

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
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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

Sec. 2. 33 MRSA §1954-A is enacted to read:

§1954-A. Retention of property with historic value

1. Historic significance. The administrator may retain any tangible property delivered to the administrator, if the property has exceptional historic significance. The historic significance must be certified by the administrator with advice from the State Historian, the State Archivist, the State Librarian and the Director of the Maine State Museum. A statement of the appraised value of the property must be filed with the certification. Historic property retained under this subsection must be stored or displayed at the Maine State Museum, the Maine State Library or other suitable locations.

2. Owner's property rights. Nothing in this section affects the right of the owner to recover the property or its value.

See title page for effective date.

CHAPTER 295

H.P. 779 - L.D. 1102

**An Act to Reduce the Limitations on
Nonprofit Organizations Holding
Games of Chance**

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

Sec. 1. 17 MRSA §332, sub-§4, ¶B, as repealed and replaced by PL 1987, c. 314, §2, is amended to read:

B. No other licensee may operate a game of chance on premises to which the general public has access. In any room where a licensed game of chance is being conducted, there ~~shall~~ must be at least one member of the licensee present in that room for every 2 nonmembers who are present. That member ~~shall~~ must have been a member of the licensee for at least one year. ~~No~~ A member of the licensee, either directly or through another member or guest, may not stake or risk something of value in the licensee's game of chance unless the member has been a member, as defined in section 330, subsection 3-B, of the licensee for at least 14 days not including the day of admission into membership.

A bona fide nonprofit organization may operate a licensed game of chance, to which the general public has access, once every ~~6~~ 3 months for a period not to exceed ~~3~~ 2 consecutive days. The licensed game of chance may be operated at any

location described in the license and ~~shall~~ may be conducted only by members of the licensee.

See title page for effective date.

CHAPTER 296

H.P. 931 - L.D. 1308

**An Act to Clarify Roles and
Responsibilities in the Child
Development Services System**

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

Whereas, this Act ensures that early intervention services and free appropriate public education services for eligible children with disabilities will continue to be made available; 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. 20-A MRSA §7725, sub-§4, ¶¶C
and D,** as enacted by PL 1997, c. 534, §6, are repealed and the following enacted in their place:

C. For children from birth to under age 3:

(1) Developmental delays, as measured by both diagnostic instruments that are criterion-based or norm-referenced and appropriate procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development, with the delay being such that the child needs early intervention services;
or

(2) A diagnosed physical or mental condition that has a high probability of resulting in developmental delay, with the condition being such that the child needs early intervention services; or

D. For children age 3 to under age 6, evaluated in accordance with 34 Code of Federal Regulations, 300.530-534, as measured by both standardized, norm-referenced diagnostic instru-

ments and appropriate procedures with the delay or impairment being such that the child needs special education and related services:

(1) Significant developmental delays in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development; or

(2) Mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; specific learning disabilities; deafness and blindness; or multiple disabilities.

Sec. 2. 20-A MRSA §7725, sub-§7, as amended by PL 1993, c. 625, §3, is further amended to read:

7. Intermediate educational unit. "Intermediate educational unit," ~~as defined~~ means an entity that meets the definition of intermediate educational unit in the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., means any 1401, (22) as in effect prior to June 4, 1997, and that is a public authority, other than a local educational agency, under the general supervision of a state educational agency, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to handicapped children within the State.

Sec. 3. 20-A MRSA §7727, sub-§2, as amended by PL 1995, c. 662, §1, is further amended to read:

2. Plan. The department shall submit the State's plan for meeting the requirements of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., to the Federal Government. ~~The~~ Except as otherwise provided in this chapter, the State's plan may not require services that exceed minimum federal requirements.

Sec. 4. 20-A MRSA §7727, sub-§4, as amended by PL 1993, c. 625, §3, is further amended to read:

4. Contracts. The department may enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter.

The department shall contract with the board of directors of a private nonprofit corporation for no fewer than 3 years and approve an annual entitlement plan with the board of directors of a regional intermediate educational unit for the purpose of ensuring coordinated service delivery in each region of the State.

Contracts with boards of directors of private nonprofit corporations or plans of regional intermediate educational units must ensure:

A. That screening, evaluation and referral services, at no cost to the family, are accessible to all children, from birth to under age 6;

B. That preschool children with disabilities, from age 3 to under age 6, have free, appropriate public education services available to them at no cost to the family; and

C. That infants and toddlers, from birth to under age 3, have early intervention services available to them by July 1, 1994 through 3rd-party payment or through a system of payments by families, including a schedule of sliding fees.

The department, in a manner consistent with and with due respect for the authority of the regional site boards of directors under section 7731, shall review and approve each regional site's budget to ensure compliance with federal and state program requirements and to ensure that the budget is within the allocations of the funding formula and other anticipated revenues.

Sec. 5. 20-A MRSA §7727, sub-§4-A is enacted to read:

4-A. Site funding. The department shall make annual grant awards from available funds to regional intermediate educational units in accordance with a funding formula developed by the department in consultation with the regional sites and adopted by rule.

A. The funding formula must include consideration of the costs associated with the following functions: administration; childfind; case management; and provision of other services. The funding formula must take into consideration other factors, which may include but are not limited to a regional site's geographic area, the general population of children from birth to under age 6, child count, Medicaid eligibility rate and cost containment measures.

B. The formula may allocate a portion of total funds, not to exceed 8% of the State's general fund appropriation for the Child Development Services System, for distribution to the regional sites based on unanticipated changes in costs or

amount of mandated services provided during the fiscal year. The formula may also include a provision to limit the magnitude of gain or loss of funds a site will experience from one fiscal year to the next.

C. The rule establishing the funding formula is a major substantive rule as defined in Title 5, chapter 375, subchapter II-A.

Sec. 6. 20-A MRSA §7731, sub-§2, as amended by PL 1995, c. 662, §4, is further amended to read:

2. Employees. Employ qualified professional and other staff at the local site. The board of directors has the authority to hire, fire and supervise the staff of the regional site and to develop and adopt personnel policies and salary scales for its employees. Professional therapists may be employed as site staff when the board and the state intermediate education unit find that:

A. Site staff therapists are needed to perform evaluations of children to ensure appropriate service plans;

B. Therapists serving children on a contractual basis are unable to provide required services within timeout mandated by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.; or

C. Site staff therapists are able to provide services comparable to those provided by contract therapists at an identifiable savings to the Child Development Services System, as determined by the commissioner;

Sec. 7. 20-A MRSA §7731, sub-§6, as amended by PL 1997, c. 534, §11, is further amended to read:

6. Contracts. ~~Subject to the approval of the department, enter~~ Enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter, except that the board shall provide to the department copies of any contract for review upon the department's request and shall obtain prior department approval of the prototype for provider contracts, any multi-year leases and any memoranda of understanding with other entities. Regional site boards of directors shall consider collaboration with school administrative units that are operating or that wish to develop, pursuant to section 4253 or 7734-A, early childhood programs in the regional board's catchment area in order to:

A. Maximize the benefit of state interdepartmental agreements and efforts;

B. Maximize the effective use of qualified personnel, facilities and other resources;

C. Ensure consistent quality of early childhood programming; and

D. Facilitate the transition process, for children and families, from the Child Development Services System to the public school system;

Sec. 8. 20-A MRSA §7732-A, sub-§6, as enacted by PL 1993, c. 625, §10, is amended to read:

6. Individual plan. Coordinate with eligible families the development of individual family service plans with eligible families that include all federally required components of the individualized education program, or coordinate an individualized education program, if preferred by the parent of a child age 3 to under age 6;

Sec. 9. 20-A MRSA §7732-A, sub-§9, as amended by PL 1995, c. 662, §5, is further amended to read:

9. Medicaid cost reimbursement. Following ~~certification by enrollment with~~ the Bureau of Medical Services within the Department of Human Services, seek reimbursement, ~~whenever feasible~~, for targeted case management and for other Medicaid reimbursable services provided by regional site employees; and

Sec. 10. 20-A MRSA §7734-A, first ¶, as amended by PL 1997, c. 534, §16, is repealed and the following enacted in its place:

In addition to the programs authorized in this chapter, school administrative units may provide services for children who are disabled in a manner consistent with sections 4251 to 4254, and the cost of such services is subsidizable as special education costs under chapter 606.

