

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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NON-EMERGENCY LAWS IS
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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
1999

§772. Words of inheritance; habendum

1. Words of inheritance; habendum. In a conveyance or reservation of real estate, the terms "heirs," "successors," "assigns," "forever" or other technical words of inheritance, or an habendum clause, are not necessary to convey or reserve an estate in fee. A conveyance or reservation of real estate, whether made before or after the effective date of this section, must be construed to convey or reserve an estate in fee simple, unless a different intention clearly appears in the deed.

2. Preservation of rights. A person claiming an interest in real estate by reason of the omission of technical words of inheritance or the lack of an habendum clause in a deed that conveyed or reserved a property interest before October 7, 1967 may preserve that claim by commencing a civil action for the recovery of that property in the Superior Court or the District Court in the county or division in which the property is located on or before December 31, 2002.

3. Limitation. After December 31, 2002, a person may not commence a civil action for the recovery of property or enter that property under a claim of right based on the absence of an habendum clause or technical words of inheritance in any deed.

4. Construction of laws. This section may not be construed to extend the period for bringing of an action or for the doing of any other required act under any statute of limitations.

5. Liberal construction. This section must be liberally construed to effect the legislative purpose of clarifying title to land currently encumbered by ancient deeds that lacked technical words of inheritance or an habendum clause.

See title page for effective date.

CHAPTER 70

S.P. 203 - L.D. 592

An Act to Establish the Chesuncook Soil Series as the Official State Soil and to Remove Enhanced Protection Status from State Symbols

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

Sec. 1. 1 MRSA §§222 and 223 are enacted to read:

§222. State soil

The Chesuncook soil series, a coarse-loamy, mixed, frigid, Typic Haplorthod, is the official state soil.

§223. No enhanced protection

Designation as a state symbol under this subchapter does not confer enhanced protection under the environmental laws or any other applicable laws.

See title page for effective date.

CHAPTER 71

H.P. 373 - L.D. 498

An Act Relating to Transfer of Ownership of Dams

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

Whereas, several dams in the State are presently in the process of being transferred to private owners; and

Whereas, there are presently no systems in place to ensure that the persons who take ownership of the dams have adequate insurance to cover losses in the event of a dam failure or a significant flood; and

Whereas, it is imperative that the State take immediate steps to ensure that dam owners have adequate insurance and proper safety plans with respect to these dams; and

Whereas, the safe operation of dams is essential to the safety of a large number of communities below the dams; and

Whereas, the transfer of dams involving inter-local agreements with municipalities depends upon funding assistance through the state-municipal revenue sharing program; 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. 37-B MRSA §1065, as amended by PL 1997, c. 517, §1 and affected by §4, is further amended to read:

§1065. Inspection of dams

1. Inspection. ~~By June 1, 1995, the~~ The director shall, at a minimum, inspect:

- A. All dams ~~which that~~ are listed in the 1981 United States Army Corps of Engineers' Inventory of Dams in the United States as "high" and "significant hazard" dams in the State;
- B. Any other new or existing dam that may, in the judgment of the director, constitute a potential threat to public safety; and
- C. Any dams identified by the director under section 1070, subsection 2.

The purpose of the inspections ~~shall be~~ is to reevaluate and ascertain the downstream hazard classification of each dam.

2. Hazard classification. Each dam inspected under this section ~~shall must~~ be classified pursuant to the hazard potential of the dam. The principal criterion used to determine the hazard classification of the dam ~~shall must~~ be the potential risk to public safety and property downstream of the dam ~~which that~~ may be affected directly or indirectly by the failure of the dam. The standards of classification of dams ~~shall must~~ be the same as those adopted by the United States Army Corps of Engineers, as set forth in 33 Code of Federal Regulations, Chapter II, and all subsequent amendments thereto.

3. Report. A state dam inspector shall write and issue a report making a recommendation regarding the classification of each dam to the director. A copy of the report ~~shall must~~ be provided to the dam owner of record and forwarded by certified mail. The dam owner shall notify the agency within 30 days of receipt of the report if the owner disagrees with the conclusions of the State's classification recommendation. If the owner of the dam does not agree with the results and recommendations of the dam inspector, the owner may at the owner's expense have a registered professional engineer conduct an independent investigation to determine the hazard classification of the dam. The dam owner shall provide the results of this independent investigation to the director within 6 months of receipt of the original report. The owner may apply for and be granted an extension of this deadline by the director for good cause. A state dam inspector shall review and consider the information provided by the owner's report pertaining to the classification of the dam and may issue a new classification recommendation.

After reviewing all available data, the director shall then determine the classification of the dam.

The director shall reevaluate the hazard classification of a dam ~~at least once every 6 years~~ on the following schedule and, if necessary, reclassify the dam to

account for the possibility that conditions downstream of the dam may have changed:

- A. At least once every 6 years; and
- B. Within 30 days of receiving a notice of transfer of ownership of a high or significant hazard dam pursuant to section 1071, unless the hazard classification has been evaluated within 4 years preceding the proposed transfer.

4. Ascertain conditions of dam. A state dam inspector shall also conduct on-site inspections of the dams inspected under subsection 1 to determine if the integrity, structural stability and function of the dams constitute a threat to public safety downstream of the dams. A state dam inspector shall issue a report on the material condition of each dam ~~which shall that must~~ describe in detail any material condition ~~which that~~ constitutes a threat to public safety. The engineering process, mathematical calculations and complete documentation justifying the assessment of the current material condition ~~shall must~~ be provided to the director. The director shall conduct on-site structural stability inspections of all dams in the State classified as high or significant hazard dams on the following schedule:

- A. At least once every 6 years; and
- B. Within 30 days of receiving a notice of transfer of ownership of a high or significant hazard dam pursuant to section 1071, unless the hazard classification has been evaluated within 4 years preceding the proposed transfer.

5. Correction of unsafe conditions. After receiving a report on a dam from a state dam inspector, if the director determines that a dam is an imminent threat to the safety of the public, the director may order the owners, lessees or persons in control of the dam to make alterations to the dam or its operations, including, but not limited to:

- A. Breach or removal of the dam;
- B. Repair or maintenance of the dam;
- C. Operation of the dam in a specified manner;
- D. Preparation of and adherence to an emergency operations plan satisfactory to the agency; or
- E. Maintenance of appropriate records relating to water levels, dam operation and dam maintenance.

When the director issues an order under this subsection, the director shall ensure that a state dam inspector is available to provide technical assistance to the

owners, lessees or persons in control of the dam and to the municipality in which the dam is located.

6. Inspection costs of transferred dam. If the inspection of a dam is conducted as a result of a transfer of ownership of a high or significant hazard dam and the agency is required to incur additional inspection costs in order to meet the inspection deadlines pursuant to this section, the owners, lessees or persons in control of the dam are responsible for any additional inspection costs incurred by the agency in conducting the inspection of the dam or reevaluating the hazard classification of the dam.

Sec. 2. 37-B MRSA §1071 is enacted to read:

§1071. Notice of transfer of ownership

Forty-five days prior to any change of ownership of a dam, whether by sale, lease or gift, the owner or owners of a dam classified as a high or significant hazard dam shall provide the name and address of the prospective new owner or owners to the director along with any plan that the prospective new owner has with regard to maintaining competent operations and correcting any unsafe conditions. For purposes of this section, "competent operations" means properly and safely maintaining the dam and ensuring compliance with all safety, environmental and water level rules or orders.

Sec. 3. Notice of revised inspection requirements. The Maine Emergency Management Agency shall provide notice of revised inspection requirements to all owners of dams classified as high or significant hazard dams within 30 days of the effective date of this Act.

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

Effective April 16, 1999.

CHAPTER 72

S.P. 316 - L.D. 950

**An Act to Consolidate and Improve
Agricultural Market Research and
New Technology Grants in the
Department of Agriculture, Food and
Rural Resources to Encourage
Economic Development of Maine
Farms and Food Processors**

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

Whereas, improvements in grant programs administered by the Department of Agriculture, Food and Rural Resources are needed to optimize benefits to agricultural industries of this State; and

Whereas, grants awarded can assist in adapting new technology and improved marketing of Maine agricultural products; and

Whereas, changes must be made to facilitate the grant process prior to soliciting applications and awarding grants; 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. 7 MRSA §125, sub-§7, as enacted by PL 1997, c. 711, §5, is amended to read:

7. Long-range plan. ~~By November 1, 1998~~ January 15, 2000, the board shall establish a long-range plan for operation of the Agricultural Experiment Station and the Cooperative Extension Service programs that includes but is not limited to plans for each of the research farms, joint appointments for experiment station and extension faculty, better utilization of research farms and objectives for research for each agricultural commodity in the State. The plan developed by the board does not include operations, research and programs relating to forestry, wildlife, aquaculture and fisheries.

Sec. 2. 7 MRSA c. 10 is amended by repealing the headnote and enacting the following in its place:

CHAPTER 10

AGRICULTURAL DEVELOPMENT GRANT PROGRAM

Sec. 3. 7 MRSA §305, as enacted by PL 1987, c. 402, Pt. A, §77, is repealed.

Sec. 4. 7 MRSA §306, as enacted by PL 1987, c. 402, Pt. A, §77, is repealed.

Sec. 5. 7 MRSA §306-A is enacted to read:

§306-A. Agricultural Development Fund

1. Agricultural Development Fund. The commissioner shall establish an agricultural development fund to accelerate new market development.