

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

elevators or ramps serving buildings required to comply with the federal Americans with Disabilities Act must be designed and constructed so as to minimize intrusion on the frontal dune, including locating the structures to the rear of buildings or within areas of a lot already developed, such as a parking area. The Department of Environmental Protection is not required to hold hearings or conduct other formal proceedings prior to finally adopting this rule in accordance with this resolve; and be it further

Sec. 42. Rules regarding water use standards.

Rules adopted by the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 470-H must be provisionally adopted by January 1, 2006 and submitted for consideration to the Joint Standing Committee on Natural Resources in the Second Regular Session of the 122nd Legislature. This section is repealed 90 days after adjournment of the Second Regular Session of the 122nd Legislature.

Sec. 43. Legislation. The Department of Environmental Protection may submit legislation to the Second Regular Session of the 122nd Legislature prior to March 1, 2006 to implement measures necessary to meet the goals of the climate action plan required in the Maine Revised Statutes, Title 38, section 577.

Sec. 44. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 5219-X applies to tax years beginning on or after January 1, 2004.

See title page for effective date.

CHAPTER 331

H.P. 945 - L.D. 1362

An Act Regarding the Maine Criminal Justice Academy

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

Sec. 1. 25 MRSA §2801, first ¶, as amended by PL 1997, c. 577, §1, is further amended to read:

There is created within the Department of Public Safety a ~~law enforcement and~~ criminal justice training facility to be known as the "Maine Criminal Justice Academy," as authorized by Title 5, section 12004-C, subsection 5, which ~~shall be~~ is established in the State.

Sec. 2. 25 MRSA §2801-A, sub-§2, ¶B, as enacted by PL 1989, c. 521, §§2 and 17, is amended to read:

B. For county, municipal and other agencies subject to this chapter, a person ~~who is defined as a corrections officer as defined by the Maine Criminal Justice Academy~~ responsible for the custody of persons confined in a penal institution pursuant to an order of a court or as a result of an arrest. As used in this paragraph, "penal institution" has the same meaning as in Title 15, section 1461, subsection 1.

Sec. 3. 25 MRSA §2801-A, sub-§§3 and 4, as amended by PL 2003, c. 19, §1, are further amended to read:

3. Full-time corrections officer. "Full-time corrections officer" means a person who is employed as a corrections officer with a reasonable expectation of working at least more than 1,040 hours in any one calendar ~~or fiscal~~ year for performing corrections officer duties.

4. Full-time law enforcement officer. "Full-time law enforcement officer" means a person who is employed as a law enforcement officer with a reasonable expectation of working at least more than 1,040 hours in any one calendar ~~or fiscal~~ year for performing law enforcement officer duties.

Sec. 4. 25 MRSA §2801-A, sub-§5, as enacted by PL 1989, c. 521, §§2 and 17, is amended to read:

5. Law enforcement officer. "Law enforcement officer" means any person who by virtue of public employment is vested by law with a ~~duty to maintain public order, to prosecute offenders, the power to make arrests for crimes or serve criminal process, whether that duty power extends to all crimes or is limited to specific crimes, to perform probation functions or to perform intensive supervision functions.~~ As used in this chapter, the term does not include federal law enforcement officers or attorneys prosecuting for the State.

Sec. 5. 25 MRSA §2801-A, sub-§§6 to 8 are enacted to read:

6. Part-time corrections officer. "Part-time corrections officer" means a person who is employed as a corrections officer with a reasonable expectation of working no more than 1,040 hours in any one calendar year for performing corrections officer duties.

7. Part-time law enforcement officer. "Part-time law enforcement officer" means a person who is employed as a law enforcement officer with a reasonable expectation of working no more than 1,040 hours in any one calendar year for performing law enforcement officer duties.

8. Transport officer. "Transport officer" means a person responsible for transferring or conveying from one place to another individuals who are confined in a penal institution pursuant to an order of a court or as a result of an arrest. As used in this subsection, "penal institution" has the same meaning as in Title 15, section 1461, subsection 1.

Sec. 6. 25 MRSA §2801-B, sub-§1, as amended by PL 2003, c. 688, Pt. A, §§25 and 26, is further amended to read:

1. Exemption. The training standards and requirements of ~~this chapter~~ section 2803-B do not apply to a person defined by this chapter as a law enforcement officer who is:

A. An employee of the Department of Corrections with a duty to perform probation functions or to perform intensive supervision functions;

B. An agent or a representative of the Department of Conservation, Bureau of Parks and Lands whose law enforcement powers are limited to those specified in Title 12, section 1806;

C. An agent or a representative of the Department of Conservation, Bureau of Forestry whose law enforcement powers are limited to those specified by Title 12, section 8901, subsection 3;

E. A harbor master;

F. A municipal shellfish conservation warden;

G. A security officer appointed by the Commissioner of Public Safety pursuant to section 2908;

H. The State Fire Marshal; ~~or~~

J. A court security officer; ~~or~~

K. A transport officer.

This exemption does not include training requirements set out in this chapter that are specific to the positions identified in this subsection.

Sec. 7. 25 MRSA §2802, as amended by PL 1993, c. 744, §1, is further amended to read:

§2802. Board of trustees

There is created a board of trustees for the academy consisting of 17 members as follows: ~~The~~ the Commissioner of Public Safety, ex officio, the Attorney General, ex officio, the Game Warden Colonel in the Department of Inland Fisheries and Wildlife ~~and, ex officio,~~ and, ex officio, the Commissioner of Corrections, ex officio, and the Chief of the State Police, ex officio, and the following to be appointed by the Governor: ~~a commissioned officer of the State~~

~~Police;~~ a county sheriff, a chief of a municipal police department, 2 officers of municipal police departments, an educator who is not and has never been a sworn member of a law enforcement agency, a representative from a criminal justice agency not involved in the general enforcement of Maine criminal laws, a representative of a federal law enforcement agency, 3 citizens each ~~who of whom~~ are not and have never been sworn members of a law enforcement agency, a municipal official who is not and has never been a sworn member of a law enforcement agency and one nonsupervisory corrections officer representing a state or county correctional facility.

~~The Commissioner of Public Safety or the commissioner's designee, the Attorney General or the Attorney General's designee, the Game Warden Colonel in the Department of Inland Fisheries and Wildlife or the Game Warden Colonel's designee and the Commissioner of Corrections or the commissioner's designee are members of the board during their terms of office. A designee of an ex officio member is a member of the board only during the term of office of the ex officio member who designated the designee. All of the other members of the board serve for a term of 3 years. A trustee holds office for the term for which the trustee is appointed or until the trustee's successor had been appointed and qualified. Members of the board are entitled to compensation in accordance with Title 5, chapter 379. Any vacancy on the board of trustees must be filled in the same manner as the original appointment, but for the unexpired term.~~

Sec. 8. 25 MRSA §2803-A, sub-§1, as amended by PL 1999, c. 630, §1, is further amended to read:

1. Training and certification of all law enforcement officers in State. In accordance with this chapter, to establish training and certification standards for all law enforcement officers, set requirements for board-approved courses, prescribe curriculum and certify both graduates of board-approved courses and persons for whom the board has waived the training requirements of this chapter. Certification must be based on the officer's demonstration of having acquired specific knowledge and skills directly related to job performance; ~~;~~

~~No later than March 1, 1995, the board shall design joint training and certification standards combining into a single basic training course the present State Police course and the basic municipal and county course. The joint training course must equal or exceed any curriculum training requirements of the State Police effective on December 31, 1994. The board shall report its recommendations and the necessary implementing legislation for a basic training course to the Legislature by April 1, 1995. The Legislature~~

must approve the associated costs of the joint training course before it may be implemented.

~~Until joint training and certification standards are implemented pursuant to this subsection, the Chief of the State Police shall approve the basic training requirements for enlisted personnel of the State Police for graduation from the academy. The board shall certify State Police enlisted personnel who meet the approved basic training requirements;~~

Sec. 9. 25 MRSA §2803-A, sub-§2, as amended by PL 1993, c. 744, §3, is further amended to read:

2. Admission standards. In accordance with the requirements of this chapter, to establish standards for admission to the board-approved courses, ~~taking into account state hiring standards and procedures applicable to all state departments. The board may not set standards for admission to the board-approved courses until July 1, 1990, for persons required to be trained under Title 30, section 6210, subsection 4, which standards are higher than those in force on September 23, 1983. The board shall set including~~ academic and physical admission standards that apply uniformly to all candidates applying for admission to the academy after December 31, 1995. ~~These standards must equal or exceed any academic and physical admission standards, including standards of the State Police, in effect prior to January 1, 1996;~~

Sec. 10. 25 MRSA §2803-A, sub-§3, as enacted by PL 1989, c. 521, §§4 and 17, is amended to read:

3. Certification of criminal justice executives. To certify and set standards for certification of ~~police chiefs~~ criminal justice executives. As used in this subsection, "criminal justice executives" means police chiefs, sheriffs and the persons directly below the police chiefs or sheriffs in line of command;

Sec. 11. 25 MRSA §2803-A, sub-§4, as enacted by PL 1989, c. 521, §§4 and 17, is repealed.

Sec. 12. 25 MRSA §2803-A, sub-§8-A, ¶A, as enacted by PL 2001, c. 559, Pt. KK, §2, is amended to read:

A. The ~~400-hour~~ preservice law enforcement training under section 2804-B;

Sec. 13. 25 MRSA §2803-A, sub-§8-C is enacted to read:

8-C. Training of transport officers. To establish certification standards and a training program for transport officers. This program must include the preservice law enforcement training under section 2804-B;

Sec. 14. 25 MRSA §2803-A, sub-§11, as enacted by PL 1989, c. 521, §§4 and 17, is repealed.

Sec. 15. 25 MRSA §2803-A, sub-§16, as enacted by PL 1989, c. 521, §§4 and 17, is amended to read:

16. Provide assistance and materials. To provide to state, municipal and county corrections officers and state, municipal and county law enforcement officers any assistance or instructional materials the board ~~deems~~ considers necessary to fulfill the purposes of this chapter and Title 30-A, sections 381 and 2671.

Sec. 16. 25 MRSA §2803-B, sub-§3, as amended by PL 2003, c. 656, §4 and c. 677, §4, is repealed and the following enacted in its place:

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; and certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; and certification for orientation and training with respect to policies regarding the recording and preservation of interview of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006.

Sec. 17. 25 MRSA §2803-B, sub-§4, as amended by PL 2003, c. 370, §4, is repealed.

Sec. 18. 25 MRSA §2803-C is enacted to read:

§2803-C. Penalty

An agency that fails to comply with a provision of this chapter commits a civil violation for which the State or local government entity whose officer or employee committed the violation may be adjudged a fine not to exceed \$500.

Sec. 19. 25 MRSA §2804-A, first ¶, as enacted by PL 1975, c. 579, §9, is amended to read:

The Commissioner of Public Safety, with the ~~approval~~ advice and consideration of the board of trustees, shall appoint a director, who ~~shall be~~ is the administrator of the academy. Qualifications of the director ~~shall must~~ be established by the commissioner and the board jointly. The salary of the director ~~shall must~~ be established by the commissioner and the board jointly. The director may be dismissed for cause by the commissioner with the approval of the board.

Sec. 20. 25 MRSA §2804-B, sub-§2, as amended by PL 1993, c. 630, Pt. B, §5, is further amended to read:

2. Preservice training standards. The board shall establish standards for preservice training certification ~~that are equivalent to the 100-hour reserve officer training course as of November 1, 1988.~~ In establishing the standards, the board shall consider the use of a registered apprenticeship with a certified, experienced officer, to be followed by an examination given by the board, as an alternative to part or all of the preservice training course leading to preservice certification. In establishing the standards, the board shall cooperate with the State and local departments and agencies to which the preservice standards apply to ensure that the standards are appropriate.

Sec. 21. 25 MRSA §2804-C, sub-§1, as amended by PL 1997, c. 395, Pt. O, §4, is further amended to read:

1. Required. As a condition to the continued employment of any person as a full-time law enforcement officer by a municipality, a county, the State or any other nonfederal employer, that person must successfully complete, within the first 12 months of initial employment, a the basic training course at the Maine Criminal Justice Academy approved by the board. ~~Thereafter, as~~ If a person's failure to comply with this requirement was a result of that person's failure to satisfy any of the admission standards applicable to the basic training course and that person is subsequently employed as a full-time law enforce-

ment officer within 12 months of termination of the initial employment by a municipality, a county, the State or any other nonfederal employer, the person must have satisfied all the admission standards to the satisfaction of the board at the time of hire. As a condition of continued employment as a full-time law enforcement officer, the officer must satisfactorily maintain the basic certification by completing the recertification requirements prescribed by the board. The board, under extenuating and emergency circumstances in individual cases, may extend ~~that the~~ the 12-month period for not more than ~~90~~ 180 days. The board also, in individual cases, may waive the basic training requirement when the facts indicate that an equivalent course has been successfully completed. This section does not apply to any person employed as a full-time law enforcement officer by a municipality on September 23, 1971 or by a county on July 1, 1972.

Sec. 22. 25 MRSA §2804-C, sub-§4, ¶¶B and C, as enacted by PL 1993, c. 744, §6, are amended to read:

B. Provide a structured residential program that balances the goals of professional policing with public services emphasis; and

C. Incorporate a community policing philosophy in its training program; and.

Sec. 23. 25 MRSA §2804-C, sub-§4, ¶D, as enacted by PL 1993, c. 744, §6, is repealed.

Sec. 24. 25 MRSA §2805-B, sub-§2, as enacted by PL 1989, c. 521, §§8 and 17, is amended to read:

2. New officers. Whenever a law enforcement officer or ~~a full-time~~ corrections officer is newly appointed, the official or department or agency head shall send notice of appointment within 30 days to the board on a form provided for that purpose. The form ~~shall be~~ is deemed an application for admission to the training program or for other certification as required by this chapter.

Sec. 25. 25 MRSA §2805-B, sub-§3 is enacted to read:

3. Termination of officers. Whenever the employment of a law enforcement officer or corrections officer is terminated, the official or department or agency head shall send notice of the termination within 30 days to the board on a form provided for that purpose.

Sec. 26. 25 MRSA §2806, sub-§2, ¶A, as repealed and replaced by PL 1995, c. 462, Pt. A, §49, is amended to read:

A. For subsection 1, paragraph A and subsection 1, paragraph B, subparagraph (2), (4), (5) ~~or~~ (6) or (7):

(1) In accordance with Title 5, chapter 375, subchapter ~~IV~~ 4; or

(2) Upon notice, through conducting an informal conference with the officer. If the board finds the factual basis of the complaint is true and that further action is warranted, it may enter into a consent agreement with the officer, which may contain provisions including voluntary surrender of the certificate and terms and conditions of recertification;

Sec. 27. 25 MRSA §2806, sub-§2, ¶B, as corrected by RR 1991, c. 2, §97, is amended to read:

B. For subsection 1, paragraph B, subparagraph (1) or (3), ~~if the officer is employed as a law enforcement officer~~, in accordance with Title 5, section 10004; and

Sec. 28. 25 MRSA §2807, as amended by PL 1995, c. 131, §3, is further amended to read:

§2807. Reports of conviction or misconduct by law enforcement and corrections officers

In the event that a law enforcement or corrections officer ~~has been~~ is convicted of a crime or violation or ~~engaged~~ engages in conduct that could result in suspension or revocation of the officer's certificate pursuant to section 2806 and the chief administrative officer of the agency employing the officer has knowledge of the conviction or conduct, then the chief administrative officer shall expeditiously notify the Director of the Maine Criminal Justice Academy with the name of the law enforcement or corrections officer and a brief description of the conviction or conduct.

Sec. 29. 25 MRSA §2808, sub-§1, ¶B, as amended by PL 1989, c. 521, §§11 and 17, is further amended to read:

B. "Training" means the ~~preservice and~~ basic training provided to ~~part-time or a full-time law enforcement officers~~ officer by the Maine Criminal Justice Academy, as described in ~~former~~ section 2805, subsection 1, and section 2805-A, ~~or sections 2804-B and 2804-C.~~

Sec. 30. 25 MRSA §2808, sub-§1, ¶C, as amended by PL 1991, c. 581, is repealed and the following enacted in its place:

C. "Training costs" means a fixed dollar amount determined by the board. In making the determi-

nation, the board shall include the following costs:

(1) The full cost of the salary, including fringe benefits, paid to the officer while in training;

(2) The full cost of the tuition charged by the Maine Criminal Justice Academy;

(3) The full cost of uniforms for training and graduation provided to the officer in training; and

(4) The full cost of the salary, inclusive of overtime, paid to officers to provide police protection that would otherwise have been lost during the absence of the officer in training.

The board shall review the determination of training costs annually, make any necessary adjustments and provide that determination to all law enforcement agencies in the State.

Sec. 31. 25 MRSA §2808, sub-§2, as amended by PL 1989, c. 521, §12, is repealed.

Sec. 32. 25 MRSA §2808, sub-§3, as enacted by PL 1989, c. 521, §13, is amended to read:

3. Reimbursement for training costs. Whenever a full-time law enforcement officer, trained at the Maine Criminal Justice Academy ~~on or after September 1, 1989, while on the payroll~~ at the expense of a particular governmental entity, is subsequently hired by another governmental entity as a full-time law enforcement officer within 5 years of graduation from the academy, the governmental entity shall reimburse the first governmental entity according to the following formula.

A. If the officer is hired by the other governmental entity during the first year after graduation, that governmental entity shall reimburse the first governmental entity the full cost of the training costs.

B. If the officer is hired by the other governmental entity during the 2nd year after graduation, that governmental entity shall reimburse the first governmental entity 80% of the training costs.

C. If the officer is hired by the other governmental entity during the 3rd year after graduation, that governmental entity shall reimburse the first governmental entity 60% of the training costs.

D. If the officer is hired by the other governmental entity during the 4th year after gradua-

tion, that governmental entity shall reimburse the first governmental entity 40% of the training costs.

E. If the officer is hired by the other governmental entity during the 5th year after graduation, that governmental entity shall reimburse the first governmental entity 20% of the training costs.

F. If the officer graduated more than 5 years before subsequently being hired by the other governmental entity, that governmental entity ~~shall~~ is not be obligated to reimburse the first governmental entity.

If the officer is subsequently hired by additional governmental entities within 5 years of graduation from the academy, each of those governmental entities ~~shall be~~ is liable to the governmental employer immediately preceding it for the training costs paid by that governmental entity under this subsection. The extent of financial liability ~~shall~~ must be determined according to the formula established by this subsection.

Reimbursement ~~shall~~ is not be required when the trained officer hired by a governmental entity has had employment with a prior governmental entity terminated at the discretion of the governmental entity.

Sec. 33. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 25, section 2803-B, subsection 3 applies retroactively to January 1, 2005.

See title page for effective date.

CHAPTER 332

H.P. 1024 - L.D. 1462

An Act To Make Minor Substantive Changes to the Tax Laws

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

Sec. 1. 4 MRSA §807-A, 2nd ¶, as amended by PL 1987, c. 497, §1 and PL 1997, c. 526, §14, is further amended to read:

Upon promulgation of and in accordance with rules adopted by the Supreme Judicial Court, employees of the Department of Administrative and Financial Services, Bureau of Revenue Services may serve civil process and represent the bureau in District Court in disclosure proceedings pursuant to Title 14, chapter 502, ancillary to the collection of taxes for which warrants have been issued pursuant to Title 36, and

may represent the State Tax Assessor in arraignment proceedings in District Court in cases in which a criminal complaint has been filed alleging violation of a provision of Title 36, section 2113, 3234 or 5332.

Sec. 2. 5 MRSA §12004-K, sub-§11-A, as enacted by PL 1997, c. 411, §1, is repealed.

Sec. 3. 36 MRSA §111, sub-§5, as amended by PL 1997, c. 668, §8, is further amended to read:

5. Tax. "Tax" means the total amount required to be paid, withheld and paid over, or collected and paid over with respect to estimated or actual tax liability under this Title and any amount assessed by the State Tax Assessor pursuant to this Title, including any interest or ~~civil penalty relating thereto~~ penalties provided by law. For purposes of sections 171, 175-A, 176-A and 186, "tax" also means any fee, fine, penalty or other obligation owed to the State provided for by law if this obligation is subject to collection by the assessor pursuant to an agreement entered into by the bureau and another agency of the State.

Sec. 4. 36 MRSA §187-B, sub-§5-B is enacted to read:

5-B. Electronic data submission. Any person required by the State Tax Assessor to file returns by electronic data submission that fails to file electronically is liable for a penalty of \$50. For purposes of this subsection, a person fails to file electronically when:

A. Two or more required returns in any consecutive 6-month period either are not filed or are filed by the person by means other than electronic data submission and the person has been notified in writing by the State Tax Assessor of that person's noncompliance and of the fact that the penalty authorized by this subsection may be imposed; or

B. The person files 2 or more required electronic returns in any consecutive 6-month period that do not comply with the specifications set forth in rules adopted by the State Tax Assessor pursuant to section 193.

Sec. 5. 36 MRSA §187-B, sub-§7, as amended by PL 2001, c. 396, §10, is further amended to read:

7. Reasonable cause. For reasonable cause, the State Tax Assessor shall waive or abate any penalty imposed by subsection 1; subsection 2, paragraphs A and B; subsections 4-A ~~and~~ 5-A ~~and~~ 5-B; or by the terms of the International Fuel Tax Agreement. Reasonable cause includes, but is not limited to, the following: