

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

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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

Sec. 4. 12 MRSA §12551-A, sub-§10 is enacted to read:

10. Reports required. A person licensed under this section must submit a report on forms provided by the department with the following information: name and location, including the town and county of waters fished; date fished; total catch; gear type; and number of nets used. The report must be submitted by May 31st of each year. A person who has not submitted this report may be prohibited from obtaining a license under this section. A person who is prohibited from obtaining a license under this section may submit an appeal to the commissioner.

All data submitted as part of the report are for scientific purposes only and are confidential and not a public record within the meaning of Title 1, chapter 13, subchapter 1, except that the commissioner may disclose data collected under this subsection if that data are released in a form that is statistical or general in nature.

See title page for effective date.

CHAPTER 238

H.P. 299 - L.D. 396

An Act To Amend the Laws Concerning the Maine State Retirement System

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

Sec. 1. 5 MRSA §17105, sub-§3, as repealed and replaced by PL 1993, c. 410, Pt. L, §23, is amended to read:

3. Staff. The executive director shall employ personnel as necessary and in accordance with board policy to transact the business of the system, which may include a general counsel. Additional attorneys may be employed to assist the general counsel with the approval of the Attorney General. The duties of the general counsel and any assistant counsel must be consistent with the terms of a memorandum of understanding between the executive director and the Attorney General.

See title page for effective date.

CHAPTER 239

S.P. 526 - L.D. 1510

An Act To Amend the Lobster Fishing Laws of Maine

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

Sec. 1. 12 MRSA §6421, sub-§5-A, as amended by PL 2003, c. 468, §2, is further amended to read:

5-A. Student license eligibility. A student license may ~~only~~ be issued only to a person who, at the time of application, is a full-time student 8 years of age or older and under 23 years of age. For the purposes of this subsection, "full-time student" means ~~"student" as defined in Title 39-A, section 102, subsection 8, paragraph C.;~~

A. A person attending a public day school in accordance with the attendance requirement of Title 20-A, section 5001-A, subsection 1;

B. A person meeting the requirements of an alternative to attendance at public day school in accordance with Title 20-A, section 5001-A, subsection 3; or

C. A person enrolled in a full-time course of study at a college or university accredited by a state-recognized accrediting agency or body.

A person may not be considered to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if it is shown that the person has a bona fide intention of continuing to pursue a full-time course of study during the semester or other enrollment period immediately following the interim period. For purposes of this subsection, "full-time course of study" means at least 60% of the usual course load for the program in which the person is enrolled.

Sec. 2. 12 MRSA §6431-F, as amended by PL 2003, c. 510, Pt. A, §6, is further amended to read:

§6431-F. Trap tags

1. Trap tag limits. ~~Beginning with the 2000 license year, the~~ The following provisions govern trap tag limits apply to holders of Class I, Class II or Class III lobster and crab fishing licenses.

A. If the license holder purchased as of November 20, 1998 for the 1998 license year between zero and 200 trap tags, the license holder may not purchase more than 300 trap tags for the initial license year. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number does not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps.

~~B. If the license holder purchased as of November 20, 1998 for the 1998 license year 201 or more trap tags, for the initial license year, the license holder may purchase a number of trap tags not greater than 100 more than the number the license holder purchased as of November 20, 1998 for the 1998 license year as long as that number does not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps. For each following year, the~~ Each year, a Class I, Class II or Class III lobster and crab fishing license holder may purchase a number of trap tags that is not greater than 100 more than the number the license holder purchased for the previous license year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit established by rule for the zone in which the person fishes a majority of that person's traps zones identified on that person's license pursuant to section 6446, subsection 1-A.

2. Exceptions. Notwithstanding subsection 1, the following trap tag limits apply:

A. If the license holder was issued a Class I, Class II or Class III lobster and crab fishing license for the first time after meeting the requirements of the apprentice program under section 6422, the license holder may not purchase more than 300 trap tags for the initial license year. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit established by rule for the zone in which the person fishes a majority of that person's traps zones identified on that person's license pursuant to section 6446, subsection 1-A; and

~~B. If the license holder was issued a Class I, Class II or Class III lobster and crab fishing license pursuant to former section 6421, subsection 5, paragraph H or former section 6421-A, subsection 1, paragraph D, the license holder may not purchase more than 300 trap tags for the initial license year. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number does not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps; and~~

C. If the license holder was issued a Class I, Class II or Class III lobster and crab fishing license on appeal, the license holder may purchase for the initial license year a number of trap tags up to the number of trap tags purchased by the person for the most recent year in which the per-

~~son held a license if the person held a license in 1996 or later or 300 trap tags if the person did not hold a license in 1996 or later. For each following year, the license holder may purchase up to an increase of 100 trap tags each year. The number of trap tags may as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit established by rule for the zone in which the person fishes a majority of that person's traps zones identified on that person's license pursuant to section 6446, subsection 1-A.~~

3. Appeal of trap tag denial. A lobster and crab fishing license holder who was issued 300 or fewer trap tags under subsection 1 for the 2000 license year because that person had purchased no trap tags as of November 20, 1998 may appeal to the commissioner for additional trap tags. The appeals process is as follows:

A. The commissioner may issue trap tags on appeal only if the following criteria are met:

(1) The person documents that the person harvested lobsters in 1996 or 1997; and

(2) The person documents that the person did not purchase trap tags in 1998 because of a substantial illness or other medical condition on the part of the person or a family member or the person documents that service in the Armed Forces of the United States or the United States Coast Guard precluded participation in the lobster fishery and the purchase of trap tags in 1998. For the purposes of this subparagraph, "family member" means a spouse, brother, sister, son in law, daughter in law, parent by blood, parent by adoption, mother in law, father in law, child by blood, child by adoption, stepchild, step-parent, grandchild or grandparent.

~~B. A person appealing the denial of trap tags under this subsection shall request the review in writing. The commissioner shall hold a hearing on the appeal if it is requested in writing within 10 days of the initial request. If a hearing is requested, it must be held within 10 days of the request, unless a longer period is mutually agreed to in writing, and it must be conducted in the Augusta area.~~

~~A hearing held under this subsection is informal. At the hearing, the appellant may present any evidence concerning the criteria listed in paragraph A that might justify issuing trap tags to the person, and the commissioner may request any additional information the commissioner consid-~~

ers necessary. ~~Any medical information provided as part of the appeal is a confidential record as defined in Title 1, section 402, subsection 3, paragraph A.~~

~~C. A license holder whose appeal is approved under this subsection may purchase a number of trap tags up to the number of trap tags purchased in 1996 or 1997, whichever is greater. For each following year, the license holder may purchase up to an increase of 100 trap tags each year. The number of trap tags may not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps.~~

~~Issuance of trap tags on appeal is at the discretion of the commissioner, except that trap tags may not be issued unless the criteria in paragraph A are met. Decisions of the commissioner must be in writing.~~

~~4. **Trap limit.** A person may not purchase submerge a number of trap tags traps greater than the number of traps allowed under the lowest trap limit established by rule for ~~a~~ the lobster management zone in which that person fishes zones identified on that person's license pursuant to section 6446, subsection 1-A.~~

~~5. **Repeal.** This section is repealed December 31, 2005.~~

Sec. 3. 12 MRSA §6446, sub-§1-A, as amended by PL 2003, c. 466, §2 and affected by §5, is further amended to read:

1-A. Declared lobster zone; authorized zones. ~~A person shall declare on~~ On an application for a Class I, Class II, Class III or noncommercial lobster and crab fishing license, a person shall declare the lobster management zone in which that person proposes to fish a majority of that person's lobster traps and shall list all other zones in which that person proposes to fish any of that person's lobster traps. A Class I, Class II, Class III or noncommercial lobster and crab fishing license must identify the declared lobster zone in which the person is authorized to fish a majority of that person's lobster traps and must identify all other zones in which a person is authorized to fish that person's traps. A person may not place any lobster traps in a zone that is not identified on that person's license. For the purposes of this subsection, the majority of a person's lobster traps must be determined from the number of trap tags issued to that person.

Sec. 4. 12 MRSA §6448, sub-§2, as amended by PL 2003, c. 510, Pt. A, §7, is further amended to read:

2. Rules for limited-entry zones. The commissioner may adopt rules establishing limits on new zone

entrants to a lobster management zone. These rules must be adopted in accordance with this subsection.

~~A. After conducting a written survey in the zone, a lobster management policy council may propose to the commissioner an exit ratio to limit new zone entrants to the zone. The lobster management policy council may also propose to the commissioner a provision to exempt from the requirements of this section an individual who became eligible for but had not been issued a Class I, Class II or Class III license pursuant to section 6421, subsection 5, paragraph C or former paragraph H prior to January 1, 2000 and to allow that individual to declare the zone as that individual's declared lobster zone. The lobster management policy council is not required to submit the proposal to referendum and the proposed exit ratio does not need to receive approval through the survey in order to be forwarded to the commissioner.~~

~~B. The commissioner may initiate rulemaking under this subsection only upon receipt of a proposal under paragraph A. The commissioner shall hold a public hearing on the proposed rules pursuant to Title 5, section 8052. The public hearing must be held in the zone in which the rules would apply and the results of the written survey must be entered into the record.~~

~~C. Rules adopted under this subsection must establish an exit ratio between the number of individuals who declared that zone as their declared lobster zone in the year prior to the previous calendar year, but who did not declare that zone as their declared lobster zone in the previous calendar year, and the number of new zone entrants authorized under subsection 7. An exit ratio established by rule under this subsection is not required to be the same as the exit ratio proposed by the lobster management policy council. Rules adopted under this subsection may exempt from the requirements of this section an individual who became eligible for but who had not been issued a Class I, Class II or Class III license pursuant to section 6421, subsection 5, paragraph C or former paragraph H prior to January 1, 2000 and allow such an individual to declare the zone as that individual's declared lobster zone.~~

~~D. Upon written notification from the lobster management policy council that a majority of the council has voted to conduct a survey in a zone regarding a proposal for an exit ratio to limit new zone entrants to the zone, the commissioner shall close the zone to new zone entrants until the commissioner either adopts rules under this subsection or declares that the commissioner will not initiate rulemaking under this subsection. In no~~

event may the zone remain closed for longer than one year unless the commissioner has adopted rules establishing limits on new zone entrants to the zone.

E. When a lobster management policy council proposes to the commissioner a change in the exit ratio established under paragraph C and a new exit ratio is adopted by rule under this subsection, the commissioner shall allow individuals who meet the following conditions to enter the zone in accordance with the previously existing exit ratio:

(1) The individual has completed the requirements of the apprenticeship program established under section 6422 by the date the commissioner receives written notification from the lobster management policy council that a majority of the council has voted to conduct a survey pursuant to paragraph D; and

(2) The individual's name is listed on the waiting list maintained under subsection 6 by the date the commissioner receives written notification from the lobster management policy council that a majority of the council has voted to conduct a survey pursuant to paragraph D.

F. When a lobster management policy council proposes to the commissioner to establish an exit ratio for the first time to limit new zone entrants under paragraph A, it may also propose to the commissioner a provision to exempt from the exit ratio, upon completion of the apprentice program, an individual who has completed at least 92% of the hours required and at least 92% of the days required by the apprentice program established under section 6422 by the date the commissioner receives written notification from the lobster management policy council pursuant to paragraph D.

Sec. 5. 12 MRSA §6462-A, sub-§1, ¶D, as enacted by PL 1997, c. 208, §3, is amended to read:

D. Three persons who hold lobster and crab fishing licenses and who are not members of lobster management policy councils established under section 6447, appointed by the commissioner. Each person appointed under this paragraph must reside in a different county. One person appointed under this paragraph must hold a noncommercial lobster and crab fishing license.

Sec. 6. 12 MRSA §6465, sub-§§1 and 2, as enacted by PL 2001, c. 623, §1, are amended to read:

1. Sources and uses of fund. Revenues from lobster special registration plate fees credited to the fund under Title 29-A, section 456-A may be used for research and education to support the development of the lobster industry in this State. Revenues may also be used to support the operation of the research, education and development board described in subsection 2, including reimbursement for travel expenses of its members.

2. Research, education and development board. The commissioner shall appoint a research, education and development board and consult with the board regarding the expenditures from the fund. The board is composed of one member from each of the following organizations:

- A. A statewide association representing the interests of persons who harvest lobster commercially;
- B. An association representing the interests of persons who harvest lobster commercially in Washington and Hancock counties;
- C. A southern Maine association representing the interests of persons who harvest lobster commercially;
- D. A statewide import-export lobster dealers' association;
- E. A statewide lobster pound owners' association;
- F. A statewide lobster processors' association;
- G. The Lobster Promotion Council under section 6455;
- H. The Lobster Advisory Council established by Title 5, section 12004-I, subsection 58; and
- I. An international lobster institute. This member must be a resident of the State.

Members are entitled to compensation according to Title 5, chapter 379.

Sec. 7. 12 MRSA §6473, sub-§2 is enacted to read:

2. Exception. Notwithstanding subsection 1, a person registered for Monhegan Lobster Conservation Area trap tags may serve as a crew member to assist in the licensed activities under the direct supervision of a Class I, Class II or Class III license holder outside the Monhegan Lobster Conservation Area.

Sec. 8. 12 MRSA §6851, sub-§2-A, as enacted by PL 1991, c. 523, §3, is amended to read:

2-A. Wholesale seafood license with lobster permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit may engage in all the activities in subsection 2 and may buy, sell, process, ship or transport lobster or properly permitted or lawfully imported lobster meat or parts anywhere within the state limits. A license under this subsection does not authorize a person to possess or transport lobster that person has taken unless that person is in possession of a license issued under section 6421, subsection 3-A, paragraph A, B, C or E. A license under this subsection does not authorize a person to remove lobster meat from the shell unless a permit under section 6857 is held.

Sec. 9. 12 MRSA §6851, sub-§4, as amended by PL 2001, c. 421, Pt. B, §53 and affected by Pt. C, §1, is further amended to read:

4. License limited. A license under this section authorizes activities at only one establishment or with only one vehicle, but not on a vessel rigged to fish, provided that this license also authorizes the sale and transportation of scallops from any vessel. The limitation in this subsection does not apply to holders of licenses issued under section 6421 when they are transporting lobsters on the vessel they have declared on their lobster license application.

Sec. 10. 12 MRSA §6862, sub-§§2 and 4, as amended by PL 2001, c. 421, Pt. B, §61 and affected by Pt. C, §1, are further amended to read:

2. Permitted activity. A lobster tail permit authorizes a wholesale seafood license holder to remove a lobster tail from a lobster and to process that whole lobster tail ~~or portions of that lobster tail~~ under the following conditions.

A. The lobster tail ~~or lobster tail portions~~ may be processed only at the establishment named in the permit.

B. The lobster tail ~~or lobster tail portions~~ may come from only a legal-sized lobster, as defined in section 6431.

C. All containers in which lobster tails ~~or lobster tail portions~~ are packed to be sold, shipped or transported must be clearly labeled with the name, address and permit number of the packer.

4. Rules. The commissioner, in accordance with Title 5, chapter 375, may adopt rules necessary for implementation and enforcement of this section. These rules may include provisions for determining that lobster tails ~~or lobster tail portions~~ processed by a wholesale seafood license holder under this section were removed by that wholesale seafood license

holder from legal-sized lobsters and other provisions as may be determined necessary.

Sec. 11. Retroactivity. That portion of this Act that enacts the Maine Revised Statutes, Title 12, section 6448, subsection 2, paragraph E applies retroactively to April 1, 2005. That portion of this Act that enacts Title 12, section 6448, subsection 2, paragraph F applies retroactively to October 1, 2004.

See title page for effective date.

CHAPTER 240

H.P. 441 - L.D. 608

An Act To Assist Municipal Implementation and Enforcement of Storm Water Management Programs

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

Sec. 1. 4 MRSA §152, sub-§6-A, ¶O, as enacted by PL 1989, c. 878, Pt. A, §7, is amended to read:

O. Local ordinances regarding air pollution control enacted pursuant to Title 38, section 597; ~~and~~

Sec. 2. 4 MRSA §152, sub-§6-A, ¶P, as amended by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is further amended to read;

P. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1; local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2; ~~and~~

Sec. 3. 4 MRSA §152, sub-§6-A, ¶Q is enacted to read:

Q. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules;

Sec. 4. 30-A MRSA §4452, sub-§5, ¶Q, as amended by PL 1989, c. 287, §3, is further amended to read:

Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those ~~which that~~ were state-imposed; ~~and~~