

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 12, 2009

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2009

made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; ~~and~~ certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005; and certification to the board for adoption of an expanded use of physical force policy under subsection 1, paragraph A must be made to the board no later than June 1, 2010. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; ~~and~~ certification for orientation and training with respect to policies regarding the recording and preservation of interview of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; and certification for orientation and training with respect to policies regarding expanded use of physical force under subsection 1, paragraph A must be made to the board no later than January 1, 2011.

5. Annual standards review. The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

6. Freedom of access. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually beginning on January 1, 2004 that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13.

7. Certification by record custodian. Notwithstanding any other law or rule of evidence, a certificate

by the custodian of the records of the board, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.

See title page for effective date.

CHAPTER 337

H.P. 1022 - L.D. 1468

An Act Regarding the Evaluation of Economic Development Programs

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 comprehensive economic development evaluation has a reporting deadline of February 1, 2010; and

Whereas, it is essential to begin the evaluation process by the beginning of July in order to meet the statutory reporting deadline; 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. 5 MRSA §13056-B, as enacted by PL 2007, c. 434, §2, is amended to read:

§13056-B. Reporting requirements of recipients of economic development funding

To assist the department in preparing the comprehensive economic development evaluation pursuant to section 13056-A, a recipient of state economic development funding, including General Fund appropriations, dedicated revenue, tax expenditures as defined in section 1666 and general obligation bond proceeds for economic development, shall, in addition to any other reporting requirements required by law, collect, maintain and provide data as requested by the department.

Sec. 2. 5 MRSA §13056-C, sub-§3, as enacted by PL 2007, c. 434, §3, is amended to read:

3. Payments to fund. Notwithstanding section 1585 or any other provision of law, the department shall assess agencies or private entities that receive General Fund appropriations or general obligation

bonds for economic development an amount for contribution to the fund that is not to exceed 0.08% of General Fund appropriations received by or general obligation bonds issued to an agency or entity for economic development efforts. Private entities that receive funds from general obligation bonds for economic development efforts shall pay to the Treasurer of State in the fiscal year in which the general obligation bond was issued an assessment amount determined by the department that is not to exceed 0.08% of the proceeds from the bond issue in any fiscal year, which payment must be made from available resources other than bond proceeds. Only those programs that receive \$250,000 or more in economic development appropriations in any fiscal year or those entities that receive funds from a general obligation bond issue of \$250,000 or more for economic development efforts in any fiscal year, as identified and certified by the department and the Office of Fiscal and Program Review, may be assessed pursuant to this subsection. The department shall provide to each agency or private entity an annual budget for the fund and a detailed account of each institution's required assessment. Total payments made pursuant to this section may not exceed ~~\$150,000~~ \$200,000 in any fiscal year.

Sec. 3. 5 MRSA §13058, sub-§5, as amended by PL 1999, c. 776, §§4 and 5, is further amended to read:

5. Review of program; report to Governor and Legislature. The commissioner shall review and evaluate the programs and functions of the department and the operation of the economic delivery system using the information available from the economic development evaluation pursuant to section 13056-A. ~~The Maine Small Business Commission, as established in section 13032, shall conduct the evaluation and review required by this section with respect to small business programs.~~ The commissioner shall report the commissioner's findings and recommendations with respect to the issues described in this subsection to the Governor and to the Legislature no later than February 1st of each first regular session of the Legislature. The commissioner shall conduct the review and evaluation with respect to the following:

- A. The purpose of these programs and the degree to which the purpose is being met;
- B. The degree of significance of the purpose of the programs and functions of the department;
- C. The extent of the coordination of programs and services as required in subsection 4;
- D. The needs, problems and opportunities that are not being met by the programs and services of the department;
- E. The types of programs and services necessary to meet the needs, problems and opportunities as set out in paragraph D;

F. The problems and successes in the economic delivery system;

G. The state of small business in this State, including economic data, the effectiveness of state programs to aid small business, problems of small business that may be affected by state policies and such other information on small business as desired by the commissioner;

H. Within available resources, the extent of business growth and change, including business expansions, new businesses and business closings;

I. Within available resources, the status of investments in business in the State; and

J. The extent to which the purposes of the Maine Downtown Center are being met.

Sec. 4. 5 MRSA §13063-O, sub-§1, as enacted by PL 2003, c. 451, Pt. MMM, §1, is amended to read:

1. Accounting and reporting requirements. The department shall:

A. Maintain an accurate accounting of the use of all program funds as required by state procedures and program guidelines, including a detailed accounting of all program funding sources and expenditures; and

~~B. Undertake an ongoing process to evaluate the impact of the projects undertaken with program funds. The evaluation process must include benchmarks and criteria to evaluate the success of the fund. The benchmarks and criteria must be designed by the department to provide the following:~~

- ~~(1) An assessment of the direct and indirect economic impact of the funded projects; and~~
- ~~(2) An assessment of the contribution of the fund to the creation of new entrepreneurial opportunities; and~~

C. Each year, submit a report to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters. The report must include:

- (1) An accounting of the use of all program funds received and expended since the program's inception;
- (2) A summary of the status of any approved projects;
- (3) A summary of the results of any completed projects;
- (4) Evaluation data and assessment consistent with section 13056-A; and

(5) Other information required to be submitted and evaluated by the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters.

Sec. 5. 5 MRSA §13070-J, as amended by PL 2005, c. 519, Pt. TTT, §1, is further amended to read:

§13070-J. Business disclosure associated with eligibility for public subsidies and incentives

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

B. "Commissioner" means the Commissioner of Economic and Community Development.

C. "Department" means the Department of Economic and Community Development.

D. "Economic development incentive" means federal and state statutorily defined programs that receive state funds, dedicated revenue funds and tax expenditures as defined by section 1666 whose purposes are to create, attract or retain business entities related to business development in the State, including but not limited to:

- (1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;
- (2) The Governor's Training Initiative Program under Title 26, chapter 25, subchapter 4;
- (3) Municipal tax increment financing under Title 30-A, chapter 206;
- (4) The jobs and investment tax credit under Title 36, section 5215;
- (5) The research expense tax credit under Title 36, section 5219-K;
- (6) Reimbursement for taxes paid on certain business property under Title 36, chapter 915;
- (7) Employment tax increment financing under Title 36, chapter 917;
- (8) The shipbuilding facility credit under Title 36, chapter 919;
- (9) The credit for seed capital investment under Title 36, section 5216-B; ~~or and~~
- (10) The credit for pollution-reducing boilers under Title 36, section 5219-Z.

E. "Economic development proposal" means proposed legislation that establishes a new program or that expands an existing program that:

- (1) Is intended to encourage significant business expansion or retention in the State; and

(2) Contains a tax expenditure, as defined in section 1664, or a budget expenditure with a cost that is estimated to exceed \$100,000 per year.

2. Disclosure. Each applicant for an economic development incentive described in subsection 1, paragraph D, subparagraphs (1) to (4) and (7) shall at a minimum identify in writing:

A. The public purpose that will be served by the business through use of the economic development incentive and the specific uses to which the benefits will be put; and

B. The goals of the business for the number, type and wage levels of jobs to be created or retained as a result of the economic development incentive received.

Applications filed under this subsection are public records for purposes of Title 1, chapter 13.

~~**3. Report.** Annually, a business receiving an economic development incentive described in subsection 1, paragraph D, subparagraphs (1) to (8), the value of which exceeds \$10,000 in one year, shall submit a written report to the commissioner no later than August 1st of the following year containing but not limited to the following information:~~

~~A. The amount of assistance received by the business in the preceding year from each economic development incentive and the uses to which that assistance has been put;~~

~~B. The total amount of assistance received from all economic assistance programs;~~

~~C. The number, type and wage level of jobs created or retained as a result of an economic development incentive;~~

~~D. Current employment levels for the business for all operations within the State, the number of employees in each job classification and the average wages and benefits for each classification;~~

~~E. Any changes in employment levels that have occurred over the preceding year; and~~

~~F. An assessment of how the business has performed with respect to the public purpose identified in subsection 2, paragraph A, if applicable.~~

~~The department shall mail report forms by May 15th of each year to every business required to file a report under this subsection. Reports filed under this subsection are public records for purposes of Title 1, chapter 13.~~

4. Agency reports. The following agencies shall submit the following reports.

A. The State Tax Assessor shall submit a report by October 1st annually to the Legislature identi-

fying the amount of public funds spent and the amount of revenues foregone as the result of economic development incentives. The report must identify the amount of the economic development incentives under the jurisdiction of the Bureau of Revenue Services received by each business to the extent permitted under Title 36, section 191 and other provisions of law concerning the confidentiality of information.

B. The Commissioner of Labor shall report by October 1st annually to the Legislature on the amount of public funds spent on workforce development and training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the Department of Labor received by each business and the public benefit resulting from those economic development incentives.

C. The Maine Community College System shall report by October 1st annually to the Legislature on the amount of public funds spent on job training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the system received by each business and the public benefit resulting from those economic development incentives.

D. The department shall report by October 1st annually to the Legislature the following:

(1) ~~The amount of public funds spent for the direct benefit of businesses in the State under municipal tax increment financing, employment tax increment financing and the Governor's training initiative. The report must identify the amount of economic development incentives under the jurisdiction of the department received by each employer and the public benefit resulting from those economic development incentives; and~~

(2) ~~The activities in the State, in the aggregate, of businesses receiving funds through the Maine Seed Capital Tax Credit program, including the following:~~

(a) ~~The total amount of tax credit certificates issued by the Finance Authority of Maine;~~

(b) ~~The total amount of private investment;~~

(c) ~~Total employment;~~

(d) ~~The total number of jobs created;~~

(e) ~~The total number of jobs retained;~~

(f) ~~Total payroll; and~~

(g) ~~Total annual sales.~~

~~The Finance Authority of Maine shall provide the department with the information collected in accordance with Title 10, section 1100 T, subsection 6 and assist in the preparation of this report.~~

~~E. The department shall report by October 1st annually to the State Tax Assessor a listing of businesses that have failed to submit reports required under subsection 3. The report must document that each business included in the report was provided with reasonable official notification of its noncompliance and that its failure to submit the required report within 30 days would result in the withholding and potential forfeiture of reimbursements for which the business may be eligible under Title 36, chapter 915. The notification must be in the form of a letter posted by certified mail before August 15th of the reporting year. If the department subsequently receives a report from the business, the department shall so notify the State Tax Assessor.~~

~~F. Prior to any forfeiture of benefits under Title 36, section 6652, subsection 3, the department shall make a written determination that the report required by subsection 3 either has not been received or is not in an acceptable form. A copy of that written determination, including the reasons for the determination, must be mailed to the claimant by certified mail. The determination made by the department constitutes final agency action that is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that sections 11006 and 11007 do not apply. The Superior Court shall conduct a de novo hearing and make a de novo determination as to whether the claimant has filed a report in substantial compliance with this section. The Superior Court shall make its own determination as to all questions of fact and law. The Superior Court shall enter such orders and decrees as the case may require. In the event that the department's determination is appealed to Superior Court pursuant to this paragraph, forfeiture of the claimant's right to receive reimbursement of taxes under Title 36, chapter 915 may not occur unless the Superior Court, subject to any appeal to the Law Court, finds that the claimant had not substantially complied with the reporting requirements of this section.~~

5. Rules. Rules adopted by the commissioner under this section are routine technical rules as defined in chapter 375, subchapter H-A 2-A.

Sec. 6. 5 MRSA §13103, sub-§2, ¶G, as amended by PL 2003, c. 50, Pt. B, §1 and affected by §2, is further amended to read:

G. Submit each biennium a report to the Governor, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters. The report must include detailed information on the status of the funds in the Maine Biomedical Research Fund, and a listing and explanation of each specific source of funding from grant sources for biomedical research and its use and the number of new jobs created in the State and where those jobs are located.

Sec. 7. 5 MRSA §13109, sub-§4, as repealed and replaced by PL 2005, c. 425, §7, is amended to read:

4. Payments to fund. Notwithstanding section 1585 or any other provision of law, agencies or private entities that receive General Fund or general obligation bonds for research and development shall contribute to the fund an amount not to exceed 0.8% of General Fund appropriations received by and general obligation bonds issued to an agency or entity for research and development efforts. Private entities that receive funds from general obligation bonds for research and development efforts shall pay to the Treasurer of State in the fiscal year in which the general obligation bond was issued an amount not to exceed 0.8% of the proceeds from the bond issue in any fiscal year, which payment must be made from available resources other than bond proceeds. Only those programs that receive \$500,000 or more in research and development appropriations in any fiscal year, or those entities that receive funds from a general obligation bond issue of \$500,000 or more for research and development efforts in any fiscal year, as identified and certified by the Office of Innovation and the Office of Fiscal and Program Review, may be assessed. The Office of Innovation shall provide to each agency or private entity an annual budget for the fund and a detailed account of each institution's required assessment. Total payments made pursuant to this section may not exceed ~~\$120,000~~ \$200,000 in any fiscal year.

Sec. 8. 5 MRSA §15302, sub-§10, as amended by PL 2001, c. 562, §1, is repealed.

Sec. 9. 7 MRSA §309, as amended by PL 1999, c. 72, §6, is further amended to read:

§309. Annual review

The commissioner and the Agriculture Development Committee shall, on an annual basis, review the effectiveness of the programs operated under the provisions of this chapter and provide a summary of the review to the Commissioner of Economic and Community Development.

Sec. 10. 36 MRSA §6652, sub-§3, as enacted by PL 1999, c. 768, §6, is repealed.

Sec. 11. 36 MRSA §6656, sub-§2, as enacted by PL 2005, c. 618, §20 and affected by §22, is amended to read:

2. Pay certified amounts. The assessor shall pay the certified amounts to each approved applicant that qualifies for the benefit under this chapter by November 1st or within 90 days after receipt of the claim, whichever is later. ~~For those claims for which payments are withheld pursuant to section 6652, subsection 3, and with respect to which the assessor receives notification under that subsection that the report has been received, reimbursement must be paid by November 1st or within 90 days after the assessor receives the notification, whichever is later.~~ Interest is not allowed on any payment made to a claimant pursuant to this chapter.

Sec. 12. Appropriations and allocations. The following appropriations and allocations are made.

ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF

Maine Economic Development Evaluation Fund Z057

Initiative: Allocates funds associated with increasing the maximum amount that can be collected from those agencies or private entities that receive General Fund appropriations or general obligation bonds for economic development for the economic development evaluation.

OTHER SPECIAL REVENUE FUNDS	2008-09	2009-10	2010-11
All Other	\$50,000	\$50,000	\$50,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$50,000	\$50,000	\$50,000

Maine Research and Development Evaluation Fund 0985

Initiative: Allocates funds associated with increasing the maximum amount that can be collected from those agencies or private entities that receive General Fund appropriations or general obligation bonds for research and development for the research and development evaluation.

OTHER SPECIAL REVENUE FUNDS	2008-09	2009-10	2010-11
All Other	\$80,000	\$80,000	\$80,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$80,000	\$80,000	\$80,000

**ECONOMIC AND
COMMUNITY
DEVELOPMENT,
DEPARTMENT
OF**

DEPARTMENT TOTALS	2008-09	2009-10	2010-11
OTHER SPECIAL REVENUE FUNDS	\$130,000	\$130,000	\$130,000
DEPARTMENT TOTAL - ALL FUNDS	\$130,000	\$130,000	\$130,000

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

Effective June 9, 2009.

CHAPTER 338

H.P. 1035 - L.D. 1482

**An Act to Amend Mercury
Standards for Air Emission
Sources**

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

Sec. 1. 38 MRSA §585-B, sub-§5, as amended by PL 2005, c. 590, §1, is further amended to read:

5. Standards for mercury. Notwithstanding subsection 1, an air emission source may not emit mercury in excess of 45.4 kilograms, or 100 pounds, per year after January 1, 2000; 22.7 kilograms, or 50 pounds, per year after January 1, 2004; 15.9 kilograms, or 35 pounds, after January 1, 2007; and 11.4 kilograms, or 25 pounds, after January 1, 2010. As an alternative to not emitting mercury in excess of 11.4 kilograms, or 25 pounds, after January 1, 2010, an air emission source may reduce mercury emissions by 90 percent by weight after January 1, 2010. Compliance with these limits must be specified in the license of the air emission source. The board shall establish by rule testing protocols and measurement methods for emissions sources for which the board has not established such protocols and methods for determining compliance with the emission standard for mercury. These rules are routine technical rules under Title 5, chapter 375, subchapter 2-A.

An air emission source may apply to the board for an extension or modification of the 11.4-kilogram, or 25-pound, limit as follows.

A. An emission source may submit an application to the board no later than January 1, 2009 for a 6-month extension of the January 1, 2010 deadline to meet the 11.4-kilogram, or 25-pound, limit. The board shall grant the extension if the board determines, based on information presented by the source, that compliance with the limit is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons.

B. An emission source may submit an application to the board no later than January 1, 2009 for a license modification establishing an alternative emission limit for mercury. The board shall grant the license modification if the board finds that the proposed mercury emission limit meets the most stringent emission limitation that is achievable and compatible with that class of source, considering economic feasibility.

Pending a decision on an application for an extension or a license modification under this subsection, the 15.9-kilogram, or 35-pound, limit applies to the emission source.

Notwithstanding the January 1, 2000 compliance date in this subsection, a resource recovery facility that is subject to an emissions limit for mercury adopted by rule by the board before January 1, 2000 shall comply with the 45.4-kilogram, or 100-pound, mercury emissions limit after December 19, 2000.

Sec. 2. 38 MRSA §585-B, sub-§6, as corrected by RR 2005, c. 2, §24, is amended to read:

6. Mercury reduction plans. Any air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. The mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

A. Identification, characterization and accounting of the mercury used or released at the emission source; and

B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released.

The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.