from the Federal Government for use for ceremonial purposes; and

Whereas, the vehicle can not be used without payment of certificate of title and registration fees or exemption from those requirements; and

Whereas, it is desirable that the vehicle be available for ceremonial purposes sooner than 90 days after adjournment of the Legislature; 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. 29-A MRSA §652, sub-§1, as amended by PL 1995, c. 250, §1, is further amended to read:

1. United States' vehicle. A vehicle owned by the Federal Government, unless it is registered in this State or, at the discretion of the Secretary of State, a vehicle owned by the Federal Government that is loaned to the State or a municipality for forest fire control activities or a veterans' organization;

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

Effective April 18, 1997.

CHAPTER 101

H.P. 205 - L.D. 258

An Act Concerning Compensation under the Natural Resources Protection Laws

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

Sec. 1. 38 MRSA §480-Z is enacted to read:

§480-Z. Compensation

The department may establish a program providing for compensation of unavoidable freshwater or coastal wetland losses due to a proposed activity. Compensation must include the restoration, enhancement, creation or preservation of wetlands that have functions or values similar to the wetlands impacted by the activity, unless otherwise approved by the department. Preservation may include protection of uplands adjacent to wetlands.

The department may require that compensation include the design, implementation and maintenance of a compensation project or, in lieu of such a project, may allow the applicant to purchase credits from a mitigation bank or to pay a compensation fee. If compensation is required, the completion and maintenance of a project, purchase of credits or payment of a compensation fee must be a condition of the permit.

The department shall identify an appropriate project, or determine the amount of credits or compensation fee, based upon the compensation that would be necessary to restore, enhance, create or preserve wetlands with functions or values similar to the wetlands impacted by the activity. However, the department may allow the applicant to conduct a project of equivalent value, or allow the purchase of credits or payment of a compensation fee of equivalent value, to be used for the purpose of restoring, enhancing, creating or preserving other wetland functions or values that are environmentally preferable to the functions and values impacted by the activity, as determined by the department. The loss of functions or values of a coastal wetland may not be compensated for by the restoration, enhancement, creation or preservation of freshwater wetland functions or values.

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a compensation project on the wetland management priorities identified by the department for the watershed in which the project is located. The department may not approve a compensation project until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article.

1. Location of project. A compensation project must be located on or adjacent to the project site, unless otherwise approved by the department. A compensation project must be located in the same watershed as the wetlands affected by the activity unless the department determines, based on regional hydrological or ecological priorities, that there is a scientific justification for locating the compensation project outside of the same watershed.

2. Approval of mitigation bank. A mitigation bank from which any credits are purchased must be approved by the department consistent with all applicable federal rules and regulations.

3. Compensation fee program. The department shall develop a compensation fee program in consultation with the State Planning Office, the United States Army Corps of Engineers and state and federal resource agencies, including the United States Fish and Wildlife Service and the United States Environmental Protection Agency.

A. The program must include, at a minimum, the following:

- (1) Identification of wetland management priorities on a watershed basis;
- (2) Identification of the types of wetland losses eligible for compensation under this subsection;
- (3) Standards for compensation fee projects;
- (4) Calculation of compensation fees based on the functions and values of the affected wetlands and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
- (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the wetland management priorities identified pursuant to subparagraph (1).

B. Any compensation fee must be paid into a wetlands compensation fund established by the department or to an organization authorized by the department as provided in subparagraphs (1) and (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

(1) The department may establish a wetlands compensation fund for the purpose of receiving compensation fees, grants and other related income. The wetlands compensation fund must be a fund dedicated to payment of costs and related expenses of wetland restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of the wetlands compensation fund and may be invested as provided by law. Interest on these investments must be credited to the wetlands compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or private, nonprofit organization dedicated to the protection of wetlands and other natural areas for the purposes of receiving compensation fees, administering the wetlands compensation fund and ensuring that compensation projects are implemented consistent with the wetland management priorities identified by the department for the watershed in which the project is located. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report to the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection. If an organization's authorization is revoked, any funds remaining in the wetlands compensation fund must be provided to the department.

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter II-A.

4. Relationship to other provisions. The purchase of credits from a mitigation bank or the payment of a compensation fee in no way relieves the applicant of the requirement to comply with any other provision of this article, including, but not limited to, the requirement to avoid or minimize effects on wetlands and water quality to the greatest extent practicable under section 480-X.

5. Report; evaluation. The department shall submit a report annually by February 1st to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding the wetlands compensation program. The report must include information on the amount and type of wetlands altered, the associated impact on wetland functions and values and the compensation required by the department. The information must be provided for each of the following categories: compensation projects implemented by the applicant, compensation authorized by the purchase of credits from a mitigation bank, compensation authorized by payment of compensation fees and wetland alterations for which compensation was not required.

By January 1, 2001, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters an evaluation of the effectiveness and efficiency of the compensation program developed under this section, including the amount and type of wetlands altered, the effect on wetland functions and values, an assessment of the relative environmental benefit of each compensation option, an assessment of whether coastal wetlands should be included in the program, an assessment of the requirement that the compensation project be located in the same watershed as the affected wetland and a comparison of the compensation program developed under this section with compensation prior to the effective date of this section. The department may include recommendations for extending the program and any suggested statutory changes.

6. Repeal. This section is repealed October 15, 2001. The repeal of this section does not affect any valid permits, compensation projects, credits and compensation funds issued, implemented, purchased or established pursuant to this section.

Sec. 2. Implementation. The Department of Environmental Protection may not approve a compensation project funded in whole or in part from compensation fees until the compensation fee program developed pursuant to the Maine Revised Statutes, Title 38, section 480-Z, subsection 3 has been agreed to by the United States Army Corps of Engineers, the United States Fish and Wildlife Service and the United States Environmental Protection Agency.

Sec. 3. Allocation. The following funds are allocated from the Wetlands Compensation Fund to carry out the purposes of this Act.

	1997-98	1998-99
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Wetlands Compensation Fund		
All Other	\$957,000	\$957,000
Provides an allocation for wetlands compensation activities.		

See title page for effective date.

CHAPTER 102

H.P. 246 - L.D. 310

An Act to Permit Investigative Officers within the Employ of the Department of Corrections to Exercise the Powers of Law Enforcement Officers

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

Sec. 1. 34-A MRSA §1001, sub-§10-A is enacted to read:

10-A. Investigative officer. "Investigative officer" means an employee of the department designated by the commissioner as having the authority to conduct investigations of offenses relating to the security or orderly management of a facility administered by the department.

Sec. 2. 34-A MRSA §3011 is enacted to read:

§3011. Investigative officers

1. Exercise of law enforcement powers. Investigative officers who are certified by the Board of Trustees of the Maine Criminal Justice Academy as law enforcement officers may exercise the powers of other law enforcement officers with respect to offenses relating to the security or orderly management of a facility administered by the department, if authorized to exercise these powers by the commissioner. Investigative officers may not exercise law enforcement powers against other employees of the department. These powers are in addition to any powers the officers may otherwise have as employees of the department. Internal investigations of employ-