

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

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

Penmor Lithographers
Lewiston, Maine
2007

the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any censure, bar, civil fine or costs of investigation the administrator will seek, a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a censure, bar or civil penalty fine or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. A summary order issued against any person becomes a final order 30 days after the administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing or on the date of the hearing if the person requesting the hearing fails to appear. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

Sec. 13. 32 MRSA §16606, sub-§3, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

3. Copies of public records. The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted or order issued under this chapter may establish a reasonable charge for furnishing the record, not to exceed \$.50 per page; for providing a licensee register in an electronically readable format, not to exceed \$20 per copy; or for certification, not to exceed \$10 per certified record. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective March 20, 2007.

CHAPTER 15

H.P. 319 - L.D. 403

**An Act To Encourage
Municipalities To Abate
Coastal Pollution**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until

90 days after adjournment unless enacted as emergencies; and

Whereas, it is important that coastal municipalities be allowed to manage their shellfish resources without the threat of losing their investments; and

Whereas, this Act needs to take effect before mud flats are again accessible for the harvest of shellfish in order to ensure coastal municipalities some measure of control over the management and conservation of the shellfish resources within their jurisdictions; 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 enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §6856, sub-§3, as amended by PL 2003, c. 248, §11, is further amended to read:

3. Depuration certificate. A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for depuration, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ensure the public safety. A depuration plant operator shall maintain a generalized management plan on file with the commissioner that sets forth a timeline for harvest, harvest limits and harvester selection. The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning. ~~To ensure consistency with municipal shellfish conservation programs, established pursuant to section 6671, the commissioner must consult with a municipal shellfish conservation committee before taking action to open an area within that municipality for depuration digging. The commissioner may continue to issue controlled purification certificates for areas that were restricted to depuration digging on September 1, 1989, without consulting municipalities.~~

Sec. 2. 12 MRSA §6856, sub-§3-A is enacted to read:

3-A. Municipal consultation and approval; depuration harvesting. Within a municipality that has a municipal shellfish conservation committee established pursuant to section 6671, the following provisions apply to shellfish growing areas that have been

downgraded after January 1, 2006 to a restricted classification for water quality as defined in rule.

A. Unless the commissioner obtains the approval of the affected municipality, the commissioner may not open an area downgraded to a restricted classification for depuration harvesting for 2 years from the date of the reclassification to allow the municipality to develop a pollution abatement plan under subsection 3-B.

B. Beginning April 1, 2007, a municipality must notify the commissioner within 8 weeks of the reclassification of an area whether or not it intends to develop a pollution abatement plan. If the municipality does not wish to develop a pollution abatement plan in accordance with subsection 3-B or if it fails to notify the commissioner within the 8-week period, municipal approval is not required.

C. If a municipal shellfish conservation committee has a pollution abatement plan as provided in subsection 3-B on file with the commissioner, the commissioner must obtain the approval of the committee before taking action to open an area within that municipality for depuration digging.

D. If a municipal shellfish conservation committee has a depuration management plan as provided in subsection 3-C approved by the commissioner, the municipality may manage the depuration harvesting over a shellfish growing area within that municipality.

Sec. 3. 12 MRSA §6856, sub-§3-B is enacted to read:

3-B. Municipal pollution abatement plan. A pollution abatement plan must be specific to a particular shellfish growing area and include at least:

A. A shoreline survey as defined by rule;

B. Hydrological and meteorological data pertaining to the area;

C. Pollution source identification;

D. Tasks to be undertaken to remediate the pollution problem; and

E. A timeline for pollution remediation. If the timeline for remediation is longer than 2 years, a scientific resource survey and a standing crop analysis as required by the commissioner must be included in the plan.

Sec. 4. 12 MRSA §6856, sub-§3-C is enacted to read:

3-C. Municipal depuration management plan. A depuration management plan must include but is not limited to:

A. A scientific shellfish survey approved by the commissioner;

B. A standing crop analysis with year classes as required by the commissioner;

C. Historical harvest data; and

D. Established annual harvest limits.

Sec. 5. 12 MRSA §6856, sub-§7, as enacted by PL 1991, c. 831, §2, is amended to read:

7. Resident depuration harvesters. ~~When~~ Except for depuration activities conducted under subsection 3-A, paragraph D, when harvesting soft-shelled clams under a depuration certificate, the person holding the certificate shall, to the extent possible, employ one person who is a resident of the municipality as harvester for every person employed as harvester who is not a resident of that municipality.

Sec. 6. Retroactivity. That section of this Act that enacts Title 12, section 6856, subsection 3-A applies retroactively to January 1, 2006.

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

Effective March 22, 2007.

CHAPTER 16

H.P. 223 - L.D. 267

An Act To Ensure Proper Funding 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, it is necessary that the Public Utilities Commission have sufficient funds to carry out its statutory obligations during fiscal years 2007-08 and 2008-09; 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 enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §116, sub-§1, as amended by PL 2005, c. 135, §1, is further amended to read: