

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
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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

CHAPTER 392

H.P. 623 - L.D. 848

**An Act to Establish a One-year
Moratorium on the Municipal
Adoption and Enforcement of
Certain Traffic Ordinances**

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

Whereas, the State can not support the enactment and enforcement of municipal ordinances that conflict with or duplicate traffic control limits contained in the Maine Revised Statutes, Title 29-A because of the effect on the consistency in the traffic laws and their enforcement across the State, the revenues of the State, the ability of the Secretary of State to regulate the licensing of motor vehicle operators and the ability of the Judicial Department to handle traffic violations fairly and efficiently; 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. 30-A MRSA §3009, sub-§1, ¶B, as amended by PL 1991, c. 549, §16 and affected by §17, is further amended to read:

B. The municipal officers may regulate the operation of all vehicles in the public ways and on publicly owned property.

(1) The violation of any ordinance authorized by this paragraph is a civil violation.

(2) A municipality may not adopt or enforce an ordinance authorized by this paragraph that is the same as or conflicts with any speed or other traffic control limits imposed by the Department of Transportation pursuant to Title 29-A. This subparagraph is repealed 90 days after adjournment of the Second Regular Session of the 118th Legislature.

Sec. 2. Report. The Joint Standing Committee on Transportation may report out legislation on the issue of municipal adoption of traffic control ordinances to the Second Regular Session of the 118th Legislature.

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

Effective June 2, 1997

CHAPTER 393

S.P. 12 - L.D. 10

**An Act to Correct Errors and
Inconsistencies in the Laws of Maine**

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

Whereas, Acts of previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; 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. 2 MRSA §8, as enacted by PL 1995, c. 537, §1, is amended to read:

§8. Land use mediation; obligation to participate

Agencies within the executive branch shall participate in mediation under Title 5, chapter 314, subchapter II, when requested to participate by the Court ~~Mediation~~ Alternative Dispute Resolution Service. This section is repealed October 1, 2001.

Sec. A-2. 3 MRSA §927, sub-§6, ¶C, as repealed by PL 1995, c. 488, §1 and amended by c. 505, §1, is repealed.

Sec. A-3. 4 MRSA §18, sub-§6, as repealed by PL 1995, c. 560, Pt. I, §2 and amended by c. 694, Pt. D, §1 and affected by Pt. E, §2, is repealed.

Sec. A-4. 4 MRSA §18, sub-§6-B, as enacted by PL 1995, c. 537, §2 and repealed by c. 560, Pt. I, §2, is repealed.

Sec. A-5. 4 MRSA §18-B, sub-§10 is enacted to read:

10. Land use mediation. The land use mediation program is a program within the Court Alternative Dispute Resolution Service.

A. The Director of the Court Alternative Dispute Resolution Service shall administer the land use mediation program established in Title 5, chapter 314, subchapter II.

B. A land use mediation fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected for mediation services pursuant to Title 5, chapter 314, subchapter II must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 5, chapter 314, subchapter II.

This subsection is repealed October 1, 2001. Any balances remaining in the land use mediation fund must be transferred to a nonlapsing account within the Judicial Department to be used to defray mediation expenses.

Sec. A-6. 4 MRSA §807, sub-§3, ¶1, as amended by PL 1995, c. 599, §2 and c. 694, Pt. D, §4 and affected by Pt. E, §2, is repealed and the following enacted in its place:

I. A person who is not an attorney, but is representing the Department of Human Services in a child support enforcement matter as provided by Title 14, section 3128-A, subsection 7 and Title 19-A, section 2361, subsection 10. This paragraph is repealed October 1, 1998; or

Sec. A-7. Effective date. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 4, section 807, subsection 3, paragraph I takes effect October 1, 1997.

Sec. A-8. 5 MRSA §1660-D, sub-§6, as enacted by PL 1995, c. 402, Pt. C, §2, is amended to read:

6. Department. "Department" means the Department of Human Services, and the Department of Mental Health and, Mental Retardation and ~~the Office of Substance Abuse Services~~, as well as other departments and agencies of State Government approved for inclusion in this chapter by the commissioner.

