

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. 2. 32 MRSA §15109, sub-§2-A is enacted to read:

2-A. Licenses. In order to safeguard life, health and property, the board shall provide for the mandatory licensing of stationary steam engineers and boiler operators. This subsection does not apply to:

A. Persons operating boilers exempt under section 15102;

B. Persons employed by entities under the jurisdiction of the Public Utilities Commission or the United States Nuclear Regulatory Commission, or its successor; or

C. Persons operating steam heating boilers, hot water heating boilers and hot water supply boilers located in schoolhouses or owned by municipalities.

Sec. 3. 32 MRSA §15109, sub-§7, as amended by PL 2001, c. 323, §38, is further amended by repealing and replacing the first paragraph to read:

7. Scope of licenses. The scope of a boiler operator's license and 4 classes of engineering licenses is as set out in this subsection.

Sec. 4. 32 MRSA §15109, sub-§7, ¶A, as enacted by PL 1995, c. 560, Pt. H, §14 and affected by §17, is repealed.

Sec. 5. 32 MRSA §15109, sub-§7, ¶B, as amended by PL 2001, c. 323, §38, is further amended to read:

B. The holder of a ~~high-pressure~~ boiler operator's license may operate, supervise or have charge of a heating plant having a capacity of not more than 20,000 #/HR or operate or supervise a plant up to the capacity of the license of the engineer in charge of the plant in which the licensee is employed. The applicant for a ~~high-pressure~~ boiler operator's license must have 6 months' operating experience prior to examination under a boiler operator's training permit. The board shall issue a permit for the purpose of gaining that experience upon receipt of an application fee and permit fee set by the director under subsection 9. Such permit must be limited to a specified plant and must be limited to one year. The board may extend the permit for a period not to exceed one year under unusual circumstances. The board may allow the owner of a small plant to sit for the ~~high-pressure~~ boiler operator's examination without first obtaining a boiler operator's training permit.

Sec. 6. 32 MRSA §15109, sub-§7, ¶C, as amended by PL 1999, c. 386, Pt. W, §18, is further amended to read:

C. The holder of a 4th-class engineer's license may have charge of a plant of not more than 50,000 #/HR or operate or supervise a plant up to the capacity of the license of the engineer in charge of the plant in which the licensee is employed. An applicant for a 4th-class engineer's license must be a high school graduate or have equivalent education and at least one year of operating or supervising experience under a duly licensed engineer having charge of a plant. An applicant for a 4th-class engineer's license must have at least one year operating or supervising experience as a ~~high-pressure~~ boiler operator.

See title page for effective date.

CHAPTER 598

S.P. 728 - L.D. 1880

An Act To Amend the Laws Governing the Loring Development Authority of Maine

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

Whereas, Loring Development Authority of Maine is considering several projects in 2004; and

Whereas, one of these projects must commence construction in 2004; and

Whereas, the financing of this project must be completed as soon as possible; and

Whereas, there have been many changes to federal and state law dealing with bonding powers; and

Whereas, the Loring Development Authority of Maine's enabling statute was adopted in 1993; and

Whereas, it is imperative that the changes in this bill take effect immediately to have the Loring Development Authority of Maine's bonding powers be updated and conform to the bonding powers of other state agencies and federal law; 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 §13080-A, sub-§6, as corrected by RR 1997, c. 2, §19, is amended to read:

6. Loring Air Force Base. "Loring Air Force Base" or "base" means those properties and facilities within the geographic boundaries of the United States Department of Defense air force base at Limestone existing on July 13, 1993. "Base" also includes the Madawaska dam site, the Loring Water System, the Loring #3 communications site in Limestone, the pipeline from Searsport to Limestone and other geographically separate property that the authority determines should be ~~deemed~~ considered part of the base, if the municipality in which the property is located has chosen not to accept the property and utilize it for other purposes.

Sec. 2. 5 MRSA §13080-B, sub-§1, ¶¶G, J and K, as enacted by PL 1993, c. 474, §1, are amended to read:

G. Contract with the Federal Government or its instrumentalities or agencies, this State or its agencies, instrumentalities or municipalities, public bodies, private corporations, partnerships, associations ~~and~~ individuals and other persons to carry out the purposes of this article;

J. Borrow money, make, issue and sell at public or private sale negotiable notes, bonds and other evidences of indebtedness or obligation of the authority for the purposes under this article and secure the payment of that obligation or any part of that obligation by pledge of all or any part of the operating revenues or other revenues or property of the authority;

K. Enter into loan or security agreements with borrowers or one or more lending institutions, including, but not limited to, banks, insurance companies and pension funds, or trustees for those institutions for the purposes for which bonds may be issued and exercise with respect to those loan or security agreements all of the powers delineated in this article for the issuance of bonds;

Sec. 3. 5 MRSA §13080-G, sub-§1, as enacted by PL 1993, c. 474, §1, is amended to read:

1. Hearing required. The authority may issue bonds to finance its activities only after giving notice of the proposed issuance ~~and its terms~~ at least twice in a newspaper of general circulation in the county and holding a duly advertised public hearing on the issuance.

