

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

480-I by the Department of Inland Fisheries and Wildlife, the following areas that are defined by the Department of Inland Fisheries and Wildlife and are in conformance with criteria adopted by the Department of Environmental Protection or are within any other protected natural resource:

- (1) Significant vernal pool habitat;
- (2) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and
- (3) Shorebird nesting, feeding and staging areas.

Sec. 3. 38 MRSA §480-Q, sub-§17, ¶¶E and F, as enacted by PL 1995, c. 575, §1, are amended to read:

E. The activity does not take place in a wetland containing or consisting of peat land dominated by shrubs, sedges and sphagnum moss; and

F. The entire activity constitutes a single, complete project; and

Sec. 4. 38 MRSA §480-Q, sub-§17, ¶G is enacted to read:

G. The activity does not occur in a significant wildlife habitat.

Sec. 5. 38 MRSA §480-BB is enacted to read:

§480-BB. Significant wildlife habitat; major substantive rules

The Department of Inland Fisheries and Wildlife shall adopt rules that define "significant vernal pool habitat," "high and moderate value waterfowl and wading bird habitat" and "shorebird nesting, feeding and staging areas" under section 480-B, subsection 10, paragraph B. The Department of Environmental Protection shall adopt rules regarding the criteria used to determine whether an area is significant vernal pool habitat, high and moderate value waterfowl and wading bird habitat or shorebird nesting, feeding and staging areas under section 480-B, subsection 10, paragraph B. The rules, as applicable, must:

1. Definition of buffer area. Include a definition of the buffer area to be regulated;

2. Certain landowners not subject to regulation. Provide that a landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat is not on property owned or controlled by that landowner;

3. Department of Environmental Protection must provide written field determination. Require that the Department of Environmental Protection provide a written field determination upon the request of a landowner whose land may be affected by the definitions and criteria adopted in a rule;

4. Department of Environmental Protection may not assess fine in certain cases. Provide that the Department of Environmental Protection may not assess a fine against a landowner who acted in accordance with a written field determination if the fine would be based solely on information in the written field determination; and

5. Process for voluntary identification. Include a process for a landowner to voluntarily identify the landowner's land as a significant vernal pool habitat and to provide the Department of Inland Fisheries and Wildlife the authority to map the significant vernal pool habitat.

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. Rules. The major substantive rules adopted pursuant to the Maine Revised Statutes, Title 38, section 480-BB must be submitted to the Legislature by January 3, 2006 for review by the Joint Standing Committee on Natural Resources during the Second Regular Session of the 122nd Legislature. The Joint Standing Committee on Natural Resources is authorized to report out legislation to the Second Regular Session of the 122nd Legislature regarding significant wildlife habitat.

See title page for effective date.

CHAPTER 117

S.P. 88 - L.D. 268

An Act To Allow Electronic Calling Devices for Hunting Moose

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

Sec. 1. 12 MRSA §11604, as repealed and replaced by PL 2003, c. 655, Pt. B, §177 and affected by §422, is repealed.

Sec. 2. 12 MRSA §12152, sub-§3, ¶¶A, C and D, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, are amended to read:

A. A propagation, rearing and sale permit does not authorize the permittee to possess, propagate or sell deer, bear, moose, wild turkey, hybrid

wild turkey or wild turkey-domestic turkey cross nor does it authorize the permittee to possess, propagate or sell any wild animal taken in accordance with section 11601; or 11602 ~~or~~ 11604.

C. A general possession permit does not authorize the permittee to possess, propagate or sell deer, bear, moose, wild turkey, hybrid turkey or wild turkey-domestic turkey cross nor does it authorize the permittee to possess, propagate or sell any wild animal taken in accordance with section 11601; or 11602 ~~or~~ 11604.

D. A rehabilitation permit does not authorize the permittee to possess, propagate or sell any wild animal taken in accordance with section 11601; or 11602 ~~or~~ 11604.

See title page for effective date.

CHAPTER 118

H.P. 457 - L.D. 624

An Act To Amend the Procedure by Which Maine Education Assessment Scores Are Interpreted

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

Sec. 1. 20-A MRSA §6202, sub-§1-A is enacted to read:

1-A. Interpretation. The statewide assessment program results may be interpreted in a manner that takes into account the particular role within a school administrative unit of regional special education or regional alternative education programs or schools approved by the commissioner in accordance with section 2501 or section 7253. For these programs or schools, the results may be interpreted by assigning the student and the scores of the student to the school in the community where the student resides. The commissioner shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 119

H.P. 983 - L.D. 1419

An Act To Amend the Laws Regarding Certain Employment-related Matters

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

Sec. 1. 26 MRSA §824, sub-§1, as enacted by PL 1983, c. 128, §1, is amended to read:

1. Request. An employer who feels that granting the leave of absence required by this subchapter will cause unreasonable hardship for ~~his~~ the employer's business may appeal for relief by filing a written notice of appeal ~~to~~ with the ~~chairman~~ chair of the State Board of Arbitration and Conciliation. If the notice of appeal is not filed within 14 days of receipt of the employee's notice requesting a leave of absence, the employer waives ~~his~~ the right to appeal. The notice of appeal ~~shall~~ must state the name of the employee and the reasons for the alleged unreasonable hardship. Payment for the services of a member of the State Board of Arbitration and Conciliation must be shared by the parties in accordance with section 931. This section provides the exclusive remedy for an employer claiming unreasonable hardship as a result of a request for leave of absence.

Sec. 2. 26 MRSA §1043, sub-§11, ¶F, as amended by PL 2003, c. 414, Pt. B, §38 and affected by c. 614, §9, is further amended by amending subparagraph (21), division (i) to read:

(i) Prior to January 1, 1978, service performed in the employ of a school that is not an institution of higher education; after December 31, 1977, service performed in the employ of a governmental entity referred to in paragraph A-1, subparagraph (1) if that service is performed by an individual in the exercise of duties:

- (i) As an elected official;
- (ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision of a state;
- (iii) As a member of the State National Guard or Air National Guard;
- (iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; ~~or~~
- (v) In a position that, under or pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the perform-