

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
OCTOBER 9, 1991

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

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J.S. McCarthy Company  
Augusta, Maine  
1991

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**PUBLIC LAWS**  
**OF THE**  
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harvesters must be notified of these guidelines and assisted in their efforts to implement the guidelines in accordance with the Bureau of Forestry advisory programs under Title 12, sections 8611 and 8612.

**3. Transportation.** The Department of Transportation in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from transportation-related activities. The Department of Transportation shall encourage all state or federally funded projects to use the best management practice guidelines. The Department of Transportation may provide technical assistance to municipalities.

**4. Development.** The commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from development-related activities. The commissioner shall provide guidance and technical assistance to the Department of Economic and Community Development and municipalities to support implementation through growth management programs required by the growth management laws, Title 30-A, chapter 187, subchapter II and municipal subdivision ordinances.

#### **§410-K. Program review**

Prior to January 1, 1993 the commissioner shall submit to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters a report detailing the effectiveness of the program and making recommendations for program improvements. The commissioner shall make recommendations on the advisability of enacting statutory or regulatory exemptions from the water quality discharge licensing requirements of section 413 for those activities conducted in compliance with best management practice guidelines under this article. The commissioner shall submit with these recommendations an analysis of the legal and enforcement issues raised by these exemptions, specifically, the need to adopt by rule best management practice guidelines.

See title page for effective date.

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## CHAPTER 346

### H.P. 693 - L.D. 992

#### An Act to Amend the Mandatory Zoning and Subdivision Control Laws

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

**Sec. 1. 38 MRSA c. 3, sub-c. I, art. 2-B, first 3 lines,** are repealed and the following enacted in their place:

**Article 2-B**  
**MANDATORY SHORELAND ZONING**

**Sec. 2. 38 MRSA §436-A, sub-§5,** as amended by PL 1989, c. 403, §4, is further amended to read:

**5. Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

A. Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that, in a natural state, the combined surface area is in excess of 10 acres; and

B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

**Sec. 3. 38 MRSA §436-A, sub-§11-A,** as enacted by PL 1989, c. 403, §5, is amended to read:

**11-A. Stream.** "Stream" means a free-flowing body of water from the outlet of a great pond or the point of confluence of 2 perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area.

**Sec. 4. 38 MRSA §438-A, sub-§3,** as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §44, is further amended to read:

**3. Commissioner approval.** Municipal ordinances, amendments and any repeals of ordinances are not effective unless approved by the commissioner. In determining whether to approve municipal ordinances or amendments, the commissioner shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the commissioner, justify a departure from the requirements of the minimum guidelines in a manner not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the commissioner shall approve a municipal ordinance that imposes more restrictive standards than those in the guidelines. If an ordinance or an amendment adopted by a municipality contains standards inconsistent with or less stringent than the minimum guidelines, the commissioner, after notice and hearing to the municipality, may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions are effective and binding within the municipality

and must be administered and enforced by the municipality. If the commissioner fails to act on any proposed municipal ordinance or amendment within 45 days of the commissioner's receipt of the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 45-day period is governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection. A municipality may appeal to the board a decision of the commissioner under this subsection.

**Sec. 5. 38 MRSA §438-A, sub-§4**, as affected by PL 1989, c. 890, Pt. A, §40 and repealed and replaced by Pt. B, §45, is amended to read:

**4. Failure to adopt ordinances.** If the commissioner determines, after notice ~~and hearing to a municipality, that a the municipality fails~~ has failed to adopt ordinances as required under this article or that an ordinance which ~~a the~~ municipality has adopted does not satisfy the requirements and purposes under this article, and that the commissioner is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, then the commissioner shall request and the board may adopt, acting in accordance with Title 5, chapter 375, subchapter II, suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission which abut those waters. Following adoption by the board, these ordinances or provisions are effective and binding within the municipality and must be administered and enforced by that municipality.

**Sec. 6. 38 MRSA §438-A, sub-§6**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §46, is repealed.

**Sec. 7. 38 MRSA §439-A, sub-§2**, as enacted by PL 1987, c. 815, §§7 and 11, is amended to read:

**2. Jurisdiction.** Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal high-water line of a water body or within any wetland. Accordingly, municipalities may enact ordinances affecting structures which extend over the water or are placed on lands lying between high and low ~~watermarks~~ waterlines or within wetlands.

**Sec. 8. 38 MRSA §439-A, sub-§5**, as repealed and replaced by PL 1991, c. 66, Pt. A, §10, is amended to read:

**5. Timber harvesting.** Municipal ordinances must regulate timber harvesting within the shoreland area, except surrounding existing forested wetlands or harvested forested wetlands that are not zoned for resource protection. Notwithstanding any provision in a local ordinance to the contrary, standards for timber harvesting activities may not be less restrictive than the following:

A. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains;

B. Within a shoreland area zoned for resource protection abutting a great pond there may not be timber harvesting within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and

C. Any site within a shoreland area zoned for resource protection abutting a great pond, beyond the 75-foot strip restricted in paragraph B, where timber is harvested must be reforested within 2 growing seasons after the completion of the harvest, according to guidelines adopted by the board. The board shall adopt guidelines consistent with minimum stocking standards established under Title 12, section 8869.

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter that must then be incorporated into local ordinances. Timber harvesting operations exceeding the 40% limitation in paragraph A may be allowed by a planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and is carried out in accordance with the purposes of shoreland zoning. The planning board shall notify the commissioner of each exception allowed.

**Sec. 9. 38 MRSA §439-A, sub-§6, ¶¶A and B**, as enacted by PL 1987, c. 815, §§7 and 11, are amended to read:

A. Within a strip extending 75 feet inland from the normal high-water ~~mark~~ line, there shall be no cleared opening or openings, except for approved construction, and a well-distributed stand of vegetation shall be retained;

B. Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water ~~mark~~ line except to remove safety hazards; and

**Sec. 10. 38 MRSA §441, sub-§3, ¶C**, as amended by PL 1989, c. 403, §11, is further amended to read:

C. Keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. On ~~an annual~~ a biennial basis, beginning in 1992, a summary of this record ~~shall~~ must be submitted by March 1 to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection; and

See title page for effective date.

## CHAPTER 347

### H.P. 1131 - L.D. 1656

#### An Act to Amend the Election Laws Governing Voting Machines and Electronic Voting Systems

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

**Sec. 1. 21-A MRSA §606, first ¶**, as enacted by PL 1985, c. 161, §6, is amended to read:

Within a reasonable time before any election, the Secretary of State shall furnish each municipality with ballots, specimen ballots, test ballots for electronic voting systems if applicable, instruction posters, election return forms, posters of specimen ballots for constitutional resolutions and statewide referenda, including the Attorney General's explanatory statements prepared under Title 1, section 353, materials setting forth the full text of all constitutional resolutions and statewide referenda and other materials necessary for conducting and reporting the results of the election.

**Sec. 2. 21-A MRSA §606, sub-§§2-B and 3-A** are enacted to read:

**2-B. Test ballots.** The Secretary of State shall provide a packet of 50 test ballots for each type of ballot to be counted by each unit of automatic counting equipment used by a counting center as defined in section 808. The Secretary of State shall authorize preparation of the test ballots for special, primary or general elections. These test ballots must be printed concurrently with the regular ballots. These test ballots must be substantially the same as the type of ballot they exemplify, except that:

A. The words "TEST BALLOT" in bold type and the name of the voting district must be printed on each test ballot; and

B. The facsimile of the signature of the Secretary of State may not be printed on a test ballot.

The Secretary of State may adopt rules, in accordance with the Maine Administrative Procedure Act, governing the printing, distribution and use of test ballots.

**3-A. Receipt issued; use of test ballots in primary, special and general elections.** The clerk shall immediately send the Secretary of State a receipt for the test ballots the clerk receives. The test ballots must be used to test automatic tabulating equipment under section 854. Upon receipt of a package or box containing test ballots for a special, primary or general election, the clerk, in the presence of one or more witnesses, shall open the packet or box containing the sealed test ballots described in subsection 2-B. The clerk shall immediately notify the Secretary of State if the number of test ballots in each packet is more or less than 50. The clerk shall keep a record of the number of test ballots throughout the preelection and postelection testing of the tabulating equipment.

**Sec. 3. 21-A MRSA §651, sub-§2**, as amended by PL 1985, c. 272, is further amended to read:

**2. Election materials distributed and posted.** At any time after the materials are received and before the polls are open, the clerk may open the packages or boxes of election materials, break the seals on the packages not marked "ballots," and use the materials for instructional purposes. Then the clerk or ~~his~~ the clerk's designated agents shall post an adequate number of instruction posters, posters of specimen ballots for constitutional resolutions and statewide referenda, including the Attorney General's explanatory statements prepared under Title 1, section 353, materials setting out the full text of constitutional resolutions and statewide referenda, and specimen ballots in the voting room outside the guard-rail enclosure. ~~When the polls are opened, or no more than 1/2 hour before the opening of the polls, the warden shall break the seals on the packages containing the ballots and distribute the ballots to the election clerks in charge of them. The breaking of the seals on the packages containing the ballots is a public proceeding and any member of the public may be present.~~

**Sec. 4. 21-A MRSA §651, sub-§§2-A and 2-B** are enacted to read:

**2-A. Testing electronic voting systems.** The clerk may break the seals on packages marked test ballots before election day in accordance with the provisions in section 606, subsection 3-A and use them to meet the requirements of section 854.

**2-B. Opening of ballot packages.** When the polls are opened, or no more than 1/2 hour before the opening of the polls, the warden shall break the seals on the packages containing the ballots and distribute the ballots to the election clerks in charge of them. The breaking of the seals on the packages containing the ballots is a public proceeding and any member of the public may be present.