

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

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

Penmor Lithographers
Lewiston, Maine
2004

manner consistent with Dig Safe System methodology. The member shall provide the information to the Dig Safe System to rely on for notification purposes and, unless otherwise specified in this rule, the member shall provide the information in a format that the Dig Safe System is capable of using, such as electronic or digital format, or by drawing the specific location of any underground facilities on maps provided by the Dig Safe System. Telephone utilities are not required under this provision to provide to the Dig Safe System the location of service drops from a main line to customer premises. The commission shall grant a waiver from this provision for any water utility transmission mains that are downstream of a treatment plant or underground water source and may require the water utility to provide the Dig Safe System with an alternative method of facility location specification, such as a corridor, for notification purposes.

2. A provision is added specifying that the provisions identified as Section 4(B)(1)(a)(ii), Section 6(A)(1)(d) and Section 7(A-1) do not take effect until May 1, 2005.

3. The provision identified in the rule as Section 5(B)(9) is amended to read substantially as follows:

9. The Dig Safe System shall restrict the use of facility location information provided by Maine operators to those uses required to perform its duties under this rule and will restrict access to the facility location information to those employees of the Dig Safe System performing such duties. Access to Maine facility location information shall not be available to the general public by electronic or digital technology or by copies of maps or plans. The Dig Safe System shall use reasonable care to maintain all facility location information provided by Maine operators in a secure manner and the commission may initiate an appropriate investigation to review security protocols.

The commission is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve.

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

Effective April 9, 2004.

CHAPTER 128

S.P. 648 - L.D. 1716

Resolve, Regarding Participation in the Federal No Child Left Behind Act of 2001

Sec. 1. Prohibition on use of state funds; exceptions. Resolved: That, in order to give priority to the implementation of Maine's system of learning results, and consistent with Title IX, Part E, Subpart 2, Section 9527 of the federal No Child Left Behind Act of 2001, the Department of Education may not spend any state funds or incur any costs not paid for under the federal No Child Left Behind Act of 2001 in order to comply with the provisions of the act, except for state funds necessary to act in accordance with sections 2, 3, 4 and 5 of this resolve; and be it further

Sec. 2. Administration of federal education funds. Resolved: That the Department of Education may administer such federal funds as may be made available to the State under Public Law 89-10, known as the federal Elementary and Secondary Education Act of 1965, as amended by Public Law 107-110, known as the federal No Child Left Behind Act of 2001. Those funds may be accepted and must be distributed and accounted for by the Department of Education in accordance with the federal No Child Left Behind Act of 2001 and federal regulations issued under provisions of that act even if there is conflict between that act or those regulations and the statutes and rules of this State; and be it further

Sec. 3. Compliance with federal requirements of No Child Left Behind Act of 2001. Resolved: That, notwithstanding the provisions of the Maine Revised Statutes, Title 20-A related to the implementation of Maine's system of learning results, and in order to comply with the provisions of the federal No Child Left Behind Act of 2001 during the 2003-2004 and 2004-2005 school years, the Commissioner of Education is authorized to determine annually whether schools are meeting state standards, and the Department of Education is authorized to impose consequences allowed in state law and required by the federal No Child Left Behind Act of 2001 within the time frame required in that act. The Department of Education may expend other state funds for activities the department was already conducting consistent with the federal No Child Left Behind Act of 2001, or for activities already authorized in the budgets for fiscal years 2003-04 and 2004-05. It is the intent of the Legislature that the Department of Education continue to study the

provisions of the federal No Child Left Behind Act of 2001 and continue to seek guidance from the United States Department of Education in order to determine changes necessary in the act and in federal regulations issued under the act; and be it further

Sec. 4. Investigation. Resolved: That the Department of Education shall conduct a thorough investigation of the costs and benefits of participating in the federal No Child Left Behind Act of 2001. The investigation must focus on the costs and benefits of aligning the federal No Child Left Behind Act of 2001 with Maine's system of learning results and must include a comprehensive analysis of the costs and benefits of participating in the federal No Child Left Behind Act of 2001; and be it further

Sec. 5. Report. Resolved: That, no later than January 15, 2005, the Department of Education shall submit its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over education matters.

See title page for effective date.

CHAPTER 129

S.P. 652 - L.D. 1719

Resolve, Authorizing the Transfer of a Parcel of Land on Peaks Island to the Peaks Island Land Preserve

Preamble. Whereas, the Constitution of Maine, Article IX, Section 23 requires that real estate held by the State for conservation purposes not be reduced or its uses substantially altered except on the vote of 2/3 of all members elected to each House; now, therefore, be it

Sec. 1. Commissioner of Inland Fisheries and Wildlife authorized to negotiate and consummate sale. Resolved: That the Commissioner of Inland Fisheries and Wildlife may negotiate and consummate by quitclaim deed the transfer of fee ownership of the state-owned property on Peaks Island in Cumberland County classified as a wildlife management area pursuant to the Maine Revised Statutes, Title 12, section 12708, subsection 1, paragraph B, subparagraph (32) to the Peaks Island Land Preserve. The deed conveying the property must include restrictions determined necessary by the commissioner for appropriate conservation of the property.

See title page for effective date.

CHAPTER 130

H.P. 1375 - L.D. 1849

Resolve, Regarding Legislative Review of Chapter 355: Sand Dune Rules, a Major Substantive Rule of the Department of Environmental Protection

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of Chapter 355: Sand Dune Rules, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if Chapter 355 is amended in that section relating to new construction in frontal dunes and designated as section 6, paragraph B, subparagraph (1) to provide that elevators, in addition to ramps, that are required for compliance with the requirements of the federal Americans with Disabilities Act are exempt from the requirement that a new structure or addition to an existing structure may not be constructed on or seaward of a frontal dune. The rule must also be amended to provide that elevators or ramps serving buildings required to comply with the federal Americans with Disabilities Act must be designed and constructed so as to minimize intrusion on the frontal dune, including locating the structures to the rear of buildings or within areas of a lot already developed, such as a parking area. The Department of Environmental Protection is not required to hold hearings or conduct