

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE

FIRST REGULAR SESSION

January 5, 1977 to July 25, 1977

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

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1977

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND EIGHTH LEGISLATURE

1977

CHAPTER 300

AN ACT to Standardize Some of the Procedures and Statutes Administered by the Department of Environmental Protection.

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

Sec. 1. 10 MRSA § 2204, sub-§ 1, as enacted by PL 1969, c. 472, is repealed.

Sec. 2. 10 MRSA § 2209, last sentence, as enacted by PL 1969, c. 472, is repealed.

Sec. 3. 10 MRSA §§ 2214 and 2215, as amended by PL 1971, c. 618, § 13, are repealed.

Sec. 3-A. 10 MRSA § 2216, as enacted by PL 1969, c. 472, is repealed.

Sec. 4. 12 MRSA § 4757, last sentence, as enacted by PL 1971, c. 541, is repealed.

Sec. 5. 12 MRSA § 4758, first sentence, as enacted by PL 1971, c. 541, is repealed.

Sec. 6. 12 MRSA § 4807-E, as enacted by PL 1973, c. 411, § 1, is repealed.

Sec. 7. 12 MRSA § 4807-G, as enacted by PL 1973, c. 411, § 1, is repealed and the following enacted in its place:

§ 4807-G. Violations

Each day of violation of any provision of this chapter or the regulations enacted hereunder shall be considered a separate offense. Alternatively, and in addition thereto, any use of land in violation of this chapter shall be deemed to be a nuisance and the board may seek an injunction to prevent or abate a violation of this chapter or regulations promulgated thereunder.

Sec. 7-A. 30 MRSA § 4105, 1st ¶, last sentence, as enacted by PL 1973, c. 601, is repealed.

Sec. 8. 32 MRSA § 4179, as amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

§ 4179. Rules and regulations

The Board of Environmental Protection shall make rules and regulations which include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 4172 and provisions establishing requirements for certification and procedures for examination of candidates.

Sec. 9. 38 MRSA §§ 343-349 are enacted to read:

§ 343. Regulations

1. Regulations. The Board of Environmental Protection may, after public hearing, adopt, amend and repeal reasonable rules and regulations necessary for the proper administration, enforcement, implementation and interpretation of any provision of law that the department is charged with the duty of administering. Rules duly promulgated shall have the full force and effect of law.

2. Effective date. Regulations adopted by the board shall become effective upon filing with the Secretary of State, unless a later date is required by statute or specified in the rule.

3. Petitions. Any interested person may petition the Board of Environmental Protection requesting the adoption, amendment or repeal of any rule or regulation. Within 90 days of receipt of a petition, the board shall either notify the petitioner in writing of its denial, stating the reasons therefor, or initiate appropriate rulemaking proceedings.

Any petition requesting the adoption, amendment or repeal of any rule or regulation filed pursuant to this subsection shall contain a statement of the reasons and facts in support of such requests.

4. Emergency regulations. If the board finds that immediate adoption, amendment or repeal of a regulation by procedures other than those set forth in section 345 is necessary to avoid an immediate threat to public health, safety or general welfare, it may modify those procedures to the minimum extent necessary to enable the adoption, amendment or repeal of regulations necessary to mitigate or alleviate the threat found. Procedures requiring the approval of the Attorney General as to form and legality or filing with the Secretary of State may not be thus waived. Any emergency regulation shall include the board's findings with respect to the existence of an emergency, and such findings shall be subject to judicial review. Any emergency regulation shall be effective only for 90 days or any lesser period of time specified in the emergency regulation.

The board shall give public notice of the adoption of the emergency regulations in one or more daily newspapers of general circulation in the affected area at least once within 4 days after their adoption. The notice shall include the time and location of a public hearing on the emergency regulations which shall be held no later than 7 days following the adoption of the emergency regulations.

§ 344. Processing of applications

1. Time limit processing application. Whenever the Board of Environmental Protection receives a properly completed application for any license, permit, approval or certificate under any of the statutes which it administers, it shall make a final decision as expeditiously as possible, but in no case shall such final decision be later than 180 days after acceptance of the application.

2. Exceptions. The Board of Environmental Protection may waive the 180-day requirement of subsection 1:

A. At the request of the applicant; or

B. After consultation with the applicant, if $\frac{2}{3}$ of the members of the board eligible to vote do so vote.

3. Notification to applicant. The Commissioner of Environmental Protection shall, within 10 working days of receipt of an application, notify applicants of the official date on which the application was accepted or return the application to the applicant specifying in writing the reasons for returning the application.

