

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

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NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

statement or other document required of a partnership must be signed by one or more partners. The appropriate return must be filed on or before the 15th day of the 4th month for partnerships or the 15th day of the 3rd month for S corporations following the close of each taxable year. For purposes of this section, "taxable year" means a year or period that would be a taxable year of the partnership or S corporation if it were subject to the tax under this Part. The assessor may elect to waive the requirement to file a Maine return as established in this section for a tax year and in its place require the partnership or S corporation to file a copy of its federal partnership or S corporation return. The requirement to file a return as established in this section does not apply to any partnership or S corporation that is subject to tax under chapter 819.

Sec. 24. Retroactive application. This Act applies to tax years beginning on or after January 1, 1997.

See title page for effective date.

CHAPTER 747

H.P. 1597 - L.D. 2226

An Act to Limit New Lobster and Crab Fishing Licenses

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

Sec. 1. 12 MRSA §6421-A is enacted to read:

§6421-A. Moratorium on new licenses

1. Moratorium. Notwithstanding section 6421, subsection 5, the commissioner may not issue a Class I, Class II or Class III lobster and crab fishing license to a person between the effective date of this section and December 31, 1999 unless that person:

A. Possessed a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year;

B. Possessed an apprentice lobster and crab fishing license issued prior to February 13, 1998 and meets the requirements of the apprentice program under section 6422; or

C. Did not possess a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included that previous calendar year.

2. Repeal. This section is repealed January 1, 2000.

Sec. 2. Report. The Lobster Advisory Council shall by January 1, 1999 submit to the joint standing committee of the Legislature having jurisdiction over marine resources matters a report, including recommended legislation, regarding limited entry into lobster management zones created under the Maine Revised Statutes, Title 12, section 6446. The council must examine methods to limit entry in individual lobster management zones for the purpose of conserving the lobster resource; assess the potential impact of those methods; and explore limitations on the use of lobster trap tags as a method to reduce fishing effort in the lobster fishery. In the course of its study, the council must, to the extent accurate information is available, compare the number of lobster licenses sold to the number of lobster license holders who harvest lobsters. Any recommendation for a system of limited entry must include a process under which a resident denied entry into the lobster fishery may appeal that denial to the Commissioner of Marine Resources. The council may also study any aspect of limited entry into the lobster fishery that is of interest to the council and the report may include recommended legislation. The joint standing committee of the Legislature having jurisdiction over marine resources matters may report out legislation during the First Regular Session of the 119th Legislature regarding limited entry into the lobster fishery.

See title page for effective date.

CHAPTER 748

H.P. 1635 - L.D. 2265

An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend the Shoreland Zoning Laws and Amend 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, as amended by PL 1997, c. 502, §1, is further amended by inserting after the first paragraph a new paragraph to read:

A person who owns property that is subject to erosion because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials shall take measures in accordance with the dates established under this paragraph to prevent unreasonable erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. Adequate and timely

temporary and permanent stabilization measures must be taken and maintained on that site to prevent unreasonable erosion and sedimentation. This paragraph applies on and after July 1, 2005 to property that is located in the watershed of a body of water most at risk as identified in the department's storm water rules adopted pursuant to section 420-D and that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. This paragraph applies on and after July 1, 2010 to other property that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8.

Sec. 2. 38 MRSA §436-A, sub-§1-A is enacted to read:

1-A. Basement. "Basement" means any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Sec. 3. 38 MRSA §439-A, sub-§4-A is enacted to read:

4-A. Alternative expansion requirement. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that permits expansions of principal and accessory structures that do not meet the water setback requirements approved by the Board of Environmental Protection if the ordinance is no less restrictive than the requirements in this subsection.

A. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water setback requirements approved by the Board of Environmental Protection. An expansion of a legally existing nonconforming structure pursuant to this subsection may not create further nonconformity with the water setback requirement.

B. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water setback requirement.

C. Legally existing nonconforming principal and accessory structures that do not meet the water setback requirements may be expanded or altered as follows, as long as other applicable standards of land use adopted by the municipality are met

and the expansion is not prohibited by paragraph A or B.

(1) For structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland, the maximum combined total floor area for all structures is 1,000 square feet, and the maximum height of any structure is 20 feet or the height of the existing structure, whichever is greater.

(2) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total floor area for all structures is 1,500 square feet, and the maximum height of any structure is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line or upland edge of a wetland must meet the floor area and height limits in subparagraph (1).

Existing principal and accessory structures that exceed the floor area or height limits under this paragraph may not be expanded, except as provided in paragraph E.

For the purposes of this paragraph, a basement is not counted toward floor area.

D. When a basement is added to an existing structure or when a basement is constructed as part of a reconstruction or replacement structure, the structure and the basement must be placed so that the setback is met to the greatest practical extent, as determined by the municipal planning board or, if authorized by the municipal planning board, the certified code enforcement officer.

E. A municipality may permit an expansion that causes the maximum floor area limits established in paragraph C to be exceeded by not more than 500 square feet if:

(1) The principal structure is set back at least 50 feet from the normal high-water line of a water body or upland edge of a wetland;

(2) An existing well-distributed stand of trees and other vegetation, as defined in the minimum guidelines adopted by the Board of Environmental Protection, extends at least 50 feet inland from the normal high-water line or upland edge of a wetland for the entire width of the property or, if such a stand is not present, a written plan by the

property owner to reestablish a buffer of native trees, shrubs and other ground cover within 50 feet of the shoreline is approved by the municipal planning board. The plan must be implemented at the time of construction and must be designed to meet the minimum guidelines adopted by the Board of Environmental Protection as the vegetation matures. Rules adopted pursuant to this subparagraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; and

(3) The municipal planning board approves a written mitigation plan. The plan must be developed, implemented and maintained by the property owner. A mitigation plan must provide for the following mitigation measures.

(a) Unstabilized areas resulting in soil erosion must be mulched, seeded or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies and wetlands.

(b) Roofs and associated drainage systems, driveways, parking areas and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron or similar device.

The written plans required pursuant to subparagraphs 2 and 3 must be filed in the registry of deeds of the county in which the property is located.

A copy of all permits issued pursuant to this paragraph must be forwarded by the municipality to the department within 14 days of the issuance of the permit.

Sec. 4. 38 MRSA §488, sub-§15, as corrected by RR 1995, c. 2, §97, is amended to read:

15. Exemption for former military bases. Development on a military base at the time ownership of the military base is acquired by a state or local development authority is exempt from review under this article. Subsequent transfer of ownership of a former military base or any portion of a former military base by a state or local development authority to another entity does not affect the exemption granted under this subsection. Development proposed or occurring on a former military base after ownership of

the military base is acquired by a state or local development authority is subject to review under this article, except that section 482, subsection 2, paragraph E does not apply to the development to the extent that the development reuses a building and associated facilities in existence on September 29, 1995.

For purposes of this subsection, "military base" means all property under the ownership or control of a federal military authority prior to the acquisition of ownership by a state or local development authority, the ownership of which is subsequently acquired by a state or local development authority. For purposes of this subsection, "ownership" means a fee interest or leasehold interest in property.

Sec. 5. Reports; nonpoint source pollution. By January 15, 1999, the Department of Environmental Protection shall submit the following reports to the joint standing committee of the Legislature having jurisdiction over natural resources matters. In developing these reports, the department shall consult with interested persons and relevant state agencies.

1. The department shall submit a report that includes an evaluation of options and recommendations for improving the implementation and maintenance of buffer strips along water resources, including small streams, except that the report may not address buffer strips on land used for agricultural or silvicultural activities. The department shall consider both regulatory and nonregulatory approaches and shall evaluate at least the following options: changes to the mandatory shoreland zoning laws to include first order streams in the shoreland zone and changes to the natural resources protection laws to apply those laws to the cutting of vegetation adjacent to streams.

2. The department shall submit a report, in cooperation with the Department of Human Services, that includes an evaluation of options and recommendations for identifying and facilitating the upgrade or replacement of substandard subsurface disposal systems. The report must include a recommendation on whether a program for identifying and upgrading or replacing substandard subsurface disposal systems should be limited to systems located in the shoreland zone associated with great ponds or should include other shoreland areas, particularly those abutting clam flats and other shellfish harvesting areas.

3. The department shall evaluate the availability of nonphosphorous fertilizer for use on lawns and other domestic areas and recommend measures for increasing consumer use of nonphosphorous fertilizers.

The joint standing committee of the Legislature having jurisdiction over natural resources matters may

report out legislation to the First Regular Session of the 119th Legislature regarding buffer strips along water resources and substandard subsurface disposal systems.

Sec. 6. Report; erosion control. By January 15, 2004, the Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding compliance with the Maine Revised Statutes, Title 38, section 420-C. The report must evaluate past and projected compliance with the erosion control laws and may include recommendations regarding staffing requirements necessary to ensure compliance with section 420-C.

The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation to the Second Regular Session of the 121st Legislature regarding compliance with the erosion control laws.

Sec. 7. Report; shoreland zoning. By January 15, 2003, the Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding compliance with the Maine Revised Statutes, Title 38, section 439-A, subsection 4-A. The report must evaluate use of and compliance with the alternative expansion provisions of that subsection and evaluate the environmental benefit of the provisions in comparison with the measures permissible under Title 38, section 439-A, subsection 4.

See title page for effective date.

CHAPTER 749

S.P. 481 - L.D. 1483

An Act to Register Interpreters for the Deaf and Hard-of-Hearing

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

Sec. 1. 5 MRSA §48, sub-§5 is enacted to read:

5. Provide information. The Division of Deafness must provide information to the public, including state agencies and individuals who work with interpreters, regarding the registration requirements provided under Title 32, chapter 22.

Sec. 2. 10 MRSA §8001, sub-§38, as amended by PL 1997, c. 245, §19, is further amended by amending the last blocked paragraph to read:

The Office of Licensing and Registration also administers the following regulatory functions: licensure of athletic trainers; registration of massage therapists; registration of interpreters for the deaf and hard-of-hearing; registration of persons pursuant to the Charitable Solicitations Act; and registration of transient sellers, including door-to-door home repair transient sellers.

Sec. 3. 32 MRSA c. 22 is enacted to read:

CHAPTER 22

AMERICAN SIGN LANGUAGE, ENGLISH INTERPRETERS AND TRANSLITERATORS

§1521. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

2. Deaf person. "Deaf person" means a person whose sense of hearing is nonfunctional for the purpose of communication and whose primary means of communication is visual.

3. Department. "Department" means the Department of Professional and Financial Regulation.

4. Hard-of-hearing person. "Hard-of-hearing person" means a person who has a functional hearing deficit, who may or may not primarily use visual communication and who may or may not use assistive devices.

5. Interpreting. "Interpreting" means the process of providing accessible communication between and among persons who are deaf, hard-of-hearing and can hear, and who do not share a common means of communication. This process includes, without limitation, interpreting and transliterating and visual-gestural, auditory and tactile communication.

6. Interpreter or transliterator. "Interpreter or transliterator" means a person who provides any of the following services:

A. English-based transliterating, which includes but is not limited to conveying a message by visible representations of the English language such as manually coded English and oral transliteration. This process conveys information from one mode of English to another mode of English;