Sec. A-9. 5 MRSA §1660-L, as enacted by PL 1995, c. 402, Pt. C, §2, is amended to read:

§1660-L. Advisory Committee to the Commissioner

There is established the Advisory Committee to the Commissioner, referred to in this section as the "advisory committee." The advisory committee must be appointed by the commissioner and consists of 7 members. Three members must represent the Department of Human Services, and the Department of Mental Health and, Mental Retardation and ~~the Office of Substance Abuse Services~~. Three members must represent community agencies. One member must represent the independent audit community. The chair must be elected by the committee from its members. All members of the advisory committee serve without compensation or reimbursement for expenses. The advisory committee must prepare an annual written report to the Legislature on the experience of the department with this chapter.

Sec. A-10. 5 MRSA §3331, sub-§5, as enacted by PL 1995, c. 537, §4, is amended to read:

5. Reporting on the land use mediation program. The council shall report by December 1, 1998 and December 1, 2000 to the Governor, the Administrative Office of the Courts, the Executive Director of the Legislative Council and the Director of the Court ~~Mediation Alternative Dispute Resolution~~ Service on the operation and effectiveness of the land use mediation program established under subchapter II. The reports must list the number and type of mediation requests received, the number of mediation sessions conducted, the number of signed mediation agreements, a summary of the final disposition of mediation agreements, a narrative discussion of the effectiveness of the program as determined by the council, a summary of deposits and expenditures from the land use mediation fund created in Title 4, section ~~18~~ 18-B, subsection ~~6-B~~ 10 and any proposals by the council with respect to the operation, improvement or continuation of the mediation program. This subsection is repealed October 1, 2001.

Sec. A-11. 5 MRSA §3341, sub-§2, as enacted by PL 1995, c. 537, §5, is amended to read:

2. Provision of mediation services; forms, filing and fees. The Court ~~Mediation Alternative Dispute Resolution~~ Service created in Title 4, section ~~18~~ 18-B shall provide mediation services under this subchapter. The Court ~~Mediation Alternative Dispute Resolution~~ Service shall:

A. Assign mediators under this subchapter who are knowledgeable in land use regulatory issues and environmental law;

B. Establish a simple and expedient application process. Not later than February 1st of each year, the Court ~~Mediation~~ Alternative Dispute Resolution Service shall send to the chair of the Land and Water Resources Council a copy of each completed application received and each agreement signed during the previous calendar year; and

C. Establish a fee for services in an amount not to exceed \$175 for every 4 hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under subsection 7.

Sec. A-12. 5 MRSA §12004-K, sub-§4-A, as enacted by PL 1989, c. 503, Pt. A, §38, is repealed.

Sec. A-13. 5 MRSA §13063-C, sub-§2, as enacted by PL 1995, c. 706, §2, is repealed and the following enacted in its place:

2. Definitions. As used in this section the following terms have the following meanings.

A. "Certified retained business" means any for-profit business in this State other than a public utility as defined by Title 35-A, section 102 that retains 100 or more qualified employees in this State and that meets all of the following criteria to the satisfaction of the commissioner:

(1) The business is not engaged in retail operations; or, if it is engaged in retail operations, less than 50% of its total annual revenues from state-based operations are derived from sales taxable in this State or the business can demonstrate to the commissioner by a preponderance of the evidence that any increased sales will not include sales tax revenues derived from a transferring or shifting of retail sales from other businesses in this State; and

(2) The commissioner determines that the business is a successor to a business that would have ceased operations in this State but for the acquisition of that business after September 1, 1996 by the applicant by any means and the applicant demonstrates to the commissioner its intention to continue to operate and employ qualified employees in the State.

For purposes of this paragraph, "retail operations" means sales of consumer goods for household use to consumers who personally visit the business location to purchase the goods.

B. "Qualified employees" means full-time employees who are employed by a certified

retained business, for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended, and group health insurance are provided, and whose income, calculated on a calendar year basis, is greater than the average annual per capita income in the labor market area in which the qualified employee is employed. Qualified employees must be residents of this State.

Sec. A-14. 5 MRSA §18525, sub-§1, ¶B, as amended by PL 1995, c. 643, §21, and repealed by §22, is repealed.

Sec. A-15. 10 MRSA §934, sub-§3, ¶A, as amended by PL 1995, c. 688, §10, is repealed.

Sec. A-16. 10 MRSA §1471, sub-§4, as amended by PL 1995, c. 65, Pt. A, §18 and affected by §153 and Pt. C, §15, is further amended to read:

4. Motor vehicle. "Motor vehicle" means any self-propelled vehicle designed primarily to transport not more than 14 individuals, except motorcycles as defined in Title 29-A, section 101, subsection 38, and any vehicles operated exclusively on a rail or rails. This definition is intended to include motor trucks that have a gross vehicle weight of not more than 10,000 pounds ~~as certified by the vehicle manufacturer or its franchised representative pursuant to Title 29, section 1652.~~

Sec. A-17. 17-A MRSA §15, sub-§1, ¶A, as repealed and replaced by PL 1995, c. 668, §2 and c. 680, §3, is repealed and the following enacted in its place:

A. Any person who the officer has probable cause to believe has committed or is committing:

- (1) Murder;
- (2) Any Class A, Class B or Class C crime;
- (3) Assault while hunting;
- (4) Any offense defined in chapter 45;

(5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;

(5-A) Assault or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 15, section 321;

(6) Theft as defined in section 357, when the value of the services is \$2,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;

(9) A violation of a condition of probation when requested by an official of the Division of Probation and Parole;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;

(11) Theft involving a detention under Title 17, section 3521;

(12) Harassment, as set forth in section 506-A;

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 19, section 769, subsection 2; and Title 19, section 770, subsection 5; or

(14) A violation of a sex offender registration provision under Title 34-A, chapter 11 or 13; and

Sec. A-18. 20-A MRSA §8703, sub-§§1 and 2, as amended by PL 1995, c. 402, Pt. A, §47 and amended by c. 505, §6 and affected by §22, are repealed and the following enacted in their place:

1. Licensing. Only a person licensed by the Secretary of State as a driver education teacher may be employed by a public secondary school, approved private secondary school, an applied technology center, applied technology region or adult education program, conducted pursuant to chapter 315, to teach driver education. The Secretary of State shall establish instructor qualification requirements for persons licensed to teach driver education.

2. Temporary license. If a licensed driver education teacher is not available to teach driver education and the school board, cooperative board or private school requests, the Secretary of State shall grant a temporary license to any person who holds a

Class A instructor's license issued by the Secretary of State in accordance with Title 29-A, section 1354.

Sec. A-19. Retroactivity. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 20-A, section 8703, subsections 1 and 2 is effective retroactively to January 1, 1996.

Sec. A-20. 20-A MRSA §18081, as repealed by PL 1995, c. 560, Pt. F, §11 and repealed and replaced by c. 563, §1, is repealed.

Sec. A-21. 22 MRSA §395-B, sub-§1, as amended by PL 1995, c. 596, §1, is repealed.

Sec. A-22. 22 MRSA §3553, sub-§7-A, as amended by PL 1989, c. 700, Pt. A, §80 and repealed by c. 837, §2, is repealed.

Sec. A-23. 22 MRSA §8305, sub-§1-A, ¶F, as enacted by PL 1993, c. 353, §4, is amended to read:

F. The provider, other residents or other persons who frequent the home have not been convicted of a crime in which a child was a victim; have not been found, in a statutorily authorized ~~forum~~ forum, to have abused or neglected children; or have not had parental rights terminated by a statutorily authorized entity.

Sec. A-24. 23 MRSA §54, as amended by PL 1987, c. 141, Pt. B, §16, is further amended to read:

§54. Highway openings

Wherever highways maintained by the State are affected, whether the highways are situated in cities, towns or plantations, the department ~~shall have~~ has all and the same rights, powers and duties in connection therewith as are granted to cities in city streets by sections 3351 to 3359, and to cities and towns by Title 35-A, sections 2306 and 2310. Whenever the opening fee provided by section 3354 or by Title 35-A, section ~~2342~~ 2510, has been paid to the department and a permit for digging up and opening a highway maintained by the State has been issued by the department, the holder of ~~said~~ the permit ~~shall be~~ is entitled to make the opening described therein without the payment of fees to the city or town or village corporation in which the street, road or highway to be opened is situated.

Sec. A-25. 24 MRSA §2330, sub-§11, as amended by PL 1991, c. 885, Pt. E, §22 and affected by §47, is further amended by amending the first paragraph to read:

11. Continued group coverage; certain circumstances. Notwithstanding this section, if the termination of an individual's group insurance coverage is a result of the member or employee being temporarily laid off or losing employment because of

an injury or disease that the employee claims to be compensable under former Title 39 or Title 39-A, the insurer shall allow the member or employee to elect, within the time period prescribed by paragraph ~~B~~ B-1, to continue coverage under the group policy at no higher level than the level of benefits or coverage received by the employee immediately before termination and at the member's or employee's expense or, at the member's or employee's option, to convert to a policy of individual coverage without evidence of insurability in accordance with this section.

Sec. A-26. 24-A MRSA §2808, sub-§2-A, as enacted by PL 1995, c. 618, §3, is amended to read:

2-A. Notwithstanding subsections 1 and 2, an employee leasing company registered pursuant to Title 32, chapter 125 qualifies as an eligible group for purposes of the purchase of group ~~life~~ health insurance as provided in this section.

Sec. A-27. 26 MRSA §1401, sub-§§3 and 4, as repealed by PL 1995, c. 560, Pt. G, §14 and amended by c. 618, §15, are repealed.

Sec. A-28. 26 MRSA §1401, sub-§5, as repealed by PL 1995, c. 560, Pt. G, §14 and amended by c. 618, §16, is repealed.

Sec. A-29. 26 MRSA §1401, sub-§6, as repealed by PL 1995, c. 560, Pt. G, §14 and enacted by c. 618, §17, is repealed.

Sec. A-30. 26 MRSA §1401-B, sub-§6 is enacted to read:

6. Monitor employee leasing industry. The commissioner shall coordinate the efforts of the State to ensure that the employee leasing industry is developing in a manner that provides the greatest benefit to Maine employers while minimizing the financial risk to those employers and to the leased employees. The commissioner shall meet at least annually with representatives of the Bureau of Insurance, the Bureau of Taxation, the Department of Economic and Community Development, the Workers' Compensation Board and the Bureau of Labor Standards within the Department of Labor. This group shall develop written material for employers and new businesses that are considering using an employee leasing firm. The material must provide guidance for employers on what questions to ask to minimize their own financial risk and that of their employees. The material must also include instructions on how to obtain public information on employee leasing companies, such as information required for registration purposes. The commissioner shall meet with the state officials listed in this subsection on at least an annual basis to review the

status of the employee leasing industry and update the written materials as needed.

Sec. A-31. 26 MRSA §1418-K, as enacted by PL 1995, c. 560, Pt. F, §13, is repealed and the following enacted in its place:

§1418-K. Fees

1. Fees prohibited generally. Except as provided in subsection 2, a rental fee may not be required or received for the granting of authority to the division to operate a vending facility.

2. Fees authorized; limitation. A rental fee or other fee may be charged to the operator only if the vending facility is located on commercial municipal property, including a public airport, where the following conditions are met:

A. The vending facility generates revenue primarily from the general public at large rather than from public employees;

B. The vending facility occupies space for which there are other competing retail commercial uses and other retail users are, in fact, renting nearby public space on the property; and

C. The public owner depends on generating revenue from the space occupied by the vending facility.

Any rent or other fee charged to the operator must be less than what would otherwise be charged to a competing commercial tenant and must be pursuant to a written agreement. The terms of the agreement must adequately account for the value of investments made by the division to create or maintain the vending facility.

3. Application. This section applies to the rental of vending facilities and the renewal of any rental agreement after the effective date of this section.

Sec. A-32. 29 MRSA §55-B, last ¶, as enacted by PL 1993, c. 698, §3, is repealed.

Sec. A-33. 29-A MRSA §1304, sub-§1, ¶F, as amended by PL 1995, c. 402, Pt. A, §47 and c. 505, §11 and affected by §22, is repealed and the following enacted in its place:

F. The Secretary of State may issue a restricted instruction permit to an applicant who is enrolled in a driver education program that includes practice driving. That permit is valid:

(1) For a school year or other specified period; and

(2) Only when the permittee is accompanied by a driver education teacher or a commercial driver education instructor, licensed by the Secretary of State under subchapter III.

Sec. A-34. Retroactivity. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 29-A, section 1304, subsection 1, paragraph F is effective retroactively to January 1, 1996.

Sec. A-35. 29-A MRSA §1351, sub-§2, ¶D, as amended by PL 1995, c. 402, Pt. A, §47 and c. 505, §12 and affected by §22, is repealed and the following enacted in its place:

D. Person licensed by the Secretary of State.

Sec. A-36. 29-A MRSA §1351, sub-§3, as amended by PL 1995, c. 402, Pt. A, §47 and c. 505, §13 and affected by §22, is repealed and the following enacted in its place:

3. Certificate. A successful course completion certificate may be issued if the course meets the standards adopted by the Secretary of State. A certificate may not be issued to a person who was not at least 15 years of age when beginning the course.

Sec. A-37. Retroactivity. These sections of this Part that repeal and replace the Maine Revised Statutes, Title 29-A, section 1351, subsection 2, paragraph D and subsection 3 are effective retroactively to January 1, 1996.

Sec. A-38. 34-B MRSA §1001, sub-§8, ¶E, as amended by PL 1995, c. 550, §1, is further amended to read:

E. The Aroostook Residential Center; or

Sec. A-39. 34-B MRSA §1001, sub-§8, ¶F, as amended by PL 1995, c. 550, §1 as repealed by c. 560, Pt. K, §10, is repealed.

Sec. A-40. 34-B MRSA §6254, as amended by PL 1995, c. 560, Pt. K, §§78 to 80, is repealed.

Sec. A-41. 36 MRSA §1752, sub-§10, as amended by PL 1995, c. 639, §8 and c. 640, §1, is repealed and the following enacted in its place:

10. Retailer. "Retailer" means a person who makes retail sales or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

Sec. A-42. 36 MRSA §2113, as amended by PL 1995, c. 639, §9 and c. 640, §7, is repealed and the following enacted in its place:

§2113. Criminal penalties

A violation of any provision of this Part for which a penalty or forfeiture is not provided by any other provision of law is a Class E crime, except that any violation of any provision of this Part for which a penalty or forfeiture is not provided by any other provision of law by a person who has a prior conviction under the same provision within the prior 3 years is a Class D crime.

Sec. A-43. 36 MRSA §5276-A, sub-§1, as amended by PL 1995, c. 639, §29 and c. 694, Pt. D, §62 and affected by Pt. E, §2, is repealed and the following enacted in its place:

1. Generally. An agency of the State, including the University of Maine System or the Maine Technical College System, that is authorized to collect from an individual or corporation a liquidated debt greater than \$25 shall notify in writing the State Tax Assessor and supply information necessary to identify the debtor whose refund is sought to be set off. The assessor, upon notification, shall assist the requesting agency by setting off that debt against a refund to which that individual or corporation is entitled under this Part. Liquidated child support debts that the Department of Human Services has contracted to collect, pursuant to Title 19-A, section 2103 or 2301, subsection 2, are eligible, under the provisions of this section, for setoff against a refund due the obligated individual. The assessor shall provide the creditor agency with the name, address and social security number of each debtor whose refund is subject to setoff.

Sec. A-44. Effective date. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 36, section 5276-A, subsection 1 takes effect October 1, 1997.

Sec. A-45. 38 MRSA §488, sub-§17, as enacted by PL 1995, c. 493, §7 and affected by §21, is amended to read:

17. Structure area within residential lots. Buildings, roads, paved areas or areas to be stripped or graded and not revegetated that are located within lots used solely for single-family residential housing are not counted toward the 3-acre threshold described in section ~~382~~ 482, subsection 6, paragraph B for purposes of determining jurisdiction. A road associated only with such lots is also not counted toward the 3-acre threshold. For purposes of this subsection, "single-family residential housing" does not include multi-unit housing such as condominiums and apartment buildings.

Sec. A-46. 38 MRSA §489-A, sub-§1, as amended by PL 1995, c. 700, §10 and c. 704, Pt. A,

§21 and affected by Pt. C, §2, is further amended to read:

1. Kinds of projects. The following kinds of projects may be reviewed by registered municipalities pursuant to this section:

A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres; or

~~D. Structures as described in section 482, subsection 6, paragraph B in excess of 3 acres but less than 7 acres; or~~

~~F. Excavation on more than 5 acres of land for borrow, topsoil, clay or silt, whether alone or in combination as described in section 482, subsection 2-B; or~~

G. A project generating 100 to 200 passenger car equivalents at peak hour.

Sec. A-47. 38 MRSA §1310-N, sub-§1, ~~¶C~~, as repealed and replaced by PL 1993, c. 680, Pt. A, §37 and amended by c. 732, Pt. B, §1, is repealed and the following enacted in its place:

C. In the case of a disposal facility, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal. This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

Sec. A-48. 38 MRSA §1310-N, sub-§5, as repealed and replaced by PL 1993, c. 680, Pt. A, §37 and amended by c. 732, Pt. B, §2, is repealed and the following enacted in its place:

5. Recycling and source reduction determination. The department shall find that the provisions of subsection 1, paragraph C are satisfied when the applicant demonstrates that all requirements of this subsection have been satisfied.

A. The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law.

(1) The department shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility.

B. The applicant has shown consistency with the recycling provisions of the state plan.

This subsection does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

Sec. A-49. PL 1995, c. 505, §4, first 3 lines are repealed and the following enacted in their place:

Sec. 4. 10 MRSA §8001, sub-§10, as amended by PL 1995, c. 402, Pt. A, §3, is repealed.

Sec. A-50. PL 1995, c. 646, §3 is amended to read:

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1996-97

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Bureau of Taxation

| | |
|-------------------------------|---------------------|
| Positions - Legislative Count | (1.0) |
| Personal Services | \$31,806 |
| All Other | 6,760 |
| Capital Expenditures | 49,952 <u>4,952</u> |
| TOTAL | \$43,518 |

Provides funds for one Revenue Agent position and associated administrative costs to inform nonresident taxpayers and enforce the required withholding amounts.

Sec. A-51. PL 1995, c. 648, §9 is amended to read:

Sec. 9. Effective date. Those sections of this Act that repeal the Maine Revised Statutes, Title 5, section 13063-A and Title 5 ~~10~~, chapter 107-A take effect August 1, 1996.

Sec. A-52. Retroactivity. That section of this Part that amends Public Law 1995, chapter 648, section 9 takes effect retroactively to August 1, 1996.

PART B

Sec. B-1. 5 MRSA §151, first ¶, as amended by PL 1995, c. 402, Pt. A, §2, and c. 505, §2 and affected by §22, is repealed and the following enacted in its place:

All money received by the Treasurer of State from those boards listed in section 12004-A

constitutes a fund for each board, which is a continuous carrying account for the payment of the compensation and expenses of the members and the expenses of the board and for executing the law relating to each board respectively and as much of the fund as may be required is appropriated for these purposes. All payments must be made from the respective funds held in the State Treasury, after the approval of the State Controller. In no event may these payments exceed the amounts received by the Treasurer of State from the treasurer of each respective board. Any balance remaining to the credit of any board at the end of any year must be carried forward to the next year.

Sec. B-2. Retroactivity. That section of this Part that repeals and replaces the Maine Revised Statutes, Title 5, section 151, first paragraph applies retroactively to January 1, 1996.

Sec. B-3. 5 MRSA §3305, sub-§1, ¶L, as repealed and replaced by PL 1995, c. 625, Pt. A, §8 and amended by c. 656, Pt. A, §1, is repealed.

Sec. B-4. 5 MRSA §3305, sub-§1, ¶N, as enacted by PL 1995, c. 625, Pt. A, §10, is amended to read:

N. Coordinate the development of solid waste management policy including:

- (1) Collecting and analyzing solid waste management and recycling data from all available sources including commercial and municipal entities;
- (2) Preparing a solid waste management and recycling plan to be submitted to the Governor and the Legislature by January 1, 1998 and every 2 1/2 years thereafter; and
- (3) Providing technical and financial assistance to municipalities in waste reduction and recycling activities; and

Sec. B-5. 9-A MRSA §6-203, sub-§6, as enacted by PL 1997, c. 155, Pt. F, §1 and affected by §2, is amended to read:

6. Volume fees. Volume fees paid with respect to consumer credit transactions that are originated by a seller, lessor or lender, other than a supervised financial organization, and that are subsequently assigned to a financial institution, as defined in Title 9-B, section 131, subsection 17, or to a credit union, as defined in Title 9-B, section 131, subsection 12, within 30 days after the inception of the consumer credit transaction must be allocated ~~between~~ within the Department of Professional and Financial Regulation, between the Office of Consumer Credit Regulation and the Bureau of Banking in proportion to

the reasonable costs of regulation of all aspects of such transactions. The agreement for allocation must be established by the Commissioner of Professional and Financial Regulation, in consultation with the Director of the Office of Consumer Credit Regulation and the Superintendent of Banking, not more frequently than every 24 months.

Sec. B-6. 15 MRSA §3203-A, sub-§7, ¶B-4, as enacted by PL 1997, c. 24, Pt. RR, §3, is amended to read:

B-4. Notwithstanding any other provision of law, on the date that the Northern Maine Regional Juvenile Detention Facility begins operating, the State is responsible for all physically restrictive juvenile detention statewide, except that the detention provided under subsection 1 remains the responsibility of the counties. At the discretion of the sheriff, a county may assume responsibility for the detention of a juvenile for the first 48 hours, excluding Saturdays, Sundays and legal holidays. Upon mutual agreement of the Commissioner of Corrections and the sheriff and upon terms mutually agreeable to them, a juvenile may be further detained by a county. Any detention of a juvenile by a county must be in a section of a jail or other secure detention facility in compliance with paragraph A or in an approved detention facility or temporary holding resource in compliance with paragraph B. This paragraph does not apply to a juvenile who is held in an adult section of a jail pursuant to court order under paragraph C or D; section 3101, subsection 4, paragraph E-1; or section 3205, subsection 2.

Sec. B-7. Effective date. That section of this Part that amends the Maine Revised Statutes, Title 15, section 3203-A, subsection 7, paragraph B-4, takes effect June 26, 1997.

Sec. B-8. 17-A MRSA §1304, sub-§4, as enacted by PL 1997, c. 54, §1, is amended to read:

4. If the court ~~sentences~~ commits a person to ~~imprisonment~~ the custody of the sheriff for nonpayment of a fine, the court may authorize, at the time of ~~sentencing~~ its order only, participation of the person in a project under Title 30-A, section 1606 with the agreement of the sheriff of the county jail where the person is committed. ~~The person's sentence~~ person must be prorated given credit according to the provisions of Title 30-A, section 1606, subsection 2. ~~The sentence runs consecutively with any other sentence.~~ The confinement ordered must be nonconcurrent with any judgment of conviction involving a term of imprisonment.

Sec. B-9. 38 MRSA §1303-C, sub-§35, as amended by PL 1995, c. 465, Pt. A, §12 and affected by Pt. C, §2, is further amended to read:

35. State waste management and recycling plan. "State waste management and recycling plan" means the plan adopted by the former Maine Waste Management Agency pursuant to chapter 24, subchapter II and subsequent plans developed by the State Planning Office pursuant to Title 5, section 3305, subsection 1, paragraph ~~E~~ N and may also be referred to as "state plan."

PART C

Sec. C-1. 4 MRSA §§1501, 1502 and 1504, as enacted by PL 1985, c. 581, §1, are amended to read:

§1501. Court Appointed Special Advocate Program

There is established within the Administrative Office of the Courts of the Judicial Department the Court Appointed Special Advocate Program to provide volunteer lay persons to serve as court appointed special advocates or guardians ad litem under Title 22, section 4005, subsection 1, in child abuse and neglect cases.

§1502. Staff

With the advice and approval of the Court Appointed Special Advocate Advisory Panel, the ~~Chief Judge of the District Court~~ State Court Administrator shall appoint a Director of the Court Appointed Special Advocate Program, who shall serve at ~~his~~ the pleasure of the State Court Administrator. The ~~Chief Judge of the District Court~~ State Court Administrator may also appoint one or more deputy directors or regional volunteer coordinators, who also shall serve at ~~his~~ the pleasure of the State Court Administrator. The ~~Chief Judge of the District Court~~ State Court Administrator shall provide necessary clerical assistance to the Court Appointed Special Advocate Program, within the limit of funds available.

§1504. Facilities

The ~~Chief Judge of the District Court~~ State Court Administrator shall provide a principal office for the Court Appointed Special Advocate Program and shall arrange for such facilities throughout the State as are necessary and adequate for the court appointed special advocates to conduct their duties.

Sec. C-2. 4 MRSA §1506, as amended by PL 1989, c. 617, §2, is further amended to read:

§1506. Immunity from civil liability

A person serving as a court appointed special advocate ~~under contract with~~ for the Judicial Department or as Director, deputy director or regional volunteer coordinator of the Court Appointed Special Advocate Program is immune from any civil liability, as are employees of governmental entities, under the Maine Tort Claims Act, Title 14, chapter 741, for acts performed within the scope of ~~the court appointed special advocate's or director's~~ that person's duties.

Sec. C-3. PL 1995, c. 665, Pt. J, §7, is amended to read:

Sec. J-7. Limit of State's obligation. If the State's continued obligation for any individual program contained in sections ~~2 and 4~~ and 6 of this Part exceeds the level of funding provided for that program, any unexpended balances occurring in other programs may be applied to avoid proration of payments for any individual program. Any unexpended balances from sections ~~2 and 4~~ and 6 may not lapse but must be carried forward to be used for the same purpose.

PART D

Sec. D-1. 22 MRSA §1555-B, sub-§8, ¶B, as enacted by PL 1997, c. 305, §5, is amended to read:

B. A person who violates subsection ~~2~~ 5 commits a civil violation for which the following forfeitures may be adjudged.

(1) For a first offense, a forfeiture of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(2) For a 2nd offense, a forfeiture of not less than \$200 and not more than \$500 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(3) For all subsequent offenses, a forfeiture of \$500 must be imposed and that forfeiture may not be suspended. The judge, in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

Sec. D-2. 29-A MRSA §515-A, as enacted by PL 1997, c. 287, §1 and affected by §2, is amended to read:

§515-A. Motorcycle registration plates

Motorcycle registration plates must bear the words "Ride Safe." Motorcycle registration plates issued prior to January 1, 1998 may be replaced, upon a registrant's request, by plates issued under this ~~subsection~~ section. The registrant shall surrender the original plates and pay a one-time \$5 fee for the replacement plates.

Motorcycle plates issued under sections 457 and 517 are exempt from this ~~subsection~~ section.

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

Effective June 5, 1997, unless otherwise indicated.

CHAPTER 394

H.P. 455 - L.D. 618

An Act to Make Allocations from the Transportation Safety Fund for the Fiscal Years Ending June 30, 1998 and June 30, 1999 and to Accelerate the Starting Date of the State Police Training Academy

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

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of the Department of Public Safety and the Department of the Secretary of State will become due and payable on or immediately after July 1, 1997; 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. 29-A MRSA §561, sub-§3, ¶A, as amended by PL 1995, c. 273, §1, is further amended to read:

A. There must be allocated to the Department of Public Safety for the State Police no more than ~~\$2,200,000~~ \$2,800,000 in fiscal year ~~1995-96~~ 1997-98 and ~~\$2,300,000~~ \$2,600,000 in fiscal year ~~1996-97~~ 1998-99 for duties imposed by this chapter and Title 35-A and for related activities.

Sec. A-2. Allocation of funds. Income to the Transportation Safety Fund for the next 2 fiscal years, from July 1, 1997 to June 30, 1998 and from July 1, 1998 to June 30, 1999, must be segregated, apportioned and disbursed as designated in the following schedule.

| | 1997-98 | 1998-99 |
|--|-------------|-------------|
| PUBLIC SAFETY, DEPARTMENT OF | | |
| Traffic Safety - Commercial Vehicle Enforcement | | |
| Positions - Legislative Count | (41,000) | (41,000) |
| Personal Services | \$2,040,288 | \$2,088,960 |
| All Other | 302,881 | 308,601 |
| Capital Expenditures | 380,000 | 147,000 |
| DEPARTMENT OF PUBLIC SAFETY | | |
| TOTAL | \$2,723,169 | \$2,544,561 |
| SECRETARY OF STATE, DEPARTMENT OF THE | | |
| Administration - Motor Vehicles | | |
| Positions - Legislative Count | (18,000) | (18,000) |
| Personal Services | \$563,597 | \$577,456 |
| All Other | 105,314 | 108,340 |
| DEPARTMENT OF THE SECRETARY OF STATE | | |
| TOTAL | \$668,911 | \$685,796 |

Sec. A-3. Adjustments to allocations. Allocations may be increased or adjusted by the State Budget Officer, with the approval of the Governor, to specifically cover those adjustments determined necessary under any salary plan approved by the Legislature and those reclassifications or range changes that have been approved by the Department of Administrative and Financial Services and submitted for legislative review prior to the effective date of this Act.

Sec. A-4. Encumbered balance at year end. At the end of each fiscal year, all encumbered balances may not be carried more than once.