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## **An Act To Strengthen Maine's Hospitals and To Provide for a New Spirits Contract**

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

**Whereas,** this legislation involves the operation of the liquor laws and makes changes necessary to maximize revenues for the benefit of the people of Maine; and

**Whereas,** the State's existing wholesale spirits contract is set to expire June 30, 2014; and

**Whereas,** the use of the competitive bid process to issue a contract for the operation of the wholesale spirits business should be initiated as soon as practicable; 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. 28-A MRS §2, sub-§§31-A and 31-B** are enacted to read:

**31-A. Spirits administration.** "Spirits administration" or "administration" means the management of spirits activities involving the distribution and sale of spirits by the alcohol bureau or any person awarded a contract under section 90. "Spirits administration" includes, but is not limited to, financial and performance management; profitable and responsible growth management; management of contracts; management of agency liquor store matters and orders; personnel management; monitoring and reporting of spirits inventory; management of bailment records and billing; management of accounts receivable, accounts payable and tax collection and reporting; and sales and profit reporting. "Spirits administration" does not include warehousing and distribution of spirits by the alcohol bureau.

**31-B. Spirits trade marketing.** "Spirits trade marketing" or "trade marketing" means oversight and management by the alcohol bureau or any person awarded a contract under section 90. "Spirits trade marketing" includes, but is not limited to, agency liquor store category management, analysis and recommendations; agency liquor store shelf reset recommendations; agency liquor store displays, advertising, point-of-sale material and event marketing recommendations; development, production and distribution of sales, marketing and informational publications; consultation and coordination with suppliers and brokers on matters affecting their brands; and development, production and distribution of any social responsibility initiatives and compliance related to those initiatives.

**Sec. A-2. 28-A MRS §83, sub-§5-B** is enacted to read:

**5-B. Report on expenditures.** Expenditures and investments made by the alcohol bureau, including but not limited to reductions in the list price at which all spirits are sold and incentives offered to agency liquor stores, must be reported annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverage matters. The report must include the impact of those spending initiatives on the number of cases of spirits sold in the State and on sales generally.

**Sec. A-3. 28-A MRSA §88,** as enacted by PL 2003, c. 20, Pt. LLL, §2 and affected by §4, is repealed.

**Sec. A-4. 28-A MRSA §90** is enacted to read:

**§ 90. Contract for operations of wholesale liquor activities**

**1. Statement of purpose.** The Legislature finds that it is in the public interest to seek efficiencies and maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business should serve this purpose and provide the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

**2. Contract for operations.** The Commissioner of Administrative and Financial Services, referred to in this section as "the commissioner," shall enter into a contract for warehousing, distribution and spirits administration and a contract for spirits trade marketing, each for a term of 10 years. Each contract must be awarded pursuant to a competitive bid process in a manner similar to the process described in Title 5, chapter 155, subchapter 1-A. The commissioner is prohibited from contracting with a bidder who also holds a license in this State or another state to distill, bottle or manufacture spirits.

**3. Development of request for bid proposals; fee.** The commissioner shall develop a request for proposals designed to encourage vigorous bidding for the purpose of awarding 2 contracts for the operations of the State's wholesale spirits business. The commissioner shall request bids for the operation of spirits trade marketing separately from bids for the combined operations of warehousing, distribution and spirits administration. In order to be considered for a contract to conduct spirits trade marketing, a bidder must submit a nonrefundable application fee of up to \$5,000. In order to be considered for a contract to conduct warehousing, distribution and spirits administration, a bidder must submit a nonrefundable application fee of up to \$20,000. The application fee must be credited to an Other Special Revenue Funds account within the division of purchases within the Department of Administrative and Financial Services to be used for managing the application process. A request for proposals must inform potential bidders of the State's target gross revenue profit margin over the term of the contract and require the bidder to affirm that the bidder, or any of the principal officers of the bidder, does not hold or have a direct financial interest in a license or permit in this State or any other state for the distillation, bottling or manufacture of alcoholic beverages. The request for proposals must instruct potential bidders to propose the scope of operations the bidder will provide and the fee for that service expressed as a percentage of revenue generated by the wholesale business. The request for proposals must direct bidders to indicate if

the bidder intends to use subcontractors and to identify those subcontractors. The request for proposals must also inform potential bidders that they may propose incentives for the bidder intended to encourage responsible growth of revenue and enhanced efficiencies in services provided.

**4. Information provided by bidders.** A bidder seeking consideration of the award of a contract for the operations of the State's wholesale spirits business pursuant to this section shall comply with the requirements of this subsection.

A. A bidder on a contract to operate the warehousing, distribution and spirits administration functions of the wholesale spirits business shall identify services or operations for which the bidder may use a subcontractor and shall demonstrate:

(1) The bidder's financial capacity and access to capital to maintain the operations;

(2) The bidder's capabilities to provide adequate transportation and distribution of liquor to agency liquor stores;

(3) The bidder's warehousing capabilities and proposed bailment rates for liquor and related fees to be charged to liquor suppliers;

(4) That the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages;

(5) The bidder's knowledge of the wholesale liquor business, alcoholic beverage industry or a related field;

(6) The bidder's plan to provide agency liquor stores with a minimum of 2 deliveries per week;

(7) The bidder's methods for processing orders and invoices, including any minimum ordering requirements, split case restrictions and inventory control plans;

(8) The bidder's business plan to provide services in a manner that will assist the State in achieving a target growth rate comparable to or exceeding that of other states that control the sale and distribution of alcoholic beverages;

(9) The bidder's plan for enhancing services to liquor suppliers and agency liquor stores; and

(10) The positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide.

**B. A bidder on a contract to provide spirits trade marketing shall:**

(1) Demonstrate the bidder's business plan and marketing strategies to encourage responsible growth to the wholesale spirits business;

(2) Demonstrate the bidder's experience or knowledge, if any, of responsible marketing of alcoholic beverages;

(3) Identify services for which the bidder may use a subcontractor;

(4) Demonstrate that the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages; and

(5) Demonstrate the positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide.

In addition to the requirements of paragraphs A and B, the commissioner, in order to ensure that the objective of maximizing growth in the State's wholesale spirits business is achieved, may require bidders to provide additional information, including disclosure of the potential of a bidder's direct and substantial conflict of interest with the State's financial interest.

**5. Award criteria and issuance of contract.** The commissioner shall select successful bidders for the contract to conduct the operations of warehousing, distribution and spirits administration and the contract to provide spirits trade marketing; however, both contracts may be awarded to the same bidder. The commissioner shall choose the best value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as criteria for award the information required to be provided in subsection 4, as applicable. When selecting a successful bidder for the contract to conduct the operations of warehousing, distribution and spirits administration, the commissioner may not consider as cause for disqualification for consideration any weakness in or inability to demonstrate proficiency in any one criterion listed in subsection 4, paragraph A, subparagraphs (6) to (10).

The commissioner shall ensure that the following criteria are met before entering into a contract with a bidder for operations of warehousing, distribution and spirits administration:

**A. That revenue to the State from the sale of spirits is predictable over the term of the contract;**

- B. That revenue from the sale of spirits will be maximized by the issuance of the contract and achieved through efficiency of services or profit sharing or both;
- C. That the contract establishes standards of efficiency and quality of operations;
- D. That the bidder has demonstrated that services provided to agency liquor stores will be enhanced;
- E. That, upon execution of the contract, the disruption of services to agency liquor stores and suppliers will be minimal or absent; and
- F. That the contract provides that the alcohol bureau must approve all bailment rates and related fees.

**6. Contract provisions; oversight and performance review.** A contract provided to a successful bidder in accordance with this section must require that the person awarded the contract submit to the alcohol bureau, in a form determined by the alcohol bureau, an annual report audited by an independent 3rd party. The alcohol bureau, following receipt of the report, shall provide the report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverages matters. The contract must prohibit the person awarded the contract from engaging in activities reserved for agency liquor stores licensed as reselling agents to provide spirits to establishments licensed for on-premises consumption. The contract must also include provisions that allow for ongoing performance standards review so that deficiencies in such standards may result in amendments to the contract or nullification. Performance standards subject to contract amendments or nullification include:

- A. Working in partnership with the State to achieve the goal of a revenue growth rate comparable to the average growth rate of other states that control the sale and distribution of alcoholic beverages;
- B. Transparency in annual reporting and conformance to the reporting requirements established by the alcohol bureau; and
- C. Except for a contract awarded to conduct spirits trade marketing, responsiveness to the service needs of agency liquor stores.

**7. Price regulation.** The alcohol bureau shall regulate the wholesale and retail prices of all liquor sold by a person awarded a contract in accordance with this section.

**Sec. A-5. 28-A MRS §453, sub-§2-C,** as enacted by PL 2009, c. 213, Pt. JJJJ, §2, is amended to read:

**2-C. Licenses.** Beginning July 1, 2009, the~~The~~ bureau shall consider whether the applicant can satisfy the following criteria when determining whether to issue an agency liquor store license under this section:

- A. ~~The~~Except as provided in subsection 2-D, the applicant has held a license to sell malt liquor and wine for off-premises consumption for more than one year immediately preceding application without a violation of any provision of this Title;

B. The applicant will be able to stock at least \$10,000 worth of spirits purchased from the State or the State's wholesale distributor upon issuance of an agency liquor store license; and

C. The applicant can purchase the initial stock of spirits using a bank check or other financial instrument that certifies that funds are available.

**Sec. A-6. 28-A MRSA §453, sub-§2-D** is enacted to read:

**2-D. Exception.** If a retailer that is located in this State and has at least 5 locations licensed as an agency liquor store is sold or ownership is transferred to another company that will assume operation of some or all of the retailer's stores and that company submits an application for an agency liquor store license at some or all of those stores, the bureau may waive the requirement of subsection 2-C, paragraph A. The bureau may provide this waiver only if the applicant has held a license in another state to sell malt liquor and wine or spirits at retail for off-premises consumption, for at least one year prior to submitting the application, without a violation of the laws governing the sale of alcoholic beverages in that state and can provide the bureau with documentation of financial success as determined by the bureau.

**Sec. A-7. 28-A MRSA §606, sub-§4**, as amended by PL 2003, c. 20, Pt. SS, §6 and affected by §8 and c. 51, Pt. C, §2, is repealed.

**Sec. A-8. 28-A MRSA §606, sub-§4-A** is enacted to read:

**4-A. Discount rates for agency liquor stores; rulemaking.** Beginning July 1, 2014 the alcohol bureau shall set the price of spirits at a minimum discount of 12% of the list price. The alcohol bureau may establish discount rates greater than 12%, including graduated discount rates, but those discount rates must be established by rules that ensure that any graduated discount rate is structured in a way that does not adversely affect agency liquor stores that stock a low level of inventory. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-9. Price regulation rulemaking.** The Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall adopt or amend rules as necessary for the effective implementation of price regulation of the wholesale and retail liquor business pursuant to the Maine Revised Statutes, Title 28-A, section 90, subsection 7 by July 1, 2014. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-10. Effective date.** Those sections of this Part that repeal the Maine Revised Statutes, Title 28-A, section 88 and Title 28-A, section 606, subsection 4 take effect July 1, 2014.

## PART B

**Sec. B-1. 22-A MRSA §216** is enacted to read:

### **§ 216. Health Care Liability Retirement Fund**

The Health Care Liability Retirement Fund, referred to in this section as "the fund," is established as a nonlapsing fund within the Department of Health and Human Services. The fund consists of proceeds from the sale of liquor operation revenue bonds pursuant to Title 30-A, section 6053. The money in the

fund must be used for the purpose of making payments to health care providers for services provided prior to December 1, 2012 under the MaineCare program established by Title 22, chapter 855. When, as determined by the commissioner, there exist no outstanding amounts owed to health care providers eligible to be paid from the fund, the State Controller shall transfer all amounts in the fund to the Liquor Operation Revenue Fund established in Title 30-A, section 6054.

**Sec. B-2. 30-A MRSA c. 225, sub-c. 5** is enacted to read:

## **SUBCHAPTER 5**

### **LIQUOR OPERATION REVENUE BONDS**

#### **§ 6051. Declaration of public policy; funding**

The Legislature finds and declares that revenue financing bonds as authorized in this subchapter are tax-exempt or taxable bonds payable from sources as provided in this subchapter and such bonds do not include a legal or equitable claim against tax revenues of the State and do not represent constitutional debt of or a pledge of the full faith and credit of the State. The Legislature also finds that issuance of the revenue financing bonds authorized in this subchapter and use of the proceeds of those bonds do not violate the terms of the Constitution of Maine, Article V, Part Third.

#### **§ 6052. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Ancillary obligation.** "Ancillary obligation" means the obligation of the bond bank in connection with liquor operation revenue bonds issued under this subchapter under any of the following entered into by the bond bank:

A. A credit enhancement or liquidity agreement, including without limitation an obligation in the form of bond insurance, a surety bond, a letter of credit, a standby bond purchase agreement, a reimbursement agreement, liquidity facility or other similar arrangement;

B. A remarketing agreement, auction agent agreement, broker-dealer agreement or other agreement relating to the marketing of liquor operation revenue bonds, an interest rate swap or another type of swap or hedging contract; or

C. An investment agreement, forward purchase agreement or similarly structured investment contract.

**2. Cost of issuance.** "Cost of issuance" means an item of expense directly or indirectly payable or reimbursable by the bond bank and related to the authorization, sale or issuance of liquor operation revenue bonds, including, but not limited to, underwriting fees and fees and expenses of professional consultants and fiduciaries.

**3. Financing costs.** "Financing costs" means all costs of issuance, capitalized interest, capitalized operating expenses and debt service reserves, fees and costs of any ancillary obligation or other fees, expenses and costs related to issuing, securing and marketing liquor operation revenue bonds.

**4. Fund.** "Fund" means the Liquor Operation Revenue Fund established in section 6054.

**5. Liquor operation revenue bond.** "Liquor operation revenue bond" means a bond, note or other evidence of indebtedness issued by the bond bank pursuant to this subchapter.

### **§ 6053. Liquor operation revenue bonds authorized**

**1. Revenue bonds.** Notwithstanding any other provision of law and upon written approval of the Governor, the bond bank may issue liquor operation revenue bonds of up to \$188,500,000 plus financing costs, and excluding bonds to refund bonds, for the purpose of retiring amounts determined by the Commissioner of Health and Human Services to be owed by the State to health care providers as provided by Title 22-A, section 216. The bonds are payable solely from funds as provided in this subchapter.

**2. Amount and terms.** The bond bank may issue liquor operation revenue bonds from time to time in amounts and upon such terms as the bond bank considers appropriate. The terms of the liquor operation revenue bonds, their payment schedule and other terms and provisions to facilitate their creditworthiness must be determined by the bond bank.

**3. Form; interest; taxability.** The bond bank shall determine the terms of the liquor operation revenue bonds, including:

A. The form of the liquor operation revenue bonds;

B. The rate or rates at which the liquor operation revenue bonds bear interest and whether such interest is intended to be includable in or excludable from the gross income of the bond owners for federal and state income tax purposes pursuant to the United States Internal Revenue Code of 1986, as amended; and

C. The maturity, except that a liquor operation revenue bond may not mature later than June 30, 2024.

**4. Not a pledge of the full faith or credit; not a debt.** Liquor operation revenue bonds are not in any way a debt or liability of the State and do not constitute a loan of the credit of the State or create any debt or debts or liability or liabilities on behalf of the State or constitute a pledge of the faith and credit of the State. All liquor operation revenue bonds issued by the bond bank, unless funded or refunded by bonds of the bond bank, are payable solely from revenues or funds pledged or available for their payment as authorized in this subchapter. Each liquor operation revenue bond must contain on its face a statement to the effect that the bond bank is obligated to pay the principal, interest and redemption premium, if any, solely from the revenues pledged for those purposes and that neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal, interest or redemption premium, if any, on the liquor operation revenue bonds.

**5. Bond proceeds.** Except as otherwise be provided under the indenture of trust or resolution of the bond bank authorizing the liquor operation revenue bonds, the net proceeds from any sale of liquor operation revenue bonds must be deposited into the Health Care Liability Retirement Fund established in Title 22-A, section 216.

**6. Agreements with financial institutions.** For the purposes of this subchapter, the bond bank may enter into an ancillary obligation or other agreement or contract with a commercial bank, trust company or banking or other financial institution within or outside the State that is necessary, desirable or convenient in the opinion of the bond bank to provide any services to the bond bank to assist the bond bank in effectuating the purposes of this subchapter. The bond bank may enter into, amend or terminate any ancillary obligation or other agreement as the bond bank determines to be necessary or appropriate. The ancillary obligation or other agreement may include without limitation contracts commonly known as interest rate swap agreements, forward purchase contracts or guaranteed investment contracts and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts may be entered into by the bond bank in connection with or incidental to entering into or maintaining any agreement that secures liquor operation revenue bonds issued under this subchapter or any investment or contract providing for investment of reserves or similar facility guaranteeing an investment rate for a period of years not to exceed the underlying terms of the liquor operation revenue bonds. The determination by the bond bank that an ancillary obligation or other agreement or the amendment or termination of an ancillary obligation or other agreement is necessary or appropriate as provided in this section is conclusive. An ancillary obligation or other agreement may contain provisions regarding payment, security, default, remedy, termination and payments and other terms and conditions as determined by the bond bank, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and to any other criteria as may be appropriate.

A liquor operation revenue bond or any ancillary obligation or other agreement made pursuant to this subsection may contain a recital that it is issued or executed, respectively, pursuant to this subchapter. The recital is conclusive evidence of the validity of the liquor operation revenue bond or ancillary obligation or other agreement and of the regularity of the proceedings relating to them.

**7. Remedies of holders of bonds.** If the bond bank defaults in the payment of principal of or interest on any issue of liquor operation revenue bonds after the principal and interest become due, whether at maturity or upon call for redemption or otherwise, and that default continues for a period of 30 days, or if the bond bank fails or refuses to comply with this subchapter or defaults in an agreement made with the holders of an issue of liquor operation revenue bonds, the holders of 25% in aggregate principal amount of liquor operation revenue bonds then outstanding, by instrument or instruments filed in the office of the clerk of courts of Kennebec County and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the bondholders. The trustee, in the trustee's own name, by mandamus or other suit, action or proceeding at law or in equity, shall enforce all rights of the bondholders or holders of the ancillary obligations or other agreements and require the bond bank to carry out any other agreements with the bondholders or holders of such ancillary obligations or other agreements and to perform the bond bank's duties required under this subchapter, as long as the bonds

are limited revenue obligations. An obligation to make debt service payments does not constitute a debt or liability of the State or any political subdivision of the State within the meaning of any constitutional or statutory limitation, or a loan of the credit of the State, or a pledge of the faith and credit of the State or any political subdivision of the State, and the State has no legal obligation to appropriate money for those payments or other such obligations. Payments of the principal of, redemption premium, if any, and interest on the liquor operation revenue bonds must be made solely from amounts derived from the fund or as otherwise authorized by this subchapter. Neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged to the payment of the principal of, redemption premium for, if any, or interest on the liquor operation revenue bonds.

**8. State authorized to enter into contracts.** The State, including any department, commission, agency or other instrumentality of the State, is authorized to enter into an agreement, contract or other arrangement with the bond bank in connection with the issuance of liquor operation revenue bonds.

**9. Reserve fund for liquor operation revenue bonds.** The bond bank may establish a capital reserve fund for the benefit of holders of liquor operation revenue bonds subject to the provisions of section 6006, subsection 5.

**10. Agreement of the State.** The bond bank is authorized to include the following statement in its liquor operation revenue bonds or contracts or ancillary obligations: "The State hereby pledges to and agrees with the holders of any liquor operation revenue bonds issued pursuant to the Maine Revised Statutes, Title 30-A, chapter 225, subchapter 5 and with those parties who may enter into any ancillary obligation or contract with the Maine Municipal Bond Bank pursuant to that subchapter that the State will not limit, alter, restrict or impair the rights vested in the Maine Municipal Bond Bank and in any party to an ancillary obligation or contract until the liquor operation revenue bonds, together with interest, including interest on any unpaid installment of interest and all costs and expenses in connection with any actions or proceedings by or on behalf of the bondholders, are fully met and discharged and such contracts and ancillary obligations are fully performed on the part of the Maine Municipal Bond Bank."

Nothing in this subchapter precludes the limitation or alteration of the rights vested in the bond bank and holders of liquor operation revenue bonds if and when adequate provision is made by law for the protection of the holders of liquor operation revenue bonds of the bond bank or those entering into contracts or ancillary obligations with the bond bank.

## **§ 6054. Liquor Operation Revenue Fund**

**1. Fund established.** The Liquor Operation Revenue Fund, referred to in this section as "the fund," is a nonlapsing fund established within the bond bank to receive the amounts referred to in subsection 2 and to pay amounts due under the liquor operation revenue bonds and any ancillary obligations. The fund must be held separate and apart from all other money, funds and accounts of the bond bank.

**2. Funding.** Notwithstanding section 85, subsection 1, beginning July 1, 2014, there must be deposited directly into the fund any amounts received pursuant to Title 28-A, section 90 and Title 22-A, section 216 and any other money or funds transferred or made available to the bond bank only for the purposes of the fund from any other source including without limitation amounts required to be deposited in the fund by the terms of any ancillary obligation or other agreement related to liquor operation revenue bonds.

**3. Use of fund during bond retirement period; fiscal years before July 1, 2017.**

Money in the fund must be held and applied solely to the payment of the liquor operation revenue bonds and any ancillary obligations secured by the fund as the bonds and ancillary obligations become due and payable and for the retirement of liquor operation revenue bonds, including the payment of any redemption premium required to be paid when any liquor operation revenue bonds are redeemed or retired before maturity or for the payment of ancillary obligations; except that, to the extent there is money in the fund not needed in accordance with terms of the liquor operation revenue bonds and ancillary obligations, before June 30th of each year, the bond bank shall withdraw an amount not exceeding \$16,714,844 in the fiscal year ending June 30, 2015, \$16,639,000 in the fiscal year ending June 30, 2016 and \$16,817,000 in the fiscal year ending June 30, 2017 to be paid to the State and distributed as follows:

A. First, to the General Fund as undedicated revenue up to \$8,714,884 in the fiscal year ending June 30, 2015, \$8,889,000 in the fiscal year ending June 30, 2016 and \$9,067,000 in the fiscal year ending June 30, 2017;

B. Second, the remainder, if any, in each fiscal year divided in equal amounts to an account within the Department of Health and Human Services and an account within the Department of Environmental Protection, up to \$3,500,000 per account or the maximum amount allowed for federal matching funds purposes under federal water programs, whichever is less, to be used for revolving loan funds for drinking water systems and wastewater treatment; and

C. Third, the remainder, if any, to an account within the Department of Transportation to be used for the construction of highways and bridges.

**4. Use of fund during bond retirement period; from July 1, 2017 until bonds retired.**

Money in the fund must be held and applied solely to the payment of the liquor operation revenue bonds and any ancillary obligations secured by the fund as the bonds and ancillary obligations become due and payable and for the retirement of liquor operation revenue bonds, including the payment of any redemption premium required to be paid when any liquor operation revenue bonds are redeemed or retired before maturity or for the payment of ancillary obligations; except that, to the extent there is money in the fund not needed in accordance with terms of the liquor operation revenue bonds and ancillary obligations, before June 30th of each year, the bond bank shall withdraw an amount not exceeding \$7,000,000 to be paid to the State and distributed as follows:

A. First, in equal amounts to an account within the Department of Health and Human Services and an account within the Department of Environmental Protection, up to \$3,500,000 per account or the maximum amount allowed for federal matching funds purposes under federal water programs, whichever is less, to be used for revolving loan funds for drinking water systems and wastewater treatment; and

B. The remainder, if any, to an account within the Department of Transportation to be used for the construction of highways and bridges.

Immediately upon retirement of all outstanding liquor operation revenue bonds and ancillary obligations secured by the fund, the bond bank shall withdraw any excess money in the fund and transfer it to the Maine Budget Stabilization Fund established in Title 5, section 1532.

**5. Use of fund after bond retirement.** After all liquor operation revenue bonds and any ancillary obligations secured by the fund have been retired, additional proceeds credited to the fund from Title 22-A, section 216 and Title 28-A, section 90 must be disbursed on a quarterly basis to the State and credited by the State Controller as follows:

A. The lesser of 15% and the maximum amount allowed for federal matching funds purposes under federal water programs, divided equally between an account within the Department of Health and Human Services and an account within the Department of Environmental Protection for revolving loan funds for drinking water systems and wastewater treatment;

B. Thirty-five percent to an account within the Department of Transportation for construction of highways and bridges; and

C. The remainder to the Maine Budget Stabilization Fund established in section 1532.

**Sec. B-3. Appropriations and allocations.** The following appropriations and allocations are made.

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

**Land and Water Quality 0248**

Initiative: Allocates funds for the state share to match available federal matching funds for wastewater treatment projects.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$0	\$1,331,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$1,331,000</b>

**ENVIRONMENTAL PROTECTION, DEPARTMENT  
 OF**

<b>DEPARTMENT TOTALS</b>	<b>2013-14</b>	<b>2014-15</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$1,331,000</b>
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<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$1,331,000</b>

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

**Health - Bureau of 0143**

Initiative: Allocates funds for the state share to match available federal matching funds for drinking water projects.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$0	\$1,331,000
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<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$1,331,000</b>

**Health Care Liability Retirement Fund N157**

Initiative: Authorizes the expenditure of bond proceeds from the sale of liquor operation revenue bonds for the state share of payments to health care providers for services provided prior to December 1, 2012.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$188,500,000	\$0
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<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$188,500,000</b>	<b>\$0</b>

**Medical Care - Payments to Providers 0147**

Initiative: Allocates the federal share of payments to health care providers for services provided prior to December 1, 2012.

<b>FEDERAL EXPENDITURES FUND</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$301,700,000	\$0
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<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<b>\$301,700,000</b>	<b>\$0</b>

**HEALTH AND HUMAN SERVICES, DEPARTMENT  
 OF (FORMERLY DHS)**

DEPARTMENT TOTALS	2013-14	2014-15
FEDERAL EXPENDITURES FUND	\$301,700,000	\$0
OTHER SPECIAL REVENUE FUNDS	\$188,500,000	\$1,331,000
DEPARTMENT TOTAL - ALL FUNDS	\$490,200,000	\$1,331,000

SECTION TOTALS	2013-14	2014-15
FEDERAL EXPENDITURES FUND	\$301,700,000	\$0
OTHER SPECIAL REVENUE FUNDS	\$188,500,000	\$2,662,000
SECTION TOTAL - ALL FUNDS	\$490,200,000	\$2,662,000

## PART C

**Sec. C-1. 28-A MRSA §81, sub-§1**, as amended by PL 1999, c. 535, §3, is further amended to read:

**1. Oversight of Bureau of Alcoholic Beverages and Lottery Operations.** The commission shall monitor the operation of the alcohol bureau in its administration of the laws relating to the sale of spirits and fortified wine.

**Sec. C-2. 28-A MRSA §81, sub-§2**, as amended by PL 1999, c. 535, §3, is further amended to read:

**2. Advice.** The commission shall advise the director of the alcohol bureau regarding the administration of the functions of the alcohol bureau. The commission may advise the Governor and the Legislature regarding issues relating to the operation of the alcohol bureau and the administration of the laws relating to the sale of spirits and fortified wine.

**Sec. C-3. 28-A MRSA §83**, as amended by PL 2011, c. 693, §§1 and 2, is further amended to read:

### § 83. Bureau of Alcoholic Beverages and Lottery Operations

**1. Bureau of Alcoholic Beverages and Lottery Operations; rules.** ~~Until the effective date of the privatization of the entire wholesale liquor business authorized by section 88, the~~ The alcohol bureau ~~or a wholesale liquor provider contracted pursuant to section 90~~ shall manage the sale, distribution and merchandising of spirits and fortified wine through state liquor stores, agency liquor stores and licensees. The alcohol bureau may establish rules and procedures for the administration of the state liquor laws under its jurisdiction. The rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. The day-to-day activities of the alcohol bureau are under the supervision of the Commissioner of Administrative and Financial Services and the director of the alcohol bureau.

**2. Purchase.** ~~Until the effective date of the privatization of the wholesale liquor business authorized by section 88, the~~The alcohol bureau or a wholesale liquor provider contracted pursuant to section 90 may buy and have in its possession spirits and fortified wine for sale to the public. The alcohol bureau shall buy spirits directly and not through the State Purchasing Agent. All spirits and fortified wine must be free from adulteration and misbranding.

**3. Sell at retail.** ~~The alcohol bureau may sell at retail in state liquor stores in original packages, either over the counter or by shipment to points within the State, spirits of all kinds and fortified wine for consumption off the premises of state liquor stores operated under the direction of the alcohol bureau.~~

**4. Enter into contracts.** Subject to any applicable laws relating to public contracts, the alcohol bureau may enter into contracts or agreements and establish contract performance standards for the wholesale purchase of spirits and fortified wine.

**5. Investigate and recommend changes.** The alcohol bureau shall carry out a continuous study and investigation of the sale of alcoholic beverages throughout the State and the operation and administration of state activities and recommend to the Commissioner of Administrative and Financial Services any changes in the laws or rules and methods of operation that are in the best interest of the State. By December 1, 2012, the commissioner shall conduct a cost-benefit analysis of the discount price at which agency liquor stores purchase spirits and fortified wine from the State or wholesale liquor provider contracted by the State that includes consideration of how the discount price may be adjusted to allow agency liquor stores' revenue trends to mirror proportionally any upward trend in spirits sales and revenue realized by the State or the State's wholesale liquor provider. The commissioner shall update the cost-benefit analysis at least every 2 years and shall make the analysis available, upon request, to the joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters.

**5-A. Sales incentives to agents; rules.** The alcohol bureau may adopt rules to provide for a sales incentive program for agency liquor stores. The alcohol bureau shall consider federal regulations that govern sales incentives for alcoholic beverages and the effect of a sales incentive program on General Fund revenue and pending or existing contracts with a wholesale liquor provider when developing an incentive program. Notwithstanding subsection 1, rules adopted in accordance with this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

**6. Certification; annual report.** The alcohol bureau shall certify monthly to the Treasurer of State, the commission and the Commissioner of Administrative and Financial Services a complete statement of the revenues and expenses for liquor sales for the preceding month. The alcohol bureau shall make an annual report to the Governor of its activities and of the amount of liquor license fees collected by the bureau, together with other information it considers advisable or that the Governor requires.

**7. Public meetings.** The alcohol bureau and the commission may hold public meetings each year at various locations within the State for the purpose of outlining operations under the liquor laws, receiving suggestions and disseminating information to the public.

**Sec. C-4. 28-A MRSA §84, sub-§1,** as corrected by RR 1999, c. 2, §29, is amended to read:

**1. Manage sale of spirits.** Manage the sale of spirits and ~~fortified wine~~ through state liquor stores, agency liquor stores and licensees in accordance with applicable laws and rules that provide for the operation of wholesale distribution of spirits and ~~fortified wine~~;

**Sec. C-5. 28-A MRSA §85, sub-§2**, as enacted by PL 1997, c. 373, §28, is amended to read:

**2. Inventory.** The alcohol bureau may keep and have on hand a stock of spirits and ~~fortified wine~~ for sale, the value of which, when priced for resale must be computed on the delivered case cost F.O.B. liquor warehouse designated by the commission filed by liquor suppliers. The inventory value must be based upon actual cost for which payment may be due and may not at any time exceed the amount of working capital authorized. Spirits and ~~fortified wine~~ may not be considered in the inventory until payment has been made for them.

**Sec. C-6. 28-A MRSA §453-C, sub-§1**, as amended by PL 2005, c. 539, §5, is further amended to read:

**1. Agent licensed to resell spirits purchased from the alcohol bureau.** An agent licensed to resell spirits and ~~fortified wine~~ purchased from the State to a retail licensee licensed for on-premises consumption must be licensed as a reselling agent. An agent is prohibited from reselling liquor to a retail licensee licensed for on-premises consumption except for spirits and fortified wine purchased from the alcohol bureau or a state liquor store. A reselling agent may not resell fortified wine purchased from wholesalers licensed to sell beer and wine in the State.

**Sec. C-7. 28-A MRSA §453-C, sub-§2**, as enacted by PL 2001, c. 711, §6, is amended to read:

**2. License fee.** The fee for a state license to resell spirits and ~~fortified wine~~ to a retail licensee licensed for on-premises consumption is \$50 annually.

**Sec. C-8. 28-A MRSA §461, first ¶**, as enacted by PL 2011, c. 140, §1, is amended to read:

An agency liquor store shall maintain a minimum number of product codes in accordance with this section. For the purposes of this section, "product code" means a single spirit or ~~fortified wine~~ product purchased from the State or the State's wholesale distributor.

**Sec. C-9. 28-A MRSA §501**, as enacted by PL 2003, c. 20, Pt. SS, §4 and affected by §8 and c. 51, Pt. C, §2, is amended to read:

### **§ 501. Wholesale liquor provider; definition**

As used in this chapter, unless the context otherwise indicates, "wholesale liquor provider" means an entity or entities contracted by the State as an agent of the State for the purpose of providing wholesale spirits and ~~fortified wine~~ to establishments licensed by the State to sell spirits and ~~fortified wine~~ for off-premises consumption.

**Sec. C-10. 28-A MRSA §503**, as enacted by PL 2003, c. 20, Pt. SS, §4 and affected by §8 and c. 51, Pt. C, §2, is amended to read:

### **§ 503. Sale to on-premises licensees prohibited**

A wholesale liquor provider shall sell spirits ~~and fortified wine~~ to establishments licensed by the State to sell liquor for off-premises consumption. A wholesale liquor provider is prohibited from selling spirits ~~and fortified wine~~ directly to establishments licensed by the State to sell liquor for on-premises consumption.

**Sec. C-11. 28-A MRSA §606, sub-§8**, as amended by PL 2005, c. 539, §6, is further amended to read:

**8. Limits on price.** An agency liquor store shall sell all spirits ~~and fortified wine~~ purchased from the alcohol bureau at the retail price established by the commission.

**Sec. C-12. 28-A MRSA §1651, sub-§1**, as amended by PL 1999, c. 166, §1, is further amended to read:

**1. State liquor tax.** Except as provided in subsection 2, the commission shall determine and set the list price at which to sell all spirits ~~and fortified wine~~ that will produce an aggregate state liquor tax sufficient to pay all liquor-related expenses of the Bureau of Alcoholic Beverages and Lottery Operations and to return to the General Fund an amount substantially equal to the amount of state liquor tax collected in the previous fiscal year. ~~With the exception of the discount agency liquor stores in Kittery and Calais, list prices must be uniform statewide.~~

C. The commission shall add any cost to the State related to handling containers returned for refund pursuant to Title 32, section 1863-A to the established price without markup.

**Sec. C-13. Effective date.** This Part takes effect July 1, 2014.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

## SUMMARY

This bill is based on Legislative Document 1546, except that it specifies that the application fees are capped at \$5,000 for a bid for spirits trade marketing and \$20,000 for a bid for spirits administration and warehousing and distribution and it eliminates those provisions of Legislative Document 1546 that propose to expand coverage under the MaineCare program.

Part A repeals current law that allows for transfer of the State's wholesale liquor business through July 1, 2014. Part A directs the Commissioner of Administrative and Financial Services to develop a request for proposals through the competitive bid process to award 2 contracts, one for the operation of the State's wholesale liquor business encompassing spirits administration and warehousing and distribution and one for spirits trade marketing. Part A also increases the discount rate at which agency liquor stores purchase spirits for retail sale from the current minimum of 9% of list price to 12% as of July 1, 2014. Part A allows the waiver of a licensing requirement in the event that a retailer with more than 5 agency liquor stores in this State is purchased or control is transferred to another company not in this State as long as the purchasing or controlling company has held a license to sell beer and wine in another state for at least one year.

Part B authorizes the bond bank, with the written approval of the Governor, to issue liquor operation revenue bonds in an amount up to \$188,500,000. Part B establishes 2 funds, the Health Care Liability Retirement Fund and the Liquor Operation Revenue Fund. The Health Care Liability Retirement Fund is funded with the revenue from the sale of the bonds and used to pay debts owed by the State for services provided by health care providers prior to December 1, 2012; anything in excess of the amount owed is transferred to the Liquor Operation Revenue Fund. The Liquor Operation Revenue Fund is funded by revenue from the management of wholesale liquor activities; such revenue will be used to pay the principal and interest of the liquor operation revenue bonds as those amounts become due.

During fiscal years 2014-15, 2015-16 and 2016-17, any excess revenue up to a set amount is transferred to the General Fund to offset the amounts included in budgeted General Fund revenue from liquor sales and operations and to offset additional General Fund costs for liquor enforcement activities; after those transfers in those fiscal years and for the rest of the bond repayment period, excess revenue over the set amount, up to \$7,000,000 per year, is transferred to the Department of Health and Human Services and the Department of Environmental Protection for revolving loan funds for drinking water systems and wastewater treatment, and, if the amount transferred for those loans is limited for federal matching funds purposes, any remainder is transferred to the Department of Transportation for construction of highways and bridges. Any excess funds retained by the Maine Municipal Bond Bank during the bond repayment period must be transferred to the Maine Budget Stabilization Fund immediately upon retirement of the bonds. Following the retirement of the bonds, excess revenue is also transferred to the Maine Budget Stabilization Fund.

Part C removes the administration of the sale of fortified wine by the State, beginning July 1, 2014.