

MAINE STATE LEGISLATURE

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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

~~The purchaser of special fuel that qualifies for one of the above exemptions must sign and provide to the seller a sworn statement indicating that the fuel will be used for the exempt purpose. The State Tax Assessor shall make forms available to suppliers for this purpose. The signed form must be retained by the supplier for at least 3 years.~~

Sec. 12. 36 MRSA §3209, as amended by PL 1987, c. 200, §2 and affected by §3, is repealed and the following enacted in its place:

§3209. Reports; payment of tax; allowance for losses

1. Suppliers. Every licensed supplier shall file on or before the last day of each month a report with the assessor stating the gross gallons of special fuel received, sold and used in this State by that supplier during the preceding calendar month, on a form prescribed and furnished by the assessor. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each supplier must pay to the assessor a tax as prescribed in section 3203 upon each gallon reported as a taxable sale or as taxable gallons used.

2. Users generally. Except as provided by subsection 4, for the purpose of determining the amount of tax imposed, each user, not later than the last day of April, July, October and January of each year, shall file with the assessor a report that must include the total gallonage of fuels used within this State during the quarter ending the last day of the preceding month. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each user shall pay to the assessor the tax imposed by section 3203 upon each gallon reported as a taxable use or as taxable gallons used, which has not been subjected to the special fuel tax.

3. Exempt users. Any user of special fuel operating exclusively within this State and using only special fuel purchased within this State upon which the State has received the special fuel tax, may be exempted, at the discretion of the assessor, from filing reports under this chapter. Any user of special fuel requesting exemption from filing reports shall file an affidavit as prescribed by the assessor.

4. Annual returns in certain circumstances. Notwithstanding any other provisions of this section, when the annual tax liability is expected to be \$100 or less, a user, with the approval of the assessor, may file an annual return with payment on or before January 31st of each year covering the prior year.

5. Monthly reports from wholesalers. Each wholesaler shall submit on or before the last day of

each month on a form prescribed and furnished by the assessor a report stating the number of gross gallons sold by that wholesaler to each distributor, importer, exporter or any other person that purchased special fuel from that wholesaler during the preceding month. The report must clearly identify each purchaser and indicate the number of gallons that each purchaser received from the wholesaler. The report must also contain any other information reasonably required by the assessor.

Sec. 13. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1998-99

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Bureau of Revenue Services

Positions - Legislative Count	(1,000)
Personal Services	\$29,660
All Other	14,835

Provides funds for a Revenue Agent position and related administrative expenses to perform desk audits of fuel tax reports.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
TOTAL

\$44,495

See title page for effective date.

CHAPTER 739

S.P. 573 - L.D. 1730

An Act to Implement the Recommendations of the Great Pond Task Force

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

Sec. 1. 12 MRSA §685-C, sub-§10 is enacted to read:

10. Operating a personal watercraft. Operating a personal watercraft is prohibited on the following categories of great ponds:

A. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission pursuant to subsection 1 as being not accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, and at least one outstanding resource value;

B. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission as being accessible within 1/4 mile by 2-wheel drive vehicles, with less than one development unit per mile, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character;

C. Great ponds and smaller ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission as being not accessible within 1/2 mile by 2-wheel drive vehicles, with no more than one noncommercial remote camp and with a cold water game fishery; and

D. Great ponds with less than all but more than 2/3 of their surface area in or partly in the jurisdiction of the commission that are identified as being of statewide significance in the "Maine Wildlands Lake Assessment" dated June 1, 1987 prepared by the commission, with 2 or more outstanding resource values in fisheries, wildlife, scenic or shore character and with more than 1/2 of their shoreline in public and private conservation ownership with guaranteed public access for low-impact public recreation.

The commission shall implement this subsection by rule adopted in accordance with section 685-A. Rules adopted to implement this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

This section does not apply to any waters subject to regulation by the Maine Indian Tribal-State Commission under Title 30, section 6207, subsection 3-A.

