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

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

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

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST AND SECOND SPECIAL SESSIONS

and

SECOND REGULAR SESSION

of the

ONE HUNDRED AND THIRTEENTH LEGISLATURE

1987

ing, is determined to be a potential source of infection to others, given conditions necessary for transmission of the disease.

7. Notifiable disease. "Notifiable disease" means any communicable disease ~~or~~, dangerous communicable disease or occupational disease, the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 1029 to 1034 or section 1493.

Sec. 18. 22 MRSA §1022, sub-§§4, 5 and 6, as enacted by PL 1977, c. 304, §2, are repealed and the following enacted in their place:

4. Hearings. Hearings under this section shall be governed by the Maine Rules of Civil Procedure and the Maine Rules of Evidence.

A. The individual, the petitioner and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

B. The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

C. The individual shall be afforded an opportunity to be represented by counsel, and, if that individual is indigent and requests counsel, the court shall appoint counsel for the individual.

D. An electronic recording shall be made of the proceedings and all hearings under this section. The record and all notes, exhibits and other evidence shall be confidential.

E. The hearing shall be confidential and no report of the proceedings may be released to the public, except by permission of the person or that person's counsel and with the approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or that person's counsel.

5. Examination ordered. If, upon hearing, it appears that there are reasonable grounds to believe that an individual has a dangerous communicable disease, the District Court shall order the examination of the individual if requested by the petitioner.

6. Commitment or treatment ordered. If, upon hearing, it appears the individual has a dangerous communicable disease and is a source of danger to other individuals, the District Court shall order the individual committed to a hospital, to submit to treatment or to take such reasonable precautions as may be necessary to not expose other individuals to the danger of infection.

Sec. 19. 22 MRSA §1022, sub-§7 is enacted to read:

7. District Court order. The District Court order shall provide that the department may change the place of confinement or care for reasonable cause. If the infected person applies for review within 30 days of the change, the District Court making the order shall review the change. If the court orders an individual committed to a hospital, the order shall specify a period of time, not to exceed 30 days, during which the order of commitment shall remain in effect. At the end of that period, the court shall hold a hearing in accordance with this section, and make such additional orders as it deems necessary, provided that no order of commitment exceeds 90 days without further review by the court.

Sec. 20. 22 MRSA §2842-A is enacted to read:

§2842-A. Identification of dead human bodies with communicable diseases

The department shall promulgate rules providing for notification to funeral directors or other authorized agents in charge of the disposition of dead human bodies in cases when the body has been diagnosed as having a communicable disease.

Notification pursuant to this section is not a violation of this Title or Title 5, chapter 501.

Sec. 21. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1988-89
HUMAN SERVICES, DEPARTMENT OF	
Medical Care — Payments to Providers	
All Other	$199,320

Provides funds for the State's share of Medicaid's portion of additional hospital cost to implement this Act.

Sec. 22. Allocation. The following funds are allocated from Federal Expenditure funds to carry out the purposes of this Act.

	1988-89
HUMAN SERVICES, DEPARTMENT OF	
Medical Care — Payments to Providers	
All Other	$400,680

Allocates federal matching funds.

Effective August 4, 1988.

CHAPTER 812

S.P. 846 — L.D. 2202

AN ACT to Strengthen the Site Location of Development Law.

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

Sec. 1. 38 MRSA §481, first ¶, as amended by PL 1983, c. 513, §1, is further amended to read:

The Legislature finds that the economic and social well-being of the citizens of the State of Maine ~~depend~~ depends upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment on the development sites and in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect the environment and quality of life in Maine.

Sec. 2. 38 MRSA §482, sub-§2, as repealed and replaced by PL 1987, c. 130, is repealed and the following enacted in its place:

2. Development which may substantially affect the environment. "Development which may substantially affect the environment," in this article called "development," means any state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development which:

A. Occupies a land or water area in excess of 20 acres;

B. Contemplates drilling for or excavating natural resources on land or under water where the area affected is in excess of 60,000 square feet;

C. Is a mining activity as defined in this section;

D. Is a hazardous activity as defined in this section;

E. Is a structure as defined in this section;

F. Is a conversion of an existing structure that meets the definition of structure in this section;

G. Is a subdivision as defined in this section; or

H. Is a multi-unit housing development as defined in this section located wholly or in part within the shoreland zone.

This term does not include state highways, state aid highways and borrow pits for sand, fill or gravel of less than 5 acres or when regulated by the Department of Transportation, and such borrow pits entirely within the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, and those activities regulated by the Department of Marine Resources under Title 12, section 6072.

Sec. 3. 38 MRSA §482, sub-§§2-D, 2-E and 2-F are enacted to read:

2-D. Multi-unit housing. "Multi-unit housing" means any building or buildings built for the purposes of providing 10 or more housing units located on a single parcel of land.

2-E. Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time except during periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes.

2-F. Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas which are:

A. Of 10 or more contiguous acres;

B. Characterized predominately by wetland vegetation; and

C. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small inclusions of land that do not conform to the criteria of this subsection.

Sec. 4. 38 MRSA §482, sub-§3-B is enacted to read:

3-B. Normal high-water line. "Normal high-water line" means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

Sec. 5. 38 MRSA §482, sub-§4-D, as enacted by PL 1981, c. 449, §§6 and 9, is amended to read:

4-D. Significant ground water aquifer. "Significant ground water aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel or fractured bedrock that contains significant recoverable quantities of water which is likely to provide drinking water supplies.

Sec. 6. 38 MRSA §482, sub-§§4-E and 4-F are enacted to read:

4-E. River. "River" means a free-flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

4-F. Shoreland zone. "Shoreland zone" means all area within 250 feet of the normal high-water line of any great pond, river or salt water body, or within 250 feet of the upland edge of a freshwater or coastal wetland.

Sec. 7. 38 MRSA §482, sub-§5, as amended by PL 1985, c. 654, is repealed and the following enacted in its place:

5. Subdivision. A "subdivision" is the division of a parcel of land of 20 or more acres into 5 or more lots to be offered for sale or lease to the general public during any 5-year period except for the following:

A. All the lots are at least 10 acres in size and the aggregate land area of all the lots make up a total of 100 acres or less, unless the subdivision is located wholly or in part in the shoreland zone, in which case the exemption does not apply;

B. When:

(1) All lots are at least 5 acres in size;

(2) All lots less than 10 acres in size are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet which abuts at one point the principal access way or the lots have at least 75 feet of frontage of a cul-de-sac which provides access;

(3) The aggregate land area of all the lots makes up a total of 100 acres or less;

(4) The subdivision is not located wholly or in part in the shoreland zone; and

(5) The municipality in which the subdivision is located has adopted a subdivision ordinance, or its municipal reviewing authority has adopted subdivision regulations, pursuant to Title 30, section 4956;

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

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

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

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a lot and actually uses the lot for that purpose during that period, that lot shall not be counted as a lot;

E. Unless intended to circumvent this article, the following transactions shall not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer; or

(2) Personal, nonprofit transactions, such as the transfer of lots by gift or devise; and

F. In those subdivisions which would otherwise not require site location approval, unless intended to circumvent this article, the following transactions shall not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the Department of Environmental Protection is made a party.

The exception described in paragraph F does not apply, and the subdivision requires site location approval whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a 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 parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970.

Sec. 8. 38 MRSA §482, sub-§6, ¶A, as enacted by PL 1975, c. 214, is amended to read:

A. A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet or contains a total floor area of 100,000 square feet or more; or

Sec. 9. 38 MRSA §483-A is enacted to read:

§483-A. Prohibition

No person may construct or cause to be constructed or operate or cause to be operated or, in the case of a subdivision, sell or lease, offer for sale or lease or cause to be sold or leased, any development requiring approval under this article without first having obtained approval for such construction, operation, lease or sale from the Board of Environmental Protection.

Sec. 10. 38 MRSA §484, as amended by PL 1987, c. 141, Pt. B, §36, is repealed and the following enacted in its place:

§484. Standards for development

The board shall approve a development proposal whenever it finds that:

1. Financial capacity. The developer has the finan-

cial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article.

2. Traffic movement. The developer has made adequate provision for traffic movement of all types into, out of or within the development area. The board shall consider traffic movement both on-site and off-site. Before issuing a permit, the board shall find that any traffic increase attributable to the proposed development will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed development.

3. No adverse effect on the natural environment. The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

4. Soil types and erosion. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.

5. Ground water. The proposed development will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

6. Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal, roadways and open space required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities, roadways and open space in the municipality or area served by those services or open space. In assessing the impact on open space, the board shall use as a standard that which is set forth in the municipality's comprehensive land use plan, when such a plan exists.

7. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

8. Sand supply. If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand within or to the sand dune system.

Sec. 11. 38 MRSA §485-A is enacted to read:

§485-A. Notification required; board action; administrative appeals

1. Application. Any person intending to construct or operate a development shall, before commencing construction or operation, notify the department in writing of the intent, nature and location of the development, together with such other information as the board may by rule require. The board or the commissioner shall either approve the proposed development, setting forth such terms and conditions as are appropriate and reasonable, or disapprove the proposed development, setting forth the reasons for the disapproval or scheduling a hearing in the manner described in subsection 2.

2. Hearing request. If the board has issued an order without a hearing regarding any person's development, that person may request, in writing, a hearing before the board within 30 days after notice of the board's decision. This request shall set forth, in detail, the findings and conclusions of the board to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings shall be scheduled in accordance with section 486-A.

3. Failure to notify board. 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 this section, schedule and conduct a public hearing with respect to that development.

Sec. 12. 38 MRSA §486-A is enacted to read:

§486-A. Hearings; orders; construction suspended

1. Hearings. If the board determines to hold a hearing on a notification submitted to it pursuant to section 485-A, it shall hold the hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

At that hearing, the board shall solicit and receive testimony to determine whether that development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The board shall permit the applicant to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

2. Developer; burden of proof. At the hearings held under this section, the burden is upon the person proposing the development to demonstrate affirmatively to the board that each of the criteria for approval listed in this article has been met, and that the public's health, safety and general welfare will be adequately protected.

3. Findings of fact; order. Within 30 days after the board adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing the development to construct or operate the development, as proposed, or granting that permission upon such terms and conditions as the board deems advisable to protect and preserve the environment and the public's health, safety and general welfare, except in the case of any low-level radioactive waste storage or disposal facility, in which case the board shall act in accordance with section 1478.

4. No construction pending order. Any person who has notified the board, pursuant to section 485-A, of intent to construct or operate a development shall immediately defer or suspend construction or operation of that development until the board has issued its order.

5. Continuing compliance; air and water pollution. Any person securing approval of the board, pursuant to this article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until that person has complied with those standards.

6. Transcripts. A complete verbatim transcript shall be made of all hearings held pursuant to this section.

Sec. 13. 38 MRSA §487-A is enacted to read:

§487-A. Hazardous activities; transmission lines

1. Preliminary notice required for hazardous activities. Preliminary notice concerning the construction or operation of a development which is a hazardous activity shall be given as follows.

A. Any person intending to construct or operate a development which is a hazardous activity shall file a preliminary notice of intent with the department and the municipal officers of any municipality affected. The preliminary notice shall contain a brief description of:

(1) The nature of the proposed development; and

(2) The location of the proposed development.

Any person intending to construct or operate any other development may file this preliminary notice.

B. The department shall determine whether the proposed development is likely to discharge pollutants to a significant ground water aquifer and whether the proposed location of the development is on a primary sand and gravel recharge area. The department shall make this determination and notify the applicant within 15 days of the receipt of the preliminary notification. If both of these determinations are affirmative, or if requested by the municipal officers of any affected municipality, the applicant must then provide, as part of the notice under section 485-A, detailed information on:

(1) The nature and extent of the significant ground water aquifer, including recharge areas and flow paths;

(2) The quality and quantity of the significant ground water aquifer;

(3) Existing and potential uses of the aquifer;

(4) The nature and quantity of potentially hazardous materials to be handled; and

(5) The nature and quantity of pollutants to be discharged.

C. An applicant who proposes a development which is a hazardous activity shall not be required to file the notice under section 485-A if both determinations in paragraph B are negative and the applicant is not otherwise required to proceed by this subchapter.

