

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

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July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

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Penmor Lithographers
Lewiston, Maine
2006

CHAPTER 620

H.P. 1330 - L.D. 1890

An Act To Make Revisions to the
Laws Governing Pesticide Control

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

Sec. 1. 7 MRSA §601, as enacted by PL 1975, c. 382, §3, is amended to read:

§601. Title

This subchapter ~~shall~~ may be known and cited as the "Maine Pesticide Control Act of 1975."

Sec. 2. 7 MRSA §602, as repealed and replaced by PL 1993, c. 349, §22, is amended to read:

§602. Enforcing official

This subchapter is administered by the Board of Pesticides Control, ~~hereinafter~~ referred to in this subchapter as the "board," established in Title 5, section 12004-D, subsection 3 and further described in Title 22, chapter 258-A.

Sec. 3. 7 MRSA §604, as amended by PL 1989, c. 878, Pt. E, §2, is further amended to read:

§604. Definitions

As used in this subchapter, unless the context otherwise indicates, the following ~~words shall~~ terms have the following meanings.

1. Active ingredient. "Active ingredient" means any ingredient ~~which that~~ will prevent, destroy, repel, control or mitigate pests; or ~~which that~~ will act as a plant regulator, defoliant or desiccant.

2. Adulterated. ~~"Adulterated," shall apply to any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted. as applied to a pesticide, means that:~~

A. The pesticide's strength or purity falls below the standard of quality as expressed on the labeling under which it is sold;

B. A substance has been substituted wholly or in part for the pesticide; or

C. A valuable constituent of the pesticide has been wholly or in part abstracted.

3. Animal. "Animal" means all vertebrate and invertebrate species, including but not limited to ~~man~~ humans and other mammals, birds, fish and shellfish.

4. Beneficial insects. "Beneficial insects" means those insects ~~which that~~, during their life cycle, are effective pollinators of plants, are parasites or predators of pests or are otherwise beneficial.

~~**5. Commissioner.** "Commissioner" means the Commissioner of Agriculture, Food and Rural Resources or his authorized agents.~~

6. Defoliant. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

7. Desiccant. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

8. Device. "Device" means any instrument or contrivance, other than a firearm, ~~which that~~ is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than ~~man~~ a human being and other ~~bacteria~~ than a bacterium, virus or other microorganism on or in a living ~~man~~ human being or other living ~~animals, but not including animal.~~ "Device" does not include equipment used for the application of pesticides when sold separately ~~therefrom~~ from pesticides.

9. Distribute. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver; pesticides in this State.

10. Environment. "Environment" includes water, air, and land and all plants and ~~man~~ human beings and other animals living therein; and the interrelationships ~~which that~~ exist among these.

11. EPA. "EPA" means the United States Environmental Protection Agency.

12. FIFRA. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act.

13. Fungi. "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, ~~as, for example, including but not limited to~~ rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living ~~man~~ human beings or other living animals, and except those in or on processed food, beverages or pharmaceuticals.

14. Highly toxic pesticide. "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under ~~the authority of FIFRA~~, Section

25(c)(2) of FIFRA or by the board under section 610, subsection 1, paragraph B.

15. Imminent hazard. "Imminent hazard" means a situation ~~which that~~ exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to section 609 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the United States Secretary of the Interior under United States Public Law 91-135.

16. Inert ingredient. "Inert ingredient" means an ingredient ~~which that~~ is not an active ingredient.

17. Ingredient statement. "Ingredient statement" means ~~a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic, following:~~

A. The name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide; and

B. If the pesticide contains arsenic in any form, the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

18. Insect. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, ~~as for example, including but not limited to~~ beetles, bugs, bees, ~~and~~ flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, ~~as for example, including but not limited to~~ spiders, mites, ticks, centipedes and wood lice.

19. Label. "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

20. Labeling. "Labeling" means the label and all other written, printed or graphic matter ~~accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of EPA; the United States Departments of Agriculture and Interior and United States Department of Health, Education and Welfare; state experiment stations; state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;~~

A. Accompanying the pesticide or device at any time; or

B. To which reference is made on the label or in literature accompanying the pesticide or device, except current official publications of EPA, the United States Department of Agriculture, the United States Department of the Interior, the United States Department of Health and Human Services, a state experiment station, a state agricultural college or other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

21. Land. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

22. Nematode. "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented ~~round worms~~ round-worms with elongated fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; nematodes may also be called nemas or eelworms.

23. Person. "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

24. Pest. "Pest" means any insects, rodents, nematodes, fungi, weeds, and other forms of terrestrial or aquatic plant or animal life or ~~virus~~ viruses, bacteria or other ~~microorganism~~ microorganisms, except viruses, bacteria or other microorganisms on or in living ~~man~~ human beings or other living animals, ~~which that~~ the commissioner declares to be a pest under section 610, subsection 1, paragraph A.

25. Pesticide. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. ~~This definition also~~ "Pesticide" includes "highly toxic pesticide."

26. Plant regulator. "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation; or for otherwise altering the behavior of plants or the produce thereof, ~~but shall~~ "Plant regulator" does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants ~~and or~~ or soil amendments.

27. Protect health and the environment. "Protect health and the environment" means ~~protection~~

to protect against any unreasonable adverse effects on the environment.

