

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.

Augusta, Maine
2012

Maintenance and Operations 0330

Initiative: Reduces funding by managing vacancies to maintain budgets within available resources as a result of the April 2012 downward projection of Highway Fund revenues by the Revenue Forecasting Committee.

HIGHWAY FUND	2011-12	2012-13
Personal Services	(\$250,000)	(\$800,000)
HIGHWAY FUND TOTAL	(\$250,000)	(\$800,000)

Multimodal - Freight 0350

Initiative: Adjusts funding to correct allocations for passenger rail that were made to the Multimodal - Freight program in error in Public Law 2011, chapter 649.

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	\$0	(\$1,812,000)
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	(\$1,812,000)

Multimodal - Passenger Rail Z139

Initiative: Adjusts funding to correct allocations for passenger rail that were made to the Multimodal - Freight program in error in Public Law 2011, chapter 649.

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	\$0	\$1,812,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$1,812,000

Urban-Rural Initiative Program 0337

Initiative: Reduces funding based on the statutory percentage to maintain budgets within available resources as a result of the April 2012 downward projection of Highway Fund revenues by the Revenue Forecasting Committee.

HIGHWAY FUND	2011-12	2012-13
All Other	(\$266,355)	(\$319,645)
HIGHWAY FUND TOTAL	(\$266,355)	(\$319,645)

TRANSPORTATION, DEPARTMENT OF

DEPARTMENT TOTALS	2011-12	2012-13
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HIGHWAY FUND	(\$2,765,460)	(\$3,318,750)
OTHER SPECIAL REVENUE FUNDS	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	(\$2,765,460)	(\$3,318,750)

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

Effective May 16, 2012.

CHAPTER 659

H.P. 928 - L.D. 1237

An Act To Prohibit Bullying and Cyberbullying in Schools

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 20-A MRS §254, sub-§11-A is enacted to read:

11-A. Model policy; reporting. By January 1, 2013, the commissioner shall develop a model policy to address bullying and cyberbullying for use by school administrative units pursuant to section 6554. A copy of the model policy must be sent to each school administrative unit in the State and posted on the publicly accessible portion of the department's website along with any training and instructional materials related to the policy that the commissioner determines necessary.

A. The commissioner shall create a procedure by which school administrative units report substantiated incidents of bullying and cyberbullying to the department on at least an annual basis. These reports may not contain personally identifying information about students or other involved persons, but must delineate the specific nature of the incidents, the consequences and the actions taken.

B. The commissioner may update or revise the model policy and shall post the update or revision on the publicly accessible portion of the department's website and send a copy of the update or revision to each school administrative unit.

Sec. 2. 20-A MRSA §1001, sub-§15, ¶H, as enacted by PL 2005, c. 307, §3, is amended to read:

H. Establish policies and procedures to address bullying, harassment and sexual harassment as set forth in section 6554.

Sec. 3. 20-A MRSA §6554 is enacted to read:

§6554. Prohibition on bullying in public schools

1. Findings. All students have the right to attend public schools that are safe, secure and peaceful environments. The Legislature finds that bullying and cyberbullying have a negative effect on the school environment and student learning and well-being. These behaviors must be addressed to ensure student safety and an inclusive learning environment. Bullying may be motivated by a student's actual or perceived race; color; religion; national origin; ancestry or ethnicity; sexual orientation; socioeconomic status; age; physical, mental, emotional or learning disability; gender; gender identity and expression; physical appearance; weight; family status; or other distinguishing personal characteristics or may be based on association with another person identified with such a characteristic. Nothing in this section may be interpreted as inconsistent with the existing protection, in accordance with the First Amendment of the United States Constitution, for the expression of religious, political and philosophical views in a school setting.

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

A. "Alternative discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the root causes of a student's specific misbehavior while retaining the student in class or school, or restorative school practices to repair the harm done to relationships and persons from the student's misbehavior. "Alternative discipline" includes, but is not limited to:

- (1) Meeting with the student and the student's parents;
- (2) Reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) Mediation when there is mutual conflict between peers, rather than one-way negative behavior, and when both parties freely choose to meet;
- (4) Counseling;
- (5) Anger management;
- (6) Health counseling or intervention;
- (7) Mental health counseling;

(8) Participation in skills building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;

(9) Community service; and

(10) In-school detention or suspension, which may take place during lunchtime, after school or on weekends.

B. "Bullying" includes, but is not limited to, a written, oral or electronic expression or a physical act or gesture or any combination thereof directed at a student or students that:

(1) Has, or a reasonable person would expect it to have, the effect of:

(a) Physically harming a student or damaging a student's property; or

(b) Placing a student in reasonable fear of physical harm or damage to the student's property;

(2) Interferes with the rights of a student by:

(a) Creating an intimidating or hostile educational environment for the student; or

(b) Interfering with the student's academic performance or ability to participate in or benefit from the services, activities or privileges provided by a school; or

(3) Is based on a student's actual or perceived characteristics identified in Title 5, section 4602 or 4684-A, or is based on a student's association with a person with one or more of these actual or perceived characteristics or any other distinguishing characteristics and that has the effect described in subparagraph (1) or (2).

"Bullying" includes cyberbullying.

C. "Cyberbullying" means bullying through the use of technology or any electronic communication, including, but not limited to, a transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted by the use of any electronic device, including, but not limited to, a computer, telephone, cellular telephone, text messaging device and personal digital assistant.

D. "Retaliation" means an act or gesture against a student for asserting or alleging an act of bullying. "Retaliation" also includes reporting that is not made in good faith on an act of bullying.

E. "School grounds" means a school building; property on which a school building or facility is located; and property that is owned, leased or used

by a school for a school-sponsored activity, function, program, instruction or training. "School grounds" also includes school-related transportation vehicles.

3. Prohibition. A person may not engage in bullying on school grounds. This section does not modify or eliminate a school's obligation to comply with state and federal constitutional protections and civil rights laws applicable to schools.

4. Scope. This section applies to bullying that:

A. Takes place at school or on school grounds, at any school-sponsored or school-related activity or event or while students are being transported to or from school or school-sponsored activities or events; or

B. Takes place elsewhere or through the use of technology, but only if the bullying also infringes on the rights of the student at school as set forth in subsection 2, paragraph B.

5. Adoption of policy. When revising the policies and procedures it has established to address bullying pursuant to section 1001, subsection 15, paragraph H, a school board shall ensure that its policies and procedures are consistent with the model policy developed or revised by the commissioner pursuant to section 254, subsection 11-A. The policies and procedures must include, but are not limited to:

A. A provision identifying the responsibility of students and others on school grounds to comply with the policies;

B. A clear statement that bullying, harassment and sexual harassment and retaliation for reporting incidents of such behavior are prohibited;

C. A provision outlining the responsibility of a superintendent to implement and enforce the bullying policies required by this section, including:

(1) A requirement that the superintendent designate a school principal or other school personnel to administer the policies at the school level; and

(2) A procedure for publicly identifying the superintendent's designee or designees for administering the policies at the school level;

D. A requirement that school staff members, coaches and advisors for extracurricular and co-curricular activities report incidents of bullying to the school principal or other school personnel designated by the superintendent pursuant to paragraph C;

E. Procedures for students, school staff members, parents and others to report incidents of bullying. The procedures must permit reports of bullying to be made anonymously;

F. A procedure for promptly investigating and responding to incidents of bullying, including written documentation of reported incidents and the outcome of the investigations;

G. A clear statement that any person who engages in bullying, who is determined to have knowingly and falsely accused another of bullying or who engages in acts of retaliation against a person who reports a suspected incident of bullying is subject to disciplinary actions, which actions may include but are not limited to imposing a series of graduated consequences that include alternative discipline;

H. A procedure for a person to appeal a decision of a school principal or a superintendent's designee related to taking or not taking disciplinary action in accordance with the policies adopted pursuant to this subsection. The appeals procedure must be consistent with other appeals procedures established by the school board and may include an appeal to the superintendent;

I. A procedure to remediate any substantiated incident of bullying to counter the negative impact of the bullying and reduce the risk of future bullying incidents, which may include referring the victim, perpetrator or other involved persons to counseling or other appropriate services;

J. A process for the school to communicate to the parent of a student who has been bullied the measures being taken to ensure the safety of the student who has been bullied and to prevent further acts of bullying; and

K. A procedure for communicating with a local or state law enforcement agency if the school principal or the superintendent's designee believes that the pursuit of criminal charges or a civil action under the Maine Civil Rights Act is appropriate.

School boards may combine the policies and procedures required by this subsection with nondiscrimination, harassment and sexual harassment policies and grievance procedures.

6. Dissemination of policy. Each school board shall annually provide the written policies and procedures adopted pursuant to subsection 5 to students, parents, volunteers, administrators, teachers and school staff. The policies and procedures must be posted on the school administrative unit's publicly accessible website. Each school board shall include in its student handbook a section that addresses in detail the policies and procedures adopted pursuant to subsection 5.

7. Application. A superintendent or the superintendent's designee shall ensure that every substantiated incident of bullying is addressed.

A. The prohibition on bullying and retaliation and the attendant consequences apply to any student, school employee, contractor, visitor or volunteer who engages in conduct that constitutes bullying or retaliation.

B. Any contractor, visitor or volunteer who engages in bullying must be barred from school grounds until the superintendent is assured that the person will comply with this section and the policies of the school board.

C. Any organization affiliated with the school that authorizes or engages in bullying or retaliation forfeits permission for that organization to operate on school grounds or receive any other benefit of affiliation with the school.

8. Transparency and monitoring. Each school administrative unit shall file its policies to address bullying and cyberbullying with the department.

9. Staff training. A school administrative unit shall provide professional development and staff training in the best approaches to implementing this section.

See title page for effective date.

CHAPTER 660

H.P. 467 - L.D. 637

An Act To Increase the Amount Tagging Agents Receive for Tagging Game

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

Sec. 1. 12 MRSA §12301-A, sub-§3, ¶C, as amended by PL 2009, c. 213, Pt. OO, §10, is further amended to read:

C. Collect \$5 and retain \$1 §2 for each seal from the person registering a bear, deer, moose or wild turkey. The remaining \$4 §3 must be returned to the department by the agent pursuant to section 10801, subsection 3.

See title page for effective date.

CHAPTER 661

H.P. 572 - L.D. 765

An Act To Address the Documented Educational and Rehabilitation Needs of Persons Who Are Blind or Visually Impaired

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

Whereas, legal requirements regarding the educational needs of children who are blind or visually impaired are not currently being met; 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. 26 MRSA §1418-D, sub-§2, as enacted by PL 1995, c. 560, Pt. F, §13, is amended to read:

2. Department of Education input; school administrative units. The division shall ensure that the Department of Education has input into any contract to provide educational services and delivery of those services to blind or visually impaired children from birth to 20 years of age. Educational services for blind or visually impaired children from birth to 20 years of age are an entitlement mandated by federal law and, as such, children will receive priority for all services provided by the division. Nothing in this section relieves school administrative units from fulfilling their responsibilities under Title 20-A, Part 4, subpart 1.

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

Effective May 21, 2012.

CHAPTER 662

S.P. 456 - L.D. 1465

An Act To Amend the Laws Governing Freedom of Access

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 1 MRSA §400 is enacted to read: