

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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Penmor Lithographers
Lewiston, Maine
2003

SELECTED MEMORIALS AND JOINT RESOLUTIONS

JOINT RESOLUTION HONORING THE ASTRONAUTS OF THE SPACE SHUTTLE COLUMBIA

S. P. 172

WHEREAS, on the morning of February 1, 2003, the space shuttle Columbia with its 7 National Aeronautics and Space Administration astronauts, returning from an extraordinarily successful scientific mission, was tragically and abruptly lost just minutes before its scheduled landing; and

WHEREAS, the brave and daring crew of gifted men and women, 6 representing the very finest of this Nation and one representing the State of Israel as its first astronaut, were eagerly returning from a mission hailed for its achievements in advancing science in several areas; and

WHEREAS, the space shuttle Columbia has continued the pioneering legacy of its predecessors, having been the first space shuttle to fly into Earth's orbit in 1981 and having flown 28 missions; and

WHEREAS, the 7 astronauts dedicated their lives to meeting scientific challenges, advancing the knowledge of space for all, and did so with happy hearts, willingly and with great enthusiasm; now, therefore, be it

RESOLVED: That We, the Members of the Senate and the House of Representatives of the One Hundred and Twenty-first Legislature now assembled in First Regular Session, pause in our deliberations to pay this tribute to: William C. McCool, Rick D. Husband, Michael Anderson, Kalpana Chawla, David M. Brown, Laurel Blair Salton Clark and Ilan Ramon and to join the people of the State of Maine in expressing to the families of the deceased our deepest understanding and prayer and to inscribe upon our journals this token of sympathy and condolence to all who share this great loss; and be it further

RESOLVED: That We respectfully request that when the Legislature adjourns this date it does so in honor and lasting tribute to each of the deceased; and be it further

RESOLVED: That suitable copies of this Joint Resolution be prepared and presented forthwith to

these beloved families on behalf of the Legislature and the people of the State of Maine.

**Read and adopted by the Senate February 4,
2003 and the House of Representatives
February 5, 2003.**

JOINT RESOLUTION COMMEMORATING THE HOLOCAUST HUMAN RIGHTS CENTER'S LEGISLATIVE AWARENESS DAY AND YOM HASHOAH, THE DAY OF REMEMBRANCE OF THOSE WHO SUFFERED AS VICTIMS OF THE HOLOCAUST

H.P. 986

WHEREAS, from 1933 to 1945, 6,000,000 Jews were murdered in the Holocaust as part of a systematic program of genocide, and millions of other people suffered as victims of Nazism; and

WHEREAS, the people of the State of Maine should always remember the atrocities committed by the Nazis so that such horrors are never repeated; and

WHEREAS, the people of the State of Maine should always remember those who liberated the Nazi concentration camps, some at the cost of their lives and others with lifelong emotional suffering, as holding an honored place in our history; and

WHEREAS, the people of the State of Maine should continually rededicate themselves to the principle of equal justice for all people, remain eternally vigilant against all tyranny and recognize that bigotry provides a breeding ground for tyranny to flourish; and

WHEREAS, March 12, 2003 has been designated as the Holocaust Human Rights Center's Legislative Awareness Day; and

WHEREAS, April 29, 2003 has been designated internationally as a Day of Remembrance of the Victims of the Holocaust, and is known as Yom HaShoah; and

WHEREAS, the national community, pursuant to an Act of Congress, will be commemorating the week of April 27th to May 4th as the Days of Remembrance of the Victims of the Holocaust, with the theme of "For Your Freedom and Ours"; and

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WHEREAS, it is appropriate for the people of the State of Maine to join in this international commemoration; now, therefore, be it

RESOLVED: That, We, the Members of the One Hundred and Twenty-first Legislature, now assembled in the First Regular Session, on behalf of the people we represent, pause in solemn memory of the victims of the Holocaust, urge one and all to recommit themselves to the lessons of the Holocaust through the Holocaust Human Rights Center's Legislative Awareness Day and the international week of commemoration and express our common desire to continually strive to overcome prejudice and inhumanity through education, vigilance and resistance; and be it further

RESOLVED: That a suitable copy of this resolution, duly authenticated by the Secretary of State, be transmitted to the United States Holocaust Memorial Council in Washington, D.C., on behalf of the people of the State of Maine.

