

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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J.S. McCarthy Company
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PUBLIC LAWS
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(2) A refusal by an insurer to issue or renew similar insurance for health reasons except at a rate exceeding the organization rate; or

(3) A refusal by an insurer to issue similar insurance except with a reduction or exclusion of coverage for a specified preexisting health condition for a period exceeding 90 days.

B. The board may adopt a list of medical or health conditions for which a person would be eligible for plan coverage without applying for health insurance pursuant to paragraph A. Persons who can demonstrate the existence or history of any medical or health conditions on the list adopted by the board would be eligible to apply directly to the organization for insurance coverage. The list may be amended from time to time as appropriate.

C. The following shall not be eligible for organization coverage:

(1) Persons eligible for health care under Medicare or Medicaid;

(2) Persons who have terminated coverage in the organization, unless 12 months have elapsed;

(3) Persons who have been paid the maximum lifetime benefit established pursuant to section 6058;

(4) Inmates of public institutions; or

(5) Persons eligible for similar coverage under a conversion at a cost less than the cost of the organization premium.

See title page for effective date.

CHAPTER 309

H.P. 376 - L.D. 507

An Act to Conform Maine Water Quality Law with Federal Requirements

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

Sec. 1. 38 MRSA §363-C, as enacted by PL 1985, c. 772, §1, is repealed.

Sec. 2. 38 MRSA §464, sub-§4, ¶F, as enacted by PL 1985, c. 698, §15, is amended to read:

F. The ~~anti-degradation~~ antidegradation policy of the State shall be governed by the following provisions.

~~(1) Existing in-stream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. As used in this paragraph, "existing in-stream water uses" means significant, well-established uses that have actually occurred on a water body on or after November 28, 1975. Factual determinations of what constitutes an existing in-stream water use on a particular water body and the extent of allowable impact on the existing use shall be made on a case-by-case basis by the board. Existing in-stream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard for classification of the particular water body.~~

Determinations of what constitutes an existing in-stream water use on a particular water body shall be made on a case-by-case basis by the Board. In making its determination of uses to be protected and maintained, the Board shall consider designated uses for that water body and:

(a) Aquatic, estuarine and marine life present in the water body;

(b) Wildlife that utilize the water body;

(c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy; and

(e) Any other evidence which, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.

(1-A) The board may only issue a waste discharge license pursuant to section 414-A, or approve a water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, when the board finds that:

(a) The existing in-stream use involves use of the water body by a population of plant life, wildlife, or aquatic, estuarine or marine life, or as aquatic, estuarine, marine, wildlife, or plant habitat, and the applicant has demonstrated that the proposed activity would not have a significant impact on the existing use. For purpose of this division, significant impact means:

(i) Impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

(b) The existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of an existing level of water quality and the applicant has demonstrated that the proposed activity would not result in significant degradation of the existing use.

The board shall determine what constitutes a population of a particular species based upon the degree of geographic and reproductive isolation from other individuals of the same species.

If the board fails to find that the conditions of this subparagraph are met, water quality certification, pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, is denied.

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality shall be maintained and protected. For purposes of this paragraph, the term "high quality waters" means following waters shall be considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; ; public reserved lands; and those river segments listed in Title 12, section 403 water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section

465-B, subsection 1; and listed under sections 467, 468 and 469.

(3) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph will be met.

(4) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification.

(5) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph 3 (3). That finding must be made following procedures established by rule of the board.

Sec. 3. 38 MRSA §634, sub-§1, as amended by PL 1985, c. 772, §2, is repealed and the following enacted in its place:

1. Coordinated permit review. Permits required under the following laws shall not be required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter I, article 5-A; site location of development laws, chapter 3, subchapter I, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the board may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The board shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

Sec. 4. 38 MRSA §635-B is enacted to read:

§635-B. Procedures for water quality certification

Issuance of a water quality certificate required under the United States Water Pollution Control Act, Section 401, shall be coordinated for the applicant under this subarticle by the Department of Environmental Protection. The issuance of a water quality certificate shall be mandatory in every case where the board approves an application under this

subarticle. The board shall issue or deny certification at the same time it approves or disapproves the proposed project. If issued, the certification shall state that there is a reasonable assurance that the project will not violate applicable water quality standards. The coordination function of the department with respect to water quality certification shall not include any proceedings or substantive criteria in addition to those otherwise required by this subarticle.

Sec. 5. 38 MRSA §636, sub-§7, ¶A, as enacted by PL 1983, c. 458, §18, is amended to read:

A. Whether the project will result in significant benefit or harm to soil stability, ~~water quality~~, coastal and inland wetlands or the natural environment of any surface waters and their shorelands;

Sec. 6. 38 MRSA §636, sub-§7, ¶E and F, as amended by PL 1985, c. 772, §3, are further amended to read:

E. Whether the project will result in significant flood control benefits or flood hazards; and

F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of non-renewable fuels it would replace ~~and~~.

Sec. 7. 38 MRSA §636, sub-§7, ¶G, as enacted by PL 1985, c. 772, §4, is repealed.

Sec. 8. 38 MRSA §636, sub-§8 is enacted to read:

8. Water quality. There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the board shall reclassify the waters of the proposed impoundment to Class GPA if the board finds:

(1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;

(2) The proposed impoundment will exceed 30 acres in surface area;

(3) The proposed impoundment will not have any upstream direct discharges except cooling water; and

(4) The proposed impoundment will not violate section 464, subsection 4, paragraph F.

See title page for effective date.

CHAPTER 310

H.P. 415 - L.D. 558

An Act to Protect Public Access to Intertidal and Submerged Lands

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

12 MRSA §558-A, sub-§2, as amended by PL 1987, c. 765, §1, is further amended to read:

2. Leases. The director may lease, for a term of years not exceeding 30 and with conditions ~~he~~ the director deems reasonable, the right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State. The director may refuse to lease submerged lands if the director determines that the lease will unreasonably interfere with customary or traditional public access ways to, or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures:

(1) The director shall charge the lessee a base rent that practically approximates the fair market rental value of the land;

(2) The director may adjust the base rent, decreasing it for desirable uses or increasing it for undesirable ones. In determining the desirability of uses, the director shall consider the extent to which the use does not impair the future use of the submerged or intertidal land for fishing, fowling or navigation, needs to be located on the submerged land, and exploits natural renewable resources of the water;

(3) The director may revalue rents every 5 years. For leases entered into before and after July 1, 1984, rents shall not exceed 4¢ per square foot increased by 10% cumulatively for each year that has elapsed since July 1, 1984, further adjusted by the cumulative increase in the United States Consumer Price Index. Notwithstanding this limit, if an appraisal of the value of the land under a new or existing lease is performed, the director may charge a rent based on subparagraphs (1) and (2);

(4) The director may also lease, for a period of not more than 5 years, a buffer zone of not more than 30 feet in width around a permanent structure located on submerged or intertidal land, provided the lease is necessary to preserve the integrity and safety of the struc-