

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

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

J.S. McCarthy Company
Augusta, Maine
1995

meeting. The committee shall notify the affected agency of the meeting on its proposed rules.

See title page for effective date.

CHAPTER 575

S.P. 730 - L.D. 1834

An Act to Amend the Laws Relating to Regulation of Wetlands

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

Sec. 1. 38 MRSA §480-Q, sub-§17, as enacted by PL 1995, c. 460, §6, is amended to read:

17. Minor alterations in freshwater wetlands. Activities that alter less than 4,300 square feet of freshwater wetlands ~~and that do not occur in, on or over another protected natural resource, except that any activity occurring within a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B is not exempt. An activity qualifies for exemption under this section only if the entire activity qualifies, including all phases of a multiphased project taken as a whole. Activities authorized or legally conducted prior to the effective date of this subsection are not considered in calculating the size of the alteration, as long as:~~

A. The activity does not occur in, on or over another protected natural resource;

B. A 25-foot setback from other protected natural resources is maintained and erosion control measures are used;

C. The activity is not located in a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B or in the wetland or water body protected by the shoreland zone;

D. The activity does not occur in a wetland normally consisting of or containing at least 20,000 square feet of open water, aquatic vegetation or emergent marsh vegetation, except for artificial ponds or impoundments;

E. The activity does not take place in a wetland containing or consisting of peat land dominated by shrubs, sedges and sphagnum moss; and

F. The entire activity constitutes a single, complete project.

An activity does not qualify for exemption under this subsection if that activity is part of a larger project, including a multiphase development, that does not

qualify as a whole project. Activities authorized or legally conducted prior to September 29, 1995 may not be considered in calculating the size of the alteration.

Sec. 2. 38 MRSA §480-Q, sub-§20 is enacted to read:

20. Constructed ponds. Alteration of legally created constructed ponds that are not considered part of a great pond, coastal wetland, river, stream or brook, as long as the constructed pond is not expanded beyond its original size.

Sec. 3. 38 MRSA §480-X, sub-§5, as enacted by PL 1995, c. 460, §7 and affected by §12, is amended to read:

5. Additional projects not eligible for Tier 2 review. An activity in freshwater wetlands containing a natural community that is imperiled ~~(S1)~~ (S2) or critically imperiled ~~(S2)~~ (S1), as defined by the Natural Areas Program pursuant to Title 5, section 13076 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

See title page for effective date.

CHAPTER 576

H.P. 244 - L.D. 346

An Act to Change the Maine Rule of Evidence That Currently Allows the Admission of Subsequent Remedial Measures as Evidence of Negligence

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

Sec. 1. 14 MRSA §1403 is enacted to read:

§1403. Admission of evidence

Notwithstanding any court rule to the contrary, when, after an event, measures are taken that, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

Sec. 2. Application. This Act applies to causes of action in which the harm or injury occurred on or after the effective date of this Act.

See title page for effective date.

CHAPTER 577

H.P. 546 - L.D. 742

An Act Regarding Wrongful Death Actions

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

Sec. 1. 18-A MRSA §2-804, sub-§(b), as amended by PL 1991, c. 187, is further amended to read:

(b) Every such action must be brought by and in the name of the personal representative of the deceased person, and the amount recovered in every such action, except as otherwise provided, is for the exclusive benefit of the surviving spouse, if no minor children, and of the children if no surviving spouse, and one-half for the exclusive benefit of the surviving spouse and one-half for the exclusive benefit of the minor children to be divided equally among them, if there are both surviving spouse and minor children, and to the deceased's heirs to be distributed as provided in section 2-106; if there is neither surviving spouse nor minor children. The jury may give such damages as it ~~deems~~ determines a fair and just compensation with reference to the pecuniary injuries resulting from ~~such~~ the death to the persons for whose benefit the action is brought, and in addition ~~thereto~~ shall give such damages as will compensate the estate of the deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses, and in addition ~~thereto~~ may give damages not exceeding \$75,000 \$150,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought, and in addition ~~thereto~~ may give punitive damages not exceeding \$75,000, provided that the action is commenced within 2 years after the decedent's death. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. No settlement on behalf of minor children is valid unless approved by the court, as provided in Title 14, section 1605.

See title page for effective date.

CHAPTER 578

H.P. 1208 - L.D. 1658

An Act to Encourage Tire Stockpile Abatement

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

Whereas, citizens and businesses of this State discard waste tires each year; and

Whereas, stockpiles of waste tires have accumulated throughout the State; and

Whereas, these stockpiles pose a tremendous potential threat to human health, public safety and the environment; and

Whereas, this legislation directs the State to reduce the size and number of tire stockpiles and to encourage the processing of tires for beneficial reuse; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA §1316-G is enacted to read:

§1316-G. Tire stockpile abatement program

The State shall undertake a program to eliminate tire stockpiles. The program is under the direction of the department with assistance from other agencies including the State Planning Office, the Department of the Attorney General, the Maine State Police, the Maine National Guard and the Department of Corrections.

1. Tire stockpile abatement. The department shall, as available resources allow:

A. Estimate the number of tires that are stockpiled and that pose a significant risk to the environment or public health;

B. Develop a tire stockpile reduction priority plan based on environmental and public health risks;

C. Seek the cooperation and assistance of private and governmental landowners or tire