

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**September 27, 2011**

**SECOND REGULAR SESSION**  
**January 4, 2012 to May 31, 2012**

**THE EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**LAWS IS**  
**SEPTEMBER 28, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 30, 2012**

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

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**Augusta, Maine**  
**2012**

**CHAPTER 651**  
**H.P. 1372 - L.D. 1854**

**An Act To Expand Educational  
Opportunities for Maine  
Students**

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

**Sec. 1. 20-A MRSA §5205, sub-§6-A** is enacted to read:

**6-A. Interdistrict enrollment policies.** The school boards of 2 or more school administrative units may adopt mutual policies allowing the transfer of students, with parental approval, among the participating units. The policies must set forth procedures and standards governing the transfers, including but not limited to the school year or years in which the policy applies, application procedures and standards of responsibility for transportation and special education. Each school board adopting a policy under this subsection shall file a copy of the policy with the department prior to the effective date of that policy and shall provide timely notice of the policy to residents of the school administrative unit governed by that school board. For the purposes of chapter 606-B, a student transferred under this subsection is considered a resident of the school administrative unit to which the student transferred.

**Sec. 2. Department of Education to convene a stakeholder group to develop a public school choice model.** The Commissioner of Education, or a designee of the commissioner, shall convene a stakeholder group and shall invite the participation of a representative from the Maine School Board Association, the Maine Principals' Association, the Maine Education Association and the Maine Administrators of Services for Children with Disabilities; a superintendent from a rural part of the State and a superintendent from an urban part of the State, named by the Maine School Superintendents Association; and 6 other members, including parents and others with an interest in education issues, appointed by the Governor. The stakeholder group shall develop a publicly funded school choice model that addresses the difficulties inherent in transportation, funding, educating disadvantaged children and educating and transporting children receiving special education services.

The Commissioner of Education shall report the stakeholder group's findings, including a proposed public school choice model, to the joint standing committee of the Legislature having jurisdiction over education matters by January 14, 2013. The committee is authorized to introduce a bill related to the report to the First Regular Session of the 126th Legislature.

**Sec. 3. Superintendents' agreements revisited.** The Commissioner of Education shall commu-

nicate with superintendents and school boards of school administrative units and clarify the law with regard to superintendents' agreements regarding placement of students and interdistrict enrollment policies pursuant to the Maine Revised Statutes, Title 20-A, section 5205, subsection 6-A.

See title page for effective date.

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**CHAPTER 652**  
**S.P. 421 - L.D. 1367**

**An Act To Restore Maine's  
Secondary Roads**

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

**Sec. 1. 5 MRSA §282, sub-§9**, as repealed and replaced by PL 2009, c. 655, Pt. B, §1, is amended to read:

**9. Energy infrastructure benefits fund.** To establish an energy infrastructure benefits fund. Except as otherwise provided by Title 35-A, section 122, ~~subsection~~ subsections 1-C and 6-B or any other law, including the Constitution of Maine, the fund consists of any revenues derived from the use of state-owned land and assets for energy infrastructure development pursuant to Title 35-A, section 122. Each fiscal year, the Treasurer of State shall transfer ~~80% of~~ revenues collected in the fund to the Efficiency Maine Trust for deposit by the Efficiency Maine Trust Board in program funds pursuant to Title 35-A, section 10103, subsection 4 and use by the trust in accordance with Title 35-A, section 10103, subsection 4-A ~~and 20% of revenues collected in the fund to the Department of Transportation for deposit in the Transportation Efficiency Fund established in Title 23, section 4210-E and use by the department in accordance with Title 23, section 4210-E, subsection 2.~~ For the purposes of this subsection, "energy infrastructure" and "state-owned" have the same meanings as in Title 35-A, section 122, subsection 1.

**Sec. 2. 23 MRSA §754, sub-§1**, as enacted by PL 1999, c. 473, Pt. C, §3, is amended to read:

**1. Jurisdiction.** Except as otherwise provided, all state and state aid highways within compact areas of urban compact municipalities, as defined in subsection 2, as determined by the department must be maintained in good repair by the town in which the highways are located at the expense of the town. Municipalities must be notified one year in advance of changes in compact or built-up sections that place additional maintenance responsibilities on the municipalities. Municipalities may waive the requirement of the one-year notice. When any town neglects to maintain the highways within 14 days after notice given its

municipal officers by the department, the department may proceed to make necessary repairs to that way, which must be paid for by the State and the cost for the repairs must be withheld from funds due the town under the ~~Urban Rural Initiative~~ Local Road Assistance Program, established in chapter 19, subchapter ~~¶ 6~~. The amounts collected from these towns must be added to the fund for maintenance of state and state aid highways.

**Sec. 3. 23 MRSA §1654**, as amended by PL 1985, c. 737, Pt. B, §21, is repealed.

**Sec. 4. 23 MRSA §1654-A** is enacted to read:  
**§1654-A. Transfers from Highway Fund unallocated surplus**

At the close of each fiscal year, the State Controller shall transfer to the Department of Transportation, Secondary Road Program Fund, established in section 1803-C and referred to in this section as "the fund," the uncommitted balance in the Highway Fund unallocated surplus account. The amount transferred to the fund, when added to previous transfers to the fund for the fiscal year in which the uncommitted balance is transferred, may not exceed the program funding cap provided in section 1803-C, subsection 4. Any remaining uncommitted balance in the Highway Fund after the transfer to the fund must be transferred to the Department of Transportation, Highway and Bridge Capital program. The Commissioner of Transportation may allot these funds by financial order upon the recommendation of the State Budget Officer and the approval of the Governor. The transferred amounts are considered adjustments to allocations. Within 30 days after approval of the financial order, the Commissioner of Transportation shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report detailing the financial status of the Department of Transportation, Highway and Bridge Capital program.

For the purposes of this section, "uncommitted balance in the Highway Fund unallocated surplus account" or "uncommitted balance" means the amount remaining in the account at the close of the fiscal year after the deduction of all allocations, budgeted financial commitments and adjustments considered necessary by the State Controller.

The State Controller shall include in the State Controller's official annual financial report at the close of each fiscal year a statement showing all transfers made from the Highway Fund unallocated surplus account for the fiscal period.

**Sec. 5. 23 MRSA §1801**, as repealed and replaced by PL 1999, c. 473, Pt. D, §1, is amended to read:

**§1801. Findings and purpose**

Municipal transportation assistance funds must be targeted to the capital needs of rural roads and highways and must also reflect urban maintenance responsibilities on state and state aid roadways.

Municipal transportation assistance funds must be adjusted according to increases or decreases in Highway Fund resources available for transportation.

Responsibility for decisions regarding maintenance and improvement of roads must follow the principle that roads that primarily serve regional or statewide needs must be the State's responsibility, roads that primarily serve local needs must be a local responsibility and roads that primarily serve as minor collector routes and major collector routes may be improved through a partnership between municipalities and the State.

The Legislature recognizes that without municipal participation the State has few resources to make necessary capital improvements to state aid minor collector highways and state aid major collector highways.

The purpose of the ~~Urban Rural Initiative~~ Local Road Assistance Program established in this subchapter is to provide equitable financial assistance to communities for their use in improving local roads; and maintaining state roads in urban compact areas. The purpose of the Secondary Road Program Fund established in this subchapter is to establish a partnership between communities and assisting the State in making capital improvements to state aid minor collector highways and state aid major collector highways.

In order to meet the purposes set out in this section, the ~~Urban Rural Initiative~~ Local Road Assistance Program has a ~~Rural Road Initiative and an Urban Compact Initiative~~ rural road assistance and urban compact assistance funding as components.

**Sec. 6. 23 MRSA §1803-B**, as amended by PL 2001, c. 565, Pt. K, §1, is further amended to read:

**§1803-B. Local Road Assistance Program**

**1. Distribution and use of funds.** Funds from the ~~Urban Rural Initiative~~ Local Road Assistance Program must be distributed to each eligible municipality, county or Indian reservation ~~under the Rural Road Initiative and the Urban Compact Initiative~~ through rural road assistance and urban compact assistance funding as follows.

