

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
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J.S. McCarthy Company
Augusta, Maine
2001

such speed limits. The nature, extent and form of that data must be acceptable to the department and may include, without limitation, the reason for the request, length and location of the proposed speed zone, road width, number of drive-ways in that zone, traffic volume, posted speed, prevailing speed as measured by radar, accident history and speed enforcement efforts.

See title page for effective date.

CHAPTER 314

H.P. 1204 - L.D. 1626

An Act to Make the Laws Affecting Certain Bridges Consistent with Federal Law

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, the Department of Transportation's biennial transportation program takes effect July 21, 2001; and

Whereas, in order for the Department of Transportation's laws to be consistent with the biennial transportation program, this legislation must be an emergency; 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Sec. 1. 23 MRSA c. 9, sub-c. VII, as amended, is repealed.

Sec. 2. 23 MRSA c. 9, sub-c. IV-A is enacted to read:

SUBCHAPTER IV-A

LOCAL BRIDGES

§561. Applicability

This subchapter applies to all minor spans and bridges, as those terms are defined in this subchapter, that are located on public ways classified as town ways or state aid highways pursuant to section 53, excluding railroad bridges, bridges over the Maine Turnpike, bridges over interstate highways and bridges over state highways and state aid highways.

§562. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Average annual daily traffic. "Average annual daily traffic" or "AADT" means the average annual daily traffic as determined by the department using accepted engineering practices.

2. Bridge. "Bridge" means a structure, including supports, designed principally to carry motor vehicles that is erected over a depression or an obstruction, such as water, a highway or a railway, and has an opening measured along the center of the roadway of more than 20 feet between the undercropping of abutments or spring lines of arches or the extreme ends of openings for multiple boxes. It also includes multiple pipes when the clear distance between openings is less than 1/2 of the smaller contiguous opening. Issues arising regarding the definition of "bridge" must be resolved in accordance with the method specified in a publication entitled "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" published by FHWA, or any subsequent replacement publication by FHWA. "Bridge" is defined in accordance with the FHWA definition.

3. Capital improvement. "Capital improvement" means the creation of, addition to or restoration of structural or functional capacity of a structure. "Capital improvement" includes construction of new structures, replacement of existing structures, removal of closed structures and rehabilitation of existing structures. Rehabilitation differs from maintenance in that it makes comprehensive structural or functional improvements that impact serviceability for at least 20 years, whereas similar maintenance is restricted to repairs to individual members of a structure or isolated areas of a structure. "Capital improvement" includes the cost of property acquisition, permitting, design, construction, traffic control, supervision and administration and all related costs.

4. Capital responsibility. "Capital responsibility" means the responsibility to provide all resources needed to make capital improvement to a structure.

5. Culvert. "Culvert" means any pipe or other structure that has a span of less than 10 feet or multiple pipes or other structures with a combined opening of less than 80 square feet in area.

6. Detour length. "Detour length" means the shortest distance measured along a public way from one abutment of a bridge to the other abutment that would result if the bridge were closed.

7. Federal Highway Administration. "Federal Highway Administration" or "FHWA" means an agency of the United States Department of Transportation.

8. Low use bridge. "Low use bridge" means a bridge with an AADT of under 100 motor vehicles.

9. Maintenance. "Maintenance" means the work necessary to preserve a structure's existing structural or functional capacity and integrity and to abate deterioration of its components. Maintenance is not intended to increase or fully restore structural or functional capacity. Maintenance is performed to ensure safety of a user of the structure or the structure in response to vehicular accident damage, flood damage of ice damage or unanticipated component failure. Maintenance normally is scheduled for routine operations or to address limited deficiencies found in periodic inspections.

10. Maintenance responsibility. "Maintenance responsibility" means the responsibility to provide all resources needed to perform maintenance on a structure. "Maintenance responsibility" does not include snow and ice control.

11. Minor span. "Minor span" means a structure designed principally to carry motor vehicles that is larger than a culvert but has a span less than that required to be defined as a bridge.

12. Municipality. "Municipality" means any unit of municipal government, including towns, cities, plantations and unorganized townships. "Municipality" includes departments or bureaus of State Government and quasi-independent agencies or boards of State Government that are responsible for structures on public highways, excepting the Maine Turnpike Authority. In cases of unorganized townships, "municipality" means county.