Sec. 2. 12 MRSA §7801, sub-§13, as enacted by PL 1979, c. 420, §1, is amended to read:

13. Operating a motorboat other than a personal watercraft while under age. A person is guilty of operating a motorboat other than a personal watercraft while under age if ~~he~~ that person:

A. Is under 12 years of age;

B. Operates any motorboat propelled by machinery of more than 10 horsepower; and

C. Is not under the immediate supervision of a person located in the motorboat who is at least 16 years of age.

This subsection does not apply to operating a personal watercraft.

Sec. 3. 12 MRSA §7801, sub-§13-A is enacted to read:

13-A. Operating a personal watercraft while under age. A person is guilty of operating a personal watercraft while under age if that person operates a personal watercraft while under 16 years of age.

Sec. 4. 12 MRSA §7801, sub-§20, ¶¶J and K, as enacted by PL 1979, c. 420, §1, are amended to read:

J. Operates a motorboat powered by an internal combustion engine on Nokomis Pond, situated in the Towns of Newport and Palmyra, Penobscot County; ~~or~~

K. Operates a motorboat in Merrymeeting Bay at a speed in excess of 10 miles per hour, except within the confines of the buoyed channels; ~~;~~

Sec. 5. 12 MRSA §7801, sub-§20, ¶¶L, M and N are enacted to read:

L. Operates a motorboat equipped with an internal combustion engine on the following waters on Mount Desert Island in Hancock County: Witch Hole Pond; Aunt Betty's Pond; Bubble Pond; Round Pond; and Lake Wood;

M. Operates a motorboat equipped with a motor greater than 10 horsepower on Upper Hadlock Pond or Lower Hadlock Pond on Mount Desert Island in Hancock County; or

N. Operates a personal watercraft in violation of section 685-C, subsection 10 or any rule adopted by the commission to implement that subsection.

Sec. 6. 12 MRSA §7801, sub-§§33 and 34 are enacted to read:

33. Operating airmobile or motorboat that exceeds noise limits. A person is guilty of operating a watercraft that exceeds the noise limit if that person operates an airmobile or motorboat powered by an engine constructed:

A. On or after January 1, 1998 that emits more than 78 decibels of sound pressure at a distance

of 50 feet using a method prescribed by the commissioner; or

B. Before January 1, 1998 that emits more than 82 decibels of sound pressure at a distance of 50 feet using a method prescribed by the commissioner.

34. Tampering with a motorboat muffler system. A person is guilty of tampering with a motorboat muffler system if that person modifies a motorboat muffler system in any way that results in an increase in the decibels of sound emitted by that motorboat. A person who violates this subsection is subject to a civil penalty not to exceed \$100 payable to the Treasurer of State and recoverable in a civil action.

Sec. 7. 12 MRSA §7825-B is enacted to read:

§7825-B. Personal watercraft rental agent certificate

1. Registration and issuance. Except as provided in this section, a person or business may not rent or lease a personal watercraft after January 1, 1999 unless that person or business:

A. Registers with the department as a personal watercraft rental agent and is issued a personal watercraft rental and leasing agent certificate from the commissioner;

B. Registers each personal watercraft being offered for rent or lease in the name of the person or business holding that certificate; and

C. Provides each person who rents or leases a personal watercraft with written instructions on how to operate the personal watercraft.

2. Fee. The fee for a personal watercraft rental and leasing agent certificate is \$25. The certificate is valid from July 1st to June 30th.

3. Revocation of certificate. The commissioner may revoke a personal watercraft rental and leasing agent certificate if the commissioner determines that the certificate holder:

A. Rented or leased a personal watercraft that was unsafe; or

B. Failed to instruct a person intending to rent or lease a personal watercraft on personal watercraft safety. The department shall provide each certificate holder with written materials and instructional guidelines on personal watercraft safety that the certificate holder shall review with each personal watercraft renter or lessor before that person operates that personal watercraft.

4. Exception. This section does not apply to:

A. Campgrounds licensed by the Department of Human Services that offer the personal watercrafts owned by that campground exclusively for use by campground clientele;

B. Commercial sporting camps. For the purposes of this section, "commercial sporting camp" means a business consisting of primitive lodging facilities that offers the public the opportunity to pursue primitive hunting, fishing, boating or snowmobiling activities;

C. A person lawfully engaged in guiding activities under section 7311 who accompanies others on guided trips that include the use of personal watercrafts; or

D. A property owner who offers a person renting or leasing that property the use of a personal watercraft registered to the property owner.

Sec. 8. 12 MRSA §7827, sub-§26 is enacted to read:

26. Unlawfully renting or leasing a personal watercraft. A person is guilty of unlawfully renting or leasing a personal watercraft if that person rents or leases a personal watercraft in violation of section 7825-B.

Sec. 9. 12 MRSA §7901, sub-§17 is enacted to read:

17. Unlawfully renting or leasing a personal watercraft. A violation of section 7827, subsection 26 is a civil violation for which a forfeiture of not less than \$200 must be adjudged. The \$200 minimum fine may not be waived by the court.

Sec. 10. 14 MRSA §159-C is enacted to read:

§159-C. Liability related to placement of navigational aids in great ponds

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Great pond" has the meaning given in Title 38, section 480-B, subsection 5.

B. "Lake association" means a nonprofit organization incorporated under state law whose corporate purpose includes maintenance or improvement of water quality or public safety on a great pond, management of water levels or other social, educational, stewardship or advocacy efforts to benefit users of or the natural environment of a great pond.

C. "Navigational aid markers" means navigational aids that conform to rules governing the State's marking of waterways.

2. Limited liability. A lake association that has obtained a permit from the Department of Conservation to place navigational aid markers in great ponds is not liable for personal injury, property damage or death caused by placement or maintenance of those navigational aid markers provided that the lake association has placed or maintained the markers in conformance with the terms and conditions of the permit.

3. No remuneration. In order to qualify for the immunity granted in subsection 2, a lake association may not receive any remuneration from the State or otherwise for placing navigational aid markers in great ponds.

4. Limitations. This section does not limit any liability that may otherwise exist for willful or malicious actions or failures to guard or warn against a known dangerous condition related to the navigational aid markers.

5. No duty created. Nothing in this section creates a duty of care or ground for liability.

6. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to a lake association against which a tort or related action is brought when the lake association is found not liable pursuant to this section.

Sec. 11. 22 MRSA §2648, first ¶, as amended by PL 1995, c. 502, Pt. E, §30, is further amended to read:

Any water utility or municipality is authorized, after consultation with the Commissioner of Inland Fisheries and Wildlife, the department and the Department of Conservation and after conducting a public hearing in the affected town, to designate by buoys in water or markers on the ice in an area on a lake or pond from which water is taken, with a radius commencing at its point of intake. ~~Such~~ The radius may not exceed ~~200~~ 400 feet and within that area a person may not anchor or moor a boat or carry on ice fishing or carry on any other activity designated by the water utility or municipality when such restriction is necessary to comply with primary or secondary drinking water regulations applicable to public water systems. Any such buoys placed in the water must be plainly marked as required by the Director of the Bureau of Parks and Lands under Title 38, section 323. Any person violating this section must, on conviction, be penalized in accordance with Title 30-A, section 4452.

Sec. 12. 30 MRSA §6207, sub-§3-A is enacted to read:

3-A. Horsepower and use of motors. Subject to the limitations of subsection 6, the commission has exclusive authority to adopt rules to regulate the horsepower and use of motors on waters less than 200 acres in surface area and entirely within Indian territory.

Sec. 13. Effective date; Passamaquoddy Tribe. The section of this Act pertaining to the regulation of horsepower and use of motors on waters entirely within Indian territory does not take effect as to the Passamaquoddy Tribe, unless within 90 days after adjournment of the Legislature, the Secretary of State receives written notification from the Joint Tribal Council of the Passamaquoddy Tribe that that tribe has agreed to the provisions of this Act. Copies of that notification must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives. In no event may this Act become effective until 90 days after adjournment of the Legislature.

Sec. 14. Effective date; Penobscot Nation. The section of this Act pertaining to the regulation of horsepower and use of motors on waters entirely within Indian territory does not take effect as to the Penobscot Nation, unless within 90 days after adjournment of the Legislature, the Secretary of State receives written notification from the Tribal Chief and Council of the Penobscot Nation that the nation has agreed to the provisions of this Act. Copies of that notification must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives. In no event may this Act become effective until 90 days after adjournment of the Legislature.

Sec. 15. Report; Maine Indian Tribal-State Commission. The Maine Indian Tribal-State Commission, established in the Maine Revised Statutes, Title 30, section 6212, shall make recommendations no later than January 1, 1999 to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on the use of personal watercraft on waters within the jurisdiction of the Maine Land Use Regulation Commission.

Sec. 16. Joint agency report. The Maine Land Use Regulation Commission, the Department of Inland Fisheries and Wildlife and the Bureau of Parks and Lands within the Department of Conservation shall jointly report no later than January 1, 1999 to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on the regulation of surface water uses on waters within the jurisdiction of the Maine Land Use

Regulation Commission. In preparing the report and recommendations, the agencies shall consult among themselves and with any other state or federal agency having administrative authority for lands wholly or partly within the commission's jurisdiction that contain a great pond. The report must describe the authority of each agency to regulate surface water uses and may include recommendations for surface water use regulations on specific water bodies or classes of water bodies within that agency's jurisdiction.

Sec. 17. Recommendations for regulating the use, operation and type of watercraft for great ponds within the organized areas of the State. A municipality, with the approval of its legislative body, may submit recommendations to the Commissioner of Inland Fisheries and Wildlife for regulating the use, operation and type of watercraft on great ponds within the jurisdiction of that municipality. For great ponds that border more than one municipality, recommendations may be submitted only after approval by the legislative bodies of all municipalities in which those waters are located. For great ponds that border lands within the jurisdiction of the Maine Land Use Regulation Commission, the approval of the commission is also required. If a municipality chooses to prepare recommendations for such waters, it shall take into consideration the use to which those waters are put, the depth of the water, the amount of water-borne traffic on the waters, wildlife and environmental values, noise, traditional uses of the water body and the safety of persons and property. These recommendations may be submitted only after a public hearing and must include a description of the resources the municipality or municipalities will use to enforce those regulations if enacted.

The commissioner shall submit a report to the First Regular Session of the 119th Legislature by January 15, 1999 on the recommendations received from municipalities prior to November 1, 1998 and shall submit a report to the Second Regular Session of the 119th Legislature on the recommendations received from municipalities between November 1, 1998 and October 30, 1999. Each report must be accompanied by legislation implementing the municipal recommendations supported by the Department of Inland Fisheries and Wildlife. That legislation may also include recommendations of the department, developed using the criteria in this section, for waters not addressed in the municipal proposals.

Sec. 18. Report on education and safety training; inland fisheries and wildlife. The Commissioner of Inland Fisheries and Wildlife shall make recommendations no later than January 1, 1999 to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on an education and safety training program

for motorboat operators on inland waters. In preparing those recommendations, the commissioner shall consult with federal and state agencies and private businesses with an interest in recreational watercraft use. Those recommendations must include methods for evaluating the effectiveness of the program and must address the issue of mandatory versus voluntary participation in the program.

See title page for effective date, unless otherwise indicated.

CHAPTER 740

H.P. 1304 - L.D. 1847

An Act to Modify the Retirement Laws for Certain Law Enforcement Officers

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

Whereas, the full actuarial costs of modification of retirement laws for certain law enforcement officers must be paid before those provisions can become law;

Whereas, the Legislature desires to create a Service Retirement Benefit Reserve in the General Fund in order to accrue sufficient funds to pay those full actuarial costs, and further desires to fund that reserve with money otherwise payable to the Retirement Allowance Fund from unappropriated surplus at the close of fiscal year 1997-98;

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 §17708, sub-§2, as amended by PL 1987, c. 739, §§20 and 48, is further amended to read:

2. Before September 16, 1984. A state police officer who was first employed by that department after July 9, 1943, but before September 16, 1984, shall contribute to the retirement system or have pick-up contributions made by the employer as follows: