

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

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J.S. McCarthy Company
Augusta, Maine
1997

CHAPTER 756

H.P. 562 - L.D. 753

**An Act to Require Law Enforcement
Agencies to Collect Data Regarding
Public Intoxication**

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Whereas, public intoxication is a serious problem that threatens the health and safety of the people of this State; and

Whereas, it is imperative that law enforcement agencies immediately begin to collect data in order to identify how to best address the problem of public intoxication and to determine how to get help for those persons who need treatment; 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. 17 MRSA §2005 is enacted to read:

§2005. Law enforcement agency responsibilities

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

A. "Intoxicated" means the state of having a disturbed mental capacity resulting from the introduction of alcohol, drugs or similar substances into the body.

B. "Public intoxication" means the state of being intoxicated in a public place.

C. "Public place" has the same meaning as provided in section 2003-A, subsection 1, paragraph D.

2. Records. A law enforcement agency shall keep records of all incidents of public intoxication that are reported in that law enforcement agency's jurisdiction.

3. Reporting. Beginning April 30, 1998 and monthly thereafter, each law enforcement agency shall submit a copy of its records of all known incidents of public intoxication to the Department of Public Safety. These records may not include individuals' names. Beginning June 30, 1998 and quarterly thereafter, the Department of Public Safety shall forward these records to the Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Substance Abuse. The records must include at least the following information:

A. The number of reported cases of public intoxication;

B. The number of persons who are reported more than one time pursuant to paragraph A;

C. The number of persons voluntarily transported to a state-licensed treatment facility or shelter as a result of reported incidents of public intoxication;

D. The number of persons voluntarily transported to their residence or left with a family member or friend as a result of reported incidents of public intoxication; and

E. The number of intoxicated persons left at the scene of the reported incident or at another public place.

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

Effective April 16, 1998.

CHAPTER 757

H.P. 1037 - L.D. 1454

**An Act to Amend the Prevailing
Wage Laws**

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

Sec. 1. 26 MRSA §1303, as amended by PL 1965, c. 406, §1, is further amended to read:

§1303. Public works; minimum wage and benefits

In the employment of laborers in the construction of public works, including state highways, by the State or by persons contracting ~~therewith~~ for such the

construction, preference ~~shall~~ must first be given to citizens of the State who are qualified to perform the work to which the employment relates; and, if they ~~cannot~~ can not be obtained in sufficient numbers, then to citizens of the United States. Every contract for ~~such work shall~~ public works construction must contain a provision ~~to this effect for employing~~ citizens of this State or the United States. The hourly wage and benefit rate paid to laborers employed in the construction of public works, including state highways, ~~shall be~~ may not be less than the fair minimum rate as determined in accordance with section 1308. Any contractor who knowingly and willfully violates this section ~~shall be punished by~~ is subject to a fine of not ~~more than \$100~~ less than \$250 per employee violation. Each day that any contractor employs a laborer at less than the wage and benefit minimum ~~herein stipulated shall constitute in this section~~ constitutes a separate violation of this section.

Sec. 2. 26 MRSA §1304, sub-§5, as corrected by RR 1995, c. 2, §65, is amended to read:

5. Fair minimum wage and benefits. "Fair minimum wage and benefits" means the prevailing wage and benefits as determined by the Director of the Bureau of Labor Standards according to section 1306.

Sec. 3. 26 MRSA §1304, sub-§9, as enacted by PL 1967, c. 403, is amended to read:

9. Prevailing wage and benefits. "Prevailing wage and benefits" ~~shall be~~ means the hourly wage and benefits paid to the median number of workers employed in a trade or occupation on the 2nd and 3rd week in September.

Sec. 4. 26 MRSA §1305, as repealed and replaced by PL 1967, c. 403, is amended to read:

§1305. Policy declared

It is declared to be the policy of the State ~~of Maine~~ that a wage of no less than the prevailing hourly rate of wages and benefits for work of a similar character in this State ~~shall~~ must be paid to all ~~workmen~~ workers employed in the construction of public works.

Sec. 5. 26 MRSA §1306, as corrected by RR 1995, c. 2, §66, is amended to read:

§1306. Fair minimum rate of wages and benefits; determination

The public authority shall, before advertising for bids for a public contract, ascertain from the Director of the Bureau of Labor Standards the fair minimum rate of wages and benefits to be paid by the successful bidder to the laborers, workers or mechanics employed in the performance of the contract. A schedule

of minimum wages and benefits must be attached to and made a part of the specifications for the construction and must be included in the bidding documents. The "fair minimum rate of wages and benefits," for the intent and purposes of sections 1304 to 1313, is the prevailing wage and benefits paid in the locality in like construction. The director or a delegated member of that bureau shall assemble the data as to wages paid by contractors employing 5 or more construction workers in the State during the 2nd and 3rd week of September of each year. From these data, the fair minimum wage and benefits for the following calendar year must be determined by the director. ~~A minimum wage~~ Minimum wages and benefits may not be established for any trade or occupation if fewer than 10 workers are employed in such a trade or occupation in the State in the 2nd and 3rd week of September.

The minimum wage ~~shall~~ and benefits must be established and filed as requested by the public authority within 30 days after such a request is received by the director. No minimum wage ~~shall~~ may be determined until January 1, 1968 and ~~shall~~ does not apply to the construction of public works then underway. When fair minimum wage and benefit rates are included and made a part of any contract, ~~such~~ the rate ~~shall~~ must remain unchanged during the time the contract is in effect.

Sec. 6. 26 MRSA §1307-A, as enacted by PL 1987, c. 786, §15, is amended to read:

§1307-A. Minimum wage and benefits rate on construction projects

The Director of the Bureau of Labor Standards ~~may~~ shall form an informal, ad hoc advisory board to advise the director with respect to issues relating to wage rates on construction projects. In forming this advisory board, the director shall select a person from labor engaged in the building trades, a person from labor engaged in the highway and heavy construction trades, a person from the highway and heavy contractors and a person from the building contractors. The board must consist equally of persons and contractors covered by collectively bargained labor agreements and those not covered by collectively bargained labor agreements.

Sec. 7. 26 MRSA §1308, as corrected by RR 1995, c. 2, §67, is amended to read:

§1308. Prevailing wages and benefits established at regular intervals; how determined

1. Determination of wage and benefit rates. The Bureau of Labor Standards shall investigate and determine the prevailing hourly wage and benefits rate paid in the construction industry in this State during the 2nd and 3rd week of September of each year.

Prevailing wages and benefits must be determined in September 1999 and become effective upon determination. In determining ~~such the~~ prevailing rates, the bureau may ascertain and consider the applicable wage and benefits rates established by collective bargaining agreements, if any, and those rates that are paid generally in the locality where the construction of the public works is to be performed. For purposes of this subsection, "benefits" means health and welfare contributions, pension or individual retirement account contributions and vacation and annuity contributions, per diem in lieu of wages and any other form of payment, except for wages, made to or on behalf of the employee. If a defined contribution amount is not established, the most accurate estimated value of contributions must be included.

2. Certified copies. A copy of any determination made at the request of the public authority ~~shall~~ must be certified by the director and ~~shall be~~ filed immediately with the public authority and with the Secretary of State. Copies ~~shall~~ must be supplied by the bureau to all persons requesting same within 10 days after ~~such the~~ filing.

3. Appeal. Any person affected by the determination of the director, whether or not ~~such that~~ person participated in the proceedings resulting in ~~such the~~ determination, may appeal to the commissioner from ~~such that~~ determination by filing a written notice with the commissioner stating the specific grounds of that person's objection within 10 days from the filing of the copy of the determination with the Secretary of State. The commissioner shall hold a hearing on the appeal, pursuant to Title 5, chapter 375, subchapter IV, within 20 days from the receipt of notice of appeal. The hearing by the commissioner must be held in Augusta. The commissioner has the authority to affirm, reverse or amend the determination of the director. The commissioner shall render a decision within 10 days after the conclusion of the hearing.

Sec. 8. 26 MRSA §§1309 and 1310, as repealed and replaced by PL 1967, c. 403, are amended to read:

§1309. Contract to contain provisions relative to rate of wages and benefits to be paid

In all cases ~~where when~~ a fair minimum wage ~~has and benefits have~~ been established, the contract between the public authority and the successful bidder ~~shall~~ must contain a provision requiring the successful bidder and all ~~his~~ subcontractors of the successful bidder to pay a rate or rates of wages ~~which shall and~~ benefits that are not be less than the fair minimum wage and benefits.

§1310. Wage and benefits rates to be kept posted

A clearly legible statement of all fair minimum wage and benefits rates to be paid the several classes of laborers, ~~workmen~~ workers and mechanics employed on the construction on the public work ~~shall~~ must be kept posted in a prominent and easily accessible place at the site ~~thereof~~ by each contractor and subcontractor subject to sections 1304 to 1313.

Sec. 9. 26 MRSA §1311, as amended by PL 1975, c. 59, §3, is further amended to read:

§1311. Wage and benefit record of contractor

The contractor and each subcontractor in charge of the construction of a public work shall keep an accurate record showing the names and occupation of each and all laborers, ~~workmen~~ workers and mechanics employed by them in connection with the construction on the public works showing the hours worked, the title of the job, the hourly rate and the actual wages paid to each of the laborers, ~~workmen~~ workers and mechanics. A copy of such a record ~~shall~~ must be kept at the job site and ~~shall~~ must be open at all reasonable hours to the inspection of the Bureau of Labor Standards and the public authority ~~which that~~ let the contract, its officers and agents. It ~~shall is~~ not be necessary to preserve ~~such those~~ records for a period longer than 3 years after the termination of the contract.

Sec. 10. 26 MRSA §§1312 and 1313, as repealed and replaced by PL 1967, c. 403, are amended to read:

§1312. Penalties for violation

1. Violation by contractor or subcontractor.

Any contractor or subcontractor who willfully and knowingly violates sections 1304 to 1313 ~~shall be~~ punished by a fine is subject to a forfeiture of not less than ~~\$50 nor more than~~ \$250.

2. Employees' remedies.

Any laborer, ~~workman~~ worker or mechanic engaged in construction of public works let to contract, who is paid less than the posted fair minimum rate of wages and benefits applicable ~~thereto~~, may recover from such a contractor or subcontractor the difference between the same and the posted fair minimum rate of wages; and in addition thereto, benefits a penalty equal in amount to ~~such the~~ difference; and reasonable attorney's fees; provided that however, the surety for ~~such the~~ contractor or subcontractor ~~shall is~~ not be liable for ~~such the~~ penalty or attorney's fees. The venue of such action shall be in the county where the work is performed. An honest mistake or error shall not be construed as a basis for recovery of the penalty sums and reasonable attorney fees under this subsection.

3. Unfair agreement.

~~No~~ A person ~~shall~~ may ~~not~~ request, demand or receive money or other thing

of value from an employee whose rate is determined by sections 1304 to 1313 upon the statement, representation or understanding that failure to comply with such request or demand will prevent the employee from procuring or retaining employment. ~~No~~ A person ~~shall~~ may not aid, directly or indirectly, assist or abet another to violate the ~~above prohibition~~ prohibitions of this subsection. Any person violating the prohibitions of this subsection ~~shall be punished by a fine~~ is subject to a forfeiture of not less than \$50 ~~nor more than~~ \$250.

~~Nothing herein shall~~ This section may not be construed to make unlawful any provision in a collective bargaining agreement between an employer and a labor organization ~~which that~~ relates, in any manner, to the conditioning of employment on union membership or on the payment of regular and periodic dues, or of initiation fees, to a labor organization.

§1313. Existing contracts

Sections 1304 to 1313 ~~shall~~ apply only to contracts for construction on public works let after January 1, 1968; and to construction on public works for which there has been determined the fair minimum wage and benefits rates as provided in sections 1304 to 1313; and ~~such that~~ determination has not been appealed ~~from~~ as provided by section 7.

Sec. 11. 26 MRSA §1314, as enacted by PL 1967, c. 403, is amended to read:

§1314. Exceptions

Whenever a public works construction is built in whole or in part by federal funds and is under the jurisdiction of the Davis-Bacon or other Federal Act ~~which that~~ requires the Secretary of Labor to establish the minimum wage and benefits and ~~such those~~ minimum wages and benefits are established by ~~him~~ the Secretary of Labor, sections 1304 to 1313 ~~shall~~ do not apply.

Sec. 12. 26 MRSA §1315, as corrected by RR 1995, c. 2, §68, is amended to read:

§1315. Cooperation with United States Department of Labor

The Bureau of Labor Standards may exchange wage and benefits finding information with the United States Department of Labor ~~where when~~ the Secretary of Labor is required to establish the minimum wage and benefits rates as defined in section 1314.

See title page for effective date.

CHAPTER 758

H.P. 1453 - L.D. 2044

An Act to Promote Access to Public Higher Education

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

Sec. 1. 20-A MRSA c. 208 is repealed.

Sec. 2. 20-A MRSA c. 208-A is enacted to read:

CHAPTER 208-A

POSTSECONDARY ENROLLMENT

§4771. Eligible institution; defined

As used in this chapter, unless the context otherwise indicates, "eligible institution" means the institutions of the University of Maine System, the Maine Technical College System and the Maine Maritime Academy.

§4772. Postsecondary courses; student eligibility

A secondary school student may be eligible to receive state subsidy for postsecondary courses, as specified in section 4775, if the following requirements are satisfied:

1. Availability. The eligible institution has space available for the secondary school student;

2. Academic standing. The student is maintaining a minimum secondary school grade point average of at least 3.0 on a scale of 4.0, or the equivalent of a "B" average, as determined by the school unit;

3. Course prerequisites. The eligible institution has determined that the student has satisfactorily completed all course prerequisites;

4. School approval. The school unit approves; and

5. Parental approval. The student's parent approves.

§4773. Dissemination of information

School administrative units shall provide general information concerning postsecondary education options available to parents and students.

§4774. Credits

1. High school credit. A school administrative unit may grant academic credit toward a high school