

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

**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**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 18, 1999**

**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**

telephone or cable line may not be left on the ground but must be hauled away, burned or chipped. Slash may not be left or placed within the right-of-way or within 25 feet of the nearer side of the right-of-way. If a burning permit is denied or revoked under this chapter, the director may allow logs that are too large to be chipped to remain in the right-of-way until the director determines that their removal is economically feasible.

**3. Utility line maintenance.** Slash accumulated by the periodic maintenance of a pipeline or an electric power, telegraph, telephone or cable line may be disposed of in the following manner.

A. Slash with a diameter of 3 inches or less may be left in piles on the ground within the maintained portion of the right-of-way. A pile may not be higher than 18 inches from the ground or longer than 50 feet and must be separated from other piles by a minimum of 25 feet in every direction. A buffer strip with a minimum width of 10% of the total width of the maintained right-of-way must be kept totally free of slash with a diameter of 3 inches or less.

B. Slash with a diameter of more than 3 inches must be removed, chipped or limbed and placed on the ground surface. The pieces must be separated and may not be piled one piece over another. Slash of this size may be left within the maintained buffer strips.

C. If a utility line right-of-way is adjacent to a road, slash that is 3 inches or less in diameter must be removed, burned or chipped. Slash with a diameter of more than 3 inches may be left on the ground within the right-of-way and must be limbed and separated and may not be piled one piece over another. Usable timber products generated from the maintenance of a utility right-of-way may be piled within the right-of-way but must be removed within 30 days.

See title page for effective date.

---



---

## CHAPTER 333

S.P. 574 - L.D. 1654

### An Act to Improve the Efficiency of Environmental Regulation in the Unorganized and Deorganized Areas of the State

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

**Sec. 1. 12 MRSA §682, sub-§1**, as amended by PL 1973, c. 569, §2, is further amended to read:

**1. Unorganized and deorganized areas.** "Unorganized and deorganized areas" shall include includes all areas located within the jurisdiction of the State of Maine, except areas located within organized cities and towns, and Indian reservations unorganized and deorganized townships, plantations that have not received commission approval under section 685-A, subsection 4 to implement their own land use controls, municipalities that have organized since 1971 but have not received commission approval under section 685-A, subsection 4 to implement their own land use controls and all other areas of the State that are not part of an organized municipality except Indian reservations.

**Sec. 2. 12 MRSA §682, sub-§4**, as amended by PL 1979, c. 631, §1, is further amended to read:

**4. Structure.** "Structure" shall mean means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, fences, billboards, signs, piers and floats. It shall does not include a wharf, fish weir or trap that may be licensed under Title 38, chapter 9.

**Sec. 3. 12 MRSA §683**, as amended by PL 1997, c. 683, Pt. B, §6 and affected by §7, is further amended to read:

### §683. Creation of Maine Land Use Regulation Commission

The Maine Land Use Regulation Commission, as established by Title 5, section 12004-D, subsection 1 to carry out the purposes stated in section 681, is created within the Department of Conservation, and in this chapter called the "commission." The commission is charged with implementing this chapter in all of the unorganized and deorganized areas of the State. The commission consists of 7 public members, none of whom may be state employees, who must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over conservation matters and to confirmation by the Legislature, for staggered 4-year terms. ~~Of the potential appointees to the commission, the Governor shall actively seek and give consideration to persons who are knowledgeable in commerce and industry; fisheries and wildlife; forestry; and conservation.~~ Appointees to the commission must be familiar with the needs and issues affecting the commission's jurisdiction. All appointees must reside in the commission's jurisdiction; work in the commission's jurisdiction; be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years; or have expertise in commerce and industry, fisheries and wildlife forestry or conservation issues as they affect the commission's

jurisdiction. In ~~addition selecting appointees,~~ the Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and to persons residing on unorganized coastal islands. At least ~~4~~ 2 members must be residents within the commission's jurisdiction. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the commission. If a county or municipality is a participant in an adjudicatory proceeding before the commission, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

~~Of the initial appointees, 2 shall be appointed for one year terms, 2 shall be appointed for 2 year terms and 3 shall be appointed for 3 year terms. Thereafter, appointees shall be appointed to serve 4 year terms. One of the members shall be elected annually by the members as chairman.~~

Any member who has not been renominated by the Governor ~~within 90 days of prior to~~ the expiration of ~~his~~ that member's term ~~shall may~~ not continue to serve on the commission, unless the Governor notifies the Legislature in writing ~~and within 90 days of prior to~~ the expiration of that member's term ~~of his finding~~ that extension of that member's term is required to ensure fair consideration of specific major applications pending before the commission. That member's term ~~shall end~~ ends upon final commission decisions on the specific applications identified in the Governor's communication. Any member renominated by the Governor prior to the expiration of that member's term shall continue to serve on the commission until the nomination is acted upon by the Legislature. A vacancy during an unexpired term ~~shall be~~ is filled as provided in this section, but only for the unexpired portion of the term.

**Sec. 4. 12 MRSA §684,** as amended by PL 1985, c. 737, Pt. A, §22, is further amended to read:

**§684. Commission officers, meetings and rules; hearings**

The commission shall elect annually, from its own membership, a ~~secretary~~ chair and such other officers it ~~deems~~ considers necessary. Meetings ~~shall be~~ are held at the call of the ~~chairman~~ chair or at the call of more than 1/2 of the membership. ~~These public meetings shall be held at least once a month.~~ The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II, may adopt whatever rules it ~~deems~~ considers necessary for the conduct of its business. The ~~secretary~~ commission shall keep minutes of all proceedings ~~of the commission,~~ which ~~minutes shall be~~ are a public record available and on file in the office of the commission.

Members of the commission, ~~except state employees,~~ shall be are compensated as provided in Title 5, chapter 379. A quorum of the commission for the transaction of business ~~shall be~~ is 4 members. No action may be taken by the commission unless upon approval by a vote of 4 members.

Whenever the commission is required or empowered to conduct a hearing pursuant to any provision of law, ~~such the~~ hearing may be held and conducted by the commission or by any member of the commission or by any qualified employee or representative of the commission as the ~~commission~~ chairman chair may determine. If the hearing is conducted by a single commissioner or qualified employee or representative, ~~such the~~ commissioner, employee or representative shall report ~~his~~ the findings of fact and conclusions to the commission together with a transcript of the hearing and all exhibits. ~~Such The~~ findings of fact and conclusions shall become a part of the record. The commission ~~shall is~~ not be bound by ~~such the~~ findings or conclusions when acting upon ~~such the~~ record, but shall take ~~such~~ action, issue ~~such~~ orders and make ~~such~~ decisions as if it had held and conducted the hearing itself.

When the commission elects to hold multiple public hearings on any matter under this chapter, all hearings held within a 45-day period are considered one hearing for administrative purposes.

**Sec. 5. 12 MRSA §685-A, sub-§1,** as amended by PL 1977, c. 694, §222, is further amended to read:

**1. Classification and districting of lands.** The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized ~~portions~~ areas of the State that fall into land use districts and designate each area in one of the following major district classifications: ~~Protection~~ protection, management and development. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter II, shall ~~enact~~ adopt regulations for determining the boundaries of each major type of district in accordance with the following standards:;

A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State:;

B. Management districts: Areas ~~which that~~ are appropriate for commercial forest product or agricultural uses or for the extraction of nonmetallic minerals and for which plans for additional

development are not presently formulated nor additional development anticipated; and

D. Development districts: Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use; or commercial removal of ~~metallic minerals or other natural resources~~, and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be ~~deemed~~ necessary and desirable to carry out the intent of this chapter.

**Sec. 6. 12 MRSA §685-A, sub-§6**, as amended by PL 1991, c. 308, is repealed.

**Sec. 7. 12 MRSA §685-A, sub-§7**, as amended by PL 1991, c. 653 and 1997, c. 526, §14, is repealed.

**Sec. 8. 12 MRSA §685-A, sub-§7-A** is enacted to read:

**7-A. Procedure for adoption or amendment of land use district standards, district boundaries and land use maps.** This subsection governs procedures for the establishment and amendment of land use district standards and boundaries and the amendment of the commission's land use maps.

A. The commission or its staff may initiate and any state or federal agency, any county or municipal governing body or any property owner or lessee may petition for adoption or amendment of land use district standards, district boundaries or land use maps.

B. Adoption and amendment of land use district standards, district boundaries and land use maps are rule-making procedures subject to the requirements of Title 5, chapter 375, subchapter II, except that the requirements of Title 5, section 8052, subsections 5, 5-A and 7; section 8053-A; section 8056, subsections 1, 3 and 4; section 8056-A; section 8057, subsection 2; section 8057-A; section 8060; section 8062; and section 8064 do not apply. The requirements of Title 5, chapter 375, subchapter II are further modified by the following provisions.

(1) Public notice of proposals to adopt or amend land use district standards, district boundaries or land use maps must state the time and the place where copies of the proposal may be inspected prior to the hearing.

(2) The commission shall give notice of hearings to amend district boundaries, by

mail, to appropriate state and federal agencies and the owners of directly affected and abutting properties, according to their names and addresses as shown on the records of Maine Revenue Services or plantation or town tax assessors. If the number of owners of directly affected and abutting properties is more than 50, notice may instead be by publication conforming to the requirements for newspaper publication of hearings under Title 5, chapter 375, subchapter IV.

(3) At any time prior to the date of adoption of proposed land use district standards, land use boundaries or land use maps, the commission may elect to reopen the public hearing record and extend the time period for public comment to such date as it may designate.

(4) The commission must act to adopt or not to adopt proposed land use district standards, land use boundaries or land use maps within 90 days after the date of final closure of the public hearing.

(5) Land use district boundaries and land use maps become effective 15 days after adoption or amendment by the commission, as long as the boundaries and maps are available in the appropriate registry of deeds for each county. Notice of adoption or amendment of land use district boundaries and land use maps must be given by publication one time in a newspaper of general circulation published in the area affected.

(6) Permanent land use standards adopted by the commission are effective immediately, but must be submitted to the next regular or special session of the Legislature for approval or modification. If the Legislature fails to act, those standards continue in full force and effect.

**Sec. 9. 12 MRSA §685-A, sub-§8**, as repealed and replaced by PL 1995, c. 462, Pt. A, §30, is repealed.

**Sec. 10. 12 MRSA §685-A, sub-§§8-A and 8-B** are enacted to read:

**8-A. Criteria for adoption or amendment of land use district boundaries.** A land use district boundary may not be adopted or amended unless there is substantial evidence that:

A. The proposed land use district is consistent with the standards for district boundaries in ef-

fect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and

B. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

**8-B. Criteria for amendment of land use standards.** Adoption or amendment of land use standards may not be approved unless there is substantial evidence that the proposed land use standards would serve the purpose, intent and provisions of this chapter and would be consistent with the comprehensive land use plan.

**Sec. 11. 12 MRSA §685-A, sub-§9,** as amended by PL 1973, c. 569, §10, is further amended to read:

**9. Periodic review of district boundaries and land use standards.** At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation of districts of the land use standards. The assistance of appropriate state agencies shall must be secured in making this review and public hearings shall must be held in accordance with the requirements set forth in subsection 7 7-A.

**Sec. 12. 12 MRSA §685-B, sub-§1,** as amended by PL 1991, c. 46, §1, is repealed and the following enacted in its place:

**1. Review and approval required.** Except as provided in this section or by commission rule:

A. A structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form other than for normal maintenance or repair without a permit issued by the commission;

B. A person may not commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the commission; or

C. A person may not commence any construction or operation of any development without a permit issued by the commission.

**Sec. 13. 12 MRSA §685-B, sub-§§1-A and 1-B** are enacted to read:

**1-A. Exceptions.** Except as provided in this section or by commission rule:

A. A permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

(1) No more than one standard culvert size wider in diameter than the culvert being replaced;

(2) No more than 25% longer than the culvert being replaced; and

(3) No longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this paragraph shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course; or

B. A permit is not required for those aspects of a project approved by the Department of Environmental Protection under Title 38 if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed. Notice of the intent to develop and a map indicating the location of the proposed development must be filed with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection.

**1-B. Delegation to staff.** The commission may establish standards by which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted. Any person aggrieved by a decision of the staff has the right to a review of that decision by the commission. A request for such a review must be made within 30 days of the staff decision.

**Sec. 14. 12 MRSA §685-B, sub-§3,** as repealed and replaced by PL 1987, c. 653, §4, is repealed.

**Sec. 15. 12 MRSA §685-B, sub-§3-A** is enacted to read:

**3-A. Hearings and procedures.** Hearings and procedures in connection with the review and approval of a permit application are subject to this subsection.

A. The commission may determine on its own motion to hold a hearing on the application.

B. If the commission determines to act upon a permit application without a hearing, the commission, within 90 days after receiving the complete application, shall make findings of fact and issue an order either granting approval, subject to reasonable terms and conditions that the commission determines appropriate in order to fulfill the requirements and intent of this chapter, the comprehensive land use plan and the commission's standards, or denying approval of the application as proposed.

C. Any person aggrieved by a decision of the commission or its staff concerning any permit application upon which no hearing was held may, within 30 days of that decision, petition the commission for a hearing. The commission is not required to hold a hearing, but shall respond within 45 days of receipt of the petition by notifying the petitioner in writing of the date, time and place set for the requested hearing or of the denial of the request.

D. Within 60 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order either granting approval, subject to reasonable terms and conditions that the commission determines appropriate in order to fulfill the requirements and intent of this chapter, the comprehensive land use plan and the commission's standards, or denying approval of the application as proposed.

**Sec. 16. 12 MRSA §685-B, sub-§4, ¶A**, as amended by PL 1989, c. 430, §2, is further amended to read:

A. Adequate technical and financial provision has been made for complying with the requirements of the state's State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, sections 4807 to 4807-G, the Site Location of Development Law site location of development laws, Title 38, sections 481 to 488 490, the Minimum Lot Size Law, sections 4807 to 4807-G, and the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A, sections 480-A to 480-Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies; and

**Sec. 17. 12 MRSA §685-B, sub-§4, ¶D**, as enacted by PL 1971, c. 457, §5, is amended to read:

D. Uses of topography, soils and subsoils meet standards of the current soil suitability guide for

land use planning in Maine, or which are adaptable to the proposed use pursuant to said guide and The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water, and and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site;

**Sec. 18. 12 MRSA §685-D**, as repealed and replaced by PL 1985, c. 459, Pt. A, §1, is amended to read:

#### **§685-D. Funding**

Beginning with fiscal year 1985 86, funding Funding for the services and activities of the commission shall come comes from the General Fund and is not be allocated to the unorganized territory under Title 36, chapter 115. It is also the intent of the Legislature that no charges may be made to plantations, towns or cities for fiscal years 1983 84 or 1984 85.

**Sec. 19. 38 MRSA §480-E, first ¶**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §73, is further amended to read:

The department shall process all permits under this article, except as provided in section 480-E-1, in accordance with chapter 2, subchapter 1, and the following requirements.

**Sec. 20. 38 MRSA §480-E-1** is enacted to read:

#### **§480-E-1. Delegation of permit-granting authority to the Maine Land Use Regulation Commission**

The Maine Land Use Regulation Commission shall issue all permits under this article for activities that are wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this Title. The Maine Land Use Regulation Commission shall process these permits in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections.

**Sec. 21. Transitional language; natural resources protection laws.** A permit issued by the Department of Environmental Protection prior to the effective date of this Act for an activity altering or adjacent to a protected natural resource within the jurisdiction of the Maine Land Use Regulation Commission and any conditions of that permit continue in effect and may be enforced by the department until the permit expires or is modified by the Maine Land Use Regulation Commission. The Maine Land Use Regulation Commission may enforce a permit it has modified.

**Sec. 22. Authorization to report out legislation.** The Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Natural Resources may report out legislation during the Second Regular Session of the 119th Legislature regarding the regulatory responsibilities of the Maine Land Use Regulation Commission and the Department of Environmental Protection. The legislation may propose reassigning the regulatory responsibilities of the 2 agencies to eliminate or reduce duplicative project review and permitting.

See title page for effective date.

---



---

## CHAPTER 334

H.P. 1140 - L.D. 1625

**An Act to Clarify Certain Laws  
Administered by the Department of  
Environmental Protection, Bureau of  
Remediation and Waste  
Management**

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

**Sec. 1. 38 MRSA §551, sub-§4-A** is enacted to read:

**4-A. Penalty for late payment of fees.** Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in this State. Licensees or registrants who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 4. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

**Sec. 2. 38 MRSA §566-A, sub-§4,** as amended by PL 1991, c. 817, §20, is further amended to read:

**4. Commissioner role.** If the owner of an underground oil storage facility or tank fails to properly abandon the facility or tank within a reasonable time period, the commissioner may undertake the abandonment. The commissioner shall collect any reimbursement due the Ground Water Oil Clean-up Fund in accordance with section 569-A or 569-B. Costs incurred by the commissioner to undertake the abandonment are a lien against the real estate of the owner as provided under section 569-A, subsection 10-A and section 569-B, subsection 6-A.

**Sec. 3. 38 MRSA §569-A, sub-§5-A** is enacted to read:

**5-A. Penalty for late payment of fees.** Fees assessed under subsection 5, paragraph A are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in Maine. Licensees or registrants who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 5.

**Sec. 4. 38 MRSA §569-A, sub-§10-A,** as enacted by PL 1997, c. 364, §34, is amended to read:

**10-A. Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil from an aboveground or underground storage facility and all costs incurred by the State in the abandonment of an underground oil storage facility or tank under section 566-A, subsection 4 are a lien against the real estate of the responsible party. For a responsible party determined eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any unpaid deductible assigned under section 568-A, subsection 2 or for eligible clean-up costs and 3rd-party damage claims above \$1,000,000.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

**Sec. 5. 38 MRSA §569-B, sub-§4-A** is enacted to read:

**4-A. Penalty for late payment of fees.** Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred. Licensees who fail to pay the fee by that date shall pay