

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

Sec. 20. 36 MRSA §5243, as repealed and replaced by PL 1991, c. 546, §35, is repealed.

Sec. 21. 36 MRSA §5278, sub-§4, as amended by PL 1989, c. 508, §24, is further amended to read:

4. Notice of change or correction. If a taxpayer is required by section ~~5243~~ 5227-A to file an amended Maine return, a claim for credit or refund of any resulting overpayment of the tax ~~shall~~ must be filed by the taxpayer within 2 years from the time the filing of the amended return was required. The amount of the credit or refund ~~shall~~ may not exceed the amount of the reduction in tax attributable to the federal amendment. This subsection ~~shall~~ does not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

Sec. 22. 36 MRSA §5311, sub-§3, as enacted by P&SL 1969, c. 154, §F, is repealed.

Sec. 23. 36 MRSA §5311, sub-§4, as enacted by PL 1977, c. 165, §7, is repealed.

See title page for effective date.

CHAPTER 589

H.P. 1305 - L.D. 1783

An Act To Clarify Prequalification Criteria for Public Improvements

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

Sec. 1. 5 MRSA §1747, sub-§3, as amended by PL 2001, c. 271, §2, is further amended to read:

3. Insufficient resources. If, in the opinion of the director, there is evidence the contractor does not have sufficient resources to successfully complete the work. The director may require additional information about the contractor's resources, including identification of major claims or litigation pending and whether the contractor has sought protection under the bankruptcy laws in the past 5 years. That information is confidential and not subject to disclosure under Title 1, chapter 13, subchapter ~~1~~ 1. In evaluating the resources of a contractor, the director may consider the contractor's prior experience, including any significant disparity between the size and type of prior projects and the project or projects under consideration;

See title page for effective date.

CHAPTER 590

S.P. 622 - L.D. 1690

An Act To Authorize the STARBASE Program

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

Sec. 1. 37-B MRSA §3, sub-§1, ¶D, as amended by PL 2003, c. 404, §2, is further amended by adding a new subparagraph (16) to read:

(16) The Adjutant General may establish a science, mathematics and technology education improvement program for schoolchildren known as the STARBASE Program. The Adjutant General may accept financial assistance and in-kind assistance, advances, grants, gifts, contributions and other forms of financial assistance from the Federal Government or other public body or from other sources, public or private, to implement the STARBASE Program. The Adjutant General may employ a director and other employees, permanent or temporary, to operate the STARBASE Program.

Sec. 2. Appropriations and allocations.

The following appropriations and allocations are made.

DEFENSE, VETERANS AND EMERGENCY MANAGEMENT, DEPARTMENT OF

Military Training & Operations 0108

Initiative: Allocates funds to establish one Clerk III position, 2 Teacher positions, one Teacher/Principal position and necessary operational costs to reflect the establishment of the STARBASE program.

Federal Expenditures Fund	2003-04	2004-05
Positions - Legislative Count	(0.000)	(4.000)
Personal Services	\$0	\$238,046
All Other	0	71,954
Federal Expenditures Fund Total	\$0	\$310,000

See title page for effective date.

CHAPTER 591

S.P. 637 - L.D. 1705

An Act To Simplify the Maine Turnpike Authority's Enforcement Procedures for Toll Violations

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

Sec. 1. 23 MRSA §1965, sub-§1, ¶V, as enacted by PL 2003, c. 311, §3, is amended to read:

V. Develop programs whereby a patron of the turnpike who uses the authority's electronic toll collection system, as defined in section 1980, subsection ~~¶ 2-A~~, paragraph B, may elect to use the patron's electronic toll collection system device to pay for services other than tolls for the use of the turnpike, whether those services are provided by the authority itself or 3rd parties, and allow the patron to participate in similar programs developed by other tolling authorities.

Sec. 2. 23 MRSA §1980, sub-§2-A, as amended by PL 2001, c. 154, §§1 to 4, is repealed and the following enacted in its place:

2-A. Toll violations. In addition to potential criminal liability under subsection 1-A, the registered owner of a vehicle may be liable for civil penalties for failure to pay a toll as set out in this subsection.

A. If an operator of a vehicle fails to pay a toll, the registered owner of that vehicle is liable for payment of the toll and is subject to a civil penalty of:

(1) Fifty dollars, except as provided in subparagraph (2) or (3);

(2) One hundred dollars, if a failure to pay a toll occurs within 18 months of a prior failure to pay; or

(3) One hundred fifty dollars, if a failure to pay a toll occurs within 18 months of 2 or more prior failures to pay.

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

(1) "Administrative fee" means the fee imposed pursuant to paragraph C, subparagraph (4).

(2) "Electronic toll collection system" means a system of collecting tolls or other charges that is capable of charging an account holder the appropriate amount by transmission of information between a device on a motor vehicle and a toll collection facility.

(3) "Pay" means paying a toll by cash, by permitting a charge against a valid account with the authority or by any other means of payment approved by the authority at the time.

(4) "Photo-monitoring system" means a motor vehicle sensor installed to work in conjunction with a toll collection facility that automatically produces a photograph, microphotograph, videotape or other recorded image of a motor vehicle when the operator of the motor vehicle fails to pay a toll.

(5) "Registered owner" means a person in whose name a motor vehicle is registered under the law of a jurisdiction, including a person issued a dealer or transporter registration plate.

(6) "Toll" or "tolls" means tolls or other charges prescribed by the authority for use of the turnpike or for other services provided to a turnpike patron under section 1965, subsection 1, paragraph V.

(7) "Violation clerk" means an employee of the authority designated by the authority to enforce violations and adjudicate appeals relating to those violations under this subsection.

C. The following procedures must be followed for the collection of tolls, administrative fees and civil penalties under this subsection.

(1) The authority shall send a notice of liability by certified mail, return receipt requested, to a person alleged to be liable as a registered owner under this subsection. The notice must be sent to the address of the registered owner on record with the authority if the registered owner is an electronic toll collection patron of the authority or, if no such record exists, the address of the registered owner on record with the Secretary of State. A record of the certified mailing is prima facie evidence of the mailing of the notice.

(2) A notice of liability must include the name and address of the person alleged to be liable as a registered owner for the failure to pay a toll under this subsection, the amount of the toll not paid, the registration number of the vehicle involved, the toll collection facility at which the failure occurred and the date and the approximate time of the failure. The notice must also include the name, address and telephone number of the violation clerk responsible for enforcing the penalty for the failure to pay.

(3) A notice of liability must include information advising the person liable under

this subsection of the manner and time in which the liability alleged in the notice may be contested and the statutory defenses described in paragraph E. The notice must also include a warning that failure to contest in the manner and time provided is an admission of liability and a waiver of available defenses and may result in revocation of the registration certificate and plates issued for the vehicle.

(4) Within 30 calendar days after the date of the issuance of the notice of liability, the registered owner to whom the notice is issued must:

(a) Pay the amount of the toll for which the person is liable, the civil penalty or penalties provided for in paragraph A and an administrative fee of \$20 for each toll for which the person is liable but has not paid;

(b) Send a written dispute by mail to the violation clerk named in the notice, as provided by paragraph I; or

(c) Request a hearing with the violation clerk named in the notice as provided by paragraph J.

D. Except as provided in paragraph E, it is not a defense to liability under this subsection that a registered owner was not operating the motor vehicle at the time of the failure to pay.

E. Defenses to liability under this subsection are as set out in this paragraph.

(1) If a person other than the registered owner of the motor vehicle is adjudicated criminally or civilly responsible for the failure to pay a toll, then the registered owner is not liable under this subsection.

(2) If the registered owner of the motor vehicle is the lessor of motor vehicles and at the time of the failure to pay an authority toll the motor vehicle was in the possession of a lessee and the lessor provides the authority with a copy of the lease agreement containing the information required by Title 29-A, section 254, then the lessee, and not the lessor, is liable under this subsection.

(3) If the motor vehicle is operated using a dealer or transporter registration plate and at the time of the failure to pay the motor vehicle was under the custody or control of a person other than the dealer or transporter, and if the dealer or transporter pro-

vides the authority with the name and address of the person who had custody or control over the motor vehicle at the time of the failure to pay, then that person and not the dealer or transporter is liable under this subsection.

(4) If a report that the motor vehicle was stolen is given to a law enforcement officer or agency before the failure to pay occurs or within a reasonable time after the registered owner becomes aware of the theft, then the registered owner is not liable under this subsection.

F. Nothing in this subsection may be construed to limit the liability of an operator of a motor vehicle for a failure to pay an authority toll. If a person who is liable for a failure to pay under this subsection was not the operator of the motor vehicle at the time of the failure to pay, that person may maintain an action for indemnification against the operator to recover all tolls, administrative fees and civil penalties paid by that person under this subsection.

G. The authority shall notify the Secretary of State, who shall, in accordance with Title 29-A, section 154, subsection 6, suspend the registration certificate and plates issued for the vehicle involved in the alleged failure to pay if a registered owner:

(1) Does not dispute a notice of liability and pay the tolls, administrative fees and civil penalties as required by paragraph C, subparagraph (4);

(2) Does not pay the required tolls, administrative fees and civil penalties within 30 days of a final decision of a violation clerk as provided in paragraphs I and J; or

(3) Does not pay the required tolls, administrative fees and civil penalties within 30 days of final adjudication of liability under paragraph K.