A. ~~Rural Road Initiative~~ road assistance funds must be distributed as follows.

- (1) Funds are distributed at a rate of \$600 per year per lane mile for all rural state aid minor collector roads and all public roads maintained by a municipality located outside urban compact areas as defined in section 754,

except that funds are distributed at a rate of \$300 per year per lane mile for all seasonal public roads.

(2) ~~Effective July 1, 2000, funds~~ Funds must be used for capital improvements as defined by this chapter, or for capital improvements to state aid minor collector ~~roads~~ highways and state aid major collector ~~highways~~ as described in ~~subsection 5~~ section 1803-C. In municipalities, counties and Indian reservations in which there are no rural state aid minor collector or major collector roads, funds may also be used for winter highway maintenance, acquisition of highway maintenance equipment or the construction of highway maintenance buildings if the governing legislative body affirmatively votes that its town ways and local bridges are in sufficiently good condition so as to not require significant repair or improvement for at least 10 years.

B. ~~Urban Compact Initiative~~ compact assistance funds must be distributed as follows.

(1) Funds are distributed at a rate of \$2,500 per year per lane mile for summer maintenance performed by municipalities on state and state aid highways in compact areas as defined in section 754. For each lane mile beyond the 2nd lane on a highway with more than 2 lanes, funds are reimbursed at a rate of \$1,250 per lane mile for summer maintenance in compact areas. Funds are distributed at a rate of \$1,700 per year per lane mile for winter maintenance performed by municipalities on state highways in compact areas as defined in sections 754 and 1001 regardless of the number of lanes.

(2) Funds must be used only for the maintenance or improvement of public roads.

C. The ~~Urban Rural Initiative~~ Local Road Assistance Program payment defined as the combined ~~Urban Compact Initiative~~ urban compact assistance and ~~Rural Road Initiative~~ rural road assistance annual payment to any municipality, county, or Indian reservation may not be less than the fiscal year 1999 Local Road Assistance Program payment.

D. Beginning July 1, 2001, the annual funding dedicated for the ~~Urban Rural Initiative~~ Local Road Assistance Program must bear the same percentage relationship to the sum of the General Fund and Highway Fund allocation to the ~~department~~ Department of Transportation for highway purposes as was provided during fiscal year 2000-01. On July 1, 2001 and every July 1st thereafter, the ~~commissioner~~ Commissioner of Transportation shall administratively adjust the

base funding and the reimbursement rates per lane mile proportionately according to revenue available.

**2. Retention of allocation for Local Road Assistance Program.** Prior to apportioning funds to each municipality, the ~~department~~ Department of Transportation shall retain sufficient funds from the allocation for the ~~Urban Rural Initiative~~ Local Road Assistance Program to ensure equitable funds are provided for roads in unorganized areas and for administration.

**3. Payment of funds.** One quarter of the funds apportioned to each municipality must be paid by the State to the municipality before September 1st, December 1st, March 1st and June 1st each year.

~~**5. State aid minor collector capital projects.** State aid minor collector capital projects as determined by the department are financed with contributions of Rural Road Initiative funds not to exceed 33% of project costs with the remainder provided by the State. Local funds other than Rural Road Initiative funds committed to the projects are matched by state funds at the discretion of the department and at a ratio that may exceed 33% of local funds. If the department is not allocated sufficient funds to match offered municipal funds, then the department must reject or defer any new municipal offers and award matching funds to municipalities with pending offers based on a priority order consistent with an established departmental 6-year plan for state aid minor collector capital projects.~~

~~**6. Municipal, county or Indian reservation administration.** Municipalities or counties or Indian reservations may choose to administer rural minor collector capital projects based on mutual agreement guided by policies and procedures adopted by the department. The state share must be available prior to construction or contract. Municipal, county or Indian reservation equipment and material contributions are included as part of the contribution of Rural Road Initiative funds. Project cost overruns or savings are shared by the municipality, county or Indian reservation and the State according to the cost sharing ratio established in subsection 5. State savings must be used for the purposes of state aid minor collector capital projects within the State. Municipal, county or Indian reservation savings may be used for any purpose allowed pursuant to subsection 1, paragraph A. At the discretion of the municipality, county or Indian reservation, project cost savings including matched state funds may accrue entirely toward additional or expanded minor collector state aid capital projects within that same jurisdiction.~~

**Sec. 7. 23 MRSA §1803-C** is enacted to read:

**§1803-C. Secondary Road Program Fund**

**1. Establishment.** The Secondary Road Program Fund, referred to in this section as "the fund," is established as a dedicated account within the Department of Transportation, referred to in this section as "the department." The fund must be used for capital improvements to state aid minor collector highways and state aid major collector highways. The department shall administer the fund.

**2. Revenue.** The fund receives the following revenue:

A. Amounts that are transferred to the fund from time to time by the Treasurer of State pursuant to:

(1) Title 5, section 282, subsection 9; and

(2) Title 35-A, section 122, subsection 6-B;

B. Amounts from unallocated balances in the Highway Fund as provided in section 1654-A; and

C. Other funds from any public or private source received for use for any of the purposes for which the fund has been established.

**3. Distribution and use of funds.** Up to 50% of project costs for a capital project on a state aid minor collector highway or state aid major collector highway as determined by the department may be financed from the fund with the remainder provided by the municipality, county or Indian reservation, except that the Commissioner of Transportation may authorize up to 80% of project costs for a capital project on a state aid minor collector highway or state aid major collector highway to be financed from the fund with the remainder provided by the municipality, county or Indian reservation if the municipality, county or Indian reservation demonstrates to the commissioner's satisfaction that the proposed project:

A. Addresses locations where there is a high incidence of vehicular accidents as defined by the department;

B. Creates a substantial number of new jobs for the region; or

C. Offers greater regional or statewide benefits relative to other similarly classified roads.

In determining local share of project costs for a capital project on a state aid minor collector highway or state aid major collector highway, the commissioner may consider the use of municipal, county or Indian reservation equipment, materials or in-kind services, an agreement to assume year-round capital and maintenance responsibilities for the project under consideration or a reduction in future Local Road Assistance Program payments.

A capital project on a state aid minor collector highway or state aid major collector highway may not be allotted funding from the Secondary Road Program

Fund until the project and local financing is approved by a vote of the legislative body of the municipality, county or Indian reservation.

**4. Program funding cap.** The annual amount available for distribution under this section may not exceed \$4,000,000, and any remaining funds after all financial commitments have been made lapse to the department's Highway and Bridge Capital program within the Highway Fund at the end of each fiscal year.

**Sec. 8. 23 MRSA §1804**, as amended by PL 1999, c. 473, Pt. D, §5, is further amended to read:

**§1804. Municipal, county or Indian reservation requirements**

To be eligible to receive funds from the Urban-Rural Initiative Local Road Assistance Program, each municipality, county or Indian reservation shall, prior to August 1st each year, certify in a manner acceptable to the department that the funds are used in a manner consistent with this chapter. ~~To be guaranteed to receive state matching funds for any Rural Road Initiative funds directed to state aid minor collector capital projects, each municipality, county and Indian reservation, prior to May 1st of each even-numbered year, shall submit a 6-year plan to the department describing the intended state aid minor collector projects to be financed with funds currently available, funds provided over the 6-year period beginning July 1st of the following year and any other funds or financing. The report must include details sufficient to estimate needed state matching funds, and must indicate whether the municipality intends to administer the project. The report also must describe any funds held in reserve for future state aid minor collector projects.~~

**Sec. 9. 23 MRSA §1807**, as enacted by PL 2001, c. 681, §1, is amended to read:

**§1807. Transit bonus payment program**

In order to promote the purposes of the Sensible Transportation Policy Act set forth in section 73, a transit bonus payment program is established. The program is governed by the provisions of this section.

**1. Application.** A municipality that increases its qualifying expenditures for transit over a base year may apply to the department for a transit bonus to the municipality's Urban-Rural Initiative Local Road Assistance Program payment, as ~~defined~~ described in section 1803-B.

**2. Qualifying expenditures for transit.** As used in this section, "qualifying expenditures for transit" means a municipality's total annual expenditures derived from municipal revenue sources that are used for the operations of a seasonal or year-round transit service that has been established for at least 3 years and that provides scheduled service for at least 3 days per week.

**3. Use of funds.** All funds distributed pursuant to this section must be used for the purposes set forth in sections 1801 and 1803-B.

**4. Program funding cap.** The annual amount available for distribution under this section may not exceed 2.5% of the annual funding dedicated for the ~~Urban Rural Initiative~~ Local Road Assistance Program. All funds not distributed each year lapse to the Department of Transportation, Highway and Bridge Capital program within the Highway Fund.

**5. Distribution of funds.** Beginning July 1, 2003, the department shall increase ~~an Urban Rural Initiative~~ the Local Road Assistance Program payment for a municipality that applies under subsection 1 on a dollar-for-dollar basis. After the total of qualifying applications for reimbursement exceeds the annual amount available for distribution provided under subsection 4, funds must be apportioned according to the amount of each municipality's increase of qualifying expenditures, ridership or other factors determined by the department.

**6. Rules.** The commissioner shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

**Sec. 10. 23 MRSA §4210-C, sub-§3,** as enacted by PL 2005, c. 457, Pt. GGG, §3, is amended to read:

**3. Calculation.** The account is not considered a General Fund appropriation or Highway Fund allocation for highway purposes in order to calculate the annual funding for the ~~Urban Rural Initiative~~ Local Road Assistance Program pursuant to section 1803-B.

**Sec. 11. 23 MRSA §4210-E,** as enacted by PL 2009, c. 655, Pt. B, §2, is repealed.

**Sec. 12. 30-A MRSA §5721-A, sub-§4,** as amended by PL 2007, c. 662, §3, is further amended to read:

**4. Adjustment for new state funding.** If the State provides net new funding to a municipality for existing services funded in whole or in part by the property tax levy, other than required state mandate funds pursuant to section 5685 that do not displace current property tax expenditures, the municipality shall lower its property tax levy limit in that year in an amount equal to the net new funds. For purposes of this subsection, "net new funds" means the amount of funds received by the municipality from the State during the most recently completed calendar year, with respect to services funded in whole or in part by the property tax levy, less the product of the following: the amount of such funds received in the prior calendar year multiplied by one plus the growth limitation factor described in subsection 3. "Net new funds" refers to state-municipal revenue sharing and does not

include changes in state funding for general assistance under Title 22, section 4311 or in state funding under the ~~Urban Rural Initiative~~ Local Road Assistance Program under Title 23, section 1803-B if those changes are the result of the operation of the formula for calculation of state funding under that section but does include changes in funding that are the result of a statutory change in the formula for calculation of state funding under that section. If the calculation required by this subsection reveals that the municipality received a net reduction in funding, the municipality is authorized to adjust its property tax levy limit in an amount equal to the net reduction of funds. For the purpose of determining if there was a net reduction in funding, the municipality may consider only those funds that are net new funds. For purposes of this subsection, "net reduction in funding" means the amount of funds received by the municipality from the State during the calendar year immediately preceding the most recently completed calendar year less the amount of such funds received in the most recently completed calendar year. If the calculation required by this subsection yields a positive value, that value may be added to the municipality's property tax levy limit. If a municipality receives net new funds in any fiscal year for which its property tax levy limit has not been adjusted as provided in this subsection, the municipality shall adjust its property tax levy limit in the following year in an amount equal to the net new funds.

**Sec. 13. 35-A MRSA §122, sub-§6-B** is enacted to read:

**6-B. Revenue from energy infrastructure corridors.** Notwithstanding subsection 6-A, 90% of the revenues generated from the use of statutory corridors designated under subsection 1-A, paragraphs A and B owned by the Department of Transportation within energy infrastructure corridors must be deposited into the Secondary Road Program Fund established in Title 23, section 1803-C and 10% of the revenues must be deposited into the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

**Sec. 14. Effective date.** This Act takes effect July 1, 2013.

Effective July 1, 2013.

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**CHAPTER 653**  
**H.P. 1371 - L.D. 1853**

**An Act To Improve  
Environmental Oversight and  
Streamline Permitting for  
Metallic Mineral Mining in  
Maine**