

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

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
2002

~~disease. The department shall adopt rules regarding the health of staff as required to protect the health and safety of the children. The rules must include a requirement that every 2 years each licensee, administrator or other staff member of the nursery school who provides care for children be declared free from communicable disease by a licensed physician, except that this requirement may be waived for a person who objects on the grounds of sincerely held religious or philosophical belief. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

B. Drinking water ~~which~~ that is taken from sources other than a public water system ~~shall~~ must pass a test for bacteria, nitrates and nitrites every year and ~~shall~~ must pass a partial chemical test every 4 years.

C. The nursery school ~~shall carry~~ carries minimum liability insurance of \$100,000 per person and \$300,000 per occurrence.

~~D. During any nursery school session there shall be at least one adult present for every 12 children. When only one adult is present, another responsible adult shall be on call and available in case of any emergency.~~

E. The nursery school ~~shall meet~~ meets, annually, the fire safety requirements specified in section 8403, subsection 2.

~~F. The nursery school shall comply with rules and regulations for the administration of medication as established by the department.~~

Sec. 11. ~~22 MRSA §8402, sub-§6~~, as enacted by PL 1975, c. 709, §2, is amended to read:

6. Relationship to licensing of child care facilities. ~~No facility licensed as a A nursery school shall be required to must be licensed as a day child care facility; but any facility licensed as a nursery school may also be licensed as a day care facility, if the nursery school complies with the law and rules applicable to day care facilities under chapter 1673.~~

See title page for effective date.

CHAPTER 646

H.P. 1524 - L.D. 2028

An Act to Provide Retirement Equity for Capital Security Officers

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

Whereas, the 1998 Special Plan was enacted to provide appropriate retirement benefits to state employees engaged in public safety and law enforcement activities; and

Whereas, as a matter of equity capital security officers should be eligible for the same retirement benefits under the 1998 Special Plan as other state employees engaged in public safety and law enforcement activities; and

Whereas, eligibility to participate in the 1998 Special Plan will assist in the recruitment and retention of capital security officers in this period of heightened awareness of the need for qualified security employees; 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. **5 MRSA §17851-A, sub-§1, ¶L**, as enacted by PL 2001, c. 409, §2, is amended to read:

L. Oil and hazardous materials emergency response workers in the employment of the Department of Environmental Protection, Division of Response Services who participate in a standby rotation on January 1, 2002 or are hired thereafter; and

Sec. 2. **5 MRSA §17851-A, sub-§1, ¶M** is enacted to read:

M. Capital security officers in the employment of the Department of Public Safety, Bureau of Capital Security on July 1, 2002 or hired thereafter.

Sec. 3. **5 MRSA §17851-A, sub-§2**, as amended by PL 2001, c. 409, §3, is further amended by amending the first paragraph to read:

2. Qualification for benefits. A member employed in any one or a combination of the capacities specified in subsection 1 after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; after June 30, 2002 for employees identified in paragraph M; and any employee identified in subsection 1, paragraph L,

qualifies for a service retirement benefit if that member either:

Sec. 4. 5 MRSA §17851-A, sub-§2, as amended by PL 2001, c. 439, Pt. GGGG, §6 and affected by §18, is further amended by amending the first paragraph to read:

2. Qualification for benefits. A member employed in any one or a combination of the capacities specified in subsection 1 after June 30, 1998 for employees identified in subsection 1, paragraphs C to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; after June 30, 2002 for employees identified in subsection 1, paragraph M; and any employee identified in subsection 1, paragraph L, qualifies for a service retirement benefit if that member either:

Sec. 5. 5 MRSA §17851-A, sub-§3, ¶A, as amended by PL 2001, c. 409, §4, is further amended to read:

A. For the purpose of meeting the qualification requirement of subsection 2, paragraph A:

(1) Service credit purchased by repayment of an earlier refund of accumulated contributions following termination of service is included only to the extent that time to which the refund relates was served after June 30, 1998 for employees identified in subsection 1, paragraphs A to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; and after June 30, 2002 for employees identified in subsection 1, paragraph M; in any one or a combination of the capacities specified in subsection 1. Service credit may be purchased for service by an employee identified in subsection 1, paragraph L regardless of when performed; and

(2) Service credit purchased other than as provided under subparagraph (1), including but not limited to service credit for military service, is not included.

Sec. 6. 5 MRSA §17851-A, sub-§3, ¶A, as amended by PL 2001, c. 439, Pt. GGGG, §7 and affected by §18, is further amended to read:

A. For the purpose of meeting the qualification requirement of subsection 2, paragraph A:

(1) Service credit purchased by repayment of an earlier refund of accumulated contributions following termination of service is included only to the extent that time to which the refund relates was served after June 30, 1998 for employees identified in

subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; and after June 30, 2002 for employees identified in subsection 1, paragraph M; in any one or a combination of the capacities specified in subsection 1. Service credit may be purchased for service by an employee identified in subsection 1, paragraph L regardless of when performed; and

(2) Service credit purchased other than as provided under subparagraph (1), including but not limited to service credit for military service, is not included.

Sec. 7. 5 MRSA §17851-A, sub-§4, ¶A, as repealed and replaced by PL 2001, c. 409, §5, is amended to read:

A. If all of the member's creditable service in any one or a combination of the capacities specified in subsection 1 was earned after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; ~~and~~ after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M; if service credit was purchased by repayment of an earlier refund of accumulated contributions for service in any one or a combination of the capacities specified in subsection 1 after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; ~~and~~ after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M; or if service credit was purchased by other than the repayment of an earlier refund and eligibility to make the purchase of the service credit, including, but not limited to, service credit for military service, was achieved after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M; the benefit must be computed as provided in section 17852, subsection 1, paragraph A.

(1) If the member had 10 years of creditable service on July 1, 1993, the benefit under subsection 2, paragraph B must be reduced as provided in section 17852, subsection 3, paragraphs A and B.

(2) If the member had fewer than 10 years of creditable service on July 1, 1993, the benefit under subsection 2, paragraph B must be reduced by 6% for each year that the member's age precedes 55 years of age.

Sec. 8. 5 MRSA §17851-A, sub-§4, ¶A, as repealed and replaced by PL 2001, c. 439, Pt. GGGG, §8 and affected by §18, is amended to read:

A. If all of the member's creditable service in any one or a combination of the capacities specified in subsection 1 was earned after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M or if service credit was purchased by repayment of an earlier refund of accumulated contributions for service after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; and after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M, in any one or a combination of the capacities specified in subsection 1, or if service credit was purchased by other than the repayment of an earlier refund and eligibility to make the purchase of the service credit, including, but not limited to, service credit for military service, was achieved after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; and after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M, the benefit must be computed as provided in section 17852, subsection 1. If the member had 10 years of creditable service on July 1, 1993, the benefit must be reduced as provided in section 17852, subsection 3, paragraphs A and B, and if the member had fewer than 10 years of creditable service on July 1, 1993, the benefit must be reduced by 6% for each year that the member's age precedes age 55.

Sec. 9. 5 MRSA §17851-A, sub-§4, ¶B, as repealed and replaced by PL 2001, c. 409, §5, is amended to read:

B. Except as provided in paragraphs D and E, if some part of the member's creditable service in any one or a combination of the capacities specified in subsection 1 was earned before July 1,

1998 for employees identified in subsection 1, paragraphs A to H; ~~before January 1, 2000 for employees identified in subsection 1, paragraphs I to K and; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M~~ and some part of the member's creditable service in any one or a combination of the capacities specified in subsection 1 was earned after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K ~~and~~; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M, then the member's service retirement benefit must be computed in segments and the amount of the member's service retirement benefit is the sum of the segments. The segments must be computed as follows:

(1) The segment or, if the member served in more than one of the capacities specified in subsection 1 and the benefits related to the capacities are not interchangeable under section 17856, segments that reflect creditable service earned before July 1, 1998 for employees identified in subsection 1, paragraphs A to H; before January 1, 2000 for employees identified in subsection 1, paragraphs I to K ~~and~~; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M or purchased by repayment of an earlier refund of accumulated contributions for service before July 1, 1998, for employees identified in subsection 1, paragraphs A to H; before January 1, 2000 for employees identified in subsection 1, paragraphs I to K ~~and~~; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M in a capacity or capacities specified in subsection 1 or purchased by other than the repayment of a refund and eligibility to make the purchase of the service credit, including, but not limited to, service credit for military service, was achieved before July 1, 1998 for employees identified in subsection 1, paragraphs A to H; before January 1, 2000 for employees identified in subsection 1, paragraphs I to K ~~and~~; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M, must be computed under section