Sec. 4. 5 MRSA §13080-G, sub-§2, as amended by PL 1995, c. 495, §§6 and 7, is further amended to read:

2. Authority. In addition to the authority provided in subsection 1-A, the authority may issue bonds from time to time in its discretion to finance the undertaking of an authorized activity under this article, including but not limited to the payment of costs of acquisition, construction, reconstruction, renovation, equipping, start-up, testing, capitalized interest, reserves, reuse or improvement within the base undertaken by a person and the payment of principal and interest upon advances for surveys and plans, and may issue refunding bonds for the payment or retirement of bonds previously issued.

A. The principal ~~and~~ interest ~~of~~ and all other amounts that may at any time become due and payable under the bonds must be made payable solely from the income, proceeds, revenues and funds of the authority derived from or held for activities under this article. Payment of the principal and interest of bonds may be further secured by a pledge of a loan, grant or contribution from the Federal Government or other source in aid of activities of the authority under this article or solely from income, proceeds, revenues, loan repayments, funds and other property, real or personal, pledged, assigned or mortgaged by or to the authority in connection with the provision of financial assistance by the authority to any person or any combination of the foregoing and by a mortgage of an urban activity or a project or part of a project, title to which is in the authority.

B. Bonds issued under this section and paragraph do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not subject to other laws or charters relating to the authorization, issuance or sale of bonds. Notwithstanding this paragraph, the authority may issue bonds in an original principal amount not to exceed \$100,000,000 to which the authority may designate section 13080-N to apply. Bonds issued under this article are declared to be issued for an essential public and governmental purpose and, together with interest on and income from the bonds, are exempt from all taxes.

C. Bonds may not be issued by the authority until the authority has received a certificate of approval from the Finance Authority of Maine authorizing issuance of bonds. Before issuing a certificate of approval under this section, the ~~au-~~ thority Finance Authority of Maine shall determine that there is a reasonable likelihood that the income, proceeds, revenues and funds of the authority derived from or held for activities under

this article or otherwise pledged to payment of the bonds will be sufficient to pay principal, interest and all other amounts that may at any time become due and payable under the bonds. In making this determination, the Finance Authority of Maine must consider the authority's analysis of the proposed bond issue and the revenues to make payments on the bond and may require such information, projections, studies and independent analyses as it considers necessary or desirable and may charge the authority reasonable fees and expenses. The issuance by the Finance Authority of Maine of a certificate of approval under this section does not constitute an endorsement of the bonds or the projects or purposes for which those bonds are issued and neither the authority nor any other person or entity, including, without limitation, any holders of bonds of the authority, have any cause of action against the Finance Authority of Maine with respect to any such certificate of approval. The Finance Authority of Maine may require that it be indemnified, defended and held harmless by the authority for any liability or cause of action arising out of or with respect to the bonds.

D. Bonds may be issued by the authority only to finance projects that are substantially located within Aroostook County.

Sec. 5. 5 MRSA §13080-G, sub-§4, ¶A, as enacted by PL 1993, c. 474, §1, is amended to read:

~~A. Sold at not less than par at public sales held after notice has been published in a newspaper of general circulation in the area of operation and in any other medium of publication that the authority designates to any person on such terms as the authority may negotiate;~~

Sec. 6. 5 MRSA §13080-G, sub-§§7 and 9, as enacted by PL 1993, c. 474, §1, are amended to read:

7. No personal liability; not debt of State or municipality. Neither the trustees of the authority nor the person executing the bonds is liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the authority must have stated on their face that they are not a debt of the State and that the State is not liable on the bonds. The bonds or obligations may not be payable out of funds or properties other than those of the authority acquired for the purposes of this article or otherwise pledged therefor.

