

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

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

6. Benefit structures consistent with the purpose of the unemployment insurance program for replacement of lost wages; and

7. The administration of the Unemployment Compensation Fund to ensure fiduciary responsibility.

In addition to the solvency plan and proposed legislation, the department shall include a detailed report demonstrating the basis upon which the department performed its evaluation. The detailed report must include the projected impacts of the solvency plan, both during the life of the solvency plan and after the solvency plan is complete.

Sec. 5. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

**BAXTER STATE PARK
AUTHORITY**

Baxter State Park Authority

Personal Services	\$2,079
Provides funds for additional unemployment compensation costs.	

See title page for effective date.

CHAPTER 746

H.P. 1614 - L.D. 2240

**An Act to Provide for Equitable
Taxation of All Financial Institutions**

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

Sec. 1. 36 MRSA §5122, sub-§1, ¶H, as amended by PL 1997, c. 557, Pt. B, §5 and affected by Pt. G, §1, is further amended to read:

H. The absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, that arises from an S Corporation with total assets for the year of at least \$1,000,000 and that, pursuant to the United States Internal Revenue Code, Section 172, is being carried back for federal income tax purposes to the taxable year by the taxpayer; ~~and~~

Sec. 2. 36 MRSA §5122, sub-§1, ¶J, as enacted by PL 1997, c. 557, Pt. B, §6 and affected by Pt. G, §1, is amended to read:

J. The amount claimed as a business expense that is included in the investment credit for the high-technology investment tax credit; ~~and~~

Sec. 3. 36 MRSA §5122, sub-§1, ¶K is enacted to read:

K. For income tax years beginning on or after January 1, 1997, all items of loss, deduction and other expense of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. An addition may not be made under this paragraph for any losses recognized on the disposition by a taxpayer of an ownership interest in a financial institution.

Sec. 4. 36 MRSA §5122, sub-§2, ¶H, as amended by PL 1995, c. 639, §16, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H and that pursuant to the Code, Section 172 was carried back for federal income tax purposes, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over; and
- (3) The amount has not been previously used as a modification pursuant to this subsection; ~~and~~

Sec. 5. 36 MRSA §5122, sub-§2, ¶I, as enacted by PL 1995, c. 639, §17, is amended to read:

I. For income tax years beginning on or after January 1, 1991, an amount equal to the amount by which federal taxable income was reduced because of vessel earnings from fishing operations that were contributed to a capital construction fund; ~~and~~

Sec. 6. 36 MRSA §5122, sub-§2, ¶J is enacted to read:

J. For income tax years beginning on or after January 1, 1997, all items of income, gain, interest, dividends, royalties and other income of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

(1) Income of the taxpayer earned on interest-bearing or similar accounts of the taxpayer at a financial institution as a customer of that financial institution;

(2) Any dividends or other distributions with respect to a taxpayer's ownership interest in a financial institution; and

(3) Any gain recognized on the disposition by the taxpayer of an ownership interest in a financial institution.

Sec. 7. 36 MRSA §5200-A, sub-§1, ¶I, as amended by PL 1997, c. 557, Pt. B, §8 and affected by Pt. G, §1, is further amended to read:

I. Interest or dividends on obligations or securities of any state or of a political subdivision or authority, other than this State and its political subdivisions and authorities; ~~and~~

Sec. 8. 36 MRSA §5200-A, sub-§1, ¶K, as enacted by PL 1997, c. 557, Pt. B, §9 and affected by Pt. G, §1, is amended to read:

K. The amount claimed as a business expense that is included in the investment credit for the high-technology investment tax credit; ~~and~~

Sec. 9. 36 MRSA §5200-A, sub-§1, ¶L is enacted to read:

L. For income tax years beginning on or after January 1, 1997, all items of loss, deduction and other expense of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. An addition may not be made under this paragraph for any losses recognized on the disposition by a taxpayer of an ownership interest in a financial institution.

Sec. 10. 36 MRSA §5200-A, sub-§2, ¶G, as amended by PL 1991, c. 548, Pt. A, §29, is further amended to read:

G. Fifty percent of the apportionable dividend income the taxpayer received during the taxable year from an affiliated corporation that is not included with the taxpayer in a Maine combined report, except that this modification must be phased in over 5 years in accordance with the following schedule:

Taxable year beginning in:	Subtractable dividend income:
1989	10%
1990	20%
1991	30%
1992	40%
1993 or thereafter	50%; and

Sec. 11. 36 MRSA §5200-A, sub-§2, ¶H, as amended by PL 1995, c. 639, §20, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989 but before January 1, 1993 and that, pursuant to the Code, Section 172, was carried back for federal income tax purposes, but only to the extent that:

(1) Maine taxable income is not reduced below zero;

(2) The taxable year is within the allowable federal period for carry-over; and

(3) The amount has not been previously used as a modification pursuant to this subsection; ~~and~~

Sec. 12. 36 MRSA §5200-A, sub-§2, ¶I is enacted to read:

I. For income tax years beginning on or after January 1, 1997, all items of income, gain, interest, dividends, royalties and other income of a financial institution subject to the tax imposed by section 5206, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the financial institution is an S corporation, the taxpayer's pro rata share and, if the financial institution is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

(1) Income of the taxpayer earned on interest-bearing or similar accounts of the

taxpayer at a financial institution as a customer of that financial institution;

(2) Any dividends or other distributions with respect to a taxpayer's ownership interest in a financial institution; and

(3) Any gain recognized on the disposition by the taxpayer of an ownership interest in a financial institution.

Sec. 13. 36 MRSA §5203-A, sub-§1, ¶A, as enacted by PL 1991, c. 528, Pt. N, §15 and affected by §17; and enacted by c. 591, Pt. N, §15 and affected by §17, is amended to read:

A. "Adjusted federal tentative minimum tax" means federal tentative minimum tax ~~reduced~~ adjusted by that portion of the taxpayer's federal tentative minimum tax that is attributable to income that the states are prohibited under federal law from subjecting to income tax or income, loss or deductions that the State has excluded from income tax and items of tax preference and adjustment as specified in the Code. Sections 56 and 57 attributable to excluded income, loss or deductions.

Sec. 14. 36 MRSA §5206, first ¶, as amended by PL 1997, c. 404, §2 and affected by §10, is further amended to read:

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every financial institution that has Maine net income or Maine assets and that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. A financial institution is subject to tax under this section even if it is treated as a partnership, S corporation or entity disregarded as separate from its owner for federal income tax purposes under the Code. The tax is the sum of the following:

Sec. 15. 36 MRSA §5206-D, sub-§1, as enacted by PL 1997, c. 404, §5 and affected by §10, is amended to read:

1. Affiliated group. "Affiliated group" means a group of 2 or more financial institutions in which more than 50% of the voting ~~stock interest~~ of each member ~~corporation or~~ financial institution is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member financial institutions.

Sec. 16. 36 MRSA §5206-D, sub-§8, ¶¶B and D, as enacted by PL 1997, c. 404, §5 and affected by §10, are amended to read:

B. A bank, savings bank, industrial bank, savings and loan association or any other entity, excluding a credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection 12-A that accepts deposits that are insured by an agency of the Federal Government;

D. A corporation or other entity more than 50% of the voting ~~stock interest~~ of which is owned, directly or indirectly, by any one or more of the organizations defined in ~~paragraph A, B or C~~ this subsection or by a credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection ~~12~~ 12-A.

Sec. 17. 36 MRSA §5206-D, sub-§§12 and 13, as enacted by PL 1997, c. 404, §5 and affected by §10, are amended to read:

12. Maine assets. "Maine assets" means a financial institution's total end-of-year assets required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, ~~Schedule L 1120S, 1065~~ or any other Internal Revenue Service form used to report end-of-year assets or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's total end-of-year assets determined as if the entity were required to file Internal Revenue Service Form 1065, multiplied by the fraction obtained pursuant to section 5206-E.

13. Maine net income. "Maine net income" means, for any taxable year, a financial institution's net income or loss per books, ~~as~~ required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, ~~Schedule M, Line 1 1120S, 1065~~ or any other Internal Revenue Service form used to report net income or loss per books or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1065, and apportioned to this State under section 5206-E.

To the extent that a financial institution derives income from a unitary business carried on by 2 or more members of an affiliated group, "Maine net income" is determined by apportioning, in accordance with section 5206-E, that part of the net income of the entire group that derives from the unitary business.

Sec. 18. 36 MRSA §5206-E, sub-§1, as enacted by PL 1997, c. 404, §5 and affected by §10, is amended to read:

1. Formula applicable. All of a financial institution's ~~net income or loss per books, as required to be~~

~~reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, Schedule M, Line 1, Maine net income~~ is apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus 2 times the receipts factor and the denominator of which is 4.

Sec. 19. 36 MRSA §§5206-F and 5206-G are enacted to read:

§5206-F. Time and place for filing returns and paying tax

The franchise tax return required by section 5220, subsection 6 must be filed on or before the 15th day of the 3rd month following the end of the financial institution's fiscal year. A financial institution required to make and file such a return shall, without assessment, notice or demand, pay any tax due to the State Tax Assessor on or before the date established by this section for filing the return.

§5206-G. Combined reports

The combined report required by section 5220, subsection 6 must include, both in the aggregate and by entity, a list of the net income or loss per books, the property, payroll and receipts in Maine and everywhere as defined in this chapter and the Maine net income of the unitary business. Neither the income nor the property, payroll and receipts of an entity that is not required to file a federal income tax return or whose income is not subject to federal income tax as income to its direct or indirect owners may be included in the combined report.

In determining Maine assets or Maine net income for purposes of filing a combined report, intercompany eliminations must be made as necessary to avoid the duplication of income or assets.

Sec. 20. 36 MRSA §5219-G, as enacted by PL 1991, c. 546, §34, is amended to read:

§5219-G. Tax credits for partners and S corporation shareholders

Each partner of a partnership or shareholder of an S corporation is allowed a credit against the tax imposed by chapter 803 in an amount equal to the partner or shareholder's pro rata share of the tax credits described in this chapter, except that in the case of credits attributable to a financial institution subject to tax under chapter 819, the credits are allowable only against the tax imposed by that chapter. A partner's pro rata share must equal the partner's percentage interest in the taxable income or loss of the partnership for federal income tax purposes for the taxable year. The pro rata share of a shareholder of an S corporation must equal the shareholder's percentage

share of stock of the S corporation as of the end of the taxable year.

Sec. 21. 36 MRSA §5220, sub-§6, as amended by PL 1997, c. 404, §7 and affected by §10, is further amended to read:

6. Certain financial institutions. Every ~~taxable entity~~ financial institution, as defined by section 5206-B, ~~subsection 4, that is required to file a federal income tax return~~ 5206-D, subsection 8, that has Maine assets as defined by section 5206-D, subsection 12, or that realizes Maine net income as defined by section 5206-D, subsection 13. ~~The State Tax Assessor may allow 2~~ A financial institution that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group shall file, in addition, a combined report in accordance with section 5206-G. Two or more financial institutions that are required to file returns under this subsection, that are members of an affiliated group ~~to~~ and that are engaged in a unitary business shall file a ~~consolidated single return on which the aggregate state tax liability of all those financial institutions is reported, in which case intercompany eliminations must be made as necessary to avoid the duplication of income or assets.~~

Sec. 22. 36 MRSA §5227, as amended by PL 1995, c. 281, §31, is further amended to read:

§5227. Time and place for filing returns and paying tax

The income tax return ~~or franchise tax return~~ required by this Part must be filed on or before the date a federal income tax return, without regard to extension, is due to be filed. A taxpayer required to make and file such a return ~~under this Part~~ shall, without assessment, notice or demand, pay any tax due thereon to the assessor on or before the date fixed for filing such return determined without regard to any extension of time for filing the return.

Sec. 23. 36 MRSA §5241, as amended by PL 1995, c. 639, §22, is further amended to read:

§5241. Partnership and S corporation returns

Every partnership and S corporation with a resident partner or shareholder or with income derived from sources in this State, determined in accordance with the applicable rules of section 5142 as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction, the names and addresses of the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual and other pertinent information the State Tax Assessor may prescribe. Any return,

statement or other document required of a partnership must be signed by one or more partners. The appropriate return must be filed on or before the 15th day of the 4th month for partnerships or the 15th day of the 3rd month for S corporations following the close of each taxable year. For purposes of this section, "taxable year" means a year or period that would be a taxable year of the partnership or S corporation if it were subject to the tax under this Part. The assessor may elect to waive the requirement to file a Maine return as established in this section for a tax year and in its place require the partnership or S corporation to file a copy of its federal partnership or S corporation return. The requirement to file a return as established in this section does not apply to any partnership or S corporation that is subject to tax under chapter 819.

Sec. 24. Retroactive application. This Act applies to tax years beginning on or after January 1, 1997.

See title page for effective date.

CHAPTER 747

H.P. 1597 - L.D. 2226

An Act to Limit New Lobster and Crab Fishing Licenses

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

Sec. 1. 12 MRSA §6421-A is enacted to read:

§6421-A. Moratorium on new licenses

1. Moratorium. Notwithstanding section 6421, subsection 5, the commissioner may not issue a Class I, Class II or Class III lobster and crab fishing license to a person between the effective date of this section and December 31, 1999 unless that person:

A. Possessed a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year;

B. Possessed an apprentice lobster and crab fishing license issued prior to February 13, 1998 and meets the requirements of the apprentice program under section 6422; or

C. Did not possess a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included that previous calendar year.

2. Repeal. This section is repealed January 1, 2000.

Sec. 2. Report. The Lobster Advisory Council shall by January 1, 1999 submit to the joint standing committee of the Legislature having jurisdiction over marine resources matters a report, including recommended legislation, regarding limited entry into lobster management zones created under the Maine Revised Statutes, Title 12, section 6446. The council must examine methods to limit entry in individual lobster management zones for the purpose of conserving the lobster resource; assess the potential impact of those methods; and explore limitations on the use of lobster trap tags as a method to reduce fishing effort in the lobster fishery. In the course of its study, the council must, to the extent accurate information is available, compare the number of lobster licenses sold to the number of lobster license holders who harvest lobsters. Any recommendation for a system of limited entry must include a process under which a resident denied entry into the lobster fishery may appeal that denial to the Commissioner of Marine Resources. The council may also study any aspect of limited entry into the lobster fishery that is of interest to the council and the report may include recommended legislation. The joint standing committee of the Legislature having jurisdiction over marine resources matters may report out legislation during the First Regular Session of the 119th Legislature regarding limited entry into the lobster fishery.

See title page for effective date.

CHAPTER 748

H.P. 1635 - L.D. 2265

An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend the Shoreland Zoning Laws and Amend the Site Location of Development Laws

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

Sec. 1. 38 MRSA §420-C, as amended by PL 1997, c. 502, §1, is further amended by inserting after the first paragraph a new paragraph to read:

A person who owns property that is subject to erosion because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials shall take measures in accordance with the dates established under this paragraph to prevent unreasonable erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. Adequate and timely