

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

Sec. 1. Study by Community Preservation Advisory Committee. Resolved: That the Community Preservation Advisory Committee, as established by the Maine Revised Statutes, Title 5, section 12004-I, subsection 24-F, shall study the Executive Department, State Planning Office's review of municipal comprehensive plans, growth management programs and local ordinances for consistency with state goals. The study must include a review of the rules governing the State Planning Office's review and the time frames for the State Planning Office's review. The Community Preservation Advisory Committee shall submit a report of its findings and recommendations, including any legislation necessary to implement the recommendations, to the Joint Standing Committee on Natural Resources by December 1, 2003. The report may be included in the annual report submitted by the Community Preservation Advisory Committee pursuant to Title 30-A, section 4350, subsection 9, paragraph A. The Joint Standing Committee on Natural Resources may report out legislation relating to the study during the Second Regular Session of the 121st Legislature.

See title page for effective date.

CHAPTER 35

H.P. 417 - L.D. 532

Resolve, Directing the Maine Health Data Organization To Evaluate the Current System of Annual Assessments and User Fees

Sec. 1. Evaluation of assessments and user fees. Resolved: That the Maine Health Data Organization shall evaluate its annual assessments and user fees, including the computation methodology for assessments and the equity of the distribution of assessments across providers and payors, with particular attention to the category of nonhospital providers. With respect to user fees, the Maine Health Data Organization shall examine current fees and develop potential strategies to reduce or eliminate user fees for providers and payors that are required to pay assessments to the organization; and be it further

Sec. 2. Report and recommendations. Resolved: That the Maine Health Data Organization shall report the results of its work and recommendations for improvements to the annual assessments and user fees to the Joint Standing Committee on Health and Human Services by January 30, 2004.

See title page for effective date.

CHAPTER 36

H.P. 408 - L.D. 523

Resolve, Requiring the Maine Human Rights Commission To Report on Complaints Involving Supervisors

Whereas, the Maine Supreme Court ruled, in *Gordan v. Cummings*, No. CUM-99-254, 2000 WL 419716 (Me. 4/19/00), withdrawn, 756 A.2d 942 (Me. 2000), in a decision that the court later vacated on procedural grounds, that a supervisor may be personally liable under the Maine Human Rights Act for acts of sexual harassment constituting a "hostile work environment"; and

Whereas, the language of the Maine Human Rights Act defining "employer" under the Maine Revised Statutes, Title 5, section 4553, subsection 4 as including "any person acting in the interest of any employer, directly or indirectly" is distinguishable from the language of the comparable federal statute, Title VII of the Civil Rights Act of 1964, 42 United States Code, Section 2000e(b); and

Whereas, the Maine Human Rights Commission has consistently interpreted the current language of the Maine Human Rights Act as providing for supervisory liability in some circumstances; and

Whereas, the Legislature is mindful of the fact that an opposite interpretation would leave victims of invidious discrimination without a remedy and might leave the victim with no option other than to file a complaint against the owner for acts of discrimination committed by someone outside the scope of agency law; and

Whereas, the Legislature recognizes that there are a limited number of circumstances in which a supervisory employee should be held liable for actions of intentional discrimination amounting to sexual harassment producing a hostile work environment; and

Whereas, the Legislature is concerned that persons violating the law should not go unpunished, that victims should not be left without a remedy and that faultless business owners should not be subjected to lawsuits because of acts committed by supervisory personnel outside the purview of agency law; and

Whereas, the Legislature is not confident that revision of the statute is necessary in order to protect victims of sexual harassment or to insulate innocent business owners in appropriate circumstances; now, therefore, be it:

Sec. 1. Report. Resolved: That the Maine Human Rights Commission shall report to the Joint

Standing Committee on Judiciary on the number of complaints the commission has received in which the employee has suffered discrimination through actions or inaction of a supervisor, but the employer has an affirmative defense against liability. The report must be submitted not later than January 14, 2004; and be it further

Sec. 2. Legislation. Resolved: That the Joint Standing Committee on Judiciary is authorized to submit legislation to the Second Regular Session of the 121st Legislature in response to the commission's report.

See title page for effective date.

CHAPTER 37

H.P. 777 - L.D. 1059

Resolve, Directing the Department of Environmental Protection To Recognize the Distinction between Water Storage Reservoirs and Natural Lakes

Whereas, the Maine Revised Statutes, Title 38, section 464, subsection 5 requires the Department of Environmental Protection, Board of Environmental Protection to adopt rules necessary to implement the water quality classification system; and

Whereas, the rules must include sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community; and

Whereas, Title 38, section 464, subsection 9 provides that certain hydropower projects that do not attain the habitat and aquatic life criteria of Title 38, section 465-A must, at a minimum, satisfy the Class C aquatic life criteria contained in Title 38, section 465, subsection 4, paragraph C; and

Whereas, the Class C aquatic life criteria contained in Title 38, section 465, subsection 4, paragraph C allow some changes to aquatic life as long as the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community; and

Whereas, the fact that water storage reservoirs are not natural lakes should be recognized when implementing water quality classifications; and

Whereas, many water storage reservoirs were authorized by legislative charter for the purpose of

storing and releasing water for in-stream purposes and downstream uses; now, therefore, be it

Sec. 1. Water storage reservoirs; rules. Resolved: That the Department of Environmental Protection, Board of Environmental Protection shall adopt rules under the Maine Revised Statutes, Title 38, section 464, subsection 5 relating to protocols and procedures for evaluation of the resident biological community in water storage reservoirs. In adopting the rules, the Board of Environmental Protection shall recognize that water storage reservoirs are artificial and are not natural water bodies, and the rules must ensure that the existing uses of water storage reservoirs are maintained and protected. In issuing licenses, permits and certifications prior to final adoption of the rules, the Department of Environmental Protection shall recognize that water storage reservoirs are artificial and are not natural water bodies and shall ensure that the existing uses of water storage reservoirs are maintained and protected. The goal of the rules and any license, permit or certification must be to require that the structure and function of the resident biological community that must be maintained in a water storage reservoir is the structure and function that would be expected to exist in a water storage reservoir with a drawdown of similar magnitude. As used in this resolve, "water storage reservoir" means an impoundment associated with a hydropower project, as defined by Title 38, section 632, that was in existence prior to November 28, 1975, was not primarily lacustrine in its natural state, is classified under Title 38, section 465-A and is managed to store and release water on an annual cycle to benefit downstream hydropower generation.

See title page for effective date.

CHAPTER 38

H.P. 1046 - L.D. 1427

Resolve, Requiring That Temporary Registration Plates Identify the Issuing Dealership

Sec. 1. Temporary plate dealer identification authorized. Resolved: That the Secretary of State shall adopt rules to establish and implement a process by which a temporary registration plate attached to a motor vehicle or trailer, pursuant to the Maine Revised Statutes, Title 29-A, section 462, identifies the dealership that attached the plate. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.