

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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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
1999

3. Service credit allowed. Service credit for the period of CETA employment occurring before July 1, 1979 must be granted to any person who satisfies the following conditions:

- A. The person was a CETA employee;
- B. The person within 90 days of termination of CETA employment became a non-CETA employee of the employer; and
- C. The employee contribution required by section 18308, subsection 4, paragraph D has been paid.

See title page for effective date.

CHAPTER 242

H.P. 1337 - L.D. 1920

An Act to Prevent Conflicts of Interest

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

Sec. 1. 5 MRSA §18, sub-§1, ¶E is enacted to read:

E. "Participates in the legislative process" means to provide any information concerning pending legislation to a legislative committee, subcommittee or study or working group, whether orally or in writing.

Sec. 2. 5 MRSA §18, sub-§2-A is enacted to read:

2-A. Participation in legislative process. An executive employee commits a civil violation if the employee participates in the legislative process in the employee's official capacity concerning any legislation in which any person described in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee's participation.

Sec. 3. 5 MRSA §18, sub-§8 is enacted to read:

8. Disclosure of conflict of interest. An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.

See title page for effective date.

CHAPTER 243

H.P. 837 - L.D. 1160

An Act to Amend Certain Laws Administered by the Department of Environmental Protection, Bureau of Land and Water Quality

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

Sec. 1. 38 MRSA §352, sub-§2-A, as enacted by PL 1997, c. 374, §1, is amended to read:

2-A. Fee adjustment. The commissioner may adjust the fees established in this subchapter on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics. These adjustments may be compounded and assessed at an interval greater than one year if the commissioner determines that such periodic increases lower administrative costs for the department and continue effective public service.

Sec. 2. 38 MRSA §352, sub-§3, as amended by PL 1997, c. 374, §2, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by August 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. A special fee may not exceed ~~\$40,000~~ \$75,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application. The processing fee for that application must be the actual cost to the department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit.

Sec. 3. 38 MRSA §411, first ¶, as repealed and replaced by PL 1995, c. 186, §1, is amended to read:

The commissioner may pay an amount not to exceed 80% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners. The commissioner may make payments to the Maine Municipal Bond Bank to

supply the State's share of the revolving loan fund established by Title 30-A, section 6006-A. The commissioner may pay up to 90% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners in which the construction cost of the project does not exceed \$100,000 as long as total expenditures for the small projects do not exceed \$1,000,000 in any fiscal year and not more than one grant is made to any applicant each year, except that the commissioner may pay a percentage of the cost of individual projects serving single-family dwellings, seasonal dwellings or commercial establishments according to the following schedule:

| ANNUAL INCOME | SINGLE-FAMILY DWELLING | SEASONAL DWELLING | COMMERCIAL ESTABLISHMENT |
|----------------------|------------------------|---------------------------|--------------------------|
| \$0 to \$5,000 | 100% | 25% <u>50%</u> | 50% |
| \$5,001 to \$20,000 | 90% | 25% <u>50%</u> | 50% |
| \$20,001 to \$30,000 | 50% | 25% | 50% |
| \$30,001 to \$40,000 | 25% | 25% | 25% |
| \$40,001 or more | 0% | 0% | 0% |

Sec. 4. 38 MRSA §411-A, sub-§2, ¶C, as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §25, is further amended to read:

C. The commissioner shall pay 25% of the costs of a project that results in the removal of a seasonal residential overboard discharge, except that the commissioner shall pay 50% of the costs of that project if the Commissioner of Marine Resources certifies that the project is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

Sec. 5. 38 MRSA §439-A, sub-§2, as amended by PL 1993, c. 383, §1 and affected by §42, is further 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 or located below the normal high-water line ~~of a water body~~ or within a wetland. Accordingly, municipalities may

enact ordinances affecting structures that extend or are located over the water or are placed on lands lying between high and low waterlines or within wetlands.

Sec. 6. 38 MRSA §439-A, sub-§4-A, ¶¶B and C, as enacted by PL 1997, c. 748, §3, are amended to read:

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.

Sec. 7. 38 MRSA §439-A, sub-§4-A, ¶E, as enacted by PL 1997, c. 748, §3, is amended by amending subparagraphs (1) and (2) to read:

(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~~ normal high-water line or upland edge of a wetland 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

Sec. 8. 38 MRSA §465, sub-§1, ¶C, as enacted by PL 1985, c. 698, §15, is amended to read:

C. There ~~shall~~ may be no direct discharge of pollutants to Class AA waters, except storm water discharges that are in compliance with state and local requirements.

Sec. 9. 38 MRSA §465-A, sub-§1, ¶C, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §65, is further amended to read:

C. There may be no new direct discharge of pollutants into Class GPA waters. Aquatic pesticide treatments or chemical treatments for the purpose of restoring water quality approved by the department and storm water discharges that are in compliance with state and local requirements are exempt from the no discharge provision. Discharges into these waters licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as permitted pursuant to section 480-C. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with

other activities, cause water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

Sec. 10. 38 MRSA §465-B, sub-§1, ¶C, as enacted by PL 1985, c. 698, §15, is amended to read:

C. There ~~shall~~ may be no direct discharge of pollutants to Class SA waters, except storm water discharges that are in compliance with state and local requirements.

Sec. 11. 38 MRSA §480-B, sub-§7, as enacted by PL 1987, c. 809, §2, is amended to read:

7. Permanent structure. "Permanent structure" means any structure constructed or erected with a fixed location, or attached to a structure with a fixed location, ~~on or in the ground within a fragile mountain area, or having a fixed location in, on or over the water~~ for a period exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

Sec. 12. 38 MRSA §480-U, sub-§4, as enacted by PL 1991, c. 214, §2, is amended to read:

4. Review period. Work may not occur until 45 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

Sec. 13. 38 MRSA §480-X, sub-§6, ¶B, as enacted by PL 1995, c. 460, §7 and affected by §12, is amended to read:

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 or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 30-day review period, a permit is deemed to be granted.

Sec. 14. 38 MRSA §480-X, sub-§7, ¶B, as enacted by PL 1995, c. 460, §7 and affected by §12, is amended to read:

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 or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 60-day review period, a permit is deemed to be granted.

Sec. 15. 38 MRSA §480-Y, sub-§2, ¶E is enacted to read:

E. The pond may not be located in a river, stream or brook if the department determines at the site assessment that there is a practicable alternative water supply that would be less damaging to the environment. For purposes of this paragraph, the term "practicable" means feasible considering cost, existing technology and logistics based on the overall purpose of the project.

Sec. 16. 38 MRSA §480-Y, sub-§5, as enacted by PL 1995, c. 659, §1, is amended to read:

5. Review period. Work may not commence until 30 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

Sec. 17. 38 MRSA §489-A, sub-§1, as amended by PL 1997, c. 393, Pt. A, §46, is further amended to read:

1. Kinds of projects. The following kinds of projects may be reviewed by registered municipalities pursuant to this section:

A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres; ~~or~~

G. A project generating 100 to 200 passenger car equivalents at peak hour; ~~or~~

H. Structures as described in section 482, subsection 6 in excess of 3 acres but less than 7 acres.

Sec. 18. 38 MRSA §489-A, sub-§1-A, as enacted by PL 1993, c. 383, §27 and affected by §42, is amended to read:

1-A. Modification. An application for a modification to a development reviewed by a municipality pursuant to subsection 1 may be reviewed by the municipality as long as:

A. The modification will not cause the total area of the development to exceed an upper area threshold specified in subsection 1; or

B. Based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality.

In addition, a municipality may modify a permit for a subdivision or structure issued by the department prior to registration of the municipality pursuant to ~~section 489-A this section~~ if the total area of the upper area modification and any prior modifications reviewed pursuant to this section does not exceed the upper area threshold provided in subsection 1 except as allowed in paragraph B.

Sec. 19. 38 MRSA §489-A, sub-§2, as amended by PL 1993, c. 383, §27 and affected by §42, is further amended to read:

2. Registration. The commissioner shall register municipalities to grant permits for projects under subsection ~~1~~ 1-B if the commissioner finds that the municipality meets all of the following criteria:

A. A municipal planning board or reviewing authority is established;

B. A comprehensive plan consistent with Title 30-A, chapter 187 has been adopted with standards and objectives determined by the department to be at least as stringent as this article;

C. Subdivision regulations have been adopted that are consistent with Title 30-A, chapter 187, and determined by the commissioner to be at least as stringent as criteria set forth in section 484;

D. Site plan review regulations have been adopted with criteria determined by the commissioner to be at least as stringent as section 484;

~~D-1. Land use regulations have been adopted that regulate all excavation operations for borrow, topsoil, clay or silt, alone or in combination, as described in section 482, subsection 2-B. The regulations must be determined by the commissioner to be at least as stringent as the criteria set forth in section 484. An excavation of 5 or fewer acres of land for topsoil, clay or silt must be conducted and reclaimed in accordance with the erosion and sedimentation control standards contained in board rules;~~

E. The municipality has adequate resources to administer and enforce the provisions of its ordinances;

F. Procedures for public hearing and notification have been established including:

(1) Notice to the commissioner upon receipt of an application, including a description of the project;

(2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;

(3) Public notification of the application and any hearings; and

(4) Satisfactory hearing procedures;

G. Procedures for appeal by aggrieved parties of local decisions are defined; and

H. A registration form, provided by the commissioner, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection.

Sec. 20. 38 MRSA §840, sub-§1, as amended by PL 1995, c. 630, §2, is further amended to read:

1. Power. The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission;

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams;

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI; or

F. Regulated by the International Joint Commission.

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

Sec. 21. PL 1997, c. 748, §5, last ¶ is amended to read:

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.

See title page for effective date.

CHAPTER 244

H.P. 1275 - L.D. 1836

An Act Concerning the Sea Urchin Fishery

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

Sec. 1. 12 MRSA §§6404-B and 6404-C are enacted to read:

§6404-B. Suspension based on conviction of fishing on closed days for sea urchin fishing

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of violating section 6749-W. The suspension must be for one year from the date of conviction.

§6404-C. Suspension based on conviction of sea urchin fishing in zone for which person is not licensed

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of violating section 6749-P. The suspension must be for one year from the date of conviction.

Sec. 2. 12 MRSA §6749-R, sub-§1, as amended by PL 1997, c. 685, §6, is further amended to read: