

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

ject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall submit an updated report to the committee by ~~January 1, 2010~~ March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the ~~124th~~ 126th Legislature ~~legislation a bill~~ relating to the evaluation and the updated report.

Sec. 3. 38 MRSA §585-B, sub-§7 is enacted to read:

7. Stack tests for mercury. An air emission source emitting mercury in excess of 10 pounds in calendar year 2010 must:

A. Conduct a stack test for mercury twice in calendar year 2011 and twice in calendar year 2012. The stack tests must be conducted at least 4 months apart; and

B. By January 1, 2013, develop a mercury reduction plan and submit the plan to the department in accordance with subsection 6. The plan must contain the results of the 4 stack tests conducted pursuant to paragraph A.

For determining compliance with subsection 5, the results of multiple stack tests under this subsection may be averaged in accordance with guidance provided by the department.

The department may approve an alternative to the stack testing requirements in this subsection, such as, but not limited to, mercury input data or a continuous mercury emission monitoring system.

See title page for effective date.

CHAPTER 536

H.P. 1211 - L.D. 1710

An Act Concerning Litigation Brought by the Attorney General To Enforce Provisions of the Forest Practices Laws

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

Sec. 1. 12 MRSA §8870, sub-§6 is enacted to read:

6. Costs permitted. In any action or proceeding brought by the Attorney General under this section, the court may award litigation costs, including court costs, reasonable attorney's fees and reasonable expert

witness fees, to be deposited in the General Fund of the State if the State or any of its officers or agencies is a prevailing party in the action or proceeding and the defendant's defense was not substantially justified. For the purposes of this subsection, a defense is "substantially justified" if the defense had a reasonable basis in law or fact at the time it was raised.

Sec. 2. 12 MRSA §9701, as enacted by PL 1979, c. 545, §3, is amended to read by adding at the end a new paragraph to read:

In any action or proceeding brought by the Attorney General under this section, the court may award litigation costs, including court costs, reasonable attorney's fees and reasonable expert witness fees, to be deposited in the General Fund of the State if the State or any of its officers or agencies is a prevailing party in the action or proceeding and the defendant's defense was not substantially justified. For the purposes of this subsection, a defense is "substantially justified" if the defense had a reasonable basis in law or fact at the time it was raised.

See title page for effective date.

CHAPTER 537

H.P. 1082 - L.D. 1538

An Act To Close Loopholes in Environmental Laws

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

Sec. 1. 38 MRSA §414, sub-§8, as enacted by PL 1997, c. 794, Pt. A, §21, is amended to read:

8. Effect of license. Issuance of a license under ~~this chapter~~ section 413 does not convey any property right of any sort, or exclusive privilege. Except for toxic effluent standards and prohibitions imposed under the Federal Water Pollution Control Act, Section 307, as amended, compliance with a license issued under section 413 during its terms constitutes compliance with ~~this chapter~~ sections 413 to 414-C and section 423-D. It is not a defense for a licensee in an enforcement action that it would have been necessary to halt or reduce the licensed activity in order to maintain compliance with the conditions of the license. The licensee shall take all reasonable steps to minimize or prevent any discharge in violation of a license that has a reasonable likelihood of adversely affecting human health or the environment.

Sec. 2. 38 MRSA §420-D, sub-§7, ¶A, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is repealed and the following enacted in its place:

A. Forest management activities as defined in section 480-B, subsection 2-B, including associated road construction or maintenance, do not require review pursuant to this section as long as any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Conservation, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State.

Sec. 3. 38 MRSA §480-Q, sub-§7-A, ¶A, as enacted by PL 1989, c. 838, §6, is repealed.

Sec. 4. 38 MRSA §480-Q, sub-§7-A, ¶D, as amended by PL 2001, c. 618, §4, is further amended to read:

D. Any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Conservation, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development but is used primarily for forest management activities, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads that provide access to development in within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Regulation Commission;

See title page for effective date.

CHAPTER 538

S.P. 632 - L.D. 1667

An Act To Amend the Election Laws and Other Related Laws

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

Sec. 1. 1 MRSA §353, as amended by PL 2009, c. 462, Pt. D, §1, is further amended to read:

§353. Explanation of proposed amendments and statewide referenda

With the assistance of the Secretary of State, the Attorney General shall prepare a brief explanatory statement that must fairly describe the intent and content and what a "yes" vote favors and a "no" vote opposes for each constitutional resolution or statewide referendum that may be presented to the people and that must include any information prepared by the Treasurer of State under Title 5, section 152. The explanatory statement may not include comments of proponents or opponents as provided by section 354. In addition to the explanatory statement, the Office of Fiscal and Program Review shall prepare an estimate of the fiscal impact of each constitutional resolution or statewide referendum on state revenues, appropriations and allocations within ~~40~~ 15 business days after the receipt of the application and full text of the proposed law by the Secretary of State. The fiscal impact estimate must summarize the aggregate impact that the constitutional resolution or referendum will have on the General Fund, the Highway Fund, Other Special Revenue Funds and the amounts distributed by the State to local units of government.

Sec. 2. 21-A MRSA §3, as amended by PL 1997, c. 436, §8, is further amended to read:

§3. Signatures and names

When this Title requires a name or signature on a document, immaterial irregularities ~~shall do not~~ invalidate the name or signature if the identity of the person named is clear to the public official charged with reviewing that document.

1. Immaterial irregularities. Immaterial irregularities include, but are not limited to, misspelling, inclusion or omission of initials and substitution of initials or nicknames for given names.

2. Application. This policy ~~shall apply~~ applies to circumstances including, but not limited to, the following:

- A. Absentee ballot applications;
- B. Absentee ballot affidavits;
- C. Signatures on petitions; and
- D. Names appearing for write-in candidates on ballots.

Sec. 3. 21-A MRSA §7, as enacted by PL 1989, c. 166, §1, is amended to read:

§7. Use of words

When used in this Title, the words "shall" and "must" are used in a mandatory sense to impose an obligation to act ~~or refrain from acting~~ in the manner specified by the context. The word "may," when used in this Title, is used in a permissive sense to grant authority or permission, but not to create duty, to act in