

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

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

Augusta, Maine
2011

chapter 375, subchapter 2-A and must be provisionally adopted by January 15, 2012.

See title page for effective date.

CHAPTER 39

H.P. 88 - L.D. 106

Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty, a Major Substantive Rule of the Department of Education

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in Section II to clarify that the definition of "adverse effect/adversely affects" means to have a negative impact that is more than a minor or transient hindrance;

2. The rule must be amended in Section VI in the part concerning an abbreviated school day to require that the Individualized Education Program Team must convene every 20 school days if a child with a disability does not return to a full-time school day within 45 calendar days after the Individualized Education Pro-

gram Team initially determined that an abbreviated school day is appropriate and necessary for the child;

3. The rule must be amended in Section VII in the part concerning multiple disabilities by deleting the procedural step that requires the Individualized Education Program Team to make a determination that the concomitant disabilities adversely affect the child's educational performance;

4. The rule must be amended in Section VII in the part concerning the procedure for determination of adverse effect on educational performance by deleting "specific learning disability" from the list of disability eligibility categories that require this procedural step;

5. The rule must be amended in Section VIII to correct a cross-reference to the definition of "3-5 (Three to under age 6)," which has been renumbered as part 39, and the table of contents for the rule must also be amended to correct the inadvertent deletion of this part of the definition section; and

6. The rule must be amended in Section X in the part concerning tutorial instruction by deleting the provision that specifies that the Individualized Education Program Team determines who will provide the tutorial instruction to a child with a disability.

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

Effective May 19, 2011.

CHAPTER 40

H.P. 287 - L.D. 361

Resolve, To Evaluate the Energy Use of the State House and the Burton M. Cross State Office Building

Sec. 1. Funds for energy efficiency. Resolved: That the Efficiency Maine Trust established in the Maine Revised Statutes, Title 35-A, section 10103 shall devote \$200,000 for the completion of an energy audit and the implementation of cost-effective energy efficiency measures in accordance with this resolve. To the extent possible, the funds must come from funding sources that permit the use of the funds to reduce consumption of fossil fuels as well as electricity consumption; and be it further

Sec. 2. Energy audit of State House and Burton M. Cross State Office Building. Resolved: That the Efficiency Maine Trust shall conduct or contract for the energy audit under section 1 of the State House and the Burton M. Cross State Office Building. The Efficiency Maine Trust shall collaborate with the chair of the State House and Capitol Park

Commission, the Executive Director of the Legislative Council and the Director of the Bureau of General Services within the Department of Administrative and Financial Services in order to ensure that the energy audit produces cost-effective energy efficiency recommendations that are consistent with the National Register of Historic Places designation of the State House; and be it further

Sec. 3. Report and implementation. Resolved: That the Efficiency Maine Trust shall report the results and recommendations from the energy audit under section 1 to the Director of the Bureau of General Services within the Department of Administrative and Financial Services and the Executive Director of the Legislative Council no later than December 7, 2011. The energy audit must rank the recommendations according to their cost-effectiveness. At the joint request of the Executive Director of the Legislative Council and the Director of the Bureau of General Services, the Efficiency Maine Trust shall provide available funds allocated pursuant to section 1 that were not used for the cost of the energy audit to implement cost-effective energy efficiency measures recommended in the energy audit.

See title page for effective date.

**CHAPTER 41
H.P. 397 - L.D. 504**

Resolve, Directing the Department of Public Safety, Division of Liquor Licensing and Compliance To Amend Its Rules Governing the Return of Spirits by Consumers

Sec. 1. Department of Public Safety's division of liquor licensing and compliance to amend rules. Resolved: That, no later than January 1, 2012, the Department of Public Safety's division of liquor licensing and compliance shall amend its rules regarding the return of spirits by a consumer. The rules must provide that an agency liquor store may permit the return of a bottle of spirits from a consumer if the bottle has not been opened or tampered with and is accompanied by a sales receipt that shows the bottle of spirits was purchased within the last 10 days from that agency liquor store. Rules adopted pursuant to this resolve are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

**CHAPTER 42
H.P. 708 - L.D. 964**

Resolve, Requiring the Department of Education To Amend Its Rules To Prohibit School Administrative Units from Imposing Unreasonable Restrictions That Impede the Ability of Parents and Evaluators To Observe Students

Sec. 1. Unrestricted educational observations by qualified examiners; rules. Resolved: That the Department of Education shall amend its rules in Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty to permit a qualified examiner to observe a child at school or at a potential educational placement when the qualified examiner is not employed by the school and is conducting an independent educational evaluation at the request of the parent, at times and durations as the school would permit a qualified examiner that is employed by the school; and be it further

Sec. 2. Provisional adoption of rules. Resolved: That the Department of Education shall provisionally adopt the amendments required under section 1 no later than December 1, 2011.

See title page for effective date.

**CHAPTER 43
H.P. 157 - L.D. 180**

Resolve, To Change Rules Concerning Landfill Gas and Odor Management from Routine Technical Rules to Major Substantive Rules

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

Whereas, rulemaking relating to the management of landfill gas and odor at solid waste facilities is currently in progress and could be complete before this legislation goes into effect unless this legislation is enacted as an emergency; and

Whereas, the scope of those rules is greater than expected when the effort was initiated in 2008, particularly with respect to the management of odors and landfill gas; and