2. Power generating facilities. In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 100 kilovolts, or more, proposed to be erected within this State by an electric utility or utilities, the proposed development, in addition to meeting the requirements of section 484, subsections 1 to 9, shall also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that an electric utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the Commissioner of Environmental Protection and in an amount not to exceed $50,000. This bond or evidence of financial capacity shall be conditioned to require the applicant to reimburse the department for its cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

3. Easement required; transmission line or gas pipeline. In the case of a gas pipeline or a transmission line carrying 100 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit shall be obtained prior to any acquisition of land by eminent domain.

4. Notice to landowners; transmission line or gas pipeline. Any person making application for site location of development approval pursuant to sections 481 to 483, for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to this article, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or transmission line. Notice shall be sent by registered mail, postage prepaid, to the landowner's last known address contained in the applicable tax assessor's records. The applicant shall file a map with the town clerk of each municipality through which the pipeline or transmission line is proposed to be located, indicating the intended approximate location of the pipeline or transmission line within the municipality. The applicant is not required to provide notice of intent to construct a gas pipeline or transmission line other than as set forth in this subsection. The board shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipe-

line. In addition to finding that the requirements of section 484, subsections 1 to 9 have been met, the board, in the case of the transmission line or pipeline, shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The board may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.

Sec. 14. 38 MRSA §488, sub-§4 is enacted to read:

4. Exemption. Development which consists only of a subdivision or subdivisions located entirely within the area of the State subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, is exempt from the requirements of this article. New construction which is not a development which may substantially affect the environment at an existing manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet in any calendar year. When review under this article is required for development at an existing manufacturing facility, the applicant shall provide plans for the new development, as well as for those activities which have been undertaken pursuant to this subsection.

Sec. 15. 38 MRSA §489, sub-§1, ¶A-1 is enacted to read:

A-1. Adopted a comprehensive plan and related land use ordinances, consistent with Title 30, chapter 239, subchapter VI, and subdivision ordinance, consistent with Title 30, chapter 239, subchapter V, all of which are consistent with criteria set forth in section 484;

Sec. 16. 38 MRSA §489, sub-§3, as enacted by PL 1975, c. 447, is amended to read:

3. Effective date of permit. No permit issued by a municipality ~~shall~~ may become effective until 30 days subsequent to its ~~issuance~~ receipt by the board. A copy of the application for the permit, the permit issued by the municipality and its findings on review of the application shall be sent to the board immediately upon its issuance by certified mail. The board shall review such permit and either approve, deny or modify it as it deems necessary. ~~Failure of~~ If the board ~~to~~ does not act within 30 days of the ~~issuance~~ receipt of the permit ~~by~~ from the municipality this shall constitute its approval and the permit shall be effective as issued.

Sec. 17. 38 MRSA §489, sub-§6 is enacted to read:

6. Joint enforcement. Any person who violates any permit issued under this section is subject to the provisions of section 349 in addition to any penalties which the municipality may impose. The provisions of this section may be enforced by the department and the municipality which issued the permit.

Sec. 18. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to developments which are pending before the Department of Environmental Protection on the effective date of this Act, but not determined to be complete by the department prior to the date of enactment or, for those developments which do not require approval by the Department of Environmental Protection under the law in effect on the date of enactment, this Act applies to developments which, prior to the date of enactment, have not had at least one substantive review or which have not been determined to be complete by the municipal reviewing authority.

Effective August 4, 1988.

CHAPTER 813

H.P. 1893 — L.D. 2586

AN ACT to Encourage and Monitor the Use of New Potato Varieties.

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

Sec. 1. 7 MRSA §2157 is enacted to read:

§2157. Potato Variety Development Program

1. Promotion. The Maine Potato Board shall be responsible for developing, each year, a program to promote new potato varieties.

2. Breeding. The Maine Agricultural Experiment Station shall be responsible for breeding and testing of new potato varieties.

3. Testing. The Maine Agricultural Experiment Station shall hire an agronomist to work with the Maine Potato Breeding Program in Presque Isle to test new potato varieties. The agronomist shall be responsible for:

A. Developing the best cultural practices for new varieties;

B. Promoting new varieties of Maine seed potatoes to farmers in Maine and other areas;

C. Establishing field trials of new varieties; and

D. Monitoring the sales and performance of the new varieties.

4. Multiplication. The Seed Potato Board shall be responsible for multiplying seedstocks of advanced selec-