17852, subsection 1, paragraph A. If the member is qualified under subsection 2, paragraph B and:

(a) Had 10 years of creditable service on July 1, 1993, the amount of the segment or segments must be reduced as provided in section 17852, subsection 3, paragraphs A and B; or

(b) Had fewer than 10 years of creditable service on July 1, 1993, the amount of the segment or segments must be reduced as provided in section 17852, subsection 3-A; and

(2) The segment that reflects creditable service earned after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K ~~and~~; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M or purchased by repayment of an earlier refund of accumulated contributions for service after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K ~~and~~; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M in any one or a combination of the capacities specified in subsection 1, or purchased by other than the repayment of a refund and eligibility to make the purchase of the service credit, including, but not limited to, service credit for military service, was achieved after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K ~~and~~; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M must be computed under section 17852, subsection 1, paragraph A. If the member is qualified under subsection 2, paragraph B and:

(a) Had 10 years of creditable service on July 1, 1993, the segment amount must be reduced in the manner provided in section 17852, subsection 3, paragraphs A and B for each year that

the member's age precedes 55 years of age; or

(b) Had fewer than 10 years of creditable service on July 1, 1993, the segment amount must be reduced by 6% for each year that the member's age precedes 55 years of age.

Sec. 10. 5 MRSA §17851-A, sub-§4, ¶B, as amended by PL 2001, c. 439, Pt. GGGG, §9 and affected by §18, is further amended to read:

B. Except as provided in ~~paragraph~~ paragraphs D and E, if some part of the member's creditable service in any one or a combination of the capacities specified in subsection 1 was earned before July 1, 1998 for employees identified in subsection 1, paragraphs C to H and before January 1, 2000 for employees identified in subsection 1, paragraphs I to K and some part of the member's creditable service in any one or a combination of the capacities specified in subsection 1 was earned after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M, then the member's service retirement benefit must be computed in segments and the amount of the member's service retirement benefit is the sum of the segments. The segments must be computed as follows:

(1) The segment or, if the member served in more than one of the capacities specified in subsection 1 and the benefits related to the capacities are not interchangeable under section 17856, segments that reflect creditable service earned before July 1, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; before January 1, 2000 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees specified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M or purchased by repayment of an earlier refund of accumulated contributions for service before July 1, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; before January 1, 2000 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees specified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M in a capacity or capacities

specified in subsection 1, or purchased by other than the repayment of a refund and eligibility to make the purchase of the service credit, including, but not limited to, service credit for military service, was achieved before July 1, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; before January 1, 2000 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M, must be computed under section 17852, subsection 1, paragraph A. If the member is qualified under subsection 2, paragraph B and:

(a) Had 10 years of creditable service on July 1, 1993, the amount of the segment or segments must be reduced as provided in section 17852, subsection 3, paragraphs A and B; or

(b) Had fewer than 10 years of creditable service on July 1, 1993, the amount of the segment or segments must be reduced as provided in section 17852, subsection 3-A; and

(2) The segment that reflects creditable service earned after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M or purchased by repayment of an earlier refund of accumulated contributions for service after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M in any one or a combination of the capacities specified in subsection 1, or purchased by other than the repayment of a refund and eligibility to make the purchase of the service credit, including, but not limited to, service credit for military service, was achieved after June 30, 1998 for employees identified in subsection 1, paragraphs C to H ~~and~~; after December 31, 1999 for employees identified in subsection 1, paragraphs I to K; before January 1, 2002 for employees identified in subsection 1, paragraph L; and before July 1, 2002 for employees identified in subsection 1,

paragraph L; and before July 1, 2002 for employees identified in subsection 1, paragraph M, must be computed under section 17852, subsection 1, paragraph A. If the member is qualified under subsection 2, paragraph B and:

(a) Had 10 years of creditable service on July 1, 1993, the segment amount must be reduced in the manner provided in section 17852, subsection 3, paragraphs A and B for each year that the member's age precedes 55 years of age; or

(b) Had fewer than 10 years of creditable service on July 1, 1993, the segment amount must be reduced by 6% for each year that the member's age precedes 55 years of age.

Sec. 11. 5 MRSA §17851-A, sub-§5, as amended by PL 2001, c. 409, §6, is further amended to read:

5. Contributions. Notwithstanding any other provision of subchapter III, after June 30, 1998 for employees identified in subsection 1, paragraphs A to H; ~~after December 31, 1999 for employees identified in subsection 1, paragraphs I to K and~~; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M, a member in the capacities specified in subsection 1 must contribute to the retirement system or have pick-up contributions made at the rate of 8.65% of earnable compensation until the member has completed 25 years of creditable service as provided in this section and at the rate of 7.65% thereafter.

Sec. 12. 5 MRSA §17851-A, sub-§5, as amended by PL 2001, c. 439, Pt. GGGG, §10 and affected by §18, is further amended to read:

5. Contributions. Notwithstanding any other provision of subchapter III, after June 30, 1998 for employees identified in subsection 1, paragraphs C to H; ~~after December 31, 1999 for employees identified in subsection 1, paragraphs I to K and~~; after December 31, 2001 for employees identified in subsection 1, paragraph L; and after June 30, 2002 for employees identified in subsection 1, paragraph M, a member in the capacities specified in subsection 1 must contribute to the retirement system or have pick-up contributions made at the rate of 8.65% of earnable compensation until the member has completed 25 years of creditable service as provided in this section and at the rate of 7.65% thereafter.

Sec. 13. Appropriations and allocations.

The following appropriations and allocations are made.

PUBLIC SAFETY, DEPARTMENT OF

Capitol Security - Bureau of

Initiative: Provides funds for the additional cost of increasing the normal cost component associated with providing retirement coverage to capitol security officers under the 1998 Special Plan effective July 1, 2002.

General Fund	2001-02	2002-03
Personal Services	\$0	\$1,379

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 2002.

Effective July 1, 2002.

CHAPTER 647

H.P. 1651 - L.D. 2157

An Act Regarding the Requirements for Documenting Pretest and Post-test Counseling for HIV Tests

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

Sec. 1. 5 MRSA §19204-A, sub-§1, ¶B, as amended by PL 1995, c. 404, §15, is further amended to read:

~~B. A written memorandum~~ An entry in the medical record of the person being counseled summarizing the contents of the discussion concerning at least the topics listed in paragraph A, subparagraphs (1) to (5) ~~given to the person being counseled.~~ A written informed consent form may be used to satisfy the requirement ~~for a written memorandum~~ in this paragraph if it contains all the required information. A written consent form does not satisfy the requirement for personal counseling in paragraph A.

Sec. 2. 5 MRSA §19204-A, sub-§2, ¶B, as amended by PL 1995, c. 404, §15, is further amended to read:

~~B. A written memorandum~~ An entry in the medical record of the person being counseled summarizing the contents of the discussion ~~given to the person being counseled;~~ and

Sec. 3. 5 MRSA §19204-A, sub-§5 is enacted to read:

5. Written information to person being counseled. To comply with the requirements of this section regarding pretest counseling, in addition to meeting the requirements of subsection 1, the provider of an HIV test shall give to the person being counseled a written document containing information on the subjects described in subsection 1, paragraph A. To comply with the requirements of this section regarding post-test counseling, in addition to meeting the requirements of subsection 2, the provider of an HIV test shall give to the person being counseled a written document containing information on the subjects described in subsection 2, paragraph A. A written consent form or other document may be used to meet one or both of the requirements for information pursuant to this subsection if the form or document contains all the information required for the type of counseling being offered.

See title page for effective date.

CHAPTER 648

H.P. 1565 - L.D. 2070

An Act to Establish the Community Preservation Advisory Committee

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

Sec. 1. 5 MRSA §12004-I, sub-§24-F is enacted to read:

24-F.	<u>Community</u>	<u>Legislative</u>	<u>30-A</u>
<u>Environment:</u>	<u>Preservation</u>	<u>Per Diem</u>	<u>MRSA</u>
<u>Natural</u>	<u>Advisory</u>	<u>and</u>	<u>§4350</u>
<u>Resources</u>	<u>Committee</u>	<u>Expenses</u>	
		<u>for</u>	
		<u>Legislators</u>	
		<u>and</u>	
		<u>Expenses</u>	
		<u>Only for</u>	
		<u>Certain</u>	
		<u>Members</u>	

Sec. 2. 30-A MRSA c. 187, sub-c. II, art. 3-B is enacted to read:

Article 3-B

COMMUNITY PRESERVATION ADVISORY COMMITTEE

§4350. Community Preservation Advisory Committee

1. Establishment; purpose. The Community Preservation Advisory Committee, established by Title 5, section 12004-I, subsection 24-F and referred to in