9. Investment of funds; redemption of bonds. The authority may:

A. Invest, in property or securities in which savings banks may legally invest funds subject to

their control, funds held in reserves, sinking funds or funds not required for immediate disbursement; ~~and~~

B. Cancel its bonds by redeeming them at the redemption price established in the bonds or by purchasing them at less than redemption price; and

C. Invest funds in accordance with Title 30-A, chapter 223, subchapter 3-A.

Sec. 7. 5 MRSA §13080-G, sub-§§10 and 11 are enacted to read:

10. Issue of bonds. With respect to all or any portion of any issue of any bonds or any series of bonds that the authority may issue in accordance with this article, the authority may covenant and consent that the interest on the bonds is includable, under the United States Internal Revenue Code of 1986 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on the bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code of 1986 or any subsequent law.

11. Pledge of security interests. Any pledge or assignment of revenue or collateral or other security interests under this article is valid and binding and perfected from the time when the pledge is made. All the revenues or collateral pledged by the authority is subject immediately to the lien of the pledge or assignment without any physical delivery or further action under the Uniform Commercial Code or otherwise. The lien of any pledge or assignment and perfection is valid and binding against all parties having claims of any kind in tort, contract or otherwise against the authority, whether the parties have notice of the pledge or assignment.

Sec. 8. 5 MRSA §13080-I, sub-§2, ¶B, as enacted by PL 1993, c. 474, §1, is amended to read:

B. Apply to or limit the right of an obligee to foreclose or otherwise enforce a mortgage of the authority or to pursue remedies for the enforcement of a pledge or lien given by the authority on its rents, fees, grants or revenues or any other sources pledged by the authority to the payment of its bonds.

Sec. 9. 5 MRSA §13080-K, sub-§2, as enacted by PL 1993, c. 474, §1, is amended to read:

2. Payment of bonds, premiums and interest. The bonds, premium, if any, and interest have been paid or a sufficient amount for the payment of the bonds and interest to maturity or a prior redemption

date have been irrevocably set aside in trust for the benefit of the bondholders in accordance with agreements with the bondholders.

Sec. 10. 5 MRSA §13080-N, sub-§5, as enacted by PL 1993, c. 729, §10, is amended to read:

5. Appropriation. On or before December 1st, annually, the authority shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund. In trust agreements or other pertinent documents ~~between the authority and the Governor,~~ it must be clearly stated that this subsection applies to the capital reserve requirement. The Governor shall pay from the Contingent Account to that fund as much of the amount as is available in the Contingent Account and shall transmit to the Legislature a certification and a statement of the amount, if any, remaining to be paid and the amount certified must be appropriated and paid to the authority during the then current state fiscal year.

Sec. 11. 5 MRSA §13080-N, sub-§7 is enacted to read:

7. Other capital reserve funds. This section, including subsection 5, may not be construed to require that each capital reserve fund established under this section have the benefit described in subsection 5.

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

Effective April 6, 2004.

CHAPTER 599

H.P. 1404 - L.D. 1897

An Act To Make Emergency Changes to Recent Law

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

Whereas, there are certain errors and inconsistencies in Public Law 2003, chapter 510 that need immediate correction; 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 §191, sub-§4, ¶A, as enacted by PL 2003, c. 510, Pt. B, §2 and affected by §3, is repealed.

Sec. 2. Retroactivity. That section of this Act that repeals the Maine Revised Statutes, Title 5, section 191, subsection 4, paragraph A applies retroactively to July 1, 2003.

Sec. 3. 22 MRSA §253, sub-§3, as repealed by PL 2003, c. 469, Pt. B, §3 and amended by c. 510, Pt. A, §14, is repealed.

Sec. 4. 22 MRSA §1812-G, sub-§7, as enacted by PL 2003, c. 376, §2, is amended to read:

7. Time limit on consideration of prior criminal conviction. Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

A. A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred; or

B. A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

Sec. 5. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 22, section 1812-G, subsection 7 applies retroactively to June 2, 2003.

Sec. 6. 22 MRSA §2061, sub-§2, as amended by PL 2003, c. 469, Pt. C, §16 and c. 510, Pt. A, §16, is repealed and the following enacted in its place:

2. Review. Each project for a health care facility has been reviewed and approved to the extent required by the agency of the State that serves as the designated planning agency of the State or by the Department of Human Services in accordance with the provisions of the Maine Certificate of Need Act of 2002, as amended, and is consistent with the cost containment provisions for health care and health coverage of the State Health Plan adopted pursuant to Title 2, section 101, paragraph A;

Sec. 7. 22 MRSA §3477, sub-§1, ¶A, as repealed and replaced by PL 2003, c. 510, Pt. E, §2 and affected by §4, is amended to read:

A. While acting in a professional capacity: