

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

established pursuant to section 193 is located. One of the 4 attorney members must be chosen from a county having a census population of from 45,000 to 120,000 and one of the 4 must be chosen from a county having a census population of less than 45,000 persons. The members are appointed by and serve at the pleasure of the Chief Justice of the Supreme Judicial Court. The Chief Justice shall designate the chair. The State Law Librarian, the University of Maine School of Law Librarian and the State Court Administrator are ex officio nonvoting members. A quorum consists of 5 of the voting members. The committee shall meet ~~at least 4 times each year~~ as needed at the call of the chair. Secretarial assistance must be provided by the Administrative Office of the Courts.

Sec. 2. 4 MRSA §193, last ¶, as enacted by PL 2001, c. 250, §2, is amended to read:

All other law libraries must ~~receive equal resources and services regardless of location~~ and have access to the regional court law library centers for the resources not available locally.

See title page for effective date.

CHAPTER 205

H.P. 1020 - L.D. 1387

**An Act To Restore Exemptions
in the Natural Resources
Protection Act**

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

Sec. 1. 38 MRSA §480-Q, sub-§2, as amended by PL 2009, c. 460, §1, is further amended to read:

2. Maintenance and repair. Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource ~~and maintenance and repair of a private crossing of a river, stream or brook~~ if:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- ~~B. Crossings do not block passage for fish or other aquatic organisms in water courses. Culverts and installation techniques utilized must achieve natural stream flow. This paragraph applies only to water courses containing fish;~~
- C. There is no additional intrusion into the protected natural resource; and
- D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is con-

sidered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure.

This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;

Sec. 2. 38 MRSA §480-Q, sub-§2-A, as amended by PL 2009, c. 460, §2, is repealed.

Sec. 3. 38 MRSA §480-Q, sub-§2-D is enacted to read:

2-D. Existing crossings. A permit is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:

A. Erosion control measures are taken to prevent sedimentation of the water;

B. The crossing does not block passage for fish in the protected natural resource area; and

C. For replacement crossings of a river, stream or brook:

(1) The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and

(2) As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom a minimum of one foot or at least 25% of the culvert or other structure's diameter, whichever is greater, except that a crossing structure does not have to be embedded more than 2 feet.

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.

Sec. 4. Statewide aquatic restoration plan for stream crossings. The Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Department of Transportation, in con-

junction with the Executive Department, State Planning Office and other interested stakeholders, shall work collaboratively to develop a statewide aquatic conservation and restoration strategy plan, referred to in this section as "the plan," designed to maintain and restore the ecological health of the State's aquatic ecosystems and focusing on maintaining and restoring dynamic ecological processes responsible for creating and sustaining habitats over broad landscapes as opposed to individual projects or small watersheds. The plan must improve upon best management practices for public and private roads by including consideration of the Department of Transportation's Waterway and Wildlife Crossing Policy and Design Guide, the Maine Interagency Stream Connectivity Work Group's 2010 final report, Maine's Atlantic salmon recovery plan and any other technical, policy and financial information that may help the process. The plan must include, but not be limited to, using scientific data from stakeholders, establishing active restoration priorities, refining existing and proposing additional best management practices, reviewing statutory exemptions and regulatory standards to inform regulatory decision making, establishing performance measures, proposing funding alternatives for passive and active restoration, identifying gaps and overlaps with other pertinent issues such as climate change and flood management and providing for education and outreach. The Department of Environmental Protection, in cooperation with the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Department of Transportation, shall present the final draft of the plan, which may include suggested legislation, to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than January 31, 2013. The committee may report out a bill to the First Regular Session of the 126th Legislature.

See title page for effective date.

CHAPTER 206

H.P. 1027 - L.D. 1398

An Act To Amend the Laws Administered by the Department of Environmental Protection

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

Whereas, this legislation corrects a water quality classification that will enable the United States Army Corps of Engineers to dredge under a permit issued by the Department of Environmental Protection, and the

dredging must be completed prior to the expiration of the 90-day period; 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. 5 MRSA §12004-I, sub-§22-B, as enacted by PL 1991, c. 804, Pt. C, §1, is amended to read:

22-B.

Environment: Natural Resources	Pollution Prevention and Small Business Assistance Advisory Committee Panel	Expenses Only Not Authorized	38 MRSA §343-D
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Sec. 2. 32 MRSA §4174, as amended by PL 1989, c. 890, Pt. A, §§4 and 40, is further amended by adding at the end a new paragraph to read:

The Department of Environmental Protection may allow an operator to review with department staff an operator certification test that the operator has completed in order to identify subject areas for which questions were answered incorrectly and further study is advisable.

Sec. 3. 32 MRSA §10010-A, as amended by PL 1997, c. 364, §11, is repealed.

Sec. 4. 38 MRSA §342-B, sub-§4-A is enacted to read:

4-A. Exemption from liability for discharges during approved site investigation work. Notwithstanding subsection 3, paragraph A and subsection 4, paragraph A, a fiduciary or lender is exempt from liability under subsection 2 if the fiduciary or lender causes, contributes to or exacerbates a discharge, release or threat of release while undertaking investigations in accordance with a voluntary response action plan approved by the commissioner under section 343-E.

Sec. 5. 38 MRSA §343-D, as amended by PL 2009, c. 121, §2 is further amended to read:

§343-D. Pollution Prevention and Small Business Assistance Advisory Panel

The Pollution Prevention and Small Business Assistance Advisory ~~Committee~~ Panel, established by Title 5, section 12004-I, subsection 22-B and referred