

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

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

Augusta, Maine
2011

more service employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

Sec. 3. 26 MRSA §664, sub-§2, as amended by PL 2007, c. 367, §2, is further amended to read:

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. ~~Service employees may volunteer to pool their tips to be split among other service employees or may volunteer to share a part of their tips with other employees who do not generally receive tips directly from customers.~~ Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

Sec. 4. 26 MRSA §664, sub-§§2-A and 2-B are enacted to read:

2-A. Tip pooling. This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.

2-B. Service charges. An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

See title page for effective date.

**CHAPTER 119
H.P. 254 - L.D. 321**

An Act To Change the Qualifications of Certain Members of the Board of Pesticides Control

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

Sec. 1. 22 MRSA §1471-B, sub-§1, as amended by PL 2007, c. 466, Pt. B, §17, is further amended to read:

1. Board established. The Board of Pesticides Control is established by Title 5, section 12004-D, subsection 3, within the Department of Agriculture, Food and Rural Resources. Except as provided in this chapter, the board must be composed of 7 members, appointed by the Governor, subject to approval by the joint standing committee of the Legislature having jurisdiction over agricultural matters and confirmation by the Senate. To provide the knowledge and experience necessary for carrying out the duties of the board, the board must consist of the following members: one person with practical experience and knowledge regarding the agricultural use of chemicals; one person who has practical experience and knowledge regarding the use of chemicals in forest management; one person from the medical community; a scientist from the University of Maine System ~~specializing in agronomy or entomology~~ having practical experience and ~~knowledge of expertise in~~ integrated pest management; one commercial applicator; and 2 persons appointed to represent the public. The 2 members appointed to represent the public must ~~have a demonstrated interest in environmental protection and~~ represent different geographic areas of the State. The term must be for 4 years, except that of the initial appointees, 2 shall serve 4-year terms, 2 shall serve 3-year terms, 2 shall serve 2-year terms and one shall serve a one-year term. Any vacancy must be filled by an appointment for the remainder of the unexpired term.

Sec. 2. Application. This Act does not require the terms of members serving on the Board of Pesticides Control on the effective date of this Act to be terminated.

See title page for effective date.

**CHAPTER 120
H.P. 751 - L.D. 1015**

An Act To Reduce Unnecessary Reporting Requirements Related to Natural Resources

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

Sec. 1. 4 MRSA §152, sub-§6-A, ¶C, as amended by PL 1991, c. 377, §1, is further amended to read:

C. Shoreland zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 38, sections 435 to 446 ~~and section 449~~;

Sec. 2. 38 MRSA §344, sub-§7, as amended by PL 1991, c. 804, Pt. A, §3, is further amended to read:

7. Permit by rule. The Board of Environmental Protection may permit, by rule, any class of activities that would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule must describe with specificity the class of activities covered by the rule and may establish standards of design, construction or use as may be considered necessary to avoid adverse environmental impacts. Any such rule must require notification to the commissioner prior to the undertaking of the regulated activity.

~~The commissioner shall annually review activities requiring permits or approval from the department to determine whether any additional classes of activities are more effectively administered under a permit by rule system. As part of this review, the commissioner shall solicit public comments on recommendations for activities to be included under permit by rule and shall review the performance of the existing permit by rule program, including a review of the compliance record of the permit by rule program. The commissioner shall annually recommend to the board any additional categories of permits for the board to permit by rule.~~

Sec. 3. 38 MRSA §352, sub-§6, as amended by PL 1993, c. 736, §6, is repealed.

Sec. 4. 38 MRSA §449, as amended by PL 1989, c. 890, Pt. A, §40 and Pt. B, §49, is repealed.

Sec. 5. 38 MRSA §470-C, sub-§§8 and 9, as enacted by PL 2001, c. 619, §1, are amended to read:

8. In-stream storage ponds. A water withdrawal from an artificial pond constructed in a stream channel ~~provided that it is subject to a minimum-flow release requirement in an existing permit, and if the water user files a notice of intent to be covered by this exemption on a form to be provided by the department; and~~

9. Duplication of reporting. A water withdrawal that is reported to any other state agency under

any program requiring substantially similar data ~~provided that if the other agency has entered into a memorandum of agreement with the department for the collection and sharing of that data; and~~

Sec. 6. 38 MRSA §470-C, sub-§10 is enacted to read:

10. Agricultural producers. An agricultural producer that is subject to rules adopted under section 470-H and the provisions of Title 7, section 353.

Sec. 7. 38 MRSA §470-D, 2nd ¶, as enacted by PL 2001, c. 619, §1 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Conservation, ~~or the Commissioner of Health and Human Services or the Commissioner of Agriculture, Food and Rural Resources~~ in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner, ~~provided except that the required information is~~ must be collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal including the distance of each groundwater withdrawal from the nearest surface water source, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The board, ~~the Department of Agriculture, Food and Rural Resources, the Department of Conservation and the Department of Health and Human Services~~ may adopt routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A as necessary to implement the reporting provisions of this article.

Sec. 8. 38 MRSA §585-D, last ¶, as amended by PL 2007, c. 619, §7, is repealed.

Sec. 9. 38 MRSA §585-H, as amended by PL 2003, c. 638, §3, is repealed.

Sec. 10. PL 1997, c. 444, §9 is repealed.

See title page for effective date.