

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2002 to April 25, 2002**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 25, 2002**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2002**

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A and Title 12, Part 10;

**Sec. 10. 17 MRSA §1015** is enacted to read:

**§1015. Surcharge imposed**

A surcharge of 10% must be added to every fine or penalty imposed by any court in this State for a violation of this chapter. The surcharge, for the purposes of collection and collection procedures, is considered a part of the fine or penalty. All funds collected as a result of this surcharge must be deposited monthly in the Animal Welfare Fund established under Title 7, section 3906-B, subsection 2.

**Sec. 11. 17 MRSA §1031, sub-§1, ¶G**, as amended by PL 2001, c. 425, §5, is further amended to read:

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A and Title 12, Part 10;

**Sec. 12. Appropriations and allocations.**

The following appropriations and allocations are made.

**AGRICULTURE, FOOD AND RURAL RESOURCES,  
DEPARTMENT OF**

**Animal Welfare Fund**

Initiative: Provides funds for 2 District Humane Agent positions.

| <b>Other Special Revenue Funds</b> | <b>2001-02</b> | <b>2002-03</b> |
|------------------------------------|----------------|----------------|
| Positions - Legislative Count      | (0.000)        | (2.000)        |
| Personal Services                  | \$0            | \$107,560      |
| All Other                          | <u>0</u>       | <u>3,753</u>   |
| Other Special Revenue Funds Total  | \$0            | \$111,313      |

**Animal Welfare Fund**

Initiative: Provides funds for one Veterinarian position.

| <b>Other Special Revenue Funds</b> | <b>2001-02</b> | <b>2002-03</b> |
|------------------------------------|----------------|----------------|
| Positions - Legislative Count      | (0.000)        | (1.000)        |
| Personal Services                  | \$0            | \$74,105       |
| All Other                          | <u>0</u>       | <u>5,586</u>   |
| Other Special Revenue Funds Total  | \$0            | \$79,691       |

**Animal Welfare Fund**

Initiative: Provides for the elimination of 4 of the 7 intermittent State Humane Agent positions, 3 positions of 494 hours each and one position of 456 hours.

| <b>Other Special Revenue Funds</b> | <b>2001-02</b> | <b>2002-03</b> |
|------------------------------------|----------------|----------------|
| Positions - FTE Count              | (0.000)        | (-0.932)       |
| Personal Services                  | \$0            | (\$26,350)     |
| All Other                          | <u>0</u>       | <u>(919)</u>   |
| Other Special Revenue Funds Total  | \$0            | (\$27,269)     |

**AGRICULTURE, FOOD AND RURAL RESOURCES,**

| <b>DEPARTMENT OF<br/>DEPARTMENT TOTALS</b> | <b>2001-02</b> | <b>2002-03</b>   |
|--|----------------|------------------|
| <b>OTHER SPECIAL REVENUE FUNDS</b>         | <b>\$0</b>     | <b>\$163,734</b> |
| <b>DEPARTMENT TOTAL - ALL FUNDS</b>        | <b>\$0</b>     | <b>\$163,734</b> |

See title page for effective date.

**CHAPTER 618**

**H.P. 1679 - L.D. 2179**

**An Act Regarding the Clearing of  
Vegetation in Areas Adjacent to  
Protected Natural Resources**

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

**Whereas**, the provisions of this legislation must take effect immediately to provide the statutory basis for major substantive rules authorized to be finally adopted 90 days after adjournment of the Legislature; and

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

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

**Sec. 1. 38 MRSA §480-B, sub-§9**, as amended by PL 1995, c. 460, §2 and affected by §12, is further amended to read:

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

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.

B. It contains or is known to contain flowing water continuously for a period of at least 3 6 months of the year in most years.

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

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

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

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

**Sec. 2. 38 MRSA §480-C, sub-§1**, as repealed and replaced by PL 1995, c. 460, §4 and affected by §12, is amended to read:

**1. Prohibition.** A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to ~~and operated in such a manner that material or soil may be washed into~~ any of the following:

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

B. Freshwater wetlands consisting of or containing:

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

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

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

**Sec. 3. 38 MRSA §480-D, sub-§3**, as amended by PL 1993, c. 296, §2, is further amended to read:

**3. Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific

biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

A. Avoiding an impact altogether by not taking a certain action or parts of an action;

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

E. Compensating for an impact by replacing the affected significant wildlife habitat.

**Sec. 4. 38 MRSA §480-Q, sub-§7-A**, as amended by PL 2001, c. 431, §6, is further amended to read:

**7-A. Forestry.** Forest management activities, including associated road construction or maintenance, in or adjacent to an existing forested wetland; or a harvested forested wetland or adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B, as long as:

A. The activity results in a forest stand that meets the minimum stocking requirements in rules adopted pursuant to Title 12, section 8869. This requirement takes effect when those rules are adopted;

B. The activity meets ~~permit-by-rule~~ permit-by-rule standards in rules adopted pursuant to this article; for any road crossing of a river, stream or brook; or for any soil disturbance adjacent to ~~a great pond, river, stream or brook~~ a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B and the commissioner is notified before the forest management activity commences;

C. The ~~forested wetland~~ protected natural resource is not mapped as a significant wildlife habitat under section 480-I; and

D. Any road construction is not used to access development but is used primarily for forest management activities, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible

width and total length consistent with forest management activities. This exemption does not apply to roads that provide access to development in a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Regulation Commission;

**Sec. 5. 38 MRSA §480-Q, sub-§§23, 24 and 25** are enacted to read:

**23. Cutting or clearing subject to mandatory shoreland zoning laws.** Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:

A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter I, article 2-B; or

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter I, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be constructed for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees and other natural vegetation" is defined as maintaining a rating score of 8 or more points in a 25-foot by 25-foot square area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of 2 to 4 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of more than 4 inches and up to and

including 12 inches has a point value of 2.

(iii) A tree with a diameter at 4 1/2 feet above ground level of more than 12 inches has a point value of 4.

(b) In applying this point system:

(i) The 25-foot by 25-foot square plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;

(iii) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this subsection; and

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection;

(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees 4 inches or more in diameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;

(4) In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover is not removed except for construction of a footpath as provided in subparagraph (1);

(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and

(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings are replanted with native tree species unless there is existing new tree growth.

Cleared openings legally in existence on September 1, 2002 may be maintained but may not be enlarged.

This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;

**24. Existing lawns and gardens.** Maintenance, but not enlargement of, lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B; and

**25. Existing agricultural fields and pastures.** Maintenance, but not enlargement of, agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 3, 2002.

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## CHAPTER 619

H.P. 1119 - L.D. 1488

### An Act to Require Major Water Users to Provide Public Information About Their Annual Water Withdrawals from Public Water Resources

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

**Sec. 1. 38 MRSA c. 3, sub-c. I, art. 4-B** is enacted to read:

#### Article 4-B

#### WATER WITHDRAWAL REPORTING PROGRAM

##### §470-A. Definitions

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

**1. Nonconsumptive use.** "Nonconsumptive use" means any use of water that results in the water being discharged back into the same water source within 1/4 mile upstream or downstream from the point of withdrawal such that the difference between the volume withdrawn and the volume returned is no more than the threshold amount per day. This also includes withdrawals from groundwater that are discharged to a subsurface system or to a hydraulically

connected surface water body such that no more than the threshold amount is consumed.

**2. Water source.** "Water source" means any river, stream or brook as defined in section 480-B, any lake or pond classified GPA pursuant to section 465-A or groundwater located anywhere in the State.

**3. Water withdrawal; withdrawal of water.** "Water withdrawal" or "withdrawal of water" means the removal, diversion or taking of water from a water source. All withdrawals of water from a particular water source that are made or controlled by a single person are considered to be a single withdrawal of water.

##### §470-B. Threshold volumes for reporting

Except as otherwise provided in this article, a person making a water withdrawal in excess of the threshold volumes established in this section shall file a water withdrawal report in accordance with section 470-D covering the 12 months ending on the previous September 30th. The threshold volumes for reporting are as follows.

**1. Withdrawals from river, stream or brook.** The threshold volume for reporting on withdrawals from a river, stream or brook or groundwater within 500 feet of a river, stream or brook is 20,000 gallons on any day or, if the watershed area at the point of withdrawal exceeds 75 square miles, a volume in gallons per day for any day that is:

A. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on historical flows for rivers, streams or brooks with an adequate record of gauge data;

B. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on an estimated low-flow value for a river, stream or brook below a dam where flow is limited by gate settings or leakage; or

C. If paragraphs A and B are not applicable, then a threshold volume calculated using the formula  $V=168.031 \text{ times } A \text{ to } 1.1 \text{ power}$ , where  $V$  is the volume in gallons per day and  $A$  is the watershed area in square miles.

**2. Withdrawals from GPA lake or pond or certain groundwater sources.** The threshold volume for reporting on withdrawals from a Class GPA lake or pond or groundwater within 500 feet of the lake or pond is determined from the following table:

| Lake area in acres | gallons/ week |
|--------------------|---------------|
| < 10               | 30,000        |
| 10-30              | 100,000       |
| 31-100             | 300,000       |