**Read and adopted by the House of
Representatives March 12, 2003 and the Senate
March 13, 2003.**

**JOINT RESOLUTION
MEMORIALIZING THE PRESIDENT
OF THE UNITED STATES AND THE
CONGRESS OF THE UNITED
STATES TO FULFILL THE INTENT
TO FUND 40% OF THE COSTS OF
SPECIAL EDUCATION AND TO END
UNFUNDED MANDATES**

H.P. 1007

WE, your Memorialists, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States and the Congress of the United States, as follows:

WHEREAS, the Congress of the United States has found that all children deserve a quality education, including children with disabilities; and

WHEREAS, the Individuals with Disabilities Education Act, 20 United States Code, Section 1400, et seq., provides that the Federal Government and state and local governments are to share in the expense of education for children with disabilities and commits the Federal Government to provide funds to assist with the excess of expenses of education for children with disabilities; and

WHEREAS, the Congress of the United States has committed to contribute up to 40% of the average

per-pupil expenditure of educating children with disabilities and the Federal Government has failed to meet this commitment to assist the states; and

WHEREAS, the Federal Government has never contributed more than 13% to 20% of the national average per-pupil expenditure to assist with the excess expenses of educating children with disabilities under the Individuals with Disabilities Education Act; and

WHEREAS, this failure of the Federal Government to meet its commitment to assist with the excess expenses of educating a child with a disability contradicts the goal of ensuring that children with disabilities receive a quality education; and

WHEREAS, the imposition of unfunded mandates by the Federal Government on state governments interferes with the separation of powers between the 2 levels of government and the ability of each state to determine the issues and concerns of the State and what resources should be directed to address these issues and concerns; and

WHEREAS, the Federal Government recognized the inequalities of unfunded mandates on state governments 8 years ago when it passed the Unfunded Mandates Reform Act of 1995; and

WHEREAS, since the passage of the Unfunded Mandates Reform Act of 1995, however, the Federal Government continues to impose unfunded mandates on state governments, including in areas such as special education requirements; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that the President of the United States and the Congress of the United States either provide 40% of the national average per pupil expenditure to assist states and local education agencies with the excess costs of educating children with disabilities or amend the Individuals with Disabilities Education Act to allow the states more flexibility in implementing its mandates; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the Congress of the United States revisit and reconfirm the Unfunded Mandate Reform Act of 1995 and put the intent and purpose of the Act into practice by ending the imposition of unfunded federal mandates on state governments; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States, to the President of the Senate of the United States, to the Speaker of the

House of Representatives of the United States and to each Member of the Maine Congressional Delegation.

Read and adopted by the House of Representatives March 18, 2003 and the Senate March 20, 2003.

**JOINT RESOLUTION
MEMORIALIZING THE PRESIDENT
OF THE UNITED STATES, THE
UNITED STATES CONGRESS AND
THE UNITED STATES DEPARTMENT
OF TRANSPORTATION TO NOT CUT
ESSENTIAL AIR SERVICES
FUNDING**

H.P. 1168

WE, your Memorialists, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States, the United States Congress and the United States Department of Transportation, as follows:

WHEREAS, the State of Maine has recently become aware of the reductions in funding proposed for the Essential Air Services, EAS, program by the current administration for fiscal year 2003-04 to \$50,000,000 from the previous year's funding of \$113,000,000; and

WHEREAS, there is also a proposed community match in the budget to access federal funds that could effectively end scheduled air service for Maine towns that now receive EAS funds since this is a time when Maine communities, especially the rural ones, can least afford such a match and our business climate can least withstand a setback; and

WHEREAS, the timing of these reductions could not be worse, as air service to such cities and towns in Maine as Augusta, Waterville, Bar Harbor, Rockland and Presque Isle is critical to help maintain a transportation infrastructure that supports Maine's existing businesses; and

WHEREAS, established businesses in Maine and businesses that we are trying to attract need reliable access to national and international air service, so the Essential Air Service program is truly "essential" to Maine communities; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to urge the President of the United States, the United States Congress and the United States Department of Transportation to stop the downward spiral that loss of essential air service could trigger in

Maine's communities and restore full funding of the Essential Air Services program; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States, the United States Secretary of Transportation, the President of the United States Senate, the Speaker of the United States House of Representatives and each Member of the Maine Congressional Delegation.

Read and adopted by the Senate April 30, 2003 and the House of Representatives April 30, 2003.

**JOINT RESOLUTION
MEMORIALIZING THE PRESIDENT
AND CONGRESS OF THE UNITED
STATES TO SUPPORT THE REFORM
OF THE SOCIAL SECURITY
OFFSETS OF THE GOVERNMENT
PENSION OFFSET AND THE
WINDFALL ELIMINATION
PROVISION**

H.P. 1185

WE, your Memorialists, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States and the United States Congress, as follows:

WHEREAS, under current federal law, individuals who receive a Social Security benefit and a public retirement benefit derived from employment not covered under Social Security are subject to a reduction in the Social Security benefits; and

WHEREAS, these laws, contained in the federal Social Security Act, 42 United States Code, Chapter 7, Subchapter II, Federal Old-Age, Survivors, and Disability Insurance Benefits, and known as the Government Pension Offset and the Windfall Elimination Provision, greatly affect public employees, particularly women; and

WHEREAS, the Windfall Elimination Provision reduces by a formula the Social Security benefit of a person who is also receiving a pension from a public employer that does not participate in Social Security; and

WHEREAS, the Government Pension Offset and the Windfall Elimination Provision are particularly burdensome on the finances of lower- and moderate-income public service workers, such as

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school teachers, clerical workers and school cafeteria employees, whose wages are low to start; and

WHEREAS, the Government Pension Offset and the Windfall Elimination Provision both unfairly reduce benefits for those public employees and their spouses whose careers cross the line between the private and public sectors; and

WHEREAS, since many lower-paying public service jobs are held by women, both the Government Pension Offset and the Windfall Elimination Provision have a disproportionately adverse effect on women; and

WHEREAS, in some cases, additional support in the form of income, housing, heating, prescription drug and other safety net assistance from state and local governments is needed to make up for the reductions imposed at the federal level; and

WHEREAS, other participants in Social Security do not have their benefits reduced in this manner; and

WHEREAS, to participate or not to participate in Social Security in public sector employment is a decision of employers, even though both the Government Pension Offset and the Windfall Elimination Provision directly punish employees and their spouses; and

WHEREAS, although the Government Pension Offset was enacted in 1977 and the Windfall Elimination Provision was enacted in 1983, many of the benefits in dispute were paid into Social Security prior to that time; and

WHEREAS, bills are present in Congress in both the House of Representatives and the Senate, known as "The Social Security Fairness Acts," that would amend the Social Security Act, 42 United States Code, Chapter 7, Subchapter II and totally repeal both the Government Pension Offset and the Windfall Elimination Provision; now, therefore, be it

RESOLVED: That We, your Memorialists, request that the President of the United States and the United States Congress work together to support reform proposals that include the following protections for low- and moderate-income government retirees:

1. Protections permitting retention of a combined public pension and Social Security benefit with no applied reductions;

2. Protections permanently ensuring that level of benefits by indexing it to inflation; and

3. Protections ensuring that no current recipient's benefit is reduced by the reform legislation; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States; the President of the United States Senate; the Speaker of the House of Representatives of the United States; and each Member of the Maine Congressional Delegation.

Read and adopted by the House of Representatives May 9, 2003 and the Senate May 12, 2003.

**JOINT RESOLUTION
MEMORIALIZING THE UNITED
STATES DEPARTMENT OF
AGRICULTURE TO PROVIDE
REGIONAL EQUITY IN FEDERAL
SUPPORT TO AGRICULTURE AS
PROMISED IN THE 2002 FARM BILL**

H.P. 1186

WE, your Memorialists, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the United States Department of Agriculture as follows:

WHEREAS, agricultural production is a unique and diversified industry in the northeastern United States; and

WHEREAS, the agricultural industry continues to be one of the top employers in each of the states in the northeast region; and

WHEREAS, differences in climate, transportation, feed, energy costs and land values compound regional differences; and

WHEREAS, the current crisis in dairy prices is placing a tremendous burden on the entire structure and infrastructure of agriculture in the northeast region; and

WHEREAS, the northeast region of the United States contains more than 135,000 small to mid-size family agricultural operations on more than 20 million acres of land; and

WHEREAS, in the northeast region, more than 58 million consumers, many living in urban areas, are concerned about food security in these times of national unrest and terrorism; and

WHEREAS, we believe that it is in the best interest of national security to ensure that regional agriculture continues to be viable and available to provide a safe, secure food supply to those consumers; and

WHEREAS, the federal Farm Security and Rural Investment Act of 2002, commonly referred to as the 2002 Farm Bill, provided a very positive first step in providing regional equity in federal support to agriculture; and

WHEREAS, the proposed United States Department of Agriculture's Environmental Quality Incentives Program rules contain provisions that will pose a severe impediment to northeast farmers who wish to access that program; now, therefore, be it

RESOLVED: That We, the Members of the 121st Legislature, now assembled in the First Regular Session, respectfully request that when the United States Department of Agriculture promulgates its rules, the department:

1. Ensure that locally led conservation not take a back seat to national priorities and measures by continuing the commitment to farmer-driven decision making that will create local efficiencies and opportunities to partner with other entities to optimize the funds available;
2. Recognize that cost-share rates less than 75% will not make agricultural production and environmental quality compatible goals as stated in the statute, particularly given the fiscal crisis in the northeast dairy industry;
3. Ensure that the Environmental Quality Incentives Program will support the development of irrigation systems for new and existing irrigators;
4. Acknowledge that the practice of 3-year rotations, encouraged by the United States Department of Agriculture, which has been adopted by many northeast producers, will under the proposed rule severely limit the number of producers who are eligible for irrigation cost-share funds;
5. Recognize that historically the northeast is underserved by farm bill programs due to the inability of northeast producers to receive commodity payments;
6. Recognize that the Environmental Quality Incentives Program is one of the few farm bill programs that can be utilized by producers in the northeast region;
7. Recognize the intent of Congress by making the Environmental Quality Incentives Program regionally equitable by distributing funds equally; and

8. Ensure that the timing of drafting the Environmental Quality Incentives Program rules doesn't eliminate states from the regional equity clause in the proposed rule for 2003 and that the \$12,000,000 allocated to each state will be available for at least one year until the rules are established and ample time is given to notify the agricultural community and to distribute funds; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to Agriculture Secretary Ann M. Veneman and to each member of the Maine Congressional Delegation.

**Read and adopted by the House of
Representatives May 12, 2003 and the Senate
May 13, 2003.**

**JOINT RESOLUTION
MEMORIALIZING CONGRESS TO
ISSUE A WAIVER OF THE
REQUIREMENTS OF THE NO CHILD
LEFT BEHIND ACT FOR MAINE
PUBLIC SCHOOLS**

H.P. 1204

WE, your Memorialists, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States and the Congress of the United States as follows:

WHEREAS, on January 8, 2002, President Bush signed into law the No Child Left Behind Act of 2001, referred to in this resolution as "the Act," which applies to all states that accept federal Title I education dollars; and

WHEREAS, the State of Maine receives federal Title I dollars and is therefore subject to the Act's requirements; and

WHEREAS, the Act mandates that every public school in Maine must make adequate yearly progress toward the goal of 100% student proficiency in math, reading and language arts and science by school year 2013-2014; and

WHEREAS, the Act requires that an entire school be identified as failing to make adequate yearly progress in any school year when the school as a whole or any one of the following subgroups within that school fails to make such progress: students with learning disabilities and students with limited English proficiency; and

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WHEREAS, it may be extremely difficult for the subgroup of students with disabilities to make adequate yearly progress in each of the measured areas each year, since those students are identified as belonging in that subgroup because of significant educational challenges, well above and beyond the normal challenges encountered by nondisabled students, that adversely affect their capacities to achieve proficiency in the measured areas; and

WHEREAS, it will be extremely difficult for the subgroup of students with limited English proficiency to meet the adequate yearly progress standard in the area of reading and language arts since those students are required to be tested in English after only 3 years in the public school system, which will rarely be a sufficient time for such students to become proficient in English; and

WHEREAS, failure by either the disabilities subgroup or the limited English proficiency subgroup in any given year to meet any one of the State's proficiency expectations for that year will result in identification of the school as a whole as failing to make adequate yearly progress; and

WHEREAS, the Act imposes a series of escalating consequences and financial costs on local schools and school units that fail to make adequate yearly progress for 2 or more years in a row, including offering intradistrict school choice and transportation; supplemental services, including private tutoring for eligible students; and the possibility of wholesale dismissal of teachers, paraprofessionals and administrators who are considered "relevant" to the school's failure to make adequate yearly progress; and

WHEREAS, the Act requires the State of Maine and local school units to develop additional new testing in grades 3, 5, 6 and 7, which will further limit the time that teachers and students are able to spend on achieving Maine's system of learning results; and

WHEREAS, the Act also requires that all Maine public school teachers who teach in core academic subjects meet federal "highly qualified" standards by the end of the 2005-2006 school year, with teachers new to the profession all having to pass a rigorous state test in the areas they will be teaching; and

WHEREAS, the Act also requires that all paraprofessionals and educational technicians working in programs funded by Title I must meet certification standards that are often higher than those that currently apply in Maine; and

WHEREAS, the Act imposes significant costs on local school units, teachers and paraprofessionals for the funding of staff development, certification upgrades, course work, choice-related transportation and private tutoring, as well as the unavoidable costs

and dislocation that would arise in the event of mandatory school restructuring and staff dismissals; and

WHEREAS, the State of Maine has had high standards of learning in its system of learning results since 1995, long before enactment of the Act, including a comprehensive statewide assessment of student achievement through the Maine Educational Assessment and including a new system of local assessment to go into effect by the end of the 2003-2004 school year; and

WHEREAS, the State of Maine for many years has been one of the highest-ranked states in the nation in school achievement, ranking first in the nation in 1999 in the performance of its kindergarten to grade 12 system, ranking first in the nation in 1999 as the best state in which to raise a child, ranking first in the nation in 2001 in the state high school completion rate and regularly ranking among the top states in the nation in student academic performance on national testing in 4th and 8th grades; and

WHEREAS, the State of Maine has obtained its strong educational achievements through the efforts of its students, teachers and schools and its own system of learning results prior to enactment of the No Child Left Behind Act of 2001; and

WHEREAS, enactment of the Act resulted in only a \$4,600,000 increase in Title I funding for the State of Maine in 2002 over and above the 2001 level that applied before the new Act's mandates; and

WHEREAS, the congressional appropriation for Title I costs was \$3.15 billion short of the congressional authorization in 2002 and \$4.32 billion short in 2003 and a projected \$6.15 billion short in 2004, for a total shortfall of \$13.2 billion over the 3-year period; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people of the State and on behalf of the State's outstanding system of public elementary and secondary school education, respectfully urge and request that the President of the United States and the Congress of the United States accommodate Maine's special circumstances by issuing a waiver of the requirements under the No Child Left Behind Act of 2001 for the State's public schools; and be it further

RESOLVED: That in the event that no such waiver is forthcoming, the United States Congress should appropriate full funding of the Act at the authorization levels called for by the Act itself; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush,

President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives and to each Member of the Maine Congressional Delegation.

**Read and adopted by the Senate May 29, 2003
and the House of Representatives
May 29, 2003.**
