

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 5, 2012 to July 10, 2013**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 9, 2013**

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

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**Augusta, Maine**  
**2013**

writing by the board and to have waived all objections to the admissibility of the ~~examining physicians'~~ examiner's testimony or examination reports on the grounds that the testimony or reports constitute a privileged communication.

See title page for effective date.

## CHAPTER 356

### H.P. 542 - L.D. 791

#### An Act To Increase Transparency and Improve Equity in Appeals to Superintendents' Agreements

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

**Sec. 1.** 20-A MRSA §5205, sub-§6, as amended by PL 1991, c. 365, §2, is further amended to read:

**6. Transfer students.** The following provisions apply to transfers of students from one school administrative unit to another.

A. Two superintendents may approve the transfer of a student from one school administrative unit to another if:

- (1) They find that a transfer is in the student's best interest; and
- (2) The student's parent approves.

The superintendents shall notify the commissioner of any transfer approved under this paragraph.

B. On the request of the parent of a student requesting transfer under paragraph A, the commissioner shall review the transfer. The commissioner's decision ~~shall be~~ is final and binding.

C. The superintendents shall annually review any transfer under this subsection.

D. For purposes of the state school subsidy, a student transferred under this subsection is considered a resident of the school administrative unit to which transferred. Upon request of the superintendent of schools in the unit in which a student is placed in accordance with this subsection, the state share percentage for subsidized educational costs for that student is equivalent to the state share percentage of the unit in which the student's parent or legal guardian resides or the average state share percentage, whichever is greater. If the parent or legal guardian does not reside in the State or can not be located, the subsidy is the state average subsidy.

E. A school administrative unit may not charge tuition for a transfer approved under this subsection.

A transfer approved under this subsection may be made only to a receiving school administrative unit that operates a public school that includes the grade level of the student whose parent requests the transfer.

See title page for effective date.

## CHAPTER 357

### H.P. 556 - L.D. 805

#### An Act To Require Notice to and Input from Municipalities in Which Certain Group Homes Are Located

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

**Sec. 1.** 34-B MRSA §3612 is enacted to read:

#### **§3612. Municipal notification**

With regard to residential services for persons committed to the custody of the commissioner pursuant to Title 15, chapter 5, 120 days prior to the opening of a residential facility by the department or to signing a contract with a community agency to provide a community-based residential facility, the department shall provide the specific location and detailed information to the municipality in which the facility is to be located. The department shall review any response or site alternatives provided by municipal officials prior to the opening of the facility or signing of the contract.

See title page for effective date.

## CHAPTER 358

### H.P. 835 - L.D. 1191

#### An Act To Strengthen the Fishing Laws

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

**Sec. 1.** 12 MRSA §6121, as amended by PL 2011, c. 598, §10, is further amended to read:

#### **§6121. Fishways in existing dams or artificial obstructions**

**1. Commissioner's authority.** In order to conserve, develop or restore anadromous fish resources, the commissioner and the Commissioner of Inland Fisheries and Wildlife may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other

artificial obstruction within coastal waters frequented by river herring, shad, salmon, sturgeon or other anadromous fish species.

**2. Examination of dams.** The commissioner and the Commissioner of Inland Fisheries and Wildlife shall annually examine all dams and other artificial obstructions to fish passage within the coastal waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous fish.

**3. Initiation of fishway proceedings.** The commissioner and the Commissioner of Inland Fisheries and Wildlife shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever ~~he determines~~ the commissioners determine that either of the following conditions may exist:

A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous fish; or

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species.

**4. Adjudicatory proceedings.**

A. A fishway proceeding ~~shall be~~ is an adjudicatory proceeding under ~~the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4~~ 4, but a hearing may not be required unless requested in accordance with paragraph B. Notice of the proceeding ~~shall~~ must be given in accordance with Title 5, section 9052, and the following requirements:

(1) Personal notice ~~shall~~ must be given to the dam owner, lessee or other person in control of the dam or artificial obstruction, informing that person that a proceeding has been undertaken and of ~~his~~ that person's right to request a hearing; and

(2) Notice to the public, in newspapers of general circulation in the areas affected, notifying the public of the initiation of the proceedings and of the public's opportunity to request a hearing.

B. If any interested person requests a public hearing, the commissioner and the Commissioner of Inland Fisheries and Wildlife shall, within 30 days, either notify the petitioners in writing of ~~his~~ the commissioners' denial stating the reasons, or schedule a public hearing. The ~~commissioner~~ commissioners shall hold a public hearing whenever:

(1) ~~He is~~ The commissioners are petitioned by 50 or more Maine residents; or

(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a public hearing.

C. The commissioner and the Commissioner of Inland Fisheries and Wildlife shall accept testimony from the dam owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the ~~commissioner~~ commissioners for that dam or artificial obstruction.

**5. Decision.** In the event the commissioner ~~decides~~ and the Commissioner of Inland Fisheries and Wildlife decide that a fishway should be constructed, repaired, altered or maintained, ~~his~~ their final orders ~~shall~~ must be issued with specific plans and descriptions of the fishway construction, alteration, repair or maintenance requirements, the conditions of the use of the fishway and the time and manner required for fishway operation. The ~~commissioner~~ commissioners may issue a decision requiring the owners, lessees or other persons in control of the dam or obstruction to construct, repair, alter or maintain a fishway. Such a decision ~~shall~~ must be supported by a finding based on evidence submitted to the ~~commissioner~~ commissioners that either of the following conditions exist:

A. One or more species of anadromous or migratory fish can be restored in substantial numbers to the watershed by construction, alteration, repair or maintenance of a fishway, and habitat anywhere in the watershed above the dam or obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species.

In the event that the ~~commissioner decides~~ commissioners decide that no fishway should be constructed, ~~he~~ the commissioners shall specify in that decision a period immediately subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.

**6. Compliance.**

A. The owner, lessee or other person in control of the dam or other artificial obstruction ~~shall be~~ is jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the ~~commissioner's~~ commissioners' decision, the ~~commissioner~~ com-

~~missioners~~ shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the ~~commissioner's~~ commissioners' order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the ~~commissioner's~~ commissioners' order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter ~~VH~~ Z.

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction ~~shall be~~ is subject to the ~~commissioner's~~ commissioners' decision.

**7. Privileged entry.** The commissioner and the Commissioner of Inland Fisheries and Wildlife, the ~~commissioner's~~ commissioners' agents or subcontractors are privileged to enter upon any private land in order to examine, at least annually, fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The ~~commissioner~~ commissioners shall notify the landowner, lessee or other person in control of the dam when the examination will take place and the time required to complete the examination. The commissioner and the Commissioner of Inland Fisheries and Wildlife shall make every effort to preserve private land and shall restore surrounding lands to the grade and condition existing prior to entry, if economically feasible.

**Sec. 2. 12 MRSA §10902, sub-§8**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §§101 to 103 and affected by §422, is further amended to read:

**8. Mandatory revocation of fishing license.** The commissioner shall suspend a person's fishing license for at least one year and may suspend any other license issued under this Part and held by that person if that person is convicted or adjudicated of:

A. Introducing fish into ~~inland waters a private pond~~ without a permit in violation of section ~~12509, subsection 2, and sections 12510, 12511 and 12512;~~

B. Taking or possessing sport fish in violation of bag, weight and size limits in violation of section 12602, as it relates to trout, salmon, togue and black bass, whenever the violation involves twice the general bag and possession limit adopted by rule by the commissioner for that species of fish;

~~B 1. Possessing fish in violation of section 12611;~~

C. Importing live bait fish or smelts, in violation of section 12556;

D. Buying or selling freshwater sport fish, in violation of section 12609-A; or

E. Taking fish by explosive, poisonous or stupefying substances, in violation of section 12653.

The commissioner shall suspend a person's fishing license for 5 years and may suspend any other license issued under this Part and held by that person if the person is convicted or adjudicated of illegally importing, transporting or possessing live freshwater fish or fish gametes under sections 12509, 12510, 12512 and 12611, except that this mandatory revocation does not apply to offenses involving live bait fish or smelts.

**Sec. 3. 12 MRSA §12461, sub-§6**, as enacted by PL 2009, c. 214, §7, is amended to read:

**6. Exceptions.** Notwithstanding the stocking restrictions set forth in subsection 4, the commissioner may:

A. Stock Big Reed Pond in T.8, R.10, W.E.L.S. with native fish species. If sufficient brook trout from Big Reed Pond are not available, brook trout from Reed Brook and its tributaries in T.8, R.10, W.E.L.S. may be used for restocking. If arctic charr from Big Reed Pond are not available, arctic charr from an endemic arctic charr water in the State may be used for restocking. If northern redbelly dace need to be restocked in Big Reed Pond, northern redbelly dace from Reed Brook and its tributaries in T.8, R.10, W.E.L.S. may be used for restocking; and

B. Stock Big Wadleigh Pond in T.8, R.15, W.E.L.S. with native fish species. If sufficient brook trout from Big Wadleigh Pond are not available, brook trout from Wadleigh Stream in T.8, R.15, W.E.L.S. and T.7, R.15, W.E.L.S. or Poland Pond in T.7, R.15 W.E.L.S. may be used for restocking. If arctic charr from Big Wadleigh Pond are not available, arctic charr from an endemic arctic charr water in the State may be used for restocking. If northern redbelly dace need to be restocked in Big Wadleigh Pond, northern redbelly dace from the nearest source may be used for restocking.

**Sec. 4. 12 MRSA §12462** is enacted to read:

**§12462. Waters containing state heritage fish that have not been stocked since 1988**

**1. Live bait rules.** The commissioner shall adopt rules governing the use of live fish as bait on lakes and ponds that contain state heritage fish as defined under Title 1, section 212-A and that according to reliable records have not been stocked since January 1, 1988. Rules adopted pursuant to this section are major sub-

stantive rules as defined under Title 5, chapter 375, subchapter 2-A.

**2. Live bait allowed.** The use of live fish as bait is allowed on Millimagassett Lake, in T.7, R.8 W.E.L.S.; Millinocket Lake and Little Millinocket Lake, in T.7, R.9 W.E.L.S., T.8, R.9 W.E.L.S. and T.7, R.10 W.E.L.S.; and Webster Lake, in T.6, R.10 W.E.L.S. and T.6, R.11 W.E.L.S.

**Sec. 5. 12 MRSA §12504**, as amended by PL 2005, c. 495, §1, is further amended to read:

**§12504. Fishing derby permits**

**1. Permit required.** Except as provided in sections 12504-A and 12505, a person may not conduct a fishing derby ~~or fishing tournament~~ without a valid permit issued under this section.

Each day a person violates this subsection, that person commits a Class E crime for which a minimum fine of \$50 and an amount equal to twice the applicable license fee must be imposed.

**2. Application.** A person wishing to conduct a fishing derby ~~or fishing tournament~~ shall first make application for and obtain a permit from the commissioner. ~~A bass tournament sponsored by a bass club in waters free of ice falls under the provisions of section 12505.~~ A completed application for a permit must include the proposed rules, targeted fish species, requested dates, places, times and prize structure for the derby ~~or tournament~~.

**2-A. Conditions; restrictions.** The commissioner may place conditions and restrictions on a derby permit.

A. The commissioner may revoke a derby permit issued to or refuse to issue a permit to a club or group that violates a condition or restriction placed on a derby permit or disallow the participation of an individual who violates a condition or restriction placed on a derby permit.

B. A derby permit does not allow a participant to keep fish alive for entry into the derby. A fish caught as part of the derby, if it is to be retained solely for derby purposes, must be killed at once and becomes part of the participant's daily bag limit.

**3. Rules.** The commissioner shall adopt all necessary rules relative to permits to ensure that derbies ~~and tournaments~~ are conducted only at such times and places and in such a manner as are consistent with the fisheries management objectives of the department. Such rules must include:

A. Specifying the number of derbies ~~or tournaments~~ that may be conducted in a given body of water and the dates within which they may be conducted. These rules must be reviewed periodically; and

B. Fixing the maximum total value of prizes that may be awarded at each derby ~~or tournament~~, except that for a derby held on Sebago Lake in Cumberland County and in conjunction with the department's fisheries management objectives, the maximum total value of prizes may not exceed \$100,000.

**3-A. Violation of rules, conditions or restrictions; penalty.** Except as provided in section 12602, the following penalties apply to violations of rules, conditions or restrictions adopted under this section.

A. A person who violates a rule adopted under subsection 3 or a condition or restriction placed on a derby permit under subsection 2-A commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates a rule adopted under subsection 3 or a condition or restriction placed on a derby permit under subsection 2-A after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

**4. Issuance.** The commissioner, following a determination that an applicant has complied with all rules adopted pursuant to this section, may issue a permit to the applicant authorizing the conduct of the derby ~~or tournament~~. Applicants who have conducted derbies ~~or tournaments~~ in the requested body of water in the past that have conformed with all rules, conditions and restrictions must be given preference in the issuance of permits.

**5. Fee.** The fee for a permit to conduct a fishing derby ~~or fishing tournament~~ is \$24.

**Sec. 6. 12 MRSA §12505, sub-§2-A** is enacted to read:

**2-A. Conditions; restrictions.** The commissioner may place conditions and restrictions on a bass tournament permit.

A. The commissioner may revoke a bass tournament permit issued to or refuse to issue a permit to a bass club that violates a condition or restriction placed on a bass tournament permit or disallow the participation of an individual who violates a condition or restriction placed on a bass tournament permit.

**Sec. 7. 12 MRSA §12505, sub-§6**, as enacted by PL 2003, c. 655, Pt. B, §252 and affected by §422, is amended to read:

**6. Violation of rules, conditions or restrictions; penalty.** Except as provided in section 12602, the following penalties apply to violations of rules adopted under subsection 5 and violations of conditions or restrictions placed on a bass tournament permit pursuant to subsection 2-A.

A. A person who violates a rule adopted under subsection 5 or a condition or restriction placed on a bass tournament permit pursuant to subsection 2-A commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates a rule adopted under subsection 5 or a condition or restriction placed on a bass tournament permit pursuant to subsection 2-A after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

**Sec. 8. Report from the Department of Inland Fisheries and Wildlife.** The Commissioner of Inland Fisheries and Wildlife shall review the lakes and ponds that contain eastern brook trout, *Salvelinus fontinalis*, and that according to reliable records have not been stocked since January 1, 1988, referred to in this section as "B List waters," and report the findings to the Joint Standing Committee on Inland Fisheries and Wildlife no later than January 15, 2014. The report must include:

1. A complete list of up-to-date B List waters with justification as to the qualifications for each water listed; and
2. A management plan for the B List waters that is in accordance with the intent of the department's mandate in the Maine Revised Statutes, Title 12, section 10051 to preserve, protect and enhance the inland fisheries and wildlife resources of the State, to encourage the wise use of these resources, to ensure coordinated planning for the future use and preservation of these resources and to provide for effective management of these resources.

The Joint Standing Committee on Inland Fisheries and Wildlife shall review the commissioner's report and, if necessary, establish guidelines for qualifications for B List waters and the management of B List waters. The committee is authorized to submit legislation related to its findings to the Second Regular Session of the 126th Legislature.

See title page for effective date.

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**CHAPTER 359**

**H.P. 427 - L.D. 608**

**An Act To Assist Small Distilleries That Also Have Off-premises Retail Licenses**

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

**Sec. 1. 28-A MRSA §1355-A, sub-§5, ¶G** is enacted to read:

G. Notwithstanding paragraph D, a holder of a small distillery license that produces less than 25,000 gallons of spirits annually and is licensed under paragraph B, subparagraph (3) to operate a retail location for off-premises consumption may pay the alcohol bureau the difference between the distillery's price charged to the alcohol bureau and the discounted list price charged by the bureau when a distillery purchases its own spirits to be sold at retail from its off-premises location. The alcohol bureau shall establish a procedure to allow a distillery to purchase spirits produced by the distillery for sale at a retail location as described in this paragraph.

See title page for effective date.

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**CHAPTER 360**

**H.P. 1090 - L.D. 1517**

**An Act To Amend the Laws Governing Decision-making Authority Regarding Energy Infrastructure Corridors**

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

**Sec. 1. 35-A MRSA §122, sub-§1-B, ¶A**, as amended by PL 2011, c. 655, Pt. MM, §14 and affected by §26, is further amended to read:

- A. The panel includes the following members:
- (1) The Director of the Governor's Energy Office within the Executive Department or the director's designee;
  - (2) The Commissioner of Administrative and Financial Services or the commissioner's designee;
  - (3) The commissioner of each department or the director of any other state agency or authority that owns or controls land or assets within the statutory corridor under consideration or that commissioner's or director's designee; ~~and~~
  - (4) Four members of the public appointed by the Governor in accordance with this subparagraph, subject to review by the joint standing committee of the Legislature having jurisdiction over utilities and energy matters and to confirmation by the Senate:
    - (a) One member with expertise in energy and utilities selected from candi-