

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**

**July 29, 2005**

**SECOND REGULAR SESSION**

**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**

**SECOND SPECIAL SESSION**

**NON-EMERGENCY LAWS IS**

**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**

**SECOND REGULAR SESSION**

**NON-EMERGENCY LAWS IS**

**AUGUST 23, 2006**

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

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**Penmor Lithographers**

**Lewiston, Maine**

**2006**

D. A landowner will receive written confirmation of the documentation from the Department of Environmental Protection; and

24. The section regarding department determinations of shorebird nesting, feeding and staging areas in the provisionally adopted rule is deleted and replaced with a provision that provides that if, upon request from a landowner, the Department of Environmental Protection staff provides a written field determination or advisory opinion regarding the presence or absence of a high- or moderate-value shorebird nesting, feeding or staging area, a landowner acting on that determination or advisory opinion by carrying out an activity subsequently found to be in violation is not required to obtain a permit for that activity and will not be subject to enforcement action if jurisdiction or a penalty would be based solely on that activity; and be it further

**Sec. 2. Implementation date; significant vernal pool habitat rule. Resolved:** That the provisions regarding the regulation of activities in, on, over or adjacent to a significant vernal pool habitat in the rule authorized pursuant to this resolve may not be implemented prior to September 1, 2007. The Department of Environmental Protection may not require a permit for an activity that takes place in, on, over or adjacent to a significant vernal pool habitat pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 5-A prior to September 1, 2007; and be it further

**Sec. 3. Report; significant wildlife habitat rules. Resolved:** That, by January 1, 2009, the Department of Environmental Protection shall submit a report on the implementation of Chapter 335: Significant Wildlife Habitat Rules to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include, but is not limited to:

1. The number of field determinations requested under the rule and the number of field determinations completed;
2. The number of individual permit applications received under the rule and the department's response to and status of those applications;
3. The number of permit-by-rule notifications regarding significant vernal pool habitats received by the department;
4. The number of permit-by-rule notifications regarding significant vernal pool habitats that required individual permits;
5. The number and type of voluntary identifications of significant vernal pool habitats submitted to

the department and the department's response to those voluntary identifications; and

6. Public education and outreach provided by the department; and be it further

**Sec. 4. Authority to report out legislation.**

**Resolved:** That the joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation relating to the significant wildlife habitat rules report submitted pursuant to section 3 of this resolve to the First Regular Session of the 124th Legislature.

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

Effective April 12, 2006.

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**CHAPTER 184**

**H.P. 1456 - L.D. 2060**

**Resolve, Regarding Legislative  
Review of Portions of Chapter 895:  
Underground Facility Damage  
Prevention Requirements, a Major  
Substantive Rule of the Public  
Utilities Commission**

**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 portions of Chapter 895: Underground Facility Damage Prevention Requirements, a provisionally adopted major substantive rule of the Public

Utilities Commission 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:

**1. Preliminary investigation.** In section 7(B)(1) a new provision is added to provide the following:

A. That the commission staff shall engage in a preliminary investigation regarding any potential violation of the Dig Safe Law or rules;

B. That the preliminary investigation must include a good faith effort to contact the potential violator and afford that person an opportunity to discuss the matter prior to the issuance of a notice of probable violation; and

C. That nothing in the new provision precludes the issuance of a notice of probable violation if a person cannot be located with reasonable effort or fails to respond to a communication from the staff;

**2. Informal review.** In section 7(B)(2)(a) it is clarified that the informal review consists of an informal conference or an analysis of the respondent's written reply;

**3. Recommended decision.** In section 7(B)(3)(a) it is provided that, following the informal conference or the waiver of the informal conference, the commission staff member shall issue in writing a recommended decision indicating whether or not the respondent has violated the Dig Safe Law or the rules and the basis for that conclusion, and the recommended disposition; and

**4. Technical changes.** Any technical changes to the rule necessary to accomplish the changes described in this resolve are made.

The commission is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

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

Effective April 12, 2006.

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## CHAPTER 185

S.P. 701 - L.D. 1784

### Resolve, To Clarify Contingency Allowance under the Certificate of Need Law

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

**Whereas,** capital projects that are already under construction will be affected by this legislation; 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. Maximum expenditure and contingency allowance. Resolved:** That the Department of Health and Human Services shall revise or adopt rules as needed to provide for a contingency allowance for the project budget of 5% to 8% depending on the type of project, as defined in the rules, in issuing a certificate of need under the Maine Revised Statutes, Title 22, chapter 103-A. A single contingency allowance must be provided for in all projects and the allowance may not be subject to an additional cap other than the applicable percentage. The department shall repeal the current cap of \$1,000,000; and be it further

**Sec. 2. Rules. Resolved:** That rules adopted pursuant to section 1 are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

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

Effective April 13, 2006.

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## CHAPTER 186

H.P. 1208 - L.D. 1701

### Resolve, To Ensure Coordination and Effectiveness in the Provision of Services under the MaineCare Noncategorical Waiver

**Sec. 1. Development of processes. Resolved:** That the Department of Health and Human Services shall ensure the coordination and effective provision of MaineCare services provided to noncategorical members eligible for benefits under the Maine Revised Statutes, Title 22, section 3174-G, subsection 1, paragraph F, referred to in this section as "noncategorical members," by:

1. Implementing a process for tracking the number of mental health treatment sessions provided to