

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

The commissioner shall adopt rules to implement this section. 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.

CHAPTER 225

H.P. 714 - L.D. 1029

An Act To Allow Municipalities To Acquire Title to Abandoned Cemeteries

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

Sec. 1. 30-A MRSA §3107 is enacted to read:

§3107. Abandoned cemeteries

1. Abandoned cemetery. For purposes of this section, "abandoned cemetery" means a cemetery in which no burial has been made in the previous 40 years and the lots or grave sites of which have not been maintained within the previous 10 years, except for maintenance rendered by the municipality in which the cemetery is located.

2. Acquisition by municipality. A municipality may acquire an abandoned cemetery, including ownership of any unoccupied lots or grave sites in the cemetery. The municipality shall use due diligence in identifying any owners of the abandoned cemetery or any of the cemetery's unoccupied lots or grave sites and provide notice to the owners of the municipality's intention to acquire the abandoned cemetery. If a municipality cannot locate an owner pursuant to this subsection, the municipality shall publish notice of its intention to acquire the abandoned cemetery for 3 successive weeks in a newspaper having general circulation in the county in which the municipality is located.

3. Notice. The notice required in subsection 2 must give a basic description of the abandoned cemetery by referencing the municipality's tax maps, set a date and place where objections to the acquisition of the abandoned cemetery by the municipality will be received and heard and, if there are unoccupied lots or grave sites in the abandoned cemetery, state the municipality's intention to acquire the unoccupied lots or grave sites.

4. Reassertion by owner. If an owner who receives notice under subsection 2 objects to the municipality's acquisition of the abandoned cemetery or an unoccupied lot or grave site in the cemetery, the owner must in writing object and reassert the owner's

right of ownership over the abandoned cemetery or unoccupied lot or grave site within 14 days of the date of the notice. An owner who reasserts ownership rights under this subsection shall promptly conform to all municipal ordinances concerning the abandoned cemetery or unoccupied lot or gravesite.

5. Reversion to municipality. Title to an abandoned cemetery and any unoccupied lots or grave sites described in the notice required under subsection 2 reverts to the municipality if an objection by an owner of the abandoned cemetery or unoccupied lot or grave site within the cemetery is not received by the 15th day after notice is sent to an identified owner or the last notice is published in a newspaper of general circulation as required under subsection 2. After title has reverted pursuant to this subsection, the municipality shall record a confirmation of the acquisition of the abandoned cemetery, including a basic description of the cemetery referencing the municipality's tax maps, in the registry of deeds in the county in which the cemetery is located.

6. Maintenance of title and characteristics. Once title to an abandoned cemetery has been recorded by a municipality, that municipality shall maintain the title in perpetuity and may never transfer title to the cemetery. The municipality shall also maintain the characteristics of the cemetery with no change in use of the cemetery land.

7. Survey and preservation plan. Prior to acquiring an abandoned cemetery under this section, a municipality may cause a survey to be done of the cemetery for which it is acquiring title in order to ascertain the true extent of the cemetery. The municipality may develop a preservation plan with guidance from a local cemetery corporation or association and local or state archaeologists.

See title page for effective date.

CHAPTER 226

H.P. 139 - L.D. 188

An Act To Promote the Uniform Implementation of the Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas

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

Sec. 1. 12 MRSA §685-A, sub-§12, as enacted by PL 2003, c. 335, §1, is repealed and the following enacted in its place:

12. Timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters. Rules adopted by the Commissioner of Conservation pursuant to section 8867-B for the purpose of regulating timber harvesting and timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters become effective for the unorganized and deorganized areas on the date established under Title 38, section 438-B, subsection 5.

The Director of the Bureau of Forestry within the Department of Conservation shall administer and enforce the regulation of timber harvesting and timber harvesting activities in these areas. For the purposes of this subsection, "timber harvesting" and "timber harvesting activities" have the same meanings as in section 8868, subsections 4 and 5.

Sec. 2. 38 MRSA §438-A, 2nd ¶, as enacted by PL 2003, c. 335, §4, is amended to read:

Notwithstanding other provisions of this article, ~~beginning January 1, 2006~~ the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Commissioner of Conservation pursuant to Title 12, section 8867-B.

Sec. 3. 38 MRSA §438-B, first ¶, as enacted by PL 2003, c. 335, §5, is amended to read:

Except as provided in subsection 4, ~~beginning January 1, 2006 on the effective date established under subsection 5,~~ rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide for the purpose of regulating timber harvesting and timber harvesting activities in shoreland areas.

Sec. 4. 38 MRSA §438-B, sub-§§2, 3 and 4, as enacted by PL 2003, c. 335, §5, are amended to read:

2. Municipal acceptance of statewide standards. A municipality may choose to have the statewide standards apply to timber harvesting and timber harvesting activities in that municipality by ~~repealing~~ authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas and notifying the director of the repeal. The authorization must specify a repeal date consistent with the effective date established under subsection 5. When a municipality accepts the statewide standards in accordance with this subsection, the director shall administer and enforce the statewide standards within that municipality beginning on the effective date established under subsection 5.

3. Municipal adoption of ordinance identical to statewide standards. A municipality may adopt an ordinance to regulate timber harvesting and timber harvesting activities that is identical to the statewide standards. A municipality that adopts an ordinance under this subsection may request the director to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning on the effective date established under subsection 5. When a municipality requests joint responsibilities, the director and the municipality shall enter into an agreement that delineates the administrative and enforcement duties of each. To continue to receive administrative and enforcement assistance from the director under this subsection, a municipality must amend its ordinance as necessary to maintain identical provisions with the statewide standards.

4. Municipal ordinances that are not identical to statewide standards. A municipal ordinance regulating timber harvesting and timber harvesting activities that is in effect and consistent with state laws and rules in effect on December 31, 2005 continues in effect unless action is taken in accordance with subsection 2 or 3. A municipality that retains an ordinance with provisions that differ from the statewide standards shall administer and enforce that ordinance. A municipality may not amend a municipal ordinance regulating timber harvesting and timber harvesting activities unless the process established in Title 12, section 8869, subsection 8 is followed. ~~Beginning on January 1, 2006 the effective date established under subsection 5,~~ a municipality may not amend an ordinance regulating timber harvesting and timber harvesting activities in a manner that results in standards that are less stringent than or otherwise conflict with the statewide standards.

Sec. 5. 38 MRSA §438-B, sub-§5 is enacted to read:

5. Effective date for statewide standards. Except as provided in subsection 4, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide beginning on the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3. Within 30 days of making the determination that the 251-municipality threshold has been met, the Commissioner of Conservation shall notify the Secretary of State in writing and advise the

secretary of the effective date for the statewide standards.

Sec. 6. PL 2003, c. 335, §§7 and 8 are amended to read:

Sec. 7. Review of rules pertaining to timber harvesting in shoreland areas within unorganized and deorganized areas. ~~No later than October 1, 2005, the~~ The Maine Land Use Regulation Commission, in consultation with the Director of the Bureau of Forestry within the Department of Conservation, shall review the commission's rules pertaining to timber harvesting and timber harvesting activities in shoreland areas and provide for the repeal or amendment of rules that duplicate or conflict with the rules adopted by the Commissioner of Conservation pursuant to the Maine Revised Statutes, Title 12, section 8867-B. The commission shall ensure that any necessary changes in rule become effective ~~January 1, 2006~~ on the date established pursuant to Title 38, section 438-B, subsection 5.

Sec. 8. Review of rules pertaining to timber harvesting in shoreland areas. ~~No later than October 1, 2005, the~~ The Commissioner of Environmental Protection, in consultation with the Director of the Bureau of Forestry within the Department of Conservation, shall review rules adopted by the commissioner or the Board of Environmental Protection pertaining to timber harvesting and timber harvesting activities in shoreland areas and provide for the repeal or amendment of rules that duplicate or conflict with the rules adopted by the Commissioner of Conservation pursuant to ~~the~~ the Maine Revised Statutes, Title 12, section 8867-B. The Commissioner of Environmental Protection and the board shall ensure that any necessary changes become effective ~~January 1, 2006~~ on the date established pursuant to Title 38, section 438-B, subsection 5.

Sec. 7. Commissioner of Conservation directed to submit legislation. The Commissioner of Conservation, in consultation with the Commissioner of Environmental Protection, shall prepare legislation to make statutory revisions necessary to implement a statewide standard for timber harvesting and timber harvesting activities in shoreland areas and to further clarify as necessary the responsibilities of the Department of Conservation, Bureau of Forestry in administering and enforcing the standard. The Commissioner of Conservation shall submit the legislation for introduction in the legislative session prior to the effective date for rules adopted pursuant to the Maine Revised Statutes, Title 12, section 8867-B as determined by Title 38, section 438-B, subsection 5.

See title page for effective date.

CHAPTER 227

S.P. 240 - L.D. 742

An Act To Postpone the Repeal Date on Nonhospital Expenditures in the Capital Investment Fund

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

Sec. 1. 2 MRSA §102, sub-§3, as enacted by PL 2003, c. 469, Pt. B, §1, is amended to read:

3. Nonhospital capital expenditures. For the first ~~3~~ 6 years of the plan, the nonhospital component of the capital investment fund must be at least 12.5% of the total.

This subsection is repealed July 1, ~~2007~~ 2008.

See title page for effective date.

CHAPTER 228

H.P. 977 - L.D. 1413

An Act To Conform the Remedies under the Maine Family Medical Leave Requirements with Those Available under Federal Law

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

Sec. 1. 26 MRSA §848, as enacted by PL 1987, c. 661, is repealed and the following enacted in its place:

§848. Judicial enforcement

1. Injunction and damages. A civil action may be brought in the appropriate court by an employee against any employer to enforce this subchapter. The court may enjoin any act or practice that violates or may violate this subchapter and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this subchapter. The court also may:

A. Award damages equal to the wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation; or

B. Order the employer to pay liquidated damages of \$100 to the employee for each day that the violation continued.

2. Additional damages. The court also may order the employer to pay an additional amount as