LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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 624

H.P. 1496 - L.D. 2095

An Act to Clarify Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Remediation and Waste Management

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

Sec. 1. 38 MRSA §352, sub-§5-A, as amended by PL 1995, c. 704, Pt. A, §1 and affected by Pt. C, §2, is further amended by amending the first paragraph to read:

5-A. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions keep accurate and regular daily time records. These records must describe the matters worked on, services performed and the amount of time devoted to those matters and services, as well as amounts of money expended in performing those functions. Records must be kept for a sufficient duration of time as determined by the commissioner to establish to the commissioner's satisfaction that the fees are appropriate. This subsection is repealed 90 days after adjournment of the Second Regular Session of the ~~118th~~ 119th Legislature.

Sec. 2. 38 MRSA §353, sub-§3, as amended by PL 1995, c. 462, Pt. A, §74, is further amended to read:

3. License fee. The license fee ~~assessed in section 352, subsection 5~~ must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant. Notwithstanding the provisions of this subsection, the license fee for a subdivision must be paid prior to the issuance of the license.

The license fees for nonferrous metal mining must be paid annually on the anniversary date of the license for the life of the project, up to and including the period of closure and reclamation.

The license fee for a solid waste facility must be paid annually. Failure to pay the annual fee within 30 days of the anniversary date of a license is sufficient grounds for modification, revocation or suspension of the license under section 341-D, subsection 3, paragraph A.

Sec. 3. 38 MRSA §564, sub-§5, as amended by PL 1991, c. 494, §6, is further amended to read:

5. Mandatory facility replacement. Upon the expiration date of a manufacturer's warranty for a tank ~~installed in accordance with subsection 1 or for an existing facility installed after 1985~~, the tank and its associated piping must be removed from service and properly abandoned in accordance with section 566-A.

This subsection does not apply until January 1, 2008 to a tank installed before December 31, 1985 that has been retrofitted to meet the requirements of subsections 1-A and 1-B.

Sec. 4. 38 MRSA §569-A, sub-§7, as enacted by PL 1991, c. 817, §26, is amended to read:

7. Reimbursement for fees imposed on transfers out of State. Any person who ~~prior to October 9, 1991 has~~ paid a fee ~~assessed pursuant to~~ under subsection 5, paragraph A on petroleum products that were exported from this State must be reimbursed by the department upon presentation of documentation of that payment and transfer.

Sec. 5. 38 MRSA §570, first ¶, as amended by PL 1997, c. 364, §36 and affected by c. 374, §§14 to 16, is further amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-A, subsection 8, paragraphs B, D, E, H and J, or other damage incurred by the State, ~~including~~ except for costs found by the commissioner to be eligible for coverage under the fund. The term "other damages," as used in this paragraph, includes interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of, or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and payment of damages that are not eligible for coverage by the fund to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in

section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 6. 38 MRSA §570, first ¶, as amended by PL 1991, c. 817, §27 and affected by §28, is further amended to read:

~~Because it is the~~ The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages ~~as well as indirect damages~~ and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-B, subsection 5, paragraphs B, D, E and G~~,~~ or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and payment of damages to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 7. 38 MRSA §570-K, sub-§2, as enacted by PL 1991, c. 694, §16, is amended to read:

2. Prohibition. After July 1, 1995, a person may not operate an aboveground oil storage facility ~~constructed after July 1, 1985~~ that has underground piping not constructed of cathodically protected steel, fiberglass or other noncorrosive material approved by the department.

Sec. 8. 38 MRSA §570-K, sub-§3, as enacted by PL 1991, c. 694, §16, is amended to read:

3. Underground piping installation. All underground piping, whether replacement or new, associated with an aboveground oil storage facility must be installed and removed:

A. In accordance with section 564 or other applicable design ~~and~~, installation, closure and removal rules adopted by the board; and

B. By persons certified by the Board of Underground Storage Tank Installers ~~pursuant to~~ under Title 32, chapter 104-A.

Sec. 9. 38 MRSA §1291, sub-§11, as enacted by PL 1997, c. 375, §14, is repealed.

Sec. 10. 38 MRSA §1291, sub-§17, as enacted by PL 1997, c. 375, §14, is amended to read:

17. Lead-based paint activities. "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as ~~interim controls,~~ lead screening, lead determination and deleading.

Sec. 11. 38 MRSA §1291, sub-§§17-A, 17-B and 17-C are enacted to read:

17-A. Lead determination. "Lead determination" means an inspection of a limited portion of a building for the purpose of identifying the presence of lead-based paint.

17-B. Lead hazard. "Lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition.

17-C. Lead inspection. "Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint.

Sec. 12. 38 MRSA §1291, sub-§18, as enacted by PL 1997, c. 375, §14, is amended to read:

18. Lead inspector. "Lead inspector" means an individual ~~whose activities include, but are not limited to, collecting samples and assessing the potential for exposure associated with the presence of lead-containing material~~ who conducts lead inspections and lead determinations.

Sec. 13. 38 MRSA §1291, sub-§27, as enacted by PL 1997, c. 375, §14, is amended to read:

27. Risk assessment. "Risk assessment" means the on-site ~~investigation~~ assessment to determine the existence, nature, severity and location of ~~lead-based paint~~ lead hazards~~,~~ and the provision of a written report explaining the results of the ~~investigation~~ assessment and the options for reducing ~~lead-based paint~~ lead hazards.

Sec. 14. 38 MRSA §1292, sub-§5, as enacted by PL 1997, c. 375, §14, is amended to read:

5. Exemption. A person who is 18 years of age or older need not obtain licensing and certification to perform lead abatement activities within a residential dwelling unit that the person owns and personally occupies, as long as a child residing in the dwelling unit has not been identified as lead-poisoned. A person 18 years of age or older who owns ~~or~~ and personally occupies a dwelling unit in which a

resident child has been identified as lead-poisoned need not obtain licensing and certification to perform abatement activities within that dwelling unit, as long as the person completes any training required by the Department of Human Services.

Sec. 15. 38 MRSA §1310-S, sub-§2, as amended by PL 1993, c. 378, §8, is further amended to read:

2. Public hearing. The department may hold an adjudicatory public hearing within the municipality in which the facility may be located or in a convenient location in the vicinity of the proposed facility. The department shall hold an adjudicatory public hearing on an application for a new or expanded commercial or state-owned solid waste disposal facility that accepts special waste upon request from a resident or a property owner in the municipality in which the proposed facility is located. The hearing must be conducted in accordance with Title 5, chapter 375, subchapter IV. Administrative expenses of a hearing held pursuant to this subsection must be paid for by the applicant as provided in department rules.

Sec. 16. 38 MRSA §1310-S, sub-§3-A is enacted to read:

3-A. Automatic abutter intervenor status. An abutting property owner has intervenor status in any public hearing held pursuant to subsection 2 if the property owner requests it no later than 10 days following public notice of the hearing. Immediately upon the commissioner's receipt of such a request, the intervenor has all rights and responsibilities commensurate with this status. A party granted intervenor status under this subsection is not eligible for intervenor assistance grants or reimbursements pursuant to subsection 4.

For purposes of this subsection, "abutting property owner" means an owner of property that is both contiguous to the property on which a facility is proposed and within 1 mile of the location of the proposed facility site, including property directly across a public or private right-of-way.

Sec. 17. 38 MRSA §1310-S, sub-§4, as amended by PL 1995, c. 465, Pt. A, §19 and affected by Pt. C, §2, is further amended to read:

4. Financial assistance. The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under subsection 3, not to exceed $50,000. The board shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, waste generation and recycling studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this section that are incurred by the municipality after notification pursuant to subsection 1 are eligible for reimbursement under this subsection only if a completed application is accepted by the department. The commissioner may make an additional assistance grant not to exceed $50,000, to be paid by the applicant as provided in department rules, to any party granted intervenor status under subsection 3 on an application for the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling when the intervenor demonstrates to the commissioner that the size, nature, location, geological setting or other relevant factors warrant additional expenditures for technical assistance. The board shall also establish rules governing:

A. The process by which an intervenor under subsection 3 may gain entry to the proposed facility site for purposes of reasonable inspection and site investigations under the auspices of the department; and

B. The reduction in the maximum level of reimbursable costs to the extent the municipality establishes by local ordinance any substantially similar financial requirements of the applicant.

Sec. 18. 38 MRSA §1319-O, sub-§2, ¶A, as amended by PL 1995, c. 573, §4, is further amended to read:

A. The board may adopt rules relating to the transportation, collection and storage of waste oil ~~by waste oil dealers~~ to protect public health, safety and welfare and the environment. The rules may include, without limitation, rules requiring licenses for waste oil dealers and the location of waste oil storage sites that are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the department to transport or handle hazardous waste is not required to obtain a waste oil dealer's license, but the hazardous waste license must include any terms or conditions determined necessary by the department relating to the transportation or handling of waste oil; and

Sec. 19. 38 MRSA §1319-R, sub-§6, as enacted by PL 1989, c. 794, §6, is amended to read:

6. Post-closure licenses. When the board determines that a facility under the jurisdiction of this

subchapter does not have and will not be issued a license pursuant to this subchapter, the board may issue a license containing terms and conditions governing the post-closure requirements applicable to the facility, including, but not limited to, environmental monitoring and corrective action. The findings in subsection 1, paragraph A, subparagraphs (1), (2) and (3) are not required for post-closure licenses.

Sec. 20. Rule-making authority. Rules adopted by the Board of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 1310-S, subsection 2 and section 1319-O, subsection 2, paragraph A are routine technical rules under Title 5, chapter 375, subchapter II-A.

Sec. 21. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570-K, subsection 2 takes effect July 1, 1999.

See title page for effective date, unless otherwise indicated.

CHAPTER 625

H.P. 1359 - L.D. 1910

An Act to Grant the Treasurer of State Full Voting Rights on the Board of Trustees of the Maine State Retirement System

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

Sec. 1. 5 MRSA §17102, sub-§1, ¶A, as amended by PL 1989, c. 503, Pt. B, §33, is further amended to read:

A. The Treasurer of State or the Deputy Treasurer of State~~, ex officio, as a nonvoting trustee~~;

Sec. 2. 5 MRSA §17102, sub-§5, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

5. Transaction of business. The transaction of business by the board ~~shall be~~ is governed as follows.

A. ~~Four~~ Five trustees ~~shall~~ constitute a quorum for the transaction of any business.

B. Each ~~voting~~ trustee is entitled to one vote.

C. ~~Four~~ Five votes are necessary for any resolution or action by the board at any meeting of the board.

See title page for effective date.

CHAPTER 626

H.P. 1437 - L.D. 2001

An Act to Amend the Maine Indian Claims Settlement Act Regarding Education Funding

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

Whereas, the educational funding provision in current law that enables schools operated by the Passamaquoddy Tribe and the Penobscot Nation to obtain significant additional federal funding will expire on June 30, 1998; and

Whereas, this federal funding reduces state general purpose aid to those schools operated by the Passamaquoddy Tribe and the Penobscot Nation; and

Whereas, a report from the Department of Education filed with the Joint Standing Committee on Education and Cultural Affairs showed average annual savings in general purpose aid of nearly $750,000, while the tribal schools also benefited from additional federal funding; and

Whereas, it is necessary to continue this provision of law that allows the Passamaquoddy Tribe and the Penobscot Nation to obtain certain federal funding that would otherwise not be available to support the schools that they operate; 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 MRSA §6211, sub-§2, as amended by PL 1991, c. 705, §1 and affected by §§4 and 5, is further amended to read:

2. Limitation on eligibility. In computing the extent to which either the Passamaquoddy Tribe or the Penobscot Nation is entitled to receive state funds under subsection 1, other than funds in support of education, any money received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, must be deducted in computing any payment to be made to the respective tribe or nation by the