When notifying the Secretary of State under this paragraph, the authority shall send a notice by certified mail, return receipt requested, informing the registered owner of the pending suspension.

H. Combinations of vehicles involving a motor vehicle and one or more trailers or semitrailers equipped with a total of 3 or more axles, including motor vehicles with 6 or more tires towing a trailer, but not including motor vehicles with 4 tires or fewer towing a trailer, are not subject to an administrative fee under this subsection.

I. The registered owner may, without waiving the right to a hearing before a violation clerk as provided by paragraph J and also without waiving the right to judicial review as provided by Title 5, chapter 375, subchapter 7, appeal a notice of liability as provided by paragraph C, subparagraph (4) and receive a review and disposition of the violation from a violation clerk by mail. The appeal by mail must contain a signed statement from the registered owner explaining the basis for the appeal. The signed statement may be accompanied by signed statements from witnesses, police officers, government officials or other relevant parties or photographs, diagrams, maps or other relevant documents that the registered owner determines appropriate to submit. Statements or materials sent to a violation clerk for review must have attached to them the name and address of the registered owner as well as the number of the notice of liability and the date of the violation. All information submitted by the registered owner becomes part of the violation record. The violation clerk shall, within 60 days of receipt of such material, review the material and dismiss or uphold the violation and notify the registered owner of the disposition of the hearing in writing by mail. If the appeal by mail is denied, the violation clerk shall explain the reasons for the determination. The review and disposition handled by mail is informal, the rules of evidence do not apply and the decision is final, subject to the hearing provisions of paragraph J.

J. As provided by paragraph C, subparagraph (4) or within 30 days of the issuance of a decision by a violation clerk under paragraph I, a registered owner may make a written request for an appeal hearing before a violation clerk designated by the authority. The violation clerk shall then notify the registered owner in writing by certified mail, return receipt requested of the date, time and place of the hearing. The hearing is informal, the rules of evidence do not apply and the decision of the violation clerk is final. The violation clerk shall notify the parties in person or by mail of the decision following the hearing. Each written appeal decision must contain a statement of reasons for the decision including a determination of each issue of fact necessary to the decision. Failure to appear at the date, time and place specified on the hearing notice automatically results in the denial of the appeal.

K. Any decision by a violation clerk under this section is subject to judicial review of final agency action in the manner provided by Title 5, chapter 375, subchapter 7. If a registered owner files an appeal pursuant to this subsection, the authority may not notify the Secretary of State to

suspend the registration certificate and plate issued for the vehicle involved in the alleged failure to pay until the appeal is resolved.

Sec. 3. 23 MRSA §1980, sub-§2-B, ¶C is enacted to read:

C. A photograph, microphotograph, videotape or recorded image obtained from a photo-monitoring system as defined in subsection 2-A may not be used by the authority for the purposes of collection of a toll or other charge if the photograph, microphotograph, videotape or recorded image shows the face of a passenger or driver of a motor vehicle.

Sec. 4. 29-A MRSA §154, sub-§6, as enacted by PL 1995, c. 65, Pt. A, §84 and affected by §153 and Pt. C, §15, is amended to read:

6. Recovery of turnpike tolls. Upon receipt of an order of suspension notice from the court Maine Turnpike Authority in accordance with Title 23, section 1980, subsection 2-A, paragraph G, the Secretary of State shall promptly mail a notice to the person liable under that subsection for unpaid Maine Turnpike Authority tolls, warning the person that, if the amount due the Maine Turnpike Authority is not paid within 10 days from the date of mailing the notice, suspension of the registration certificate and plates issued for the vehicle in question will result. If the person fails to pay the required amount within 10 days after mailing of the notice, the Secretary of State shall, in accordance with section 2482, shall mail the required 10-day notice and suspend, pursuant to chapter 23, the registration certificate and plates issued for the vehicle in question. This subsection takes effect July 1, 1995. The Secretary of State may not reinstate the registration certificate and plates until the Maine Turnpike Authority provides notice that the toll and applicable fines and penalties have been paid. Notwithstanding any other provision of law, Title 5, section 9052, subsection 1 does not apply to a notice of suspension issued pursuant to this subsection.

See title page for effective date.

CHAPTER 592

H.P. 1238 - L.D. 1662

An Act To Strengthen the Prohibition against Night Hunting

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

Sec. 1. 12 MRSA §10502, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read: