

# 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.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2007**

the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation shall review and evaluate the annual percentage fee imposed by litigation funding providers on consumers who entered into contracts for legal funding and assess whether a cap on the maximum annual percentage fee is necessary. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters by March 1, 2009. The joint standing committee may submit legislation to implement a cap on the annual percentage fee on legal funding contracts to the First Regular Session of the 124th Legislature.

**Sec. 3. Effective date.** This Act takes effect January 1, 2008.

Effective January 1, 2008.

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## CHAPTER 395

### H.P. 1319 - L.D. 1885

#### An Act To Repeal Inactive Boards and Commissions

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

**Sec. 1. 3 MRSA §959, sub-§1, ¶L**, as amended by PL 2003, c. 600, §1, is further amended to read:

L. The joint standing committee of the Legislature having jurisdiction over natural resource matters shall use the following list as a guideline for scheduling reviews:

- (1) Department of Environmental Protection in 2007;
- (2) Board of Environmental Protection in 2007;
- ~~(3) Advisory Commission on Radioactive Waste and Decommissioning in 2005;~~
- (4) Saco River Corridor Commission in 2005; and
- (5) Board of Underground Oil Tank Installers in 2011.

**Sec. 2. 5 MRSA §1826-B, sub-§3** is enacted to read:

**3. Director.** "Director" means the Director of the Bureau of General Services within the Department of Administrative and Financial Services.

**Sec. 3. 5 MRSA §1826-C**, as amended by PL 2003, c. 515, §§5 to 8 and c. 689, Pt. B, §6, is further amended to read:

#### §1826-C. Work center purchases

~~**1. Committee established.** There is established the Work Center Purchases Committee, consisting of the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's designee, the Director of the Bureau of Rehabilitation Services within the Department of Labor, a representative of the Department of Health and Human Services, a representative of work centers, a representative of the business community and persons with disabilities. The total number of members with disabilities on the committee must be a minimum of 5.~~

~~**2. Appointments; terms; compensation.** The members of the Work Center Purchases Committee shall be appointed by and shall serve at the pleasure of the Governor. All members of the committee shall serve without compensation, except for reimbursement of necessary expenses incurred in the performance of their duties. The 3 agencies of the State Government that are represented on the committee shall absorb any necessary expenses.~~

**3. Powers and duties.** The powers and duties of the Work Center Purchases Committee shall include the following:

A. Develop and use a work center purchases schedule, pursuant to subsection 4;

B. Develop and carry out procedures for standard competitive bidding for the products and services on the work center purchases schedule pursuant to subsection 5;

C. Develop procedures to be used in the award and extension of contracts, pursuant to subsection 6;

D. Incorporate the Department of Administrative and Financial Services, Bureau of General Services rules of appeal of contract awards to resolve disputes related to Work Center Purchases Committee decisions;

E. Develop and, when necessary, implement procedures to ensure that any member of the committee who has an actual or potential conflict of interest with respect to any contract under consideration by the committee is prohibited from taking any action on that contract in his capacity as a committee member in accordance with the same provisions and standards that apply to executive employees as described in Title 5, section 18; and

F. Issue rules, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to carry out the purpose and intent of this subchapter.

**4. Work center purchases schedule.** The ~~Work Center Purchases Committee~~ director shall develop and use a work center ~~purchases'~~ purchases schedule. The ~~committee~~ director shall:

A. Identify and develop a list of all products and services purchased or scheduled to be purchased by State Government;

B. Identify and develop a list of all work centers in the State, including a description of the products and services work centers are currently providing or have recently provided and including an assessment of the products and services that work centers are capable of providing, but have not recently provided; and

C. Develop from the information obtained in paragraphs A and B a work center ~~purchases'~~ purchases schedule ~~which that~~ describes all products and services to be purchased by the State ~~which that~~, in the view of the ~~committee~~ director, could be provided by work centers. In developing this schedule, the ~~committee~~ director shall give consideration to the abilities of work centers to meet contract requirements and to meet generally ~~ex-cepted~~ accepted quality control standards and any potential technical assistance that may be required to enable a work center to compete fairly for contracts, pursuant to this subchapter.

**5. Competitive bidding.** The ~~Work Center Purchases Committee~~ director shall develop procedures for competitive bidding by eligible work centers only for products and services identified on the work center purchase schedule. If no bid is received from a work center for any product or service on the schedule, the ~~Director of the Bureau of General Services within the Department of Administrative and Financial Services~~ director shall confer with the Department of Corrections to determine whether the Department of Corrections is able to provide the product or service at a fair price. If the ~~Director of the Bureau of General Services~~ director and the Department of Corrections do not come to agreement, the product or service must be put out to general bid by the ~~Director of the Bureau of General Services~~ director, in accordance with standard rules and procedures. If only one work center bid is received, the ~~committee~~ director shall review the bid and make a determination regarding the fairness of the price and terms of the proposed contract. If the ~~committee~~ director determines that the work center may not be awarded this bid, the ~~Director of the Bureau of General Services~~ director shall confer with the Department of Corrections to determine whether the Department of Corrections is able to provide the product or service at a fair price. If the ~~Director of the Bureau of General Services~~ director and the Department of Corrections do not come to agreement, the contract must be offered for standard competitive bid by the

~~Director of the Bureau of General Services~~ director in accordance with standard rules and procedures.

**6. Award of contracts; fair price.** The ~~Work Center Purchases Committee~~ shall have ~~director~~ has final determination in awarding contracts to work centers through the competitive bidding process. The ~~committee's~~ director's judgment shall ~~prevail~~ prevails in the determination that the price and contract terms are fair and reasonable both to the work center and to the State. In determining a fair price, the ~~committee~~ director shall ensure the ability of the work center to recover the costs of labor, material, equipment, overhead and delivery.

**7. Assignment of contracts.** The ~~Work Center Purchases Committee~~ director shall ensure that contracts awarded to work centers may not be assigned to any other vendor, except as may be necessary to complete the contracts, because of extraordinary events beyond the control of the work centers. Any additional costs incurred because of these assignments shall ~~must~~ be borne by the work center as a normal cost of doing business.

**Sec. 4. 5 MRSA c. 389**, as amended, is repealed.

**Sec. 5. 10 MRSA §997-A, sub-§2**, as enacted by PL 1999, c. 474, §2, is amended to read:

**2. Establishment of fund.** The Agriculturally Derived Fuel Fund, referred to in this section as the "fund," is established as a nonlapsing fund under the jurisdiction and control of the authority. The authority, ~~in consultation with the Agricultural Products Utilization Commission, as established in Title 5, section 12004 I, subsection 6 F,~~ may apply for and accept any appropriation, grant, gift or service made available from public or private sources consistent with the purpose of this section.

**Sec. 6. 10 MRSA §997-A, sub-§3**, as enacted by PL 1999, c. 474, §2, is amended to read:

**3. Application of fund.** Money in the fund may be used for direct loans and direct subsidies to a business or cooperative for the design and construction of a facility to produce an agriculturally derived fuel. The authority, pursuant to Title 5, chapter 375, subchapter ~~H A, in consultation with the Agricultural Products Utilization Commission 2-A~~ shall adopt rules for determining eligibility, feasibility, terms, conditions and security for direct loans, secured loans and investments. Money in the fund not needed to meet the obligations of the authority as provided in this section may be invested in a manner permitted by law. For the purposes of this section, "business" means an individual, company, corporation or any other entity organized for a common business purpose and "cooperative" means an association organized as a cooperative in accordance with Title 13, chapter 85, subchapter ~~H 2.~~

**Sec. 7. 10 MRSA §997-B**, as amended by PL 1999, c. 731, Pt. VVV, §3, is repealed.

**Sec. 8. 12 MRSA §544, sub-§3, ¶D**, as enacted by PL 1999, c. 556, §13, is amended to read:

D. The Natural Areas Program may levy appropriate charges to those using, for commercial gain, the inventory and information services provided by the Natural Areas Program to recover the costs of providing the services and a reasonable portion of the costs associated with building and maintaining the biological and conservation database. Charges must be fixed in a schedule prepared and revised as necessary by the Natural Areas Program, ~~reviewed by the Natural Areas Advisory Board~~ and supported and explained by accompanying information.

**Sec. 9. 12 MRSA §544-A**, as enacted by PL 1999, c. 556, §13, is repealed.

**Sec. 10. 12 MRSA §544-B, sub-§2**, as enacted by PL 1999, c. 556, §13, is amended to read:

**2. Register of critical areas.** The commissioner, ~~with the advice of the board~~, shall maintain a register of critical areas that must contain natural areas classified as critical areas as follows.

A. In determining the classification of an area or site as a registered critical area, the commissioner shall consider:

- (1) The unique or exemplary natural qualities of the area or site;
- (2) The intrinsic fragility of the area or site and sensitivity to alteration or destruction;
- (3) The voluntary commitment to conserve or protect the area or site;
- (4) The present or future threat of alteration or destruction; and
- (5) The economic implications of inclusion of an area or site on the register.

The commissioner, with the advice of the board, may remove a registered critical area from the register if the commissioner determines that the area or site no longer qualifies as a critical area.

B. Each registered critical area must be documented with at least the following information:

- (1) A general description of the area or site;
- (2) A list of the endangered or threatened species or other unique or exemplary natural features occurring at the area or site, and reasons for inclusion in the register;
- (3) The size and location of the area or site; and

- (4) The name or names of the property owner or owners, contingent upon the consent of the owner or owners.

C. The commissioner shall notify owners of natural areas of the natural value of their land and the implications of voluntary conservation. Subsequently a natural area may be placed upon the Register of Critical Areas with at least 60 days' notice before registration and the consent of the landowner.

**Sec. 11. 12 MRSA §544-B, sub-§3, ¶B**, as enacted by PL 1999, c. 556, §13, is amended to read:

B. The commissioner may establish procedures to substantiate the identification of endangered and threatened native plant species. In determining and revising the list, the commissioner shall use the rare plant database of the Natural Areas Program, ~~the advice of the Natural Areas Advisory Board~~ and the knowledge of botanists in the State. In addition, the commissioner shall consult with federal agencies, interested state agencies, other states or provinces having a common interest and other interested persons and organizations. The commissioner shall determine criteria for each category. When establishing the list, the commissioner shall consider aspects of plant biology that contribute to a species' rarity such as:

- (1) Endemism. The plant species or subspecies may be geographically restricted to the State or areas immediately adjacent to the State;
- (2) Scarcity. A plant species or subspecies may be numerically scarce throughout its distribution in North America and occur in only a few locations in the State;
- (3) Special habitat. A plant species or subspecies may require habitat that is scarce in the State;
- (4) Limit of range. A plant species or subspecies in the State may be at the edge of its distribution or disjunct from its main distribution; and
- (5) Population decline or vulnerability. A plant species or subspecies may be threatened or seriously declining due to habitat modification or destruction or from overcollection for commercial, recreational or educational purposes.

**Sec. 12. 5 MRSA §12004-G, sub-§2**, as enacted by PL 1987, c. 786, §5, is repealed.

**Sec. 13. 5 MRSA §12004-G, sub-§7-F**, as enacted by PL 2003, c. 704, §1, is repealed.

**Sec. 14. 5 MRSA §12004-G, sub-§10-B**, as enacted by PL 2001, c. 658, §1 and as affected by §5, is repealed.

**Sec. 15. 5 MRSA §12004-G, sub-§12**, as amended by PL 1989, c. 104, Pt. C, §§3 and 10, is repealed.

**Sec. 16. 5 MRSA §12004-G, sub-§21-B**, as enacted by PL 2001, c. 708, §2, is repealed.

**Sec. 17. 5 MRSA §12004-G, sub-§26**, as amended by PL 1991, c. 93, §1, is repealed.

**Sec. 18. 5 MRSA §12004-I, sub-§3-A**, as enacted by PL 1999, c. 566, §4, is repealed.

**Sec. 19. 5 MRSA §12004-I, sub-§6-F**, as enacted by PL 1999, c. 474, §1, is repealed.

**Sec. 20. 5 MRSA §12004-I, sub-§29-C**, as amended by PL 1997, c. 184, §11, is repealed.

**Sec. 21. 5 MRSA §12004-I, sub-§47-E**, as enacted by PL 1999, c. 786, Pt. A, §1, is repealed.

**Sec. 22. 5 MRSA §12004-J, sub-§2-A**, as amended by PL 1997, c. 700, §1, is repealed.

**Sec. 23. 5 MRSA §12006, sub-§2**, as amended by PL 1999, c. 668, §47, is further amended to read:

**2. Legislative repeal of inactive boards.** The Secretary of State shall submit suggested legislation to the joint standing committee of the Legislature having jurisdiction over state government matters on or before January 15th in the first regular session of each biennium to repeal those boards that have not reported on their activities to the Secretary of State under this section or section 12005-A during either of the prior 2 calendar years or have been inactive during the preceding 24 months. The joint standing committee of the Legislature having jurisdiction over state government matters may submit legislation to the first regular session of each biennium to repeal those boards.

**Sec. 24. 20-A MRSA c. 406**, as amended, is repealed.

**Sec. 25. 22 MRSA §2692**, as enacted by PL 1999, c. 786, Pt. A, §3, is repealed.

**Sec. 26. 22 MRSA §2693, sub-§1, ¶A**, as amended by PL 2003, c. 494, §10, is further amended to read:

A. By July 1, 2005, the department shall adopt rules establishing the procedures for adoption and periodic review of maximum retail prices, the procedures for establishing maximum retail prices for new prescription drugs and for reviewing maximum retail prices of selected drugs and the procedures for phasing out or terminating maximum retail prices. ~~Prior to adopting rules pursuant to this paragraph, the commissioner shall con-~~

~~sult with and consider the recommendations of the commission regarding the rules.~~

**Sec. 27. 22 MRSA §2693, sub-§1, ¶C**, as enacted by PL 1999, c. 786, Pt. A, §3, is amended to read:

C. In establishing maximum retail prices under this paragraph, the commissioner ~~shall consider the advice of the commission and~~ shall follow procedures set forth by rules adopted by the department.

**Sec. 28. 24-A MRSA c. 56-B**, as amended, is repealed.

**Sec. 29. 26 MRSA §51**, as amended by PL 2003, c. 673, Pt. Q, §1, is repealed.

**Sec. 30. 30-A MRSA §5241, sub-§5**, as enacted by PL 2001, c. 669, §1, is repealed.

See title page for effective date.

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**CHAPTER 396**

**H.P. 1340 - L.D. 1906**

**An Act To Clarify the Authority of Boards and Committees**

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

Whereas, the Law Court issued an opinion known as Stevenson v. Town of Kennebunk on April 26, 2007; and

Whereas, the Stevenson decision raises substantial questions about the ability of any governmental body to take any action when there is a vacancy on that body; and

Whereas, the Stevenson decision disrupts the ability of governmental bodies to continue operating as they have for years; and

Whereas, it is immediately necessary to clarify the law and eliminate any uncertainty before government bodies incur substantial delays and inconvenience, effort and expense to change local charters and ordinances; 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:**