

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

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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1989

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Sec. 7. 38 MRSA §636, sub-§7, ¶G, as enacted by PL 1985, c. 772, §4, is repealed.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

ture and the Commissioner of Marine Resources consents to that lease;

(5) No portion of any existing or proposed lease may be subleased after August 1, 1988, for a period of time of more than 5 years for the purpose of providing berthing space for any boat or vessel. This subparagraph shall not apply to any existing sublease or assignments thereof or to any subleasing plan or arrangement approved by the director prior to April 15, 1988. This subparagraph is repealed 91 days after the adjournment of the First Regular Session of the 114th Legislature; and

(6) The director may grant the proposed lease if the director finds that, in addition to any other findings that the director may require, the proposed lease:

- (a) Will not unreasonably interfere with navigation;
- (b) Will not unreasonably interfere with fishing or other existing marine uses of the area; and
- (c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities.

This subparagraph is repealed 91 days after the adjournment of the First Regular Session of the 114th Legislature.

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop such terms and conditions as ~~he~~ the director deems reasonable.

C. The director shall charge an administrative fee of \$25 for each lease in addition to any rent.

D. The director may establish a reasonable minimum rent to which any lease is subject, but it shall not exceed \$75 per year.

See title page for effective date.

CHAPTER 311

H.P. 629 - L.D. 852

An Act to Strengthen and Improve Enforcement of Environmental Laws

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

Sec. 1. 4 MRSA §152, sub-§6, as repealed and replaced by PL 1987, c. 737, Pt. C, §§2 and 106; and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

6. Environmental laws. Original jurisdiction, concurrent with that of the Superior Court to grant equitable relief and impose penalties in proceedings involving alleged violations of a local environmental ordinance or regulation or a state environmental law or rule, including, but not limited to, the following:

A. The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A;

B. The minimum lot size law, Title 12, sections 4807 to 4807-G;

C. Shoreland zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 12, sections 4811 to 4817;

D. The plumbing and subsurface waste water disposal rules adopted by the Department of Human Services under Title 22, section 42;

E. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;

F. Local ordinances enacted under Title 22, section 2642, and in accordance with Title 30-A, section 3001;

G. Local land use ordinances enacted under Title 30-A, section 3001;

H. Local building codes adopted pursuant to Title 30-A, section 3001, and in accordance with Title 30-A, chapter 185, subchapter I;

I. Automobile junkyards, Title 30-A, chapter 183, subchapter I;

J. Regulation and inspection of plumbing, Title 30-A, chapter 185, subchapter III;

K. Malfunctioning domestic waste water disposal units, Title 30-A, section 3428;

L. The subdivision law, Title 30-A, section 4551; local subdivision ordinances enacted under Title 30-A, section 3001; and subdivision regulations adopted under Title 30-A, section 4551;

M. Local zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 30-A, section 4503;

N. All laws administered by the Department of Environmental Protection, Title 38, chapters 2 to 16; and