LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH 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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ber of drinks for a fixed price, except at private functions not open to the public;

(4) Encourage or permit, on the licensed premises, any game or contest ~~which~~ that involves drinking or the awarding of drinks as prizes; or

(5) Any other practice the specific purpose of which is to encourage customers of the licensee to drink to excess; and

Sec. 3. 28-A MRSA §1051, sub-§3, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

3. Liquor not to be consumed elsewhere. Except as provided in paragraphs A and B, no licensee for the sale of liquor to be consumed on the premises where sold may personally or by ~~his~~ an agent or employee, sell, give, furnish or deliver any liquor to be consumed elsewhere than upon the licensed premises. The service and consumption of liquor must be limited to areas that are clearly defined and approved in the application process by the bureau as appropriate for the consumption of liquor. Outside areas must be controlled by barriers and by signs prohibiting consumption beyond the barriers.

A. Subject to law and the rules of the ~~commission~~ bureau, hotel licensees may sell liquor in the original packages or by the drink to bona fide registered room guests. Any sale to a guest may be delivered to the guest's room only by a hotel employee.

B. A licensee may serve liquor at locations other than the licensed premises under the off-premise catering license issued under section 1052.

Sec. 4. 28-A MRSA §1652, sub-§2-B is enacted to read:

2-B. Failure to make payments. If a winery or brewery that has not filed an excise tax surety bond fails to make tax payments as required by this section, the bureau may immediately take back its license issued pursuant to section 1355, having the effect of voiding the license.

Sec. 5. 28-A MRSA §2077-A, as amended by PL 1993, c. 60, §3, is repealed.

Sec. 6. 28-A MRSA §2077-B is enacted to read:

§2077-B. Interstate shipping of liquor prohibited

1. Prohibition. A person may not sell, furnish, deliver or purchase liquor from an out-of-state company by mail order.

2. Penalty. A person who violates this section is subject to penalties listed in section 2075, subsection 4.

See title page for effective date.

CHAPTER 502

H.P. 1126 - L.D. 1582

An Act to Clarify and Amend the Storm Water Management Laws, the Erosion and Sedimentation Control Laws, and the Site Location of Development Laws

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

Sec. 1. 38 MRSA §420-C, first ¶, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by Pt. C, §2, is amended to read:

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.

Sec. 2. 38 MRSA §420-D, sub-§§2 and 5, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by Pt. C, §2, are amended to read:

2. Review. If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 30 calendar days. If structural means are used to meet those standards, the department shall review the application within 60 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit

requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this substitution take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: ~~article 5-A, protection of natural resources;~~ article 6, site location of development, unless the project requires review solely as a development that generates 100 or more passenger car equivalents at peak hour; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; and sections 631 to 636, permits for hydropower projects. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

Sec. 3. 38 MRSA §420-D, sub-§10, ¶¶A and B, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by Pt. C, §2, are amended to read:

A. When a permit is required because of the size of the proposed impervious area, the following fees apply.

(1) If structural means of ~~erosion~~ storm water control are used, the fee is $500 for from 20,000 square feet up to one acre of impervious area, plus $250 for each additional whole acre of impervious area.

(2) If solely vegetative means of ~~erosion~~ storm water control are used, the fee is $250 for from 20,000 square feet up to one acre of impervious area, plus $125 for each additional whole acre of impervious area.

B. When a permit is required because of the size of the proposed disturbed area, the following fees apply.

(1) If structural means of ~~erosion~~ storm water control are used, the fee is $500 for 5 acres, plus $250 for each additional whole acre of ~~impervious~~ disturbed area.

(2) If solely vegetative means of ~~erosion~~ storm water control are used, the fee is $250 for 5 acres, plus ~~$250~~ $125 for each additional whole acre of ~~impervious~~ disturbed area.

Sec. 4. 38 MRSA §420-D, sub-§11 is enacted to read:

11. Compensation fee. The department may establish a nonpoint source reduction program to allow an applicant to pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any

remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than $10,000 per pound of available phosphorus, except that the commissioner may set a rate up to $20,000 per pound for a project located in the direct watershed of a severely blooming lake.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through payment of a compensation fee as provided by rules adopted pursuant to this subsection.

Sec. 5. 38 MRSA §482, sub-§2, as amended by PL 1995, c. 700, §3 and c. 704, Pt. A, §3 and affected by Pt. C, §2, is repealed and the following enacted in its place:

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

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

B. Is a metallic mineral mining or advanced exploration activity as defined in this section;

C. Is a structure as defined in this section;

D. Is a subdivision as defined in this section;

E. Generates 100 or more passenger car equivalents at peak hour; or

F. Is an oil terminal facility as defined in this section.

Sec. 6. 38 MRSA §482, sub-§3-D is enacted to read:

3-D. Oil terminal facility. "Oil terminal facility" means a facility and related appurtenances located in, on, over or under the surface of any land or water that is used or capable of being used to transfer, process, refine or store oil as defined in section 542, subsection 6. "Oil terminal facility" does not include:

A. A facility used or capable of being used to store less than 1,500 barrels or 63,000 gallons of oil;

B. A facility not engaged in the transfer of oil to or from the waters of the State; or

C. A facility consisting only of a vessel or vessels as defined in section 542, subsection 11.

Sec. 7. 38 MRSA §484, sub-§2, ¶B, as enacted by PL 1995, c. 704, Pt. A, §9 and affected by Pt. C, §2, is amended to read:

B. Notwithstanding any other provision of this article, the review of any proposed development that requires approval under this article solely because it is a development that generates 100 or more passenger car equivalents at peak hour is limited only to issues relevant to the traffic movement standard in this section. The additional provisions in this paragraph apply only to section 485-A permits for a proposed development that generates 100 to 200 passenger car equivalents at peak hour and is subject to the limited scope of review provided in this subsection.

If an application is subject to review by the department, the department, together with the Department of Transportation and the appropriate representative of the municipality or municipalities where the project is located, shall discuss with the applicant the scope of impact evaluation required for the proposed development and the type of proceedings warranted. The applicant shall provide notice to abutting municipalities. The Department of Transportation shall make the final determination on the appropriate scope of evaluation and information required. If the Department of Transportation determines as a result of these communications that the applicant has

demonstrated that the proposed development satisfies ~~minimum performance~~ standards adopted for developments that generate 100 to 200 passenger car equivalents at peak hour and the Department of Transportation determines that there are no other significant traffic-related issues presented, the department may issue a permit to the applicant without further proceedings.

Sec. 8. 38 MRSA §484, sub-§4-A, as enacted by PL 1995, c. 704, Pt. A, §11 and affected by Pt. C, §2, is amended to read:

4-A. Storm water management and erosion and sedimentation control. The proposed development, other than a metallic mineral or advanced exploration activity, meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. ~~For purposes of review of metallic mineral mining or advanced exploration, these standards apply in all areas of the State. If a permit is issued pursuant to this article, a permit is not required pursuant to section 420-D.~~ A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7. If exempt ~~from~~ under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality ~~rules~~ standards adopted pursuant to section 420-D.

Sec. 9. 38 MRSA §488, sub-§9, as enacted by PL 1993, c. 383, §26 and affected by §42, is amended to read:

9. Development within unorganized areas. A development located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other than a metallic mineral mining or advanced exploration activity or an oil terminal facility, is exempt from the requirements of this article. For developments within the commission's jurisdiction, the Director of the Maine Land Use Regulation Commission may request and obtain technical assistance and recommendations from the department. The commissioner shall respond to the requests in a timely manner. The recommendations of the department must be considered by the Maine Land Use Regulation Commission in acting upon a development application.

Sec. 10. 38 MRSA §488, sub-§11, as amended by PL 1995, c. 659, §2 and c. 700, §8, is repealed and the following enacted in its place:

11. Farm and fire ponds. A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for mining or advanced exploration activity or excavation for borrow, clay, topsoil or silt.

Sec. 11. 38 MRSA §488, sub-§16, as repealed and replaced by PL 1995, c. 625, Pt. A, §53 and repealed by c. 700, §9, is repealed.

Sec. 12. PL 1995, c. 704, Pt. A, §23, sub-§3 is amended to read:

3. A municipality with delegated authority pursuant to the Maine Revised Statutes, Title 38, section 489-A prior to the effective date of this Act continues to have delegated authority following the effective date of this Act and is presumed to have capacity pursuant to Title 38, section ~~489-D~~ 488, subsection 19 as of the effective date of this Act.

Sec. 13. PL 1995, c. 704, Pt. C, §1 is amended to read:

Sec. C-1. Rule-making authority. The Department of Environmental Protection has authority to adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 to implement Title 38, section 420-D; section 484, subsection 2, paragraph B; and section 485-A, subsection 1-C, as enacted by this Act and in accordance with the terms of those sections. Such rules, except those adopted pursuant to Title 38, section 420-D, subsection 11, must be provisionally adopted and submitted to the Legislature for review as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A no later than ~~January 1~~ February 28, 1997. Rulemaking to update the first comprehensive lists of "watersheds of bodies of water most at risk from new development" and "sensitive or threatened regions of watersheds" is not considered major substantive rulemaking pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 14. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Land and Water Quality		
All Other	$50,000	$50,000
Provides an allocation for the storm water compensation fund.		

Sec. 15. Applicability of Site Law to existing oil terminal facilities. An oil terminal facility that is in existence on June 30, 1997 does not require review under the site location of development laws on or after that date unless it is or becomes a structure as defined in the Maine Revised Statutes, Title 38, section 482, subsection 6.

Sec. 16. Report concerning reducing nonpoint source pollution from developed areas in the shoreland zone, and addressing equity concerns relating to expansions. By January 1, 1998, the Department of Environmental Protection shall prepare and submit a report to the Joint Standing Committee on Natural Resources on the following issues:

1. Whether approval of an expansion of a nonconforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot, including necessary installation and maintenance of best management practices; and

2. Whether the 30% expansion rule set out in the Maine Revised Statutes, Title 38, section 439-A, subsection 4 and department rules adopted pursuant to that subsection should be amended to improve the equity of its application, considering factors such as existing building size, building setback, lot area, lot frontage, degree of expansion allowed, water quality impacts and aesthetic impacts.

The report must include any draft legislation necessary to achieve any recommended changes and must briefly describe any necessary regulatory changes. In preparing the report, the department shall convene and consult with a work group that includes representatives of groups, including, but not limited to, municipalities, shorefront property owners, water utilities and environmental organizations.

Sec. 17. Use of compensation fees. Rules adopted by the Department of Environmental Protection pursuant to section 4 of this Act must provide guidance on the use of compensation fees to organizations authorized by the department to receive those fees. In developing the rules, the department shall consider appropriate percentages that should be allocated to project implementation, education, technical assistance and other project components.

Sec. 18. Retroactivity. That section of this Act that repeals and replaces the Maine Revised Statutes, Title 38, section 488, subsection 11 applies retroactively to April 10, 1996, and that section of this Act that repeals Title 38, section 488, subsection 16 applies retroactively to July 4, 1996.

See title page for effective date.

CHAPTER 503

S.P. 47 - L.D. 157

An Act to Impose a Surcharge on Documents Recorded in a Registry of Deeds to Fund Preservation of Registry Documents

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

Sec. 1. 33 MRSA §752 is enacted to read:

§752. Records preservation surcharge

1. Surcharge. In addition to any other fees required by law, a register of deeds may collect a surcharge of $3 per document for all records that are recorded in the registry of deeds, except those recorded by agencies of State Government and municipalities.

2. Account. The surcharge imposed in subsection 1 must be transferred to the county treasurer who shall deposit it in a separate nonlapsing account within 30 days of receipt. Money in the account is not available for use as a general revenue of the county. Interest earned on the account must be credited to the account.

3. Expenditures from account. The money in the account established in subsection 2 must be used for the restoration, re-creation and preservation of the records recorded in the office of the register of deeds.

4. Repeal. This section is repealed January 1, 2002.

See title page for effective date.

CHAPTER 504

H.P. 601 - L.D. 792

An Act Concerning Technical Changes to the Tax Laws

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

Whereas, delay in making technical changes to the tax laws would interfere with administration of those laws; and

Whereas, legislative action is immediately necessary in order to ensure continued and efficient administration of the tax laws; and