

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
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C. Unless the voting device enables a voter to mark that voter's choices in secret, the clerk must provide a sufficient number of voting booths for each voting district or precinct that allow a voter to mark that voter's ballot in secret.

3. Delivery of ballots or ballot cards to the counting center. The precinct election officials shall prepare a report of the number of voters who have voted as indicated by the incoming voting list and shall place the original copy of this report in the ballot box or ballot card container for delivery to the counting center. The ballot box or ballot card container must be sealed so that no additional ballots or ballot cards may be deposited or removed. The duplicate copy of the report must be returned to the municipal clerk with other records. The clerk shall make arrangements to have the voted ballots or ballot cards of designated polling places picked up at the polling places and delivered to the counting center by authorized election officials or police officers.

4. Proceedings at the counting center. All proceedings at the counting center are under the direction of the municipal clerk and must be conducted in the following manner.

A. The count must be conducted under the observation of the public but no persons except those authorized may touch any ballot or ballot card.

B. All persons who are engaged in processing and counting the ballots must be deputized and take an oath that they will faithfully perform their assigned duties.

C. If it appears that any ballot card is damaged or defective so that it can not properly be counted by the automatic tabulating equipment, a true duplicate copy must be made and substituted for the damaged ballot card or the card may be tabulated manually. All duplicate ballot cards must be clearly labeled "duplicate" and must bear a serial number that must be recorded on the damaged or defective ballot card.

D. When the count is completed, the programs, test materials, ballots and ballot cards must be sealed and retained as provided in section 23.

Other provisions of law under this article that are not inconsistent with the use of punch card voting systems apply to all elections in which a punch card voting system is used.

Sec. 114. 21-A MRSA §906, sub-§1, as amended by PL 1993, c. 473, §41 and affected by §46, is further amended to read:

1. Referendum questions on separate ballot. Referendum questions must be printed on a ballot separate from the general election ballots, except for municipalities using electronic scanning devices ~~tabulating equipment~~. There must be a place on the ballot for the voter to designate the voter's choice.

See title page for effective date.

CHAPTER 460

S.P. 570 - L.D. 1544

An Act to Streamline Permit Procedures for Freshwater Wetlands in the State

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

Sec. 1. 38 MRSA §480-B, sub-§4, as amended by PL 1989, c. 430, §3, is further amended to read:

4. Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas ~~which that~~ 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;~~

B. Inundated or saturated by surface or ~~ground~~ water groundwater 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; and

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

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

Sec. 2. 38 MRSA §480-B, sub-§9, as repealed and replaced by PL 1995, c. 92, §2, is amended to read:

9. River, stream or brook. "River, stream or brook" means a channel between defined banks ~~and associated flood plain wetlands~~. A channel is created by the action of surface water and has 2 or more of the following characteristics.

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if

that is not available, a 15-minute series topographic map.

B. It contains or is known to contain flowing water continuously for a period of at least 3 months of the year in most years.

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water or a grassy swale.

Sec. 3. 38 MRSA §480-B, sub-§10, as amended by PL 1993, c. 296, §1, is further amended to read:

10. Significant wildlife habitat. "Significant wildlife habitat" means the following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal lists of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and significant vernal pools as defined and identified by the Department of Inland Fisheries and Wildlife. For purposes of this subsection, "identified" means identified in a specific location by the Department of Inland Fisheries and Wildlife.

Sec. 4. 38 MRSA §480-C, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §70, is repealed and the following enacted in its place:

1. Prohibition. A person may not perform or cause to be performed any activity listed in subsection

2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to and operated in such a manner that material or soil may be washed into any of the following:

A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or

B. Freshwater wetlands consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

Sec. 5. 38 MRSA §480-Q, sub-§6, as enacted by PL 1987, c. 889, §2, is amended to read:

6. Agricultural activities. ~~Draining~~ Subject to other provisions of this article that govern other protected natural resources, altering 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 normal farming activities such as clearing of vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm or livestock ponds or irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads;

Sec. 6. 38 MRSA §480-Q, sub-§§17 and 18 are enacted to read:

17. Minor alterations in freshwater wetlands. Activities that alter less than 4,300 square feet of freshwater wetlands and that do not occur in, on or over another protected natural resource, except that any activity occurring within a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B is not exempt. An activity qualifies for exemption under this section only if the entire activity qualifies, including all phases of a multiphased project taken as a whole. Activities authorized or legally conducted prior to the effective date of this subsection are not considered in calculating the size of the alteration.

18. Service drops for telephone or electrical service. Vegetative clearing of a freshwater wetland for the installation of telephone or electrical service, if:

A. The line extension does not cross or run beneath a coastal wetland, river, stream or brook;

B. The placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and

C. The total length of the extension is less than 1,000 feet.

Sec. 7. 38 MRSA §480-X is enacted to read:

§480-X. Alterations of freshwater wetlands

An application for a permit to undertake activities altering freshwater wetlands must be processed by the department using the review process described in this section.

1. Application. This section does not apply to activities otherwise qualifying for reduced review procedures, such as permits by rule or general permits; activities exempt from review under another section of this article; or activities involving protected natural resources other than freshwater wetlands, such as great ponds, coastal wetlands and rivers, streams or brooks.

2. Three-tiered review process; tiers defined. Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4.

B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5.

C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5.

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of

review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

The standards of section 480-D do not apply to projects that qualify for Tier 1 or Tier 2 review, except that water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 or Tier 2 review and that satisfy the permitting requirements set forth in subsection 3, 6 or 7, as applicable, are presumed not to have significant environmental impact.

3. General requirements. A person undertaking an activity for which a permit is processed pursuant to this section must satisfy the requirements of this subsection.

A. An applicant for Tier 1 or Tier 2 review must meet the following requirements.

(1) Alteration of freshwater wetland areas on the property must be avoided to the extent feasible considering cost, existing technology and logistics based on the overall purpose of the project.

(2) The area of the freshwater wetland to be altered must be limited to the minimum amount necessary to complete the project.

(3) Erosion control measures must be used to prevent sedimentation of protected natural resources. A 25-foot buffer strip must be maintained between the activity and any river, stream or brook.

(4) The activity must comply with applicable water quality standards pursuant to section 480-D, subsection 5.

B. An applicant for Tier 1, Tier 2 or Tier 3 review for projects that would alter wetland hydrology and could also alter stream flows or other adjacent surface waters, must comply with the water quality classification standards contained in section 465.

4. Projects not eligible for Tier 1 or Tier 2 review. The following activities are not eligible for Tier 1 or Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present:

A. Activities located within 250 feet of:

- (1) A coastal wetland; or
- (2) The normal high-water line, and within the same watershed, of any lake or pond classified as GPA under section 465-A;

B. Activities occurring in freshwater wetlands, other than artificial ponds or impoundments, containing under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water;

C. Activities occurring in freshwater wetlands that are inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information;

D. Activities occurring in freshwater wetlands containing significant wildlife habitat that has been mapped, identified or defined, as required pursuant to section 480-B, subsection 10, at the time of the filing by the applicant;

E. Activities occurring in peatlands dominated by shrubs, sedges and sphagnum moss, except that applications proposing work in previously mined peatlands may be considered by the department for Tier 1 or Tier 2 review, as applicable; or

F. Activities occurring within 25 feet of a river, stream or brook.

The department shall inform the applicant in writing within the review period specified in subsection 6 or 7 if the proposed project does not qualify for Tier 1 or Tier 2 review processing and shall explain permitting options if the applicant wishes to pursue the project. The department is responsible for providing information necessary to establish whether the types of wetlands described in paragraphs D and E will be affected by the proposed activity. Unless the applicant knowingly or willfully provided incomplete or false information to the department, if the department does not notify the applicant that the proposed project does not qualify for Tier 1 or Tier 2 review, the project is deemed to be qualified for Tier 1 or Tier 2 review, as applicable.

5. Additional projects not eligible for Tier 2 review. An activity in freshwater wetlands containing a natural community that is imperiled (S1) or critically imperiled (S2), as defined by the Natural Areas Program pursuant to Title 5, section 13076 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

6. Application process for Tier 1 review activities. Applications for Tier 1 review are governed by this subsection.

A. The application must be sent by certified mail or hand-delivered to the department. The application must include:

- (1) The application fee;
- (2) The project location on a United States Geological Survey map;
- (3) A description of the project, including a drawing showing the area of freshwater wetland to be filled or otherwise altered and areas of any marsh or open water within the freshwater wetland; and

(4) A signed statement averring that all of the requirements of subsection 3 will be met, that the activity will not occur in a wetland area described in subsection 4 and that a copy of the application has been submitted by the applicant for public display to the municipal office of the municipality in which the project will be located.

B. Work may not occur until 30 days after the department receives a complete application, unless written approval is issued sooner by the department. The department shall notify the applicant in writing no later than 30 days after the department receives a complete application if the applicable requirements of this section have not been met. If the department has not notified the applicant within the 30-day review period, a permit is deemed to be granted.

C. Fees for Tier 1 review may not exceed the following:

- (1) For projects up to 5,000 square feet, \$35;
- (2) For projects from 5,000 square feet up to 10,000 square feet, \$75; and
- (3) For projects from 10,000 square feet up to 15,000 square feet, \$150.

7. Application process for Tier 2 review. Applications for Tier 2 review are governed by this subsection.

A. An application form must be submitted, with the application fee, to the department and include the following information:

- (1) Documentation that public notice has been provided of the proposed project in accordance with department rules;

(2) A United States Geological Survey map showing the project location;

(3) Written certification by a knowledgeable professional experienced in wetland science that the project will not alter, or cause to be altered, a wetland described in subsection 4 or 5;

(4) A top view drawing of the entire project, including existing and proposed fill, excavation, roads and structures; cross-sectional drawings of any fill or excavated areas; delineation of the wetland boundaries and calculated area of freshwater wetlands affected; description of existing vegetation on the project site; identification of any surface water bodies within 100 feet of the proposed alteration; and a drawing of the 25-foot buffer strip between the project and any river, stream or brook;

(5) A soil erosion and sedimentation control plan;

(6) For work in previously mined peatlands, information on the past mining activity, including the approximate dates of the mining activity, the area and depth to which peat has been excavated from the site, any restoration work on the site and the current condition of the site;

(7) A statement describing why the project can not be located completely in upland areas and any alternatives that exist for the project that would either avoid or minimize the amount of proposed freshwater wetland alteration; and

(8) A plan for compensating for lost functions and values of the freshwater wetland when required by, and in accordance with, rules adopted by the department.

B. Work may not occur until 60 days after the department has received a complete application for processing, unless written approval is issued sooner by the department. The department shall notify the applicant in writing within 60 days of the department's receipt of a complete application whether the applicable requirements of this section have been met. If the department has not notified the applicant within the 60-day review period, a permit is deemed to be granted.

C. Fees for Tier 2 review must be set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws.

8. Application process for Tier 3 review.

Applications for Tier 3 review are governed by this subsection.

A. An application form must be submitted to the department that contains all the information required for Tier 2 review, in addition to any information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department.

B. Written approval from the department is required before work may begin.

C. Fees for Tier 3 review are set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws.

Sec. 8. 38 MRSA §490-D, sub-§5-A, as enacted by PL 1995, c. 287, §11, is amended to read:

5-A. Protected natural resources. A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond, ~~freshwater wetland~~ or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and having the characteristics listed in paragraph B. Any excavation activities conducted within 100 feet of a protected natural resource ~~requires~~ a must comply with the applicable permit requirement under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, stream, brook ~~or Class I or Class II wetland, as defined in 06-096-CMR 310.~~ coastal wetland, significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peatlands dominated by shrubs, sedges and sphagnum moss.

~~C. A natural buffer strip at least 25 feet wide must be maintained between the working edge of the excavation and a Class III wetland, as defined in 06-096 CMR 310.~~

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal high water mark of a great pond, river, stream, brook or upland edge of a wetland.

Sec. 9. Allocation. The following funds are allocated from the Maine Environmental Protection Fund to carry out the purposes of this Act.

	1995-96	1996-97
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Environmental Protection Fund		
All Other	\$13,037	\$17,383
Allocates funds to cover the increased costs of administering changes in the wetlands permitting process.		

Sec. 10. Evaluation period. From the effective date of this Act to October 1, 1997, the Department of Environmental Protection shall monitor the effectiveness of the regulatory program established in the Maine Revised Statutes, Title 38, section 480-X. The department shall provide an interim report by February 1, 1997 and a final report by January 1, 1998 to the joint standing committee of the Legislature having jurisdiction over natural resource matters. The reports must include information on the number of applications submitted for review, the average amount of time required to process each application, the amount and type of freshwater wetlands altered, the extent of compliance with permit standards and an assessment of the overall effectiveness of the program in terms of increased efficiency, equivalent or enhanced protection of freshwater wetlands, increased cost-effectiveness and opportunity for public involvement in the regulatory process, as well as whether the program is simpler and more easily understood than wetlands regulation was before the program was put in place. The reports must include recommendations on any changes needed to the program, including any resource needs or new application review periods based on this information.

In addition, the Department of Environmental Protection, in conjunction with the State Planning

Office, shall coordinate with the United States Army Corps of Engineers and state and federal resource agencies, including the United States Fish and Wildlife Service, to develop procedures and schedules that will expedite Tier 3 review to the extent practicable and to develop a streamlined cranberry cultivation general permit. A report of the department's coordination efforts must be submitted to the Legislature with the evaluation reports.

By January 1, 1996, the Department of Environmental Protection shall supply to the joint standing committee of the Legislature having jurisdiction over natural resource matters copies of all rules adopted or proposed to be adopted pursuant to this Act, including all rules concerning mitigation.

By February 1, 1996, the Department of Environmental Protection shall provide to the joint standing committee of the Legislature having jurisdiction over natural resource matters a report that discusses the effects the tier thresholds established under the Maine Revised Statutes, Title 38, section 480-X on the structure of any programmatic general permit issued by the United States Army Corps of Engineers and whether greater streamlining of the permitting process could be obtained through changes in the tier thresholds. The report must also include a thorough critique of this entire Act, including identification of any provisions that need further clarification or otherwise require amendment in order to achieve a fully streamlined process. The report must include draft legislation to achieve any recommended changes.

Sec. 11. Committee authorized to report out legislation. The joint standing committee of the Legislature having jurisdiction over natural resource matters may report out legislation concerning wetlands regulation to the Second Regular Session of the 117th Legislature or the First Regular Session of the 118th Legislature.

Sec. 12. Application. This Act:

1. Does not apply to an activity that occurred prior to the effective date of this Act and for which a permit was required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A prior to the effective date of this Act;
2. Does not apply to an activity for which a permit was not required under the Maine Revised States, Title 38, chapter 3, subchapter I, article 5-A prior to the effective date of this Act, but is required under this Act if the activity began prior to the effective date of this Act; and
3. With the exception of those sections of this Act that amend the Maine Revised Statutes, Title 38, section 480-Q, subsection 6 and enact Title 38, section

480-Q, subsection 17, does not apply to an activity performed or caused to be performed on or after the effective date of this Act if the person performing the activity, or causing the activity to be performed, was in possession of applicable federal, state or local licenses prior to the effective date of this Act.

See title page for effective date.

CHAPTER 461

H.P. 1095 - L.D. 1539

An Act to Permit a One-time Transfer of Retained Funds for Community Corrections Programs

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the counties have not been fully reimbursed for the costs of care of state prisoners in county jails; and

Whereas, without full reimbursement, the counties are burdened by the continuing costs of jail operations incurred by housing state prisoners; and

Whereas, a one-time proportionate transfer of retained funds for community corrections programs to offset some of these county jail costs would greatly aid certain counties; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 34-A MRSA §1210, sub-§4, as amended by PL 1989, c. 127, §1, is further amended to read:

4. Verification of commitment; actual days served. As a condition of reimbursement, the department shall require the county to submit appropriate documentation verifying the court commitment and the actual number of days served for each prisoner for which reimbursement is requested. Documentation ~~shall~~ must include, but is not ~~be~~ limited to:

A. An invoice provided by the Department of Corrections, completed by the county, listing all

prisoners for which reimbursement is requested for the quarter;

B. One copy of the actual Court Judgment and Commitment Order, including class of crime, for each prisoner listed in the invoice submitted;

C. One copy of each Release Date Computation Sheet showing the actual number of days served by each prisoner included in the invoice submitted; and

D. By February 1st of each calendar year, ~~the county shall provide,~~ in a format provided by the ~~Department of Corrections~~ department, a copy of actual expenditures for the support of prisoners for the previous calendar year. The Department of Audit shall establish, in consultation with the counties and the ~~Department of Corrections~~ department, a uniform system of accounting for the support of prisoners for the counties pursuant to its authority in Title 5, section 243 and consistent with the requirements of this section. No county may be reimbursed after July 1, 1987, until it has implemented the uniform accounting system for the expenditure for support of prisoners.

In any fiscal year in which the actual amount appropriated for reimbursement to counties is less than the reimbursable costs the department projects, the department, notwithstanding the other provisions of this subsection, may reimburse counties prior to receiving the documentation required quarterly under this subsection.

Sec. 2. 34-A MRSA §1210, sub-§6-A, as amended by PL 1993, c. 517, §1, is further amended to read:

6-A. Funds to be used for community corrections programs. Thirty percent of all funds claimed by each county for reimbursement under this section must be retained by the department until the county demonstrates that the retained funds will be used for community corrections programs, as described in subsection 1, paragraph B, that are developed as part of a comprehensive local plan approved by the commissioner. One half of the retained funds must be retained until the county demonstrates that the funds will be used for adult programs, and 1/2 of the retained funds must be retained until the county demonstrates that the funds will be used for juvenile programs. All funds retained by the department under this subsection not released by the end of the year may not lapse, but must be carried forward into subsequent years, with each county's funds carried over for that county. A county may shift funds from the funds retained and available for adult programs pursuant to this subsection to juvenile diversion programs. All funds not committed by any county after 3 years from the date the county's