28. Registrant. "Registrant" means a person who has registered any pesticide pursuant to the provisions of this subchapter.

29. Registration. "Registration" ~~also means~~ includes reregistration.

30. Restricted use pesticide. "Restricted use pesticide" means any pesticide or pesticide use classified for restricted use by the ~~Administrator~~, EPA Administrator.

31. Rodent. "Rodent" means any member of the animal group of the order rodentia, including but not limited to rats, mice, gophers, porcupines and squirrels.

32. Unreasonable adverse effects on the environment. "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~ human beings or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

33. Weed. "Weed" means any plant ~~which~~ that grows where it is not wanted.

34. Wildlife. "Wildlife" means all living things that are neither human, domesticated nor, as defined in this subchapter, pests, including but not limited to mammals, birds and aquatic life.

Sec. 4. 7 MRSA §605, as enacted by PL 1975, c. 382, §3, is amended to read:

§605. Misbranded

The term "misbranded" ~~applies~~:

1. False, misleading or inconspicuous labeling. ~~To any~~ As applied to any pesticide subject to this subchapter means that:

A. ~~If its~~ Its labeling bears any statement, design or graphic representation relative ~~thereto~~ to the pesticide or to its ingredients ~~which~~ that is false or misleading in any particular;

B. ~~If it~~ It is an imitation of or is distributed under the name of another pesticide; or

C. ~~If any~~ Any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter, in the labeling and in such terms, as to render it likely to be read and understood by the ordinary individ-

ual under customary conditions of purchase and use; or

2. Lack of certain information. ~~To any~~ As applied to any pesticide means that:

A. ~~If the~~ The labeling does not contain a statement of the use classification under which the product is registered;

B. ~~If the~~ The labeling accompanying it does not contain directions for use ~~which~~ that are necessary for effecting the purpose for which the product is intended and that, if complied with, together with any requirements imposed under FIFRA, Section 3(d) ~~of FIFRA~~, are adequate to protect health and the environment;

B-1. The label does not contain a warning or caution statement that may be necessary and that, if complied with, together with any requirements imposed under FIFRA, Section 3(d), would be adequate to protect the health and environment;

B-2. The label does not bear an ingredient statement on that part of the immediate container, and on the outside container and wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase. The pesticide is not misbranded if the ingredient statement appears prominently on another part of the container as permitted pursuant to FIFRA, Section 2(q)(2)(A) if the size or form of the container makes it impracticable to place it on the part of the retail package that is presented or displayed under customary conditions of purchase;

C. ~~If the label does~~ There is not ~~bear~~ affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(1) ~~Name~~ The name, brand or trademark under which the pesticide is ~~distributed~~ sold;

(2) ~~An ingredient statement on that part of the immediate container, and on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase; provided that the ingredient statement may appear prominently on another part of the container as permitted pur~~

~~suant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;~~

~~(3) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, would be adequate to protect the health and environment;~~

(4) The net weight or measure of the content;

(5) The name and address of the manufacturer, registrant or person for whom manufactured; and

(6) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;

D. ~~If that~~ The pesticide contains any substance or substances in quantities highly toxic to ~~man~~ human beings unless the label bears, in addition to other label requirements:

(1) The skull and crossbones;

(2) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(3) A statement of a practical treatment, including first aid or otherwise, in case of poisoning by the pesticide; ~~or~~

E. ~~If the~~ The pesticide container does not bear a registered label or ~~if the label does not contain all the information required by this subchapter or the regulations~~ rules adopted under this subchapter.

Sec. 5. 7 MRSA §606, as amended by PL 1989, c. 878, Pt. E, §§3 and 4, is further amended to read:

§606. Prohibited acts

1. Unlawful distribution. ~~It is unlawful for any A person to~~ may not distribute in the State any of the following:

A. ~~Any A~~ pesticide ~~which that~~ has not been registered pursuant to the provisions of this subchapter;

B. ~~Any A~~ pesticide if any of the claims made for it or any of the directions for its use or other la-

beling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; ~~provided that~~ a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product; if the registration is amended to reflect ~~such that~~ change and if ~~such that~~ change will not violate any provision of FIFRA or this subchapter;

C. ~~Any A~~ pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to ~~such the~~ container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and ~~the regulations~~ rules adopted under this subchapter;

D. ~~Any A~~ pesticide ~~which that~~ has not been colored or discolored pursuant to ~~the provision of~~ section 610, subsection 1, paragraph D;

E. ~~Any A~~ pesticide ~~which that~~ is adulterated or misbranded or any device ~~which that~~ is misbranded; ~~or~~

F. ~~Any A~~ pesticide in containers ~~which that~~ are unsafe due to damage.

2. Unlawful alteration, misuse, divulging of formulas, transportation, disposal and noncompliance. ~~It shall be unlawful A person may not:~~

A. ~~For any person to detach~~ Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or ~~regulations~~ rules adopted under this subchapter; ~~or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this subchapter or the regulations adopted thereunder;~~

A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter;

B. ~~For any person to use~~ Use or cause to be used any pesticide in a manner inconsistent with its labeling or ~~to regulations~~ with rules of the board, if those ~~regulations~~ rules further restrict the uses provided on the labeling;

C. ~~For any person to use~~ Use for that person's own advantage or ~~to reveal~~, other than to the board or proper officials or employees of the state or federal executive agencies, ~~or~~ to the

courts of this State or of the United States in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board as ~~containing~~ to contain or ~~relating~~ relate to trade secrets or commercial or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

D. ~~For any person to handle~~ Handle, transport, store, display or distribute pesticides in such a manner as to endanger ~~man and his~~ human beings or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides;

E. ~~For any person to dispose~~ Dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or pollute any water supply or waterway;

F. ~~For any person to refuse~~ Refuse or otherwise fail to comply with the provisions of this subchapter, the ~~regulations~~ rules adopted ~~hereunder~~ under this subchapter, or of any lawful order of the board; or

G. ~~For any person to apply~~ Apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board, ~~which rules are designed to minimize pesticide drift to the maximum extent practicable under currently available technology. Without limitation, these rules may prescribe procedures to be used for the application of pesticides, including the time, place, manner and method of that application, may restrict or prohibit use of pesticides in designated areas or during specified periods of time and may prescribe tolerance levels for pesticide residues in off target areas. The board shall propose the rules by June 15, 1985.~~

Sec. 6. 7 MRSA §607, as amended by PL 2003, c. 282, §1, is further amended to read:

§607. Registration

1. Conditions requiring registration. Every A pesticide ~~which is~~ may not be distributed in this State ~~shall be unless it is~~ registered with the board ~~subject to the in accordance with the~~ provisions of this subchapter. Such registration shall be renewed annually prior to January 1, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same

~~person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this subchapter, or if the pesticide is distributed under the provisions of an experimental use permit issued under section 608 or an experimental use permit issued by EPA, except that registration is not required if:~~

A. A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and is used solely at that plant or warehouse as a constituent part to make a pesticide that is registered under the provisions of this subchapter; or

B. A pesticide is distributed under the provisions of an experimental use permit issued by EPA.

2. Contents of statement made by applicant.

The applicant for registration shall file a statement with the board, which ~~shall~~ must include:

A. The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than applicant's;

B. The name of the pesticide;

C. Other necessary information required ~~for completion of the department's application for registration forms by the board;~~ and

D. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA.

3. Submission of formula. The board, when it ~~deems~~ determines it necessary in the administration of this subchapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

4. Test results. The board may require a full description of ~~the all~~ tests made and the results ~~thereof~~ of those tests on any pesticide not registered pursuant to ~~the Federal Insecticide, Fungicide and Rodenticide Act FIFRA~~, Section 3 or on any pesticide on which restrictions are being considered by the board. In the case of renewal of registration, ~~the board may require~~ a statement ~~shall be required~~ only with respect to test result information ~~which that~~ is different from that furnished when the pesticide was registered or last reregistered. Notwithstanding Title 1, section 402, ~~data submitted under this subsection and subsections 3 and 5 are confidential and shall not be available for public inspection.~~

5. Power to require other information. The board may ~~prescribe~~ by rules adopted under section

610 require the submission of other necessary information by regulation adopted in a manner consistent with the Maine Administrative Procedure Act.

5-A. Confidentiality. Notwithstanding Title 1, section 402, data submitted pursuant to subsections 3, 4 and 5 are confidential and may not be available for public inspection.

6. Registration fee; validity. The applicant desiring to register a pesticide shall ~~must~~ pay an annual registration fee of \$105 beginning in calendar year 1994, \$115 beginning in calendar year 2003 and \$125 beginning in calendar year 2004 and thereafter for each pesticide registered for that applicant. Annual registration periods expire on December 31st of any one year or in a manner consistent with Title 5, section 10002, as to license expiration, whichever is later.

7. Renewal of registration. Forms Registrations must be renewed annually prior to January 1st. The board shall mail forms for reregistration ~~shall be mailed~~ to registrants at least 30 days prior to the due date.

8. Approval of application for registration.

A. ~~Provided the State is authorized by the Administrator of the United States Environmental Protection Agency to register pesticides pursuant to Sections 24(a) and 24(c) of FIFRA, the board shall consider the required information set forth under subsections 2, 3, 4 and 5 and shall, subject to the terms and conditions of the United States Environmental Protection Agency certification, register such pesticide if it determines that:~~

- ~~(1) Its composition is such as to warrant the proposed claims for it;~~
- ~~(2) Its labeling and other material required to be submitted comply with the requirements of this subchapter;~~
- ~~(3) It will perform its intended function without unreasonable adverse effects on the environment;~~
- ~~(4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment; and~~
- ~~(5) A need for the pesticide exists.~~

~~If, within 180 days from the date the completed application for registration is submitted, the Board of Pesticides Control fails to act upon an application for registration of a pesticide which has been certified by the United States Environ-~~

~~mental Protection Agency the pesticide shall be deemed registered under this chapter, unless the Board of Pesticides Control issues a written statement containing the reasons for the failure to act upon the application. The statement of the Board of Pesticides Control shall be considered a refusal to register pursuant to section 609.~~

~~This paragraph does not apply if the registrant fails to provide any information required to be submitted under this chapter or does not provide other information requested by the Board of Pesticides Control in order to determine whether the pesticide should be registered.~~

~~The preceding paragraph does not affect the rights of the Board of Pesticides Control to make further inquiry regarding the registration of a pesticide or to refuse reregistration, suspend or revoke registration or otherwise restrict or condition the use of pesticides in order to protect public health and the environment.~~

~~B. Prior to registering a pesticide for a special local need, the board shall classify the uses of the pesticide for general or restricted use in conformity with Section 3(d) of FIFRA; provided, that the board shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where 2 pesticides meet the requirements of this paragraph, one should not be registered in preference to the other.~~

~~C. The board may develop and promulgate such other requirements by regulation, adopted in a manner consistent with the Maine Administrative Procedure Act, as are necessary for the state plan to receive certification from EPA.~~

8-A. Approval of application for registration. The processing of an application for registration is governed by this subsection.

A. The board shall consider the required information set forth under subsections 2, 3, 4 and 5 and shall register a pesticide if it determines that:

- (1) Its composition warrants the proposed claims for it;
- (2) Its labeling and other material required to be submitted comply with the requirements of this subchapter;
- (3) It will perform its intended function without unreasonable adverse effects on the environment;
- (4) When used in accordance with widespread and commonly recognized practice,

it will not generally cause unreasonable adverse effects on the environment; and

(5) A need for the pesticide exists.

B. If, within 180 days from the date the completed application for registration is submitted, the board fails to act upon an application for registration of a pesticide that has been certified by EPA, the pesticide is deemed registered under this chapter unless the board issues a written statement containing the reasons for the failure to act upon the application. The statement of the board is deemed a refusal to register pursuant to section 609.

C. Paragraphs A and B do not apply if the registrant fails to provide any information required to be submitted under this subchapter or does not provide other information requested by the board in order to determine whether the pesticide should be registered.

Nothing in this paragraph affects the rights of the board to make further inquiry regarding the registration of a pesticide or to refuse reregistration, to suspend or revoke registration or to otherwise restrict or condition the use of pesticides in order to protect public health and the environment.

D. Prior to registering a pesticide for a special local need, the board shall classify the uses of the pesticide for general or restricted use in conformity with FIFRA, Section 3(d). The board may not make any lack of essentiality a criterion for denying registration of any pesticide. When 2 pesticides meet the requirements of this paragraph, the board may not register one in preference to the other.

E. The board may establish such other requirements by rule in accordance with section 610 as are necessary to carry out the provisions of this subsection.

9. Adverse environmental effects. If, at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects of a pesticide on the environment of the pesticide, the registrant shall submit such that information to the board.

Sec. 7. 7 MRSA §607-A, as corrected by RR 1997, c. 2, §26 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

§607-A. Review or reregistration

1. Review required. The board shall review all chemical pesticides used in this State in accordance with the requirements of this section. ~~This review must~~

~~be completed for presently registered pesticides on a schedule to be determined by the board, with restricted use pesticides and the most widely used pesticides receiving priority, and within 3 years for pesticides registered after September 23, 1983. The board shall select 2 pesticides for review each year with priority given to pesticides that have patterns of use in this State that differ from prevalent use patterns nationally or regionally. The board may select additional pesticides for review as the board determines need and as resources allow.~~

2. Review process. In cooperation with technical personnel of the Department of Environmental Protection; the Department of Inland Fisheries and Wildlife; the Department of Health and Human Services; the Department of Marine Resources; and the Department of Conservation, specifically the Maine Forest Service, the board shall conduct a review ~~to include consisting of~~ the following ~~or portions of~~ the following as the board determines relevant:

A. An environmental risk assessment to determine the effects of pesticides on the ecosystem. This assessment is to be based on available literature. The board shall request data that it determines necessary to carry out the purpose of this chapter, ~~but, when the literature is not available, is inadequate or incomplete, this assessment shall be based on an environmental monitoring protocol; or~~

B. A health risk assessment, based on a literature search of laboratory, clinical and epidemiological data available within and without the State. The board shall request data it determines necessary to carry out the purpose of this chapter; ~~and~~

C. ~~A water residue survey to determine a representative sample of a number of wells or bodies of water, either at random, in areas of possible contamination or at other bases to be described by the board, for the purpose of testing these waters and preparing a profile of the kinds and amounts of pesticides present.~~

2-A. Water residue surveys. The board shall conduct a water residue survey at least once every 6 years to establish a representative sample of a number of wells or bodies of water, selected at random, in areas of possible contamination or at other locations to be described by the board, for the purpose of testing these waters and preparing a profile of the kinds and amounts of pesticides present.

3. Effect of review on reregistration. If the reviews in this section demonstrate that the impact of the pesticide on the ecosystem warrants additional health or environmental safeguards, the board shall require implementation of those safeguards prior to

reregistration. The board may not refuse to renew a pesticides registration based solely on its inability to conduct a review in accordance with this section.

Sec. 8. 7 MRSA §608, as amended by PL 1989, c. 878, Pt. E, §7 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is repealed.

Sec. 9. 7 MRSA §609, as amended by PL 1989, c. 878, Pt. E, §8, is further amended to read:

§609. Refusal to register; cancellation; suspension; legal recourse

1. Procedure. ~~Provided the State is certified by the Administrator of EPA to register pesticides formulated to meet special local needs, the board shall consider the~~ The following for refusal to register; for cancellation; for suspension; or for legal recourse for such pesticides provisions govern the board when refusing to register a pesticide, refusing to renew a pesticide registration, canceling a pesticide registration or suspending a pesticide registration. ~~This registration, cancellation and suspension shall be considered rule making as that term is defined in the Maine Administrative Procedure Act and notice shall be provided in a manner consistent with the Maine Administrative Procedure Act.~~

A. If it does not appear to the board that ~~the a~~ a pesticide ~~is such as to warrant warrants~~ the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or ~~regulations rules~~ rules adopted ~~thereunder~~ under this subchapter, the board shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections and shall notify, in a manner consistent with the ~~Maine Administrative Procedure Act, the applicant of the opportunity for hearing prior to refusal to register.~~

B. When the board determines that a pesticide or its labeling does not comply with the provisions of this subchapter or ~~the regulations rules~~ rules adopted ~~thereunder~~ under this subchapter, the board may cancel or refuse to renew the registration of a pesticide or change its classification, after notice and opportunity for hearing has been provided in a manner consistent with the ~~rule-making provisions of the~~ Maine Administrative Procedure Act.

C. When the board determines that there is an imminent hazard, it may, on its own motion, suspend the registration of a pesticide in ~~a manner consistent~~ accordance with the ~~Maine Adminis-~~

~~trative Procedure Act, Title 5, section 8054, as to emergency rule making pending decisions reached after notice and opportunity for a hearing 10004. Hearings shall be held with the utmost possible expedition.~~

D. When the board becomes cognizant of any possible hazard or violation involving either a registered or unregistered product, it shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or charge to be preferred, the possible hazard or violation to be delivered by registered mail, return receipt requested, to the person concerned, who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the board registrant and may cancel or refuse to renew the registration of the pesticide or change its classification after notice and opportunity for hearing has been provided in a manner consistent with the Maine Administrative Procedure Act.

E. Any person who will be adversely affected by such order in this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the board and thereupon the board shall file in the court the record of the proceedings on which it based its order. The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the board with respect to questions of fact shall be sustained, if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the board to take further testimony, if there are reasonable grounds for the failure to adduce such evidence in the prior hearing. The board may modify its findings and order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

2. Federally registered pesticides. If the board determines that any federally registered pesticide, with respect to the use of such pesticide within this State, does not warrant the claims for it, or might cause unreasonable adverse effects on the environment, the board may refuse to register the pesticide as required in section 607; or, if the pesticide is registered under section 607, ~~the registration may be cancelled or suspended as provided in~~ may cancel or suspend the registration in accordance with subsection 1. If the board believes the pesticide does not comply with the provisions of FIFRA or the regulations adopted ~~thereunder~~ by EPA pursuant to FIFRA, it shall advise

EPA of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of FIFRA; and suggest necessary corrections.

3. Person adversely affected by board action.

Any person adversely affected by a final action of the board under this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of that final action, a petition praying that the action be set aside in whole or in part. A copy of the petition must be forthwith transmitted by the clerk of the court to the board and upon receipt the board shall file in the court the record of the proceedings on which it based its final action. The court has jurisdiction to affirm or set aside the final action complained of in whole or in part. The findings of the board with respect to questions of fact must be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the board to take further testimony if there are reasonable grounds for the failure to adduce the evidence in the prior hearing. The board may modify its findings and final action by reason of the additional evidence and shall file the additional record and any modification of the findings or final action with the clerk of the court.

Sec. 10. 7 MRSA §610, as amended by PL 1989, c. 878, Pt. E, §9, is further amended to read:

§610. Determinations; rules; restricted use pesticides; uniformity

1. Determinations. ~~The board is authorized, after due notice and an opportunity for a hearing in a manner consistent with the rule making provisions of the Maine Administrative Procedure Act may by rule:~~

A. ~~To declare~~ Declare as a pest any form of plant or animal life, except ~~virus~~ viruses, bacteria or other microorganisms on or in living ~~man~~ human beings or other living animals, ~~which is that~~ are is injurious to health or the environment;

B. ~~To determine~~ Determine whether pesticides registered under the authority of FIFRA, Section 24(c) of FIFRA are highly toxic to ~~man~~ human beings. The definition of highly toxic, as defined in Title 40, Code of Federal Regulations, Section 162.8 as issued or hereafter amended, shall govern the board's determination;

C. ~~To determine~~ Determine whether pesticides ~~and or~~ quantities of substances contained in pesticides, ~~which~~ are injurious to the environment; ~~the~~ The board shall must be guided by EPA regulations in this determination; and

D. ~~To prescribe regulations requiring~~ Require any pesticide to be colored or discolored; if it

determines that such a requirement is feasible and is necessary for the protection of health and the environment.

2. Rule-making powers. ~~The board is authorized, after due notice and a public hearing, in a manner consistent with the Maine Administrative Procedure Act, to make appropriate regulations for carrying out the provisions of this subchapter, including. The board's rule-making authority includes, but is not limited to regulations providing for, rules:~~

A. ~~The~~ Providing for the collection, examination and reporting of samples of pesticides or devices;

B. ~~The~~ Providing for the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers;

C. ~~Labeling~~ Establishing requirements of all pesticides required to be registered under provisions of this subchapter, provided that such ~~regulations shall~~ rules do not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA; ~~and~~

D. Specifying classes of devices ~~which shall be that are~~ subject to the provisions of section 605, subsection 1-;

E. Governing pesticide application, including, but not limited to, rules:

(1) Designed to minimize pesticide drift to the maximum extent practicable under currently available technology;

(2) Prescribing procedures to be used for the application of pesticides, including the time, place, manner and method of that application;

(3) Restricting or prohibiting the use of pesticides in designated areas or during specified periods of time; and

(4) Prescribing tolerance levels for pesticide residues in off-target areas;

F. Prescribing the submission of information necessary for the board to undertake its responsibilities under this subchapter;

G. Prescribing requirements as necessary to carry out the provisions of section 607;

H. Governing the registration and the cancellation and suspension of registration of pesticides pursuant to section 609; and

I. For the purpose of achieving uniformity of requirements between the states and the Federal Government, provided the rules are in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use, as established by EPA or other federal or state agencies.

3. ~~Uniformity of requirements; restricted uses.~~ ~~For the purpose of uniformity of requirements between the states and the Federal Government, the board may, after a public hearing, adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use as established by EPA or other federal or state agencies.~~

4. Designation of rules. Rules adopted under this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless otherwise specified or designated in accordance with subsection 5.

5. Review of regulatory agenda; designation as major substantive rules. Notwithstanding Title 5, section 8060, subsection 2, the due date for the submission of a regulatory agenda by the board under section 8060 is January 15th. The board shall annually submit a regulatory agenda complying with Title 5, section 8060, subsection 1 to the joint standing committee of the Legislature having jurisdiction over pesticides regulation. The legislative committee of jurisdiction shall complete its review of the board's regulatory agenda no later than February 15th of each year. The committee may report out legislation no later than February 20th to designate any rule on the board's regulatory agenda as a major substantive rule subject to legislative review under Title 5, chapter 375, subchapter 2-A.

Sec. 11. 7 MRSA §611, as amended by PL 1989, c. 878, Pt. E, §10, is further amended to read:

§611. Enforcement

1. Board powers. ~~Notwithstanding any other provisions provision of law, the sampling and examination of pesticides or devices shall be made under the direction of the board for the purpose of determining whether they comply with the requirements of this subchapter must be done under the direction of the board. The board is authorized may, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to labeled pesticides or devices packaged for distribution, and to may open any case, package or other container; and to may, upon tendering the market~~

~~price, take samples for analysis. If it appears from such an examination that a pesticide or device fails to comply with the provisions of this subchapter or regulations rules adopted thereunder under this subchapter, and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to such that person in a manner consistent with the Maine Administrative Procedure Act. Any The board shall provide any person so notified shall be given an opportunity for a hearing in a manner consistent with the Maine Administrative Procedure Act as to Act's provisions governing adjudicatory proceedings. If thereafter in the opinion of the board it appears that the provisions of this subchapter or regulations rules adopted thereunder under this subchapter have been violated by such that person, the board shall refer a copy of the results of the analysis or the examination of such pesticide or device to the attorney for the district in which the violation occurred.~~

2. Minor violations. ~~Nothing in this subchapter shall may be construed as requiring the board to report minor violations of this subchapter for prosecution or for the institution of condemnation proceedings when the board believes that the public interest will be served best by a suitable notice of warning in writing.~~

3. Repeated violations. ~~The board shall record all violations of this chapter subchapter and Title 22, chapter 258-A, including the name of the owner of the land on which the pesticides were intended to be applied, the name of the licensed pesticides applicator and the name of the person who contracted the pesticide application services. The board shall identify persons who repeatedly violate provisions relating to pesticide use and recommend to the Attorney General methods to prevent these repeated further violations by those persons.~~

Sec. 12. 7 MRSA §612, as amended by PL 1989, c. 878, Pt. E, §11, is further amended to read:

§612. "Stop sale, use or removal" order

When the board has reasonable cause to believe a pesticide or device is being distributed, stored, transported or used in violation of any of the provisions of this subchapter or of any of the ~~prescribed regulations under rules adopted pursuant to~~ this subchapter, it may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of ~~any such that~~ pesticide or device. If the owner or custodian is not available for service of the order, the board may attach the order to the pesticide or device and notify the owner or custodian and the registrant. The pesticide or device ~~shall may~~ not be sold, used or removed until the provisions of this subchapter have been complied with and the pesticide or device has been released in writing under conditions specified by

the board or the violation has been otherwise disposed of as provided in this subchapter by a court of competent jurisdiction. The issuance of such an order shall not be considered is not a licensing or an adjudicatory proceeding as defined by the Maine Administrative Procedure Act.

Sec. 13. 7 MRSA §613, as amended by PL 1989, c. 878, Pt. E, §12, is further amended to read:

§613. Judicial action after "stop sale, use or removal" order

The following provisions govern judicial actions concerning a "stop sale, use or removal" order by the board.

1. Filing action; adjudication. After service of a "stop sale, use or removal" order is made upon any person, either that person, the registrant or the board may file an action in a court of competent jurisdiction in the district in which ~~a the violation of this subchapter or regulations adopted thereunder~~ is alleged to have occurred for an adjudication of the alleged violation. The court ~~in such action~~ may issue temporary or permanent injunctions, mandatory or restraining, and ~~such any~~ intermediate orders as it ~~deems~~ determines necessary or advisable. The court may order condemnation of any pesticide or device ~~which that~~ does not meet the requirements of this subchapter or ~~regulations adopted thereunder~~ rules adopted under this subchapter.

2. Disposition of condemned pesticide; costs and fees. If the court orders that a pesticide or device is condemned, it shall, after entry of decree, the court shall direct that the pesticide or device be disposed of by destruction or sale as the court directs, and if such, If the pesticide or device is directed to be sold, the proceeds, less costs, including legal costs, shall must be paid to the Treasurer of State as provided in section 621, ~~provided that the~~ A pesticide or device shall may not be sold contrary to the provisions of this subchapter or ~~regulations adopted thereunder~~ rules adopted under this subchapter. ~~Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the~~ When a decree of condemnation is entered against a pesticide or device, the court shall charge court costs, fees, storage and other proper expenses against the person, if any, appearing as claimant of the pesticide. The court may direct that the pesticide or device be delivered to the owner thereof, upon payment of costs and execution and delivery of a good and sufficient bond conditioned on the pesticide or device not being disposed of unlawfully, for relabeling, reprocessing or otherwise bringing the product into compliance.

3. Award of court costs and fees. ~~When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.~~

Sec. 14. 7 MRSA §614, as amended by PL 1989, c. 878, Pt. E, §13 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is repealed.

Sec. 15. 7 MRSA §616, as repealed by PL 1989, c. 841, §2 and amended by c. 878, Pt. E, §15, is repealed.

Sec. 16. 7 MRSA §616-A, sub-§1, as enacted by PL 1989, c. 841, §3, is amended to read:

1. Informal hearing. When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing, ~~as defined under the Maine Administrative Procedure Act.~~

Sec. 17. 7 MRSA §617, as amended by PL 1989, c. 878, Pt. E, §16, is further amended to read:

§617. Exemptions

1. Exemptions from penalties. The penalties provided for violations of section 606, subsection 1, paragraphs A, B, C, D and E ~~shall do~~ not apply to:

A. Any carrier while lawfully engaged in transporting a pesticide within this State; if ~~such the~~ carrier ~~shall~~, upon request, ~~permit~~ permits the board to copy all records showing the transactions in and movement of the pesticides or devices;

B. Public officials of this State and the Federal Government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations;

C. The manufacturer, shipper or other distributor of a pesticide for experimental use only, provided that ~~such~~ person holds or is covered by a valid experimental use permit ~~as provided for by section 608 or issued by EPA, and provided further that such the~~ permit covers the conduct in question; or

D. Any person who ships a substance or mixture of substances being put through tests ~~in which~~ the purpose of which is only to determine ~~its~~ the value of the substance or mixture for pesticide

purposes or to determine its toxicity or other properties and from the use of which the user does not expect to receive any benefit in pest control ~~from its use~~.

2. Exemption from this subchapter; pesticides for export. ~~No A pesticide or device shall be deemed may not be found to be~~ in violation of this subchapter ~~when if the pesticide or device is~~ intended solely for export to a foreign country; and ~~when is~~ prepared or packed according to the specifications or directions of the purchaser. If the pesticide or device is not so exported, all the provisions of this subchapter ~~shall~~ apply.

Sec. 18. 7 MRSA §618, as amended by PL 1989, c. 878, Pt. E, §17, is further amended to read:

§618. Publication of information

The board may publish, at least annually and in such form as it ~~may deem~~ determines proper, results of analyses based on official samples as compared with the guaranteed analyses ~~guaranteed~~ and information concerning the distribution of pesticides, ~~provided that. The board may not publish individual distribution information shall not be, and that information is not a public record under Title I, section 402.~~

Sec. 19. 7 MRSA §619, as amended by PL 1989, c. 878, Pt. E, §18, is further amended to read:

§619. Delegation of duties

All authority vested in the board ~~by virtue of the provisions of under~~ this subchapter may, with like force and effort, be executed by ~~such~~ employees of the board ~~as to whom the board may from time to time designate for said purpose delegates such authority.~~

Sec. 20. 7 MRSA §620, first ¶, as amended by PL 1989, c. 878, Pt. E, §19, is further amended to read:

The board may cooperate with, receive grants-in-aid from and enter into cooperative agreements with any agency of the Federal Government; or of this State or its subdivisions, or with any agency of another state, in order to implement this subchapter, including but not limited; to taking such actions to:

Sec. 21. 7 MRSA §621, as amended by PL 1993, c. 410, Pt. S, §2, is further amended to read:

§621. Disposition of funds

All money received by the board under ~~the provisions of~~ this subchapter must be deposited in the State Treasury to the credit of a special fund to be used for carrying out the provisions of this subchapter and Title 22, chapter 258-A, Board of Pesticides Control, and for such other expenses related to insect and pest

management as provided by law. Positions that are allocated to the fund but that do not perform functions specifically assigned to the board in this subchapter and Title 22, chapter 258-A remain under supervision and management of the Department of Agriculture, Food and Rural Resources.

Sec. 22. 7 MRSA §622, as enacted by PL 1975, c. 382, §3, is repealed.

Sec. 23. 7 MRSA §623, as amended by PL 1977, c. 78, §25, is further amended to read:

§623. Prior liability

The enactment of this subchapter ~~shall~~ does not have the effect of terminating or in any way modifying any liability, civil or criminal, ~~which shall already be~~ in existence on October 1, 1975.

Sec. 24. 7 MRSA §625, as enacted by PL 1989, c. 702, §1, is amended to read:

§625. Right-of-way spraying; no-spray agreements

Any public utility, or the Department of Transportation, ~~which that~~ maintains a right-of-way through a municipality shall offer a no-spray agreement, with reasonable provisions, for the municipality to consider if it desires. Any agreement negotiated may include, but is not limited to, the responsibilities of the parties, the allocation of costs and the rights and remedies of the parties in the event of default and may apply to all or any part of the right-of-way within the municipality. Any agreement reached under this section must be negotiated in good faith, written and signed by all parties. As part of the no-spray agreement, the municipality may either perform the vegetation control work to standards as provided in the agreement; or ~~else~~ contract with the public utility or the Department of Transportation to conduct the work.

If a reasonable no-spray agreement is offered to a municipality and an agreement is not reached within 90 days after the date of the offer, the public utility or the Department of Transportation at its own option may apply pesticides in ~~the its~~ right-of-way ~~under its jurisdiction~~ or use other methods to control the vegetation. If the municipality agrees to perform vegetation control work; but does not perform it by the agreed-upon date, the public utility or the Department of Transportation, after 90 ~~days~~ days' written notice to the municipality, at its own option may apply pesticides in ~~the its~~ right-of-way ~~under its jurisdiction~~, or use other methods to control the vegetation.

It is the intent of the Legislature that this section ~~to~~ make available to municipalities an alternative to right-of-way maintenance procedures ~~which that~~ use pesticides. This section does not affect municipal authority to enact ordinances nor the authority of

public utilities or the Department of Transportation to maintain its right-of-way clear of unwanted vegetation in the absence of an agreement.

Sec. 25. Rules. Nothing in this Act repeals or is intended to repeal or substantively affect any rules of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control in effect on the effective date of this Act.

See title page for effective date.

CHAPTER 621

H.P. 1350 - L.D. 1909

An Act To Make Minor Technical Changes to Maine's Spending Growth Benchmarks

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

Sec. 1. 5 MRSA §1531, sub-§2, as enacted by PL 2005, c. 2, Pt. A, §5 and affected by §14, is amended to read:

2. Average real personal income growth. "Average real personal income growth" means the average for the prior 10 calendar years, ending with the most recent calendar year for which data is available, of the percent change in personal income in this State, as estimated by the United States Department of Commerce, Bureau of Economic Analysis, less the percent change in the Consumer Price Index for the calendar year. For purposes of this subsection, "Consumer Price Index" has the same meaning as in Title 36, section 5402, subsection 1. The average real personal income growth is determined by October 1st, annually, by the Director of the State Planning Office within the Executive Department.

Sec. 2. 5 MRSA §1531, sub-§3, as enacted by PL 2005, c. 2, Pt. A, §5 and affected by §14, is amended to read:

3. Baseline General Fund revenue. "Baseline General Fund revenue" means the recommended General Fund revenue forecast reported by the Revenue Forecasting Committee in its December 1st report of even-numbered years, increased by ~~the estimated amount of net General Fund revenue decrease, if any, for all enacted changes reducing state and local tax burden included in that forecast~~ the net reduction of General Fund revenue, if any, for all enacted changes affecting state and local tax burden since the previous December 1st report of even-numbered years of the Revenue Forecasting Committee.

Sec. 3. 5 MRSA §1534, sub-§1, as enacted by PL 2005, c. 2, Pt. A, §5 and affected by §14, is amended to read:

1. Establishment of General Fund appropriation limitation. As of December 1st of each even-numbered year, there must be established a General Fund appropriation ~~limit~~ limitation for the ensuing biennium. The General Fund appropriation ~~limit~~ limitation applies to all General Fund appropriations, except that the additional cost for essential programs and services for kindergarten to grade 12 education under Title 20-A, chapter 606-B over the fiscal year 2004-05 appropriation for general purpose aid for local schools is excluded from the General Fund appropriation limitation until the state share of that cost reaches 55% of the total state and local cost.

A. For the first fiscal year of the biennium, the General Fund appropriation limitation is equal to the biennial base year appropriation multiplied by one plus the growth limitation factor in subsection 2.

B. For the 2nd year of the biennium, the General Fund appropriation ~~limit~~ limitation is the General Fund appropriation limitation of the first year of the biennium biennial base year appropriation multiplied by one plus the growth limitation factor in subsection 2.

Sec. 4. 5 MRSA §1535, as amended by PL 2005, c. 519, Pt. VV, §3, is further amended to read:

§1535. General Fund transfers to stabilization fund

Baseline General Fund revenue, as recommended by the Revenue Forecasting ~~Commission~~ Committee and authorized in accordance with chapter 151-B, and other available budgeted General Fund resources that exceed the General Fund appropriation limitation established by section 1534 plus the additional cost for essential programs and services for kindergarten to grade 12 education under Title 20-A, chapter 606-B over the fiscal year 2004-05 appropriation for general purpose aid for local schools until the state share of that cost reaches 55% of the total state and local cost must be transferred to the stabilization fund.

Sec. 5. 30-A MRSA §706-A, sub-§1, ¶A, as enacted by PL 2005, c. 2, Pt. B, §1 and affected by §§2 and 4 and c. 12, Pt. WW, §14, is amended to read:

A. "Average real personal income growth" ~~means the average for the prior 10 calendar years, ending with the most recent calendar year for which data is available, of the percent change in personal income in this State, as estimated by the United States Department of Commerce, Bureau of Economic Analysis, less the percent~~