13. Property valuation. "Property valuation" means the value of all taxable property in a municipality based upon 100% of the current market value as determined by the State Tax Assessor.

14. Redundant bridge. "Redundant bridge" means a bridge in which the AADT multiplied by the detour length in miles is less than 200.

15. Structure. "Structure" means a bridge or minor span.

§563. Inspection, posting and closure

The department shall inspect all structures.

1. Municipal-maintained structures. For a structure for which a municipality has maintenance responsibility, the department shall advise the municipality of its inspection findings, noted deficiencies and recommendations regarding posting or closure. The municipality has sole responsibility and authority to determine whether a structure must be posted or closed, except that the department may close the structure in cases of emergency or when the department reasonably determines closure is necessary to protect the traveling public from imminent hazard. If the department becomes aware of deficiencies in a structure that could impact posting or closure decisions, the department shall promptly notify the municipality. The municipality is responsible for all costs and expenses related to the posting and closure, including any needed notifications, procedures, signing and barricades.

2. Department-maintained structures. For a structure for which the department has maintenance responsibility, the department has sole responsibility and authority to determine whether the structure must be posted or closed, except that a municipality may close the structure in cases of emergency. If the municipality becomes aware of deficiencies in a structure that could impact posting or closure decisions, the municipality shall promptly notify the department. The department is responsible for all costs and expenses related to the posting and closure, including any needed notifications, procedures, signing and barricades.

§564. Minor spans

The department has maintenance responsibility and capital responsibility for all minor spans on state aid highways, unless provided otherwise pursuant to section 566, subsection 5.

A municipality has maintenance responsibility and capital responsibility for all minor spans on town ways except as provided otherwise pursuant to section 566, subsection 5. For a minor span located on a town line, the municipalities shall equally share capital responsibility unless the municipalities agree otherwise.

Upon request by a municipality, the department shall provide limited technical advice regarding repair

and capital improvement options without assuming any cost of or liability to the municipality.

§565. Bridges

1. Generally. The department has maintenance responsibility and capital responsibility for all bridges on state aid highways and town ways except as provided in subsection 2 or unless provided otherwise pursuant to section 566, subsection 5.

2. Low use or redundant bridges on town ways. A municipality has maintenance responsibility for all low use bridges on town ways and all redundant bridges on town ways.

For the capital improvement of a low use bridge on a town way or a redundant bridge on a town way located wholly within one municipality, the municipality shall pay 50% of the cost or 1% of its property valuation, whichever is less. For a bridge located on a town line, each municipality shall pay 25% of the cost of the capital improvement or 1% of its property valuation, whichever is less, unless the municipalities and the department agree otherwise. The department shall pay the remaining portion of the cost of the capital improvement.

§566. Changes affecting responsibilities

1. Changes to structures. If a structure is improved in a manner that affects whether it is defined as a minor span or a bridge, the responsibilities set forth in this subchapter regarding the structure do not change unless the department determines that there exists a reasonable engineering basis for the improvement.

2. New structures. If a municipality constructs a new bridge on a town way, the department shall assume the responsibilities set forth in the subchapter only if the department determines that there is a reasonable engineering basis for the bridge, as opposed to a minor span, and if the department approves the design and construction of the bridge.

3. Changes to classification of road. If the department changes the classification of the road carried by the structure, the responsibilities regarding the structure change in accordance with this subchapter.

4. Changes to federal definition of bridge. If FHWA changes its definition of "bridge," the responsibilities change in accordance with this subchapter regarding structures affected by that change.

5. Special finding by commissioner. Upon application by a municipality or upon the department's initiative, the commissioner, after notice and opportunity to be heard, may alter responsibilities set forth in

this subchapter upon a finding that special and unusual factual circumstances related to the structure or its location justify the alteration.

§567. Bridge capital improvement priorities

The department shall biennially prepare a list of bridges that are eligible for capital improvement under this subchapter, arranged in priority order using accepted bridge management principles and as constrained by available funding. The department is the final arbiter as to whether any bridge is placed on the list. The department shall consult with municipalities regarding the manner of improving low use bridges on town ways and redundant bridges on town ways.

§568. Emergency improvements

In case of an emergency as determined by the department, the department may perform any maintenance or capital improvement to a structure.

Sec. 3. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

	2001-02	2002-03
TRANSPORTATION, DEPARTMENT OF		
Local Bridges		
All Other	(\$250,000)	(\$250,000)
Capital Expenditures	(1,192,000)	(1,192,000)
Total	(1,492,000)	(1,492,000)
Deallocates funds to reflect the transfer of capital and maintenance responsibilities for all minor spans that are on town ways to municipalities.		
Highway and Bridge Improvements		
Capital Expenditures	261,000	261,000
Allocates funds to reflect the transfer of responsibility for certain bridges from municipalities to the Department of Transportation.		
Bridge Maintenance		
All Other	131,000	131,000
Allocates additional funds to reflect the transfer of responsibility for certain		

bridges from municipalities to the Department of Transportation.

DEPARTMENT OF TRANSPORTATION	(\$1,100,000)	(\$1,100,000)
TOTAL		

Sec. 4. Retroactivity. This Act applies retroactively to July 1, 2001.

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

Effective May 30, 2001.

CHAPTER 315

S.P. 564 - L.D. 1724

An Act to Provide for Remediation of Abandoned Landfills

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

Sec. 1. 38 MRSA §1310-D, as amended by PL 1993, c. 732, Pt. C, §§6 to 10, is further amended to read:

§1310-D. Closure of open-municipal landfills

The provisions of this article govern open-municipal solid waste landfills.

1. Landfill ranking. The department shall create and maintain a list of all open-municipal solid waste landfills ranked on the basis of the hazard each poses or potentially poses to the public health and environment. The list must establish no less than 2 categories of landfills: "high risk" landfills, which include those landfills that are known to pose a public health or environmental threat so immediate or substantial that corrective action must be taken without delay, and landfills that are not known to be "high risk." The department shall inform each affected municipality in writing whenever there are changes made to the priority list and publish the most current version of that list on or about February 1st of each year. All pertinent and related rules adopted by the department establishing standards governing landfill ~~remediation and~~ closure must be designed so that the costs of ~~remediation and~~ closure are coordinated with and reasonably proportionate to the relative public health risk and environmental risk indicated by the specific rank of the municipal landfill.

2. Evaluation. In response to the priorities established in the open-municipal solid waste landfill

ranking and the objectives of paragraphs A to C, the commissioner shall conduct, subject to the availability of funding, environmental evaluations of each open-municipal solid waste landfill. The commissioner may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The commissioner may utilize existing analyses of facilities, subject to the provisions of this subsection. Municipalities shall cooperate with the efforts of the department by providing reasonably available and relevant material that the department may require with regard to the purposes of this section. When the commissioner has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, the commissioner may designate the landfill as a high-risk landfill and take measures necessary to effect proper ~~remediation and~~ closure of the landfill, notwithstanding the site's listed priority. In those cases, the commissioner shall ensure that the requirements of this subsection are met. The commissioner shall ensure that each evaluation achieves the following objectives:

- A. To identify the actual hazards, if any, to the environment and public health posed by the landfill and to determine the closure ~~and remediation~~ requirements of the landfill;
- B. When appropriate, to establish a monitoring system, which may include monitoring wells and test borings sufficient to ensure identification and monitoring of potential hazards;
- C. When potential hazards are identified, to provide:
 - (1) A complete description of the movement of surface waters, ground waters and landfill gases on or near the landfill;
 - (2) An identification of pollutants in those waters;
 - (3) An evaluation of the scope, direction and rate of movement of the contamination plume, if any; and
 - (4) Any other information that the commissioner determines necessary to prepare the closure ~~or remediation~~ recommendations pursuant to this subchapter;

D. To provide a recommended closure plan for the landfill ~~and, when necessary, a recommended plan for the remediation of any hazards identified by the evaluation.~~ Closure ~~and remediation~~ recommendations must ensure a level or standard of control of pollutants in surface waters at least as stringent as the water quality criteria established under chapter 3, subchapter I, article 4-A. Those recommendations must also seek to achieve a