

# MAINE STATE LEGISLATURE

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L.D. 1761

DATE: 4/7/94

(Filing No. H-1081)

MAJORITY  
APPROPRIATIONS & FINANCIAL AFFAIRS

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1306, L.D. 1761, Bill, "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1994 and June 30, 1995"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

**Whereas,** the 90-day period may not terminate until after the beginning of the next fiscal year; and

**Whereas,** certain obligations and expenses will become due and payable on or immediately after July 1, 1993; 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:**

**PART A**

**Sec. A-1. Supplemental appropriations from General Fund.** There are appropriated from the General Fund for the fiscal years ending June 30, 1994 and June 30, 1995, to the departments listed, the following sums.

**COMMITTEE AMENDMENT**

R 18

2 Financial Services to be made available by financial order upon  
the recommendation of the State Budget Officer and approval of  
4 the Governor to be used for statewide capital construction,  
improvements and repairs.

6 Sec. G-4. 5 MRSA §1583-A, as amended by PL 1993, c. 414, Pt.  
F, §1, is further amended to read:

8 **§1583-A. Creation of positions**

10 Notwithstanding any other provision of law, positions,  
12 except for workers' compensation positions to be established for  
former regular employees of the State who are receiving workers'  
14 compensation payments from the State and intern positions to be  
established as part of the Summer Internship Program, may not be  
16 established except as authorized by legislative appropriation or  
allocation, including general ledger accounts. This provision  
18 does not apply to project positions funded by the Highway Fund  
through salary savings.

20 Sec. G-5. Effective date. That section of this Part that  
22 amends the Maine Revised Statutes, Title 5, section 1583-A takes  
effect on January 1, 1994.

24 Sec. G-6. 5 MRSA §1811, sub-§5, as amended by PL 1991, c. 780,  
26 Pt. Y, §64, is further amended to read:

28 5. Storerooms. To establish and operate, with the approval  
of the Commissioner of Administrative and Financial Services,  
30 storerooms which, in the judgment of the Director of the Bureau  
of General Services, are determined necessary for the storage and  
32 distribution of supplies, materials and equipment by resale,  
rental or other method, required for use by the State Government  
34 or any department or agency, or any political subdivision or  
school administrative unit. Notwithstanding section 1587, the  
36 Director of the Bureau of General Services may purchase, lease,  
lease-purchase or enter into other financing agreements for the  
38 acquisition of equipment in accordance with this subsection when  
it can be demonstrated that any such action or agreement provides  
40 a clear cost advantage to the State. All contracts, terms, terms  
of financing and other terms related to any financing agreement  
42 reached are subject to the review of the joint standing committee  
of the Legislature having jurisdiction over appropriations and  
44 financial affairs;

46 Sec. G-7. 14 MRSA §8112, sub-§2, as repealed and replaced by  
PL 1987, c. 740, §11, is amended to read:

48

R 48.

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2 2. When the governmental entity is liable. A Except as  
 4 provided in subsection 9, a governmental entity shall, with the  
 6 consent of the employee, assume the defense of and shall  
 8 indemnify any employee against a claim which that arises out of  
 10 an act or omission occurring within the course and scope of  
 12 employment and for which sovereign immunity has been waived under  
 14 section 8104-A, under another law or by legislative  
authorization. Except as otherwise provided herein in this  
subsection, in lieu of assuming the defense of an employee, the  
governmental entity may pay the reasonable attorneys' fees and  
court costs of the employee. If the defense of its employee  
creates a conflict of interest between the governmental entity  
and the employee, the governmental entity shall pay the  
reasonable attorneys' fees and court costs of the employee.

16 A governmental entity shall may not be required to indemnify its  
 18 employee and is not liable for the attorneys' fees and court  
 20 costs of its employee under this subsection in the event that the  
 22 employee is determined to be criminally liable for the acts or  
 24 omissions in question. In addition, after the litigation against  
 26 the employee is concluded, a governmental entity shall--be is  
 relieved of any obligation to indemnify the employee for punitive  
 damages and may recoup any attorneys' fees and costs paid to  
 outside counsel if the governmental entity proves that the  
 employee acted in bad faith.

28 This subsection does not apply if the employee settles the claim  
 without the consent of the governmental entity.

30 This subsection does not apply if notice is not required to have  
 32 been filed as provided in section 8107 or if the employee does  
 34 not notify the governmental entity within 30 days after receiving  
 actual written notice of the claim or within 15 days after the  
 service of a summons and complaint if the governmental entity is  
 prejudiced by the lack of such notice.

36 **Sec. G-8. 14 MRSA §8112, sub-§9 is enacted to read:**

38 9. Certain suits arising out of use of motor vehicles. A  
 40 governmental entity is not required to assume the defense of or  
 42 to indemnify an employee of that governmental entity who uses a  
 44 privately owned vehicle, while acting in the course and scope of  
 46 employment, to the extent that applicable liability insurance  
 48 coverage exists other than that of the governmental entity. In  
such cases, the employee of the governmental entity and the owner  
of the privately owned vehicle may be held liable for the  
negligent operation or use of the vehicle but only to the extent  
of any applicable liability insurance, which constitutes the

primary coverage of any liability of the employee and owner and of the governmental entity. To the extent that liability insurance other than that of the governmental entity does not provide coverage up to the limit contained in section 8105, the governmental entity remains responsible for any liability up to that limit.

**Sec. G-9. Effective date.** That section of this Part that amends the Maine Revised Statutes, Title 14, section 8112 is repealed June 30, 1995.

**Sec. G-10. 36 MRSA §6267 is enacted to read:**

**§6267. Phase out of elderly tax deferral program**

New taxpayer claims for participation in the deferral program provided pursuant to this chapter are not allowed regarding an application filed on or after April 1, 1991.

**Sec. G-11. PL 1993, c. 410, Pt. A, §§25-A and 25-B are enacted to read:**

**Sec. A-25-A. Position count descriptions.** The State Budget Officer shall study the feasibility of changing Positions - Nonlegislative Count to Positions - Full-Time Equivalent, FTE, in the General Fund, Highway Fund, Federal Block Grant Fund, Internal Telecommunications Fund, Alcoholic Beverage Fund and State Lottery Fund and Positions - Nonlegislative Count to Positions - Legislative Count or Positions - Full-Time Equivalent, FTE, in All Other funds. As a part of this study, the State Budget Officer is authorized to conduct a pilot project in an agency or agencies. The State Budget Officer shall submit a report of findings and recommendations to the Joint Standing Committee on Appropriations and Financial Affairs no later than January 1, 1995. Upon the approval of the findings and recommendations by the Joint Standing Committee on Appropriations and Financial Affairs, the State Budget Officer may implement the position changes in fiscal year 1995-96 and fiscal year 1996-97 and include these changes in the current services budget submission for the fiscal year 1998-99 biennial budget.

**Sec. A-25-B. Position actions.** Positions identified with an appropriation or allocation are presented for informational purposes. The State Budget Officer, when reviewing position actions submitted from departments and agencies pursuant to an appropriation or allocation, shall approve or deny the position actions based on the extent to which the submission is within the appropriation or allocation for Personal Services and complies

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2	Department of Mental Health	
4	and Mental Retardation -	
	Medicaid	900,000
6	Department of Mental Health	
8	and Mental Retardation -	
	Disproportionate Share;	
10	Bangor Mental Health Institute	(600,000)
12	Section A-5	371,827
14	<b>PART P</b>	
16	Section P-1	6,125,000
18	<b>PART Q</b>	
20	Section Q-1	4,000,000
22	<b>PART U</b>	
24	Section U-2	57,000
26	<b>GENERAL FUND UNDEDICATED</b>	
	<b>REVENUE, TOTAL</b>	<u>12,130,287</u>
28	<b>ADJUSTMENTS TO BALANCE</b>	
30	<b>PART M</b>	
32	Section M-1	198,406
34	<b>ADJUSTMENTS TO BALANCE,</b>	
36	<b>TOTAL</b>	<u>\$198,406'</u>

**STATEMENT OF FACT**

This amendment makes supplemental appropriations, deappropriations, allocations and deallocations for the remainder of the 1994-95 biennium. It also changes various provisions of the law necessary for the proper operation of State Government.

This amendment also replaces the fiscal note to the bill.