

# 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.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

requirements as those set forth for resident auctioneers ~~or small auctioneers~~.

**Sec. 6. 32 MRSA §279**, as amended by PL 1995, c. 402, Pt. A, §20, is further amended to read:

**§279. Inspection of license**

Every auctioneer ~~or small auctioneer~~ licensed by the State must show that auctioneer's ~~or small auctioneer's~~ state license at any time upon the request of a municipal law enforcement agency or municipal clerk or officer in whose municipality the auctioneer ~~or small auctioneer~~ is conducting an auction. The provisions for obtaining a state auctioneer's ~~or small auctioneer's~~ license do not prohibit any municipality from establishing its own permit requirements for an auction sale, provided no municipal permit is required for an auction that lasts less than 2 full consecutive days.

**Sec. 7. 32 MRSA §280, sub-§1**, as amended by PL 1995, c. 402, Pt. A, §21, is further amended to read:

**1. Statement of ownership of property.** Any law enforcement officer may require the auctioneer ~~or small auctioneer~~ to state whether the merchandise being sold is owned in part or in its entirety by the auctioneer ~~or small auctioneer~~. If the merchandise is owned by another party, the name and address of that party must be stated to law enforcement officials.

**Sec. 8. 32 MRSA §280, sub-§3**, as amended by PL 1995, c. 402, Pt. A, §22, is further amended to read:

**3. Real estate brokerage.** If an auctioneer ~~or small auctioneer~~ engages in real estate brokerage, the auctioneer ~~or small auctioneer~~ must be licensed under chapter 114, except that a license is not required if the auctioneer ~~or small auctioneer~~ is hired to call bids on real estate being sold at an auction and the auctioneer ~~or small auctioneer~~ does not prepare contracts or otherwise control the actual sale or take custody of any part of the purchase price.

**Sec. 9. 32 MRSA §282, last ¶**, as amended by PL 1995, c. 402, Pt. A, §25, is further amended to read:

The Board of Licensing of Auctioneers may take any action pursuant to Title 10, section 8003, subsection 5. Any person who purports to be or operates as a licensed auctioneer ~~or small auctioneer~~ without obtaining a license commits a Class E crime.

**Sec. 10. 32 MRSA §283, first ¶**, as amended by PL 1995, c. 402, Pt. A, §26, is further amended to read:

Each auctioneer ~~or small auctioneer~~ shall post for display and describe at the beginning of each auction the conditions of the auction sale. The conditions must include:

**Sec. 11. 32 MRSA §283, sub-§§2, 3 and 6**, as amended by PL 1995, c. 402, Pt. A, §26, are further amended to read:

**2. Highest bidder acknowledged.** That the highest bidder will be acknowledged by the auctioneer ~~or small auctioneer~~;

**3. Bid not commensurate.** Whether a bid not commensurate with value, in the opinion of the auctioneer ~~or small auctioneer~~, may be made;

**6. Auctioneer or owner bidding.** Whether or not the owner, or auctioneer ~~or small auctioneer~~ reserves the right to bid;

See title page for effective date.

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**CHAPTER 184**

**S.P. 151 - L.D. 430**

**An Act to Clarify the Provisions that Implement Performance Budgeting in State Government**

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

**Sec. 1. 5 MRSA §1710-K**, as repealed and replaced by PL 1995, c. 705, §1, is amended by repealing and replacing the headnote to read:

**§1710-K. Performance budgeting; definitions**

**Sec. 2. 5 MRSA §1710-K, sub-§1, ¶F**, as enacted by PL 1995, c. 705, §1, is amended to read:

F. "State agency" means a department, agency, organization, corporation or association that receives a direct appropriation or allocation from the State or is required to comply with chapter 149, except that for the purposes of this chapter "state agency" does not include the Maine Sardine Council, the Maine Lobster Promotion Council, the Maine Potato Board, the Maine Dairy Promotion Board, the Maine Dairy and Nutrition Council, the Maine Blueberry Commission or the Maine Indian Tribal-State Commission.

**Sec. 3. 5 MRSA §1710-K, sub-§2**, as enacted by PL 1995, c. 705, §1, is repealed.

**Sec. 4. 5 MRSA §1710-L**, as enacted by PL 1995, c. 395, Pt. B, §1, is amended to read:

**§1710-L. Commission on Performance Budgeting established; membership; appointment**

The Commission on Performance Budgeting, as established in section 12004-I, subsection 29-C, is established to monitor, track and guide performance budgeting in State Government and to periodically report to the Legislature and the Governor on recommendations for improvements in performance budgeting.

**1. Membership.** The commission is composed of the following ~~13~~ 14 members:

A. Two members of the Senate and 2 members of the House of Representatives who serve on the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs, appointed by the presiding officers of their respective legislative bodies;

B. One member of the Senate and one member of the House of Representatives who serve on the joint standing committee of the Legislature having jurisdiction over state and local government matters, appointed by the presiding officers of their respective legislative bodies;

C. Four members representing state departments, appointed by the Governor;

D. The Director of the State Planning Office;

E. The State Budget Officer; ~~and~~

F. The State Controller; ~~and~~

G. One member representing the judiciary, appointed by the Chief Justice.

At least one of the legislative members appointed by the President of the Senate and one of the members appointed by the Speaker of the House of Representatives must belong to the political party that has the 2nd largest number of members in the legislative body of that appointed member.

**2. Chair.** The Governor, the President of the Senate and the Speaker of the House of Representatives shall appoint a chair from among the members of the commission.

**3. Time of appointment; terms.** Commission members must be appointed in ~~July~~ January and serve 2-year terms, except that the initial commission members must be appointed within 30 days of the effective date of this section and serve until ~~June 1997~~ January 1998. ~~The commission shall hold its first meeting, called by the Director of the State Planning Office, before August 1, 1995.~~

**Sec. 5. 5 MRSA §1710-M, sub-§1,** as enacted by PL 1995, c. 395, Pt. B, §1, is amended to read:

**1. Provision of guidance and advice.** Provide strategic guidance and advice to the Legislature and the Governor regarding performance budgeting in State Government, including the methods and strategies used by departments and agencies for the collection and evaluation of information related to programs and services provided, public benefits, services not provided, coordination, alternatives and impact. The commission shall also provide guidance and advice on the methods and strategies for implementing performance budgeting in State Government;

**Sec. 6. 5 MRSA §1710-O,** as enacted by PL 1995, c. 395, Pt. B, §1, is amended to read:

**§1710-O. Meetings**

The commission shall meet at least quarterly. Additional meetings may be called by a majority vote of the commission or by the chair of the commission. All meetings are open to the public.

**Sec. 7. 5 MRSA §1710-P, sub-§3,** as enacted by PL 1995, c. 705, §2, is amended to read:

**3. Submission of the final strategic plan and program selection for legislative review.** No later than February 1, 1997, each state agency shall submit its final strategic plan and budget proposal for the selected program to be piloted for performance budgeting for review by the joint standing committee of the Legislature having jurisdiction over that agency's matters. Copies of each final strategic plan and pilot budget proposal must be provided to the Director of the State Planning Office, the State Budget Officer and the Director of the Office of Fiscal and Program Review.

**Sec. 8. 5 MRSA §1710-P, sub-§3-A** is enacted to read:

**3-A. Pilot performance budgets.** The State Budget Officer and the Director of the Office of Fiscal and Program Review shall coordinate the submission of agencies' pilot budget proposals to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs for the purposes of reviewing and evaluating the pilots.

**Sec. 9. 5 MRSA §1710-P, sub-§§4, 5 and 7,** as enacted by PL 1995, c. 705, §2, are amended to read:

**4. Selection of program by policy area.** By September 1, 1997, each state agency shall identify at

least one program or significant subprogram within a policy area that has the same or similar goals and objectives as one or more other state agencies; develop jointly with those state agencies measurable objectives; and coordinate strategies for achieving those objectives. During selection of the program, and development of the joint goals and objectives, each agency shall consult with and receive comments from the joint standing committee of the Legislature having jurisdiction over that agency's matters, the State Budget Officer and the Director of the Office of Fiscal and Program Review.

Each state agency shall submit its joint measurable objectives and strategies to the Director of the State Planning Office, who shall provide copies to the State Budget Officer, the Office of Fiscal and Program Review and the joint standing committee of the Legislature having jurisdiction over the agency's matters.

**5. Development of policy areas.** By December 31, 1997, the State Budget Officer and the Legislative Council or the council's designee, in consultation with state agencies, shall ~~develop a plan to~~ group all state agencies into policy areas, which must be formed around common goals and measurable objectives. Any plan grouping that proposes to transfer or modify the existing statutory mission or mandate of an agency must be submitted to and approved by the Legislature prior to implementation.

**7. Development of joint budget proposals.** By September 1, 1998, state agencies within each policy area shall develop budget proposals that are tied to their joint measurable objectives ~~and in their~~ strategic plan.

**Sec. 10. 5 MRSA §1710-P, sub-§8**, as amended by PL 1995, c. 560, Pt. K, §82 and affected by §83 and enacted by c. 705, §2, is further amended to read:

**8. Demonstration project; job training programs.** The Department of Labor, the Department of Education, the Department of Human ~~Resources Services~~, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Maine Technical College System shall at a minimum select job training as ~~one of the policy areas in which they and~~ develop joint strategic planning and budgeting goals and objectives and coordinate strategies as a demonstration project for the purposes of carrying out the requirements of subsections 4 to 7 ~~for the biennium beginning July 1, 1997.~~

**Sec. 11. 5 MRSA §12004-I, sub-§29-C**, as enacted by PL 1995, c. 395, Pt. B, §2, is amended to read:

<b>29-C.</b> Finance	Commission on Perform- ance Budg- eting	Not Authorized	5 MRSA <del>@1710-K</del> <u>§1710-L</u>
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See title page for effective date.

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## CHAPTER 185

### H.P. 228 - L.D. 292

#### An Act to Modify Waiver of a Defense in the Criminal Law

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

**Sec. 1. 17-A MRSA §101, sub-§1**, as repealed and replaced by PL 1981, c. 324, §24, is amended to read:

**1.** The State is not required to negate any facts expressly designated as a "defense," or any exception, exclusion or authorization ~~which that~~ is set out in the statute defining the crime by proof at trial, unless the existence of the defense, exception, exclusion or authorization is in issue as a result of evidence admitted at the trial ~~which that~~ is sufficient to raise a reasonable doubt on the issue, in which case the State must disprove its existence beyond a reasonable doubt. This subsection does not require a trial judge to instruct on an issue that has been waived by the defendant. The subject of waiver is addressed by the Maine Rules of Criminal Procedure.

See title page for effective date.

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## CHAPTER 186

### H.P. 960 - L.D. 1323

#### An Act to Remove the Sunset for the Employment of an Owner's Representative

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

**Sec. 1. 5 MRSA §1753, sub-§5**, as enacted by PL 1993, c. 606, §2, is amended to read:

**5. Report required.** A school unit employing an owner's representative under this section shall provide a report to the Bureau of General Services describing the effectiveness of an owner's representative to a project ~~and the recommendations for continuation or discontinuation beyond the date of repeal of this section.~~ The Bureau of General Services shall provide the joint standing committee of the