Sec. 11. Pilot projects. Notwithstanding the Maine Revised Statutes, Title 20-A, chapter 307-A, the Commissioner of Education, after consultation with adjoining regional sites and providing opportunity for public comment, may approve up to 10 pilot projects to operate year-round under which a school administrative unit may assume any of the obligations listed in Title 20-A, section 7732-A within its geographic area. In approving pilot projects, the commissioner may authorize the provision of services to children from 3 years of age to under 6 by the school administrative unit and may grant federal and state funds to the school administrative unit in amounts proportionate to and consistent with amounts allocated to regional sites under the funding formula

adopted pursuant to Title 20-A, section 7727, subsection 4-A.

A parent whose child is receiving services when a pilot project is approved under this section may request that service providers continue to serve the child. The unit shall respond to the request within 14 days; the decision of the unit is final. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over educational matters on the implementation of the pilot projects not later than December 1st in any year in which a pilot project is in operation.

Sec. 12. Adoption of funding formula.

The major substantive rule adopting the funding formula, pursuant to the Maine Revised Statutes, Title 20-A, section 7727, subsection 4-A must be presented by the Department of Education for legislative review in the First Regular Session of the 120th Legislature, except that the Commissioner of Education may adopt by rule a funding formula for each of the state fiscal years 1999-00 and 2000-01 as an emergency rule pursuant to Title 5, section 8073. The commissioner shall report to the Joint Standing Committee on Education and Cultural Affairs by February 15, 2000 on the funding formula for fiscal year 1999-00.

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

Effective May 24, 1999.

CHAPTER 297

S.P. 378 - L.D. 1079

An Act to Establish a Framework for Management of Emerging Fisheries

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

Sec. 1. 12 MRSA §6171-B is enacted to read:

§6171-B. Sustainable development of emerging fisheries

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

A. "Emerging fishery" means the commercial fishing for any marine organism, except shrimp, herring and groundfish species, that requires a commercial fishing license issued under section 6501.

B. "Endorsement" means an authorization, identified on a commercial fishing license issued under section 6501, to harvest, possess, transport and sell a specific marine organism for which there is an emerging fishery.

2. Determination of sustainability. The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the Marine Resources Advisory Council, may require a person to hold an endorsement to participate in an emerging fishery if the commissioner determines that a marine organism or its habitat is under increasing pressure that could impact its sustainability. The commissioner shall ensure that emerging fisheries do not develop at a rate that is not sustainable on a long-term basis.

Harvesters involved in an emerging fishery may petition the commissioner to investigate the sustainability of that emerging fishery.

3. Eligibility for endorsements. The commissioner may limit the number of endorsements issued to control the number of individuals engaged in commercial harvesting in an emerging fishery, based on criteria established by rule. The commissioner may require the collection and timely reporting of any biological or environmental data as a condition of the endorsement. The commissioner's authority to limit the number of endorsements issued for a specific marine organism is limited to a period of 3 years from the date of the issue of the first endorsement, renewable for one 3-year extension.

4. Endorsement required. Notwithstanding section 6501, a person may not fish for, take, possess, ship, transport or sell a marine organism for which an endorsement is required pursuant to subsection 2 unless that person holds a current commercial fishing license with an endorsement for that organism, except that a license with an endorsement is not required for that person to fish for, take, possess or transport the organism only for personal use.

A fee may not be charged for an endorsement required pursuant to this section.

5. Incidental harvest. Notwithstanding subsection 4, the taking or possession at sea of a marine organism for which an endorsement is required is not prohibited if the taking is incidental to the harvesting of another organism.

6. Rule-making authority. The commissioner may adopt rules to establish eligibility for endorsements, the number of endorsements issued and reporting requirements. Rules authorized by this section must be adopted and amended in accordance with the procedures outlined in subchapter II and are