The commissioner shall give reasonable notice to the applicant of the date the board will act on the application and that a draft order relating to the application is available in the Augusta office of the department. Draft orders shall be available to any persons at the Augusta office of the department prior to the date the board acts on the application.

All correspondence notifying the applicant of Board of Environmental Protection decisions shall be by registered mail, return receipt requested.

4. Delegation. The Board of Environmental Protection is authorized to delegate to the Commissioner of Environmental Protection and the department staff, authority to approve; approve with conditions or disapprove applications for approvals by the board made pursuant to any of the laws which the board is required to administer. Delegation of authority under sections 413, 414, 414-A, 484 and 590 shall be limited to the applications meeting the following criteria:

A. Applications for development of a subdivision of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;

B. Applications for a maximum daily discharge of less than 50,000 gallons per day; and

C. Applications for incinerators in Classes I through IV or for a boiler at a facility with a total boiler capacity of less than 100,000,000 B.T.U.'s.

Such delegation shall be in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated, and with regulations adopted by the board, which regulations shall include assurance that any interested person aggrieved by a decision of the commissioner or the department staff made pursuant to this section shall have a right to appeal such decision to the board.

5. Reconsideration. Within 30 days of the applicant's receipt of a board decision, any person aggrieved by the decision may petition the Board of Environmental Protection, in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the board, or for an opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered.

The board shall, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing or dis-

miss the petition. Any public hearing held under this section shall be held within 45 days of the board's decision to hold such hearing and the commissioner shall provide reasonable notice to interested persons. The time for appeal of a final decision of the board on any application shall be computed from the date of receipt by petitioner of the board's decision pursuant to this subsection.

The running of the time for appeal, as provided in section 346, is terminated by a timely petition for reconsideration filed pursuant to this subsection, and the full time for appeal, as provided in section 346, commences to run and is to be computed from the date upon which notice is received of any administrative action denying the petition or any order or decision of the board as a result of the petition; provided that the filing of a petition for reconsideration shall not be deemed an administrative or judicial prerequisite for the filing of appeal pursuant to section 346.

6. Fees. The board may establish reasonable fees for the reproduction of materials in its custody, including all or part of any application submitted to the department. All such fees may be retained by the department to reimburse expenses incurred in reproducing such materials.

§ 345. Hearings

1. Hearings. Except as provided in section 347, whenever the board or Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by any member of the board or any employee or representative of the Department of Environmental Protection so authorized by the board.

2. Notification. Prior to any hearing conducted by the board or department, the department shall:

A. Publish notice of the hearing twice in a newspaper of general circulation in the area affected. The date of the first publication shall be no more than 21 days nor less than 14 days prior to the date of the hearing and the 2nd publication shall be at least 7, but no more than 10 days, prior to the date of the hearing. In addition, the notice may be published in any other trade, industry, professional or interest group publication which the board deems necessary to reach persons affected;

B. Provide notice of the hearing to any applicant by registered mail at least 10 days before the date of the hearing; and

C. Provide notice of the hearing at least 10 days before the date of the hearing by regular mail to persons who have filed with the commissioner within the calendar year a written request to receive notification of hearings.

3. Contents of notice. The public notice and notice of hearing to applicant and others shall contain:

A. A reference to the statutory authority for conduct of the hearing;

B. A statement of the purpose of the hearing, including, for hearings involving the adoption, repeal or modification of a regulation, a concise description of the regulation proposed;

C. A statement of the time, date and place of the hearing and the manner in which views may be submitted for consideration by the board; and

D. A statement of the place and time where relevant material may be examined, and the name, address and telephone number of the person from whom further information may be obtained.

4. Fees. The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

5. Record. A full and complete record shall be kept of all hearings.

6. Written decisions. Every decision of the board, other than those concerning the adoption, repeal or modification of regulations, shall be in writing and shall include findings of fact and conclusions of law. A copy of the decision shall be delivered personally or by registered mail, return receipt requested, to each party of record to the hearing as recognized by department hearing regulations. Written notice of the party's rights to review or appeal of the decision, within the agency or by the courts, as the case may be, and of the action required and the time within which the action must be taken in order to exercise the right of review or appeal, shall be given to each such party with the decision.

§ 346. Judicial appeals.

1. Except as provided in section 347, subsection 2, any person aggrieved by any order or decision of the board resulting from a hearing before the board of which a transcript is available may appeal therefrom to the Superior Court by filing a notice of appeal with the court stating the points of appeal within 30 days after receipt of such order or decision by the person or other legal entity to whom it is directed. The appellant shall send a copy of the notice of appeal to the applicant or licensee. The appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the board. The court's review shall be limited to questions of law and to whether the board acted regularly and within the scope of its authority and the board's decision shall be final so long as supported by substantial evidence. The court may affirm or reverse the board's decision or remand the matter to the board for further proceedings.

2. Appeals from all other orders or decisions of the board, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

3. Limitation. No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an aggrieved person under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and

enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.

§ 347. Violations

1. General procedures. Whenever it appears to the Board of Environmental Protection, after investigation, that there is a violation of any provision of the laws or regulations which it administers, or of the terms or conditions of any of its orders, which does not create a substantial or immediate danger to public health or safety, the board may notify the Attorney General or schedule a hearing thereon. If a hearing is scheduled, the commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of such hearing. The notice shall specify the act done or omitted to be done which is claimed to be in violation of law.

At such hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the board shall, as soon thereafter as practicable, make findings of fact based on the record and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.

2. Emergency procedures. Whenever it appears to the board, after investigation, that there is a violation of any provision of the laws or regulations which it administers or of the terms or conditions of any of its orders, which is creating or is likely to create a substantial and immediate danger to public health or safety, it may order the person or persons causing or contributing to such a hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the board's findings and order issued under this emergency procedure shall be made by the sheriff or a deputy sheriff within the county where the person, to whom the order is directed, operates or resides. In the event such persons are so numerous that the specified method of service is a practical impossibility or the board is unable to identify the person or persons causing or contributing to such a hazard, the board shall make its order known through prominent publication in news media serving the affected area.

The person to whom such order is directed shall comply therewith immediately. Such order may not be appealed to the Superior Court in the manner provided in section 346, but such person may apply to the board for a hearing on such order, which hearing shall be held by the board within 48 hours after receipt of application therefor. Within 7 days after such hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

3. Revocation, modification or suspension of licenses. After written notice to the licensee of at least 14 days and opportunity for hearing, the board may revoke, suspend or modify, in whole or in part, any license or

issue an order prescribing necessary corrective action, whenever the board finds:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts;
- C. There has been a change in any condition or circumstances that requires revocation, suspension or a temporary or permanent modification of the terms of the license; or
- D. The licensee has violated any provision of the laws administered by the board.

For the purpose of this subsection, the term "license" and "licensee" shall include respectively any license, permit, approval or certification issued by the board and the holder thereof.

4. Oaths. Any member, authorized employee or representative of the board presiding at any hearing under this section may administer oaths and affirmations to any witness appearing at such hearing.

5. Subpoenas. The board may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any such hearing. If any person served with a subpoena demonstrates to the satisfaction of the board that the production of such information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, such information shall be disclosed only at a nonpublic portion of such hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the subpoena. The Superior Court may issue such an order and may punish failure to obey the same as civil contempt.

6. Enforcement orders. All orders of the board shall be enforced by the Attorney General. If any order of the board is not complied with within the time period specified, the board shall immediately notify the Attorney General of this fact.

§ 348. Judicial enforcement

1. General. In the event of a violation of any provision of the laws administered by the Department of Environmental Protection or of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection or decree of the court, as the case may be, the Attorney General may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the Department of Environmental Protection.

2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the Department of Environmental Protection or of any order, rule, regulation, license, permit, approval or decision of the Board of En-

vironmental Protection or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible.

3. Injunction proceedings. If the board finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property they shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347.

§ 349. Penalties

1. Criminal penalties. Any person who violates any provision of the laws administered by the Department of Environmental Protection, or the terms or conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a fine, payable to the State, of not more than \$25,000, except as provided in subsection 4, for each day of such violation.

2. Civil penalties. Any person who violates any provision of the laws administered by the Department of Environmental Protection, or any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of such violation.

3. Falsification and tampering. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any rule, regulation, license, permit, approval or decision of the board, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board shall, upon conviction, be subject to a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or both.

4. Exceptions. The following are exempt from the maximum fine set forth in subsection 1 and are subject to the following maximum fines:

- A. Section 419; (high phosphorous detergent) — \$500;
- B. Section 422; (Great Ponds) — \$200;
- C. Section 423; (Discharge from watercraft) — \$500;
- D. Section 471; (Alteration of wetlands) — \$500;
- E. Subchapter II-A; (Oil pollution) — \$5,000;
- F. Section 1306; (Solid waste) — \$500;
- G. T. 10, Section 2205; (Mining reclamation) — \$100;

H. T. 12, Section 4757; (regulations for state-held wetlands) — \$100;

I. T. 12, Chapter 421 and orders thereunder; (wetlands zoning) — \$500;

J. T. 12, Chapter 423-A and regulations thereunder (Minimum lot size) — \$1,000 and

K. T. 30, Sections 4104 and 4105 (Septic materials disposal) — \$1,000.

Sec. 10. 38 MRSA § 361, 8th ¶, as last amended by PL 1971, c. 618, § 9, is repealed.

Sec. 11. 38 MRSA § 361, 9th ¶, as amended by PL 1971, c. 618, § 9, is repealed.

Sec. 12. 38 MRSA § 361, 13th and 14th ¶¶, as enacted by PL 1975, c. 395, are repealed.

Sec. 13. 38 MRSA § 361-B, as enacted by PL 1975, c. 301, is repealed.

Sec. 14. 38 MRSA § 361-C, as last amended by PL 1975, c. 770, § 208, is repealed.

Sec. 15. 38 MRSA § 365, 2nd sentence and the 3rd sentence, as amended, are repealed.

Sec. 16. 38 MRSA § 413, sub-§ 6, as enacted by PL 1971, c. 461, § 3, and as amended by PL 1971, c. 618, § 12, is further amended to read:

6. **Unlicensed discharge.** If after investigation the board finds any unlicensed discharge, it may notify the Attorney General of the violation without recourse to the hearing procedures of section ~~457~~, ~~subsection 2~~ 347. The Attorney General shall proceed immediately under section ~~454~~ 348.

Sec. 17. 38 MRSA § 414, sub-§ 1, as last repealed and replaced by PL 1973, c. 450, § 11, is repealed.

Sec. 18. 38 MRSA § 414, sub-§ 6, first sentence, as last repealed and replaced by PL 1973, c. 450, § 13, is repealed.

Sec. 19. 38 MRSA § 414, sub-§ 7, as enacted by PL 1973, c. 450, § 14, is repealed.

Sec. 20. 38 MRSA § 415, as last amended by PL 1971, c. 618, § 12, is repealed.

Sec. 21. 38 MRSA § 418, sub-§ 2, 4th ¶, as amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

In the event the board deems it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

Sec. 22. 38 MRSA § 418, sub-§ 2, last ¶, as enacted by PL 1971, c. 355, is repealed.

Sec. 23. 38 MRSA § 419, sub-§ 4, as enacted by PL 1971, c. 544, § 128, is repealed.

Sec. 24. 38 MRSA § 423, last ¶, as enacted by PL 1973, c. 625, § 274, is repealed.

Sec 25. 38 MRSA § 451, 2nd ¶, 2nd sentence, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

The board may, after hearing in accordance with section 345, establish by order a mixing zone with respect to any discharge for which a license has heretofore been issued pursuant to section 414, or for which an exemption has been granted by virtue of section 413, subsection 2.

Sec. 26. 38 MRSA § 451, sub-§ 2, as last repealed and replaced by PL 1973, c. 450, § 19, is repealed.

Sec. 27. 38 MRSA §§ 453 and 454, as last amended by PL 1973, c. 450, §§ 20 to 22, are repealed.

Sec. 28. 38 MRSA § 475, 1st ¶, as enacted by PL 1975, c. 595, § 3, is repealed.

Sec. 29. 38 MRSA § 477, as enacted by PL 1975, c. 595, § 3, is repealed.

Sec. 30. 38 MRSA § 484, 1st ¶, as enacted by PL 1969, c. 571, § 2 and as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

In the event that the board determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given.

Sec. 31. 38 MRSA § 485, 1st ¶, as enacted by PL 1969, c. 571, § 2 and as amended by PL 1971, c. 618, § 12, is further amended to read:

The board may at any time with respect to any person who has commenced construction or operation of any development without having first notified the board pursuant to section 483, schedule and conduct a public hearing in the manner provided by section 484 with respect to such development.

Sec. 32. 38 MRSA § 485, 2nd and 3rd ¶¶, as enacted by PL 1969, c. 571, § 2 and as amended by PL 1971, c. 618, § 12, are repealed.

Sec. 33. 38 MRSA § 486, as enacted by PL 1969, c. 571, § 2 and as amended by PL 1971, c. 618, § 12, is repealed.

Sec. 34. 38 MRSA § 487, as last repealed and replaced by PL 1973, c. 423, § 9, is repealed.

Sec. 35. 38 MRSA § 546, 1st ¶, as enacted by PL 1969, c. 572, § 1 and as amended by PL 1971, c. 618, § 12, is repealed.

Sec. 36. 38 MRSA § 546, sub-§§ 1 - 3, as enacted by PL 1969, c. 572, § 1 and as amended by PL 1971, c. 618, § 12, are repealed.

Sec. 37. 38 MRSA § 560, sub-§ 8, last sentence, as enacted by PL 1975, c. 578, is repealed.

Sec. 38. 38 MRSA § 560, sub-§ 9, as enacted by PL 1975, c. 578, is repealed.

Sec. 39. 38 MRSA § 583-A, as enacted by PL 1975, c. 282, § 1, is repealed.

Sec. 40. 38 MRSA § 585, 2nd ¶, 2nd sentence, as enacted by PL 1969, c. 474, § 1, is repealed.

Sec. 41. 38 MRSA § 585-A, 2nd ¶, 2nd sentence, as enacted by PL 1971, c. 462, § 3, is repealed.

Sec. 42. 38 MRSA § 587, last ¶, as enacted by PL 1969, c. 474, § 1, is amended to read:

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section ~~593~~ 347, subsection 2, to any person or his property.

Sec. 43. 38 MRSA § 588, as enacted by PL 1969, c. 474, § 1, is repealed.

Sec. 44. 38 MRSA § 589, last ¶, as repealed and replaced by PL 1971, c. 462, § 4 and as amended by PL 1971, c. 618, § 12, is further amended to read:

Failure to register, to install, maintain and use emission monitoring devices or to file reports shall render the failing party liable to the penalties prescribed in sections ~~595 and 596~~ 348 and 349 for violation of board orders.

Sec. 45. 38 MRSA § 592, as enacted by PL 1969, c. 474, § 1 and as amended by PL 1971, c. 618, § 12, is repealed.

Sec. 46. 38 MRSA § 593, as last amended by PL 1973, c. 438, § 7, is repealed.

Sec. 47. 38 MRSA § 594, as enacted by PL 1969, c. 474, § 1 and as amended by PL 1971, c. 618, § 12, is repealed.

Sec. 48. 38 MRSA §§ 595 and 596, as last repealed and replaced by PL 1975, c. 282, § 5, are repealed.

Sec. 49. 38 MRSA § 599, sub-§ 5, 4th ¶, 3rd sentence, as enacted by PL 1975, c. 228, § 3, is repealed.

Sec. 50. 38 MRSA § 1101, sub-§ 2, last sentence, as repealed and replaced by PL 1971, c. 400, § 2, and as amended by PL 1971, c. 618, § 12, is repealed.

Sec. 51. 38 MRSA § 1101, sub-§ 5, as repealed and replaced by PL 1971, c. 400, § 2, and as amended by PL 1971, c. 618, § 12, is repealed.

Sec. 52. 38 MRSA § 1304, sub-§ 1, 4th sentence, as enacted by PL 1973, c. 387, is repealed.

Sec. 53. 38 MRSA § 1304, sub-§ 1, first ¶, last sentence, as last amended by PL 1975, c. 577, is repealed.

Sec. 54. 38 MRSA § 1307, as enacted by PL 1973, c. 387, is repealed.

Effective October 24, 1977

CHAPTER 301

AN ACT to Regulate the Placing by Nonutilities of Electric Utility Facilities within Public Ways.

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

Sec. 1. 23 MRSA § 3026, 2nd ¶, as enacted by PL 1975, c. 711, § 8, is amended by inserting at the end the following new sentence to read:

For purposes of this section, the words "public easement" shall include, without limitation, an easement for public utility facilities necessary to provide service.

Sec. 2. 35 MRSA § 2344 is amended by adding at the end the following new paragraph and subsections:

No person, firm, company or association except a public utility engaged in the business of the transmission or distribution of electricity shall construct and maintain its lines with poles or other structures carrying electricity in, upon, along or under the roads, streets and public ways maintained by any city or town unless, in addition to meeting the requirements of section 2483, the applicable licensing authority finds that:

1. Compliance; National Electric Safety Code. Construction and maintenance of the line will comply with all applicable provisions of the National Electric Safety Code and the standard requirements of the utility from whom the owner proposes to take service;

2. Posting surety bonds. The applicant has posted with the licensing authority a surety bond in an amount sufficient to:

A. Protect the public from claims, demands and actions arising out of improper construction or maintenance of the line and unsafe conditions thereon; and

B. Insure that the owner of the line, and his successors and assigns, will continue to properly maintain and repair the line and protect the public from harm.

This section shall not apply to state and state-aid highways maintained by the State.