

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

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

Penmor Lithographers
Lewiston, Maine
2007

Sec. 2. Establishment of training program. The Department of Transportation shall establish a training program for all airport managers designated pursuant to the Maine Revised Statutes, Title 6, section 102, subsection 2, paragraph A within 90 days of the effective date of this Act.

See title page for effective date.

CHAPTER 77

H.P. 275 - L.D. 345

An Act To Clarify Recent Changes to the Laws Regulating Land Use Ordinances

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

Whereas, Public Law 2005, chapter 597 takes effect July 1, 2007, which is prior to the expiration of the 90-day period; and

Whereas, Public Law 2005, chapter 597 provides that local rate of growth ordinances must be based upon the number of building or development permits issued over the past 10 years; and

Whereas, the current language could be interpreted to mean all building permits, including permits for minor construction, and not just new residential dwellings; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 30-A MRSA §4360, sub-§3, ¶B, as enacted by PL 2005, c. 597, §3 and affected by §4, is amended to read:

B. The ordinance sets the number of building or development permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for new residential dwellings within the municipality during the 10 years immediately prior to the year in which the number is calculated. The mean is determined by adding together the total number of permits issued for new residential dwellings for each year in the prior 10 years and then dividing by 10;

Sec. 2. 30-A MRSA §4360, sub-§3, ¶D, as enacted by PL 2005, c. 597, §3 and as affected by §4, is amended to read:

D. The number of building or development permits for new residential dwellings allowed under the ordinance is recalculated every 3 years.

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

Effective May 8, 2007.

CHAPTER 78

S.P. 16 - L.D. 41

An Act Regarding Final Agency Action Subject to Appeal Pursuant to the Maine Workers' Compensation Act of 1992

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

Sec. 1. 39-A MRSA §360, sub-§3, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

3. Appeal. ~~Imposition of a penalty.~~ A decision of the board under this section is deemed to be final agency action subject to appeal to the Superior Court, as provided in Title 5, chapter 375, subchapter ~~VII~~ 7. Notwithstanding Title 5, section 11004, execution of a penalty assessed under this section is stayed during the pendency of any appeal under this subsection. The Attorney General shall represent the board in any appeal under this subsection or the board may retain private counsel for that purpose.

See title page for effective date.

CHAPTER 79

S.P. 292 - L.D. 904

An Act To Make Technical and Supervisory Amendments to the Banking Laws

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

Sec. 1. 9-B MRSA §212, sub-§1, ¶A, as amended by PL 1995, c. 502, Pt. H, §4, is further amended to read:

A. The superintendent may employ a deputy ~~superintendent~~ superintendents, subject to the com-

missioner's approval and in accordance with the Civil Service Law.

Sec. 2. 9-B MRSA §212, sub-§1, ¶B, as amended by PL 1995, c. 502, Pt. H, §4, is further amended to read:

B. The superintendent shall designate ~~the~~ a deputy superintendent to perform the duties of the superintendent whenever the superintendent is absent from the State; ~~the~~ a deputy superintendent is directed to do so by the superintendent; there is a vacancy in the office of superintendent; or the superintendent is incapacitated by illness. In the event of a vacancy in the office of the superintendent, the superintendent's incapacitating illness or absence from the State at a time when there is no deputy superintendent, the commissioner may designate a special deputy superintendent to perform the duties of the superintendent for a period not to exceed 6 months.

Sec. 3. 9-B MRSA §212, sub-§3, as amended by PL 1995, c. 502, Pt. H, §4, is further amended to read:

3. Training of bureau personnel. At the expense of the bureau, the superintendent may train the deputy ~~superintendent~~ superintendents and bureau's employees, or have them trained, in a manner the superintendent determines desirable; however training programs may not place such undue emphasis upon safety and soundness of financial institutions that institutions would be inhibited by the bureau from engaging in unusual activities or loans that are in the public interest.

Sec. 4. 9-B MRSA §234, sub-§1, as enacted by PL 1975, c. 500, §1, is amended to read:

1. Requirement. In connection with any proceeding under ~~this chapter~~ section 231 or 232 involving a financial institution under the concurrent supervision of a federal agency and the bureau, the superintendent shall provide the appropriate federal agency with notice of any such proceeding and the grounds therefor. Such proceeding may then be continued jointly or by either the federal agency or the superintendent.

Sec. 5. 9-B MRSA §235 is enacted to read:

§235. Change of director or senior executive officer

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Financial institution in troubled condition" includes any financial institution:

(1) That is subject to a cease and desist order issued under section 231 or issued by a federal regulator under applicable federal law;

(2) That is subject to a written agreement as contemplated under section 231;

(3) That has a composite rating of 4 or 5 under the federal Uniform Financial Institutions Rating System or comparable composite ratings under a rating system employed by the superintendent;

(4) That is not in compliance with section 412-A or is not in compliance with applicable federal capital standards; or

(5) That has been notified in writing by the superintendent that it is in troubled condition for the purposes of this section.

B. "Senior executive officer" means any person who holds the title of president, chief executive officer, chief operating officer, chief financial officer, chief lending officer or chief investment officer or, without regard to title, salary or compensation, performs the function of one or more of these positions. "Senior executive officer" also includes any other person identified by the superintendent, whether or not hired as an employee, with significant influence over, or who participates in, major policy-making decisions of a financial institution.

2. Filing notice. A financial institution in troubled condition shall file notice with the superintendent at least 30 days prior to adding or replacing a member of its board of directors or governing body, employing a senior executive officer or changing the duties of a senior executive officer so that the senior executive officer would assume a different senior executive officer position. The notice must be in a form and contain content as prescribed by the superintendent. For good cause shown, the superintendent may accept notice of less than 30 days.

3. Approval. The superintendent shall approve or disapprove the notice under subsection 2 within 10 days after the receipt of the notice.

Sec. 6. 9-B MRSA §241, sub-§10, as enacted by PL 1995, c. 628, §18, is amended to read:

10. Deposit concentration. A financial institution authorized to do business in this State, a financial institution not authorized to do business in this State, a financial institution holding company, a foreign bank or a foreign bank holding company may not consolidate or merge or acquire control, directly or indirectly, of all or part of a Maine financial institution or Maine financial institution holding company authorized to do business in this State if, as the result of the consolidation, acquisition or merger, the financial ~~financial~~ acquiring institution would hold or control more than 30% of the total amount of deposits of financial institutions authorized to do business in this State that are attributable to branches located in this State; except, upon

consideration of the decision-making criteria found in section 253, the superintendent may waive the 30% deposit concentration limit on a case-by-case basis. In calculating the amount of deposits that ~~a financial institution authorized to do business in this State~~ an acquiring institution may hold or control under this section, credit union shares are added to the amount of deposits of financial institutions authorized to do business in this State that are attributable to branches located in this State. The 30% deposit concentration limit does not apply to credit unions authorized to do business in this State.

Sec. 7. 9-B MRSA §342, sub-§6, ¶D is enacted to read:

D. The financial institution must notify and provide the superintendent with a copy of the application filed with the appropriate federal regulator within 3 days of filing with the federal regulator.

Sec. 8. 9-B MRSA §351, sub-§3, as enacted by PL 1997, c. 398, Pt. G, §1, is amended to read:

3. Superintendent's approval required. Following approval by the governing body of each participating institution, the plan of merger, consolidation, purchase or assumption, together with certified copies of the authorizing resolutions adopted by the governing body of each participating institution, must be forwarded to the superintendent for approval or disapproval pursuant to section 252. If the superintendent disapproves the plan, the superintendent shall state the reason or reasons for the disapproval in writing and furnish them to the participating institutions. The institutions must be given an opportunity to amend the plan to obviate the reasons for disapproval.

Sec. 9. 9-B MRSA §351, sub-§3-A is enacted to read:

3-A. Superintendent's approval not required. Notwithstanding subsection 3, if the surviving institution of a merger, consolidation, purchase or assumption is a federally chartered institution and the transaction is subject to approval by its federal regulator, approval by the superintendent is not required. The financial institution shall notify and provide the superintendent a copy of the application filed with the appropriate federal regulator within 3 days of filing with the federal regulator.

Sec. 10. 9-B MRSA §846, sub-§2, as amended by PL 1995, c. 512, §2, is further amended to read:

2. Voting. A member may not be entitled to vote by proxy, except in a vote for dissolution or merger, or have more than one vote; and a member under the age of 18 may be entitled to vote, subject to conditions prescribed in the bylaws. A fraternal organization, voluntary association, partnership or corporation having membership in a credit union may cast one vote at

any of the meetings of the credit union by a duly delegated agent.

Sec. 11. 9-B MRSA §874, as amended by PL 2003, c. 322, §43, is further amended to read:

§874. Conversion: State to federal charter

A credit union organized under the general or special laws of this State may convert to a federally chartered credit union. The credit union must notify and provide the superintendent with a copy of the application filed with the National Credit Union Administration within 3 days of filing with the National Credit Union Administration. Approval of the members of the credit union for the conversion must be obtained in the manner set forth in section 342, subsection 6. Upon obtaining the approval, the credit union shall provide to the superintendent all necessary approvals and charters required by the National Credit Union Administration and all federal laws and regulations applicable to the conversion. The superintendent shall notify the Secretary of State that the conversion has been effected. A copy of the approval or charter must accompany the notification.

Sec. 12. 9-B MRSA §1011, sub-§2, as amended by PL 1995, c. 628, §26, is further amended to read:

2. Maine financial institution holding company. "Maine financial institution holding company" means any company whose home state is this State and that has control over any Maine financial institution authorized to do business in this State or has control over a company that controls a Maine financial institution authorized to do business in this State.

Sec. 13. 9-B MRSA §1011, sub-§6, as amended by PL 1975, c. 666, §31-A, is further amended to read:

6. Maine financial institution. "Maine financial institution" means a financial institution ~~authorized to do business in this State~~ defined in section 131, subsection 17.

Sec. 14. 9-B MRSA §1013, sub-§1, ¶C, as amended by PL 1997, c. 182, Pt. A, §8, is further amended to read:

C. Acquisition of more than 5% of the voting shares of a financial institution, ~~whose home state is not this State~~, or a foreign bank by a Maine financial institution or a Maine financial institution holding company.

Sec. 15. 9-B MRSA §1013, sub-§1-A, as enacted by PL 1985, c. 642, §6, is amended to read:

1-A. Notification. Notwithstanding subsection 1, any person or company ~~which that~~ acquires directly or indirectly more than 5% of the voting shares of a Maine financial institution or Maine financial institution holding company shall within 5 days of the acqui-

sition file with the superintendent a statement containing the following information and any additional information as the superintendent ~~shall prescribe~~ prescribes as necessary or appropriate in the public interest:

- A. The background and identity of the person or company acquiring the voting shares;
- B. The source and amount of the funds or other consideration used in making the purchase; and
- C. Any plans or proposals ~~which that~~ any acquiring person or company making the acquisition may have to liquidate the Maine financial institution or Maine financial institution holding company, to sell its assets or merge it with any company or to make any other major change in its business, corporate structure or management.

The superintendent shall promptly notify the Maine financial institution or Maine financial institution holding company when a notice has been filed pursuant to this section. The notice ~~shall~~ must identify the fact of the acquisition and the identity of the person or company acquiring the voting shares.

Any person or company must also file notice under this section when there is material change in ownership. The acquisition of an aggregate of more than another 5% of the voting shares is a material change.

Sec. 16. 9-B MRSA §1013, sub-§3, ¶A, as amended by PL 1995, c. 628, §32, is further amended to read:

- A. The Maine financial institution or Maine financial institution holding company to be established or acquired shall enter into an agreement with the superintendent to provide reports and permit examination of its records to the extent considered necessary by the superintendent to ensure compliance with this section and other relevant provisions of this Title and any rules adopted under this Title. ~~If the financial institution to be established or acquired is federally chartered, the agreement may provide that compliance examination information must be provided by the federal agency responsible for supervision of that financial institution. The superintendent may specify the information that requires verification, and must be provided a report of that status of compliance by the federal agency.~~

Sec. 17. 9-B MRSA §1013, sub-§3, ¶C, as amended by PL 1997, c. 182, Pt. A, §9, is repealed.

Sec. 18. 9-B MRSA §1013, sub-§5, as enacted by PL 1983, c. 302, §3, is amended to read:

5. Regulations. The superintendent may ~~promulgate regulations~~ adopt rules to supplement the requirements of this section.

Sec. 19. 9-B MRSA §1013, last ¶, as enacted by PL 1977, c. 223, is amended to read:

Notwithstanding the foregoing, ~~no a~~ a Maine financial institution holding company ~~shall be~~ is not required to obtain the approval of the superintendent for the acquisition of additional shares in a financial institution ~~which that~~ the Maine financial institution holding company owned or controlled by a majority of the voting shares; prior to the acquisition of additional shares.

Sec. 20. 9-B MRSA §1015, sub-§1, ¶A, as repealed and replaced by PL 1989, c. 16, §2, is amended to read:

- A. Acquisition by a person or company of control of a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution, ~~or establishment by a person or company of a Maine financial institution or Maine financial institution holding company;~~

Sec. 21. 9-B MRSA §1015, sub-§1, ¶C, as amended by PL 1997, c. 182, Pt. A, §11, is further amended to read:

- C. Acquisition or establishment by a Maine financial institution or a Maine financial institution holding company of a financial institution ~~outside of the State of Maine~~, including a foreign bank, in excess of 5% of the voting shares of such institution;

Sec. 22. 9-B MRSA §1015, sub-§2, as amended by PL 1997, c. 182, Pt. A, §12, is further amended to read:

2. Criteria for approval. Applications for approvals required in subsection 1 must be filed pursuant to procedures established by the superintendent. Action on those applications must be taken in accordance with the requirements of section 252 and is subject to the standards set forth in section 253, except that applications for approval under subsection 1, paragraph A are not subject to the standards set forth in section 253, subsection 2, paragraphs C and D. In addition, applications for approvals required in subsection 1 by foreign banks are subject to the following additional criteria:

- A. The foreign bank or foreign bank holding company engages in the banking business outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, or the superintendent finds that the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and

B. Whether the foreign bank or foreign bank holding company has provided the superintendent with adequate assurances that it will make available to the superintendent such information on the operations or activities of the foreign bank, foreign bank holding company and any affiliate of the foreign bank or foreign bank holding company that the superintendent considers necessary to determine and enforce compliance with this Title and other applicable state law.

Sec. 23. 9-B MRSA §1015, sub-§5, ¶B, as enacted by PL 1997, c. 398, Pt. K, §12, is amended to read:

B. If the assets of the company being acquired are between 15% and 50% of the financial institution holding company's total consolidated assets, the financial institution holding company must notify the superintendent at least 10 days prior to consummating the transaction. The superintendent may require that an application be filed pursuant to section 252 if the following conditions are not satisfied and, based on a preliminary analysis, the superintendent concludes that the transaction may have a material adverse effect on the financial condition of the financial institution holding company and its ability to act as a source of strength to the Maine financial institution:

(1) Before and immediately after the proposed transaction, the acquiring Maine financial institution and financial institution holding company are well capitalized, as determined by the superintendent; and

(2) At the time of the transaction, the acquiring Maine financial institution and financial institution holding company are well managed, as defined in section 446-A.

Sec. 24. 9-B MRSA §1053, sub-§2, as enacted by PL 1985, c. 558, is amended to read:

2. Plan. A plan of reorganization authorized under this chapter ~~shall~~ must be approved by a majority of the board of directors, ~~corporators and members, or~~ and members; of ~~such~~ the mutual financial institution.

Sec. 25. 30-A MRSA §5951, sub-§2, ¶B, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10 and as amended by PL 2001, c. 44, §11 and as affected by §14, is further amended to read:

B. The Superintendent of Financial Institutions, who also serves as a commissioner ex officio; ~~and.~~

(1) The Superintendent of Financial Institutions may designate a deputy superintendent to serve in place of the Superintendent of Financial Institutions; and

Sec. 26. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 9-B, chapter 23, in the chapter headnote, the words "cease and desist orders; removal of officer or director" are amended to read "cease and desist orders; removal or change of officer or director" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 80

H.P. 464 - L.D. 615

An Act To Authorize the Use of the Department of Health and Human Services Staff as Hearing Officers

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

Sec. 1. 34-B MRSA §1203, sub-§4, as amended by PL 1995, c. 15, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

4. Grievance procedures. The commissioner shall establish procedures for hearing grievances of clients receiving children's behavioral health, adult mental health or adult mental retardation services from the department. The commissioner shall also establish procedures for hearing client appeals from the denial of eligibility for adult mental retardation services from the department. The procedures must include the opportunity for a timely hearing before a state hearing examiner or an independent fair hearing examiner. The commissioner may assign staff of the department's office of administrative hearings or may contract for the services of the hearing examiner or examiners, who shall conduct all adjudicatory proceedings pursuant to the Maine Administrative Procedure Act and who may not be employees of the Department of Health and Human Services.

See title page for effective date.

CHAPTER 81

H.P. 292 - L.D. 362

An Act To Effect the Seizure and Disposal of Contraband Fireworks

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

Whereas, the possession and use of fireworks by individuals without a permit is illegal in this State; and