LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

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Twin City Printery
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PUBLIC LAWS

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tures above the high water line causing no additional intrusion of an existing structure into the great pond, river, stream or brook, wetland or sand dune;

3. Peat mining. Alteration of a freshwater wetland for the purpose of exploring for or mining peat, subject to article 6, where applicable;

4. Interstate pipelines. Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline, subject to article 6, where applicable;

5. Gold panning. Notwithstanding section 480-C, a permit shall not be required for panning gold, provided that stream banks are not disturbed and no unlicensed discharge is created;

6. Agricultural activities. Draining a freshwater wetland for the purpose of growing agricultural products is exempt from the provisions of this article. This exemption applies only as long as the land is being used for growing agricultural products;

7. Forestry. Alteration of a freshwater wetland associated with normal forestry management and harvesting activities is exempt from the provisions of this article. The determination of what constitutes normal forestry management and harvesting activities shall be made by the Maine Land Use Regulation Commission regardless of whether the freshwater wetland is located within the jurisdiction of the commission and according to standards adopted by the commission. For purposes of this subsection, "normal forestry management and harvesting activities" means those activities which meet the forestry standards of the Maine Land Use Regulation Commission; and

8. Hydropower projects. Hydropower projects are exempt from the provisions of this article to the extent provided in section 634. Alteration of a freshwater wetland associated with the operation of a hydropower project, as defined in section 632, is exempt from the provisions of this article, but is subject to chapter 5, article 1, subarticle 1-B, where applicable.

§480-R. Violations; enforcement

1. Violations. A violation is any activity which takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity. Each day of a violation shall be considered a separate offense. A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred.

2. Enforcement. Inland fisheries and wildlife game wardens, Department of Marine Resources marine patrol officers and all other law enforcement officers enumerated in Title 12, section 7055, shall enforce the terms of this article.

§480-S. Fee for significant wildlife habitat review

The department shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications regarding significant wildlife habitats in the same manner as provided for other fees in section 352. The maximum fees are $150 for processing and $50 for a license. All fees shall be credited to the Maine Environmental Protection Fund established in section 351.

Sec. 3. Transition. Applications pending on the effective date of this Act which were determined by the department to be complete by March 31, 1988, shall be governed by the law in effect on March 31, 1988. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to any application pending on the effective date of this Act which was not determined to be complete by March 31, 1988, and to any application filed after the effective date of this Act.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1988-89
CONSERVATION, DEPARTMENT OF	
Maine Land Use Regulation Commission	
All Other	$5,000

Provides funds for contractual services to handle the additional workload for the proposed review of forestry practices.

Sec. 5. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1988-89
ENVIRONMENTAL PROTECTION, DEPARTMENT OF	
Maine Environmental Protection Fund	
Positions	(2)
Personal Services	$49,596
All Other	4,000
Capital Expenditures	1,256
Total	$54,852

Provides funds for 2 Environmental Specialist II positions and general operating expenses to carry out the licensing and enforcement functions of the proposed review of significant wildlife habitat.

Effective August 4, 1988.

CHAPTER 810

S.P. 870 — L.D. 2265

AN ACT to Establish a Resource Protection Law.

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

Sec. 1. 12 MRSA §682, sub-§2, as amended by PL 1987, c. 514, §1, is repealed and the following enacted in its place:

2. Subdivision. A subdivision is a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing.

The creation of a lot or parcel more than 500 acres in size shall not be counted as a lot for the purpose of this subsection.

The creation of a lot or parcel of at least 40 but not more than 500 acres in size shall not be counted as a lot for the purpose of this subsection except when the lot or the parcel from which it was divided is located wholly or partly within the shoreland area as defined in Title 38, section 435 and except as provided in paragraph A.

A. When 3 or more lots containing at least 40 but not more than 500 acres are created within a 5-year period from a parcel which is located wholly outside the shoreland area as defined in Title 38, section 435, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the registry of deeds, the commission and the State Tax Assessor within 60 days of the creation of that lot. Any subsequent division of a lot created from the original parcel within 10 years of the filing of the plan in the registry of deeds shall be considered a subdivision. Failure to file the plan required by this paragraph is a violation of this chapter subject to the penalties provided in section 685-C, subsection 8.

B. The commission shall submit a report by March 15th, annually, to the joint standing committee of the Legislature having jurisdiction over energy and natural resources. The report shall indicate the number and location of lots for which a plan was filed under paragraph A and the number and location of subsequent divisions requiring review by the commission.

Sec. 2. 30 MRSA §4956, sub-§1, as amended by PL 1987, c. 514, §2, is further amended to read:

1. Defined. A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality, unless the intent of ~~such~~ that gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of ~~said~~ the first 2 lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create a 3rd lot, unless both ~~such~~ those dividings are accomplished by a subdivider who shall have retained one of ~~such~~ the lots for his own use as a single family residence or for open space land as defined in Title 36, section 1102 for a period of at least 5 years prior to ~~such~~ that 2nd dividing. ~~Lots of 40 or more acres shall not be counted as lots, except where such lots are located wholly or partly within any shoreland zone, in which case municipal review may be required by the municipality, provided that the average lot depth to shore frontage ratio is greater than 5 to one. Where 3 or more lots of 40 or more acres are developed, a plan must be filed with the registry of deeds and the municipal authority responsible for reviewing subdivisions.~~

A lot of at least 40 acres shall not be counted as a lot, except:

A. Where the lot or parcel from which it was divided is located wholly or partly within any shoreland area as defined in Title 38, section 435; or

B. When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 acres or more in size as lots for the purposes of this subsection where the parcel of land being divided is located wholly outside any shoreland area as defined in Title 38, section 435.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

A "densely developed area" is defined as any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres. A principal structure is defined as any building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

Sec. 3. 30 MRSA §4956, sub-§2, ¶B, as repealed and replaced by PL 1973, c. 465, §1, is amended to read:

B. The municipal reviewing authority may, after a public hearing, adopt, amend or repeal additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of such hearing.

(1) The regulations may provide for a multi-stage application or review procedure consisting of no more than 3 stages: Preapplication sketch plan; preliminary plan; and final plan. Each stage shall meet the time requirements of paragraph D.

Sec. 4. 30 MRSA §4956, sub-§2, ¶C-1, as enacted by PL 1975, c. 468, §2, is amended to read:

C-1. Upon receiving an application, the municipal reviewing authority shall issue to the applicant a dated receipt. Upon receiving an application, the municipal reviewing authority shall notify by mail all abutting property owners of the proposed subdivision, specifying the location of the proposed subdivision and a general description of the project. Within 30 days from receipt of an application, the municipal reviewing authority shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the municipal reviewing authority has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.

Sec. 5. 30 MRSA §4956, sub-§3, ¶J, as amended by PL 1985, c. 794, Pt. A, §2, is further amended to read:

J. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any. In making this determination, the municipal reviewing authority is authorized to interpret these ordinances and plans;

Sec. 6. 37-B MRSA §742, sub-§1, ¶C, as enacted by PL 1983, c. 594, §33, is amended to read:

C. After the filing of the emergency proclamation and in addition to any other powers conferred by law, the Governor may:

(1) Suspend the enforcement of any statute prescribing the procedures for conduct of state business, or the orders or rules of any state agency, if strict compliance with the provisions of the statute, order or rule would in any way prevent, hinder or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the State Government and of each political subdivision of the State as reasonably necessary to cope with the disaster emergency;

(3) Transfer the direction, personnel or functions of state departments and agencies, or units thereof, for the purposes of performing or facilitating emergency services;

(4) Authorize the obtaining and acquisition of property, supplies and materials pursuant to section 821;

(5) Enlist the aid of any person to assist in the effort to control, put out or end the emergency or aid in the caring for the safety of persons;

(6) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, if he deems this action necessary for the preservation of life or other disaster mitigation, response or recovery;

(7) Prescribe routes, modes of transportation and destinations in connection with evacuations;

(8) Control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;

(9) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles; ~~and~~

(10) Make provision for the availability and use of temporary emergency housing; ;

(11) Order the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency for which this proclamation was made; and

(12) Take whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area.

Sec. 7. 38 MRSA §347, sub-§2, as enacted by PL 1977, c. 300, §9, is amended to read:

2. Emergency procedures. Whenever it appears to the ~~board~~ commissioner, after investigation, that there is a violation of any provision of the laws or regulations which ~~it~~ the department administers or of the terms or conditions of any of ~~its~~ the department's orders, which is creating or is likely to create a substantial and immediate danger to public health or safety, ~~it~~ the commissioner 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~~ commissioner'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~~ commissioner is unable to identify the person or persons causing or contributing to such a hazard, the ~~board~~ commissioner shall make ~~its~~ the order known through prominent publication or announcement in news media serving the affected area.

The person to whom ~~such~~ the order is directed shall comply therewith immediately. ~~Such~~ The order may not be appealed to the Superior Court in the manner provided

in section 346, but ~~such~~ the person may apply to the board for a hearing on ~~such~~ the order, which hearing shall be held by the board within 48 hours after receipt of application therefor. Within 7 days after ~~such~~ the 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.

Sec. 8. 38 MRSA §347, sub-§6, as enacted by PL 1983, c. 300, §9, is amended to read:

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

Sec. 9. 38 MRSA §482, sub-§5, ¶G, as enacted by PL 1985, c. 654, is amended to read:

G. Lots of 40 or more acres but not more than 500 acres shall not be counted as lots; ~~or~~ except where:

(1) The proposed subdivision is located wholly or partly within the shoreland area as defined in Title 38, section 435;

Sec. 10. 38 MRSA §482, sub-§5, ¶G-1 is enacted to read:

G-1. Lots of more than 500 acres in size shall not be counted as lots; or

Sec. 11. Transition. This Act applies to any division of land occurring after the date of enactment of this Act. Notwithstanding Title 1, section 302, this Act applies to any application for subdivision approval submitted after the date of enactment of this Act.

This Act shall not apply to the parcel of land of approximately 343.6 acres in the northwest portion in Township 9 SD which shall not be divided into more than 8 lots and which is subject to a conservation easement to the State, as described in the Agreement between the State and Prentiss & Carlisle Company, Inc., dated April 1, 1988, if that Agreement is enacted into law.

Effective August 4, 1988.

CHAPTER 811

S.P. 916 — L.D. 2392

AN ACT to Amend the Laws Relating to AIDS and Communicable Diseases.

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

Sec. 1. 5 MRSA §19201, sub-§4-A is enacted to read:

4-A. HIV test. "HIV test" means a test for the presence of an antibody to HIV or a test for an HIV antigen.

Sec. 2. 5 MRSA §19201, sub-§5-A, ¶A, as repealed and replaced by PL 1987, c. 539, is amended to read:

A. Based on an actual understanding by the person to be tested:

(1) That the test is being performed;

(2) Of the nature of the test;

(3) Of the persons to whom the results of that test may be disclosed;

(4) Of the purpose for which the test results may be used; and

(5) Of ~~all~~ any reasonably foreseeable risks and benefits resulting from the test; and

Sec. 3. 5 MRSA §19203, as repealed and replaced by PL 1987, c. 539, is repealed and the following enacted in its place:

§19203. Confidentiality of test

No person may disclose the results of an HIV test, except as follows:

1. Subject of test. To the subject of the test;

2. Designated health care provider. To a health care provider designated by the subject of the test in writing. When a patient has authorized disclosure of HIV test results to a person or organization providing health care, the patient's physician may make these results available only to other health care providers working directly with the patient, and only for the purpose of providing direct patient care. Any physician who discloses HIV test results in good faith pursuant to this subsection shall be immune from any criminal or civil liability for the act of disclosing HIV test results to other health care providers;

3. Authorized person. To a person or persons to whom the test subject has authorized disclosure in writing, except that the disclosure may not be used to violate any other provisions of this chapter;

4. Certain health care providers. A health care provider who procures, processes, distributes or uses a human body part donated for a purpose may, without obtaining informed consent to the testing, perform an HIV test in order to assure medical acceptability of the gift for the purpose intended. Testing pursuant to this subsection does not require pretest and post-test counseling;