

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTIETH LEGISLATURE

SECOND SPECIAL SESSION
September 29, 2021

SECOND REGULAR SESSION
January 5, 2022 to May 9, 2022

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 29, 2021

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 8, 2022

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

Augusta, Maine
2022

The University of Maine System, the Small Business Development Center Program, the Maine ~~World International Trade Association and the Maine Science and Technology Foundation~~ Center and the Maine ~~Technology Institute~~ shall provide such support and assistance as the board may request, within the expertise of each.

Sec. 9. Terms of current board members. Notwithstanding the Maine Revised Statutes, Title 10, section 384, a member of the Small Enterprise Growth Board serving on the effective date of this Act:

1. Shall serve a term ending on the 3rd anniversary of the date on which the member's term began; and
2. May be appointed to a term to begin immediately following the end of the member's term only if the member has not served for 6 consecutive years as of the date of the end of the term.

See title page for effective date.

CHAPTER 503

H.P. 1342 - L.D. 1801

An Act To Modify Exemptions for Certain Storm Water Discharges to Class AA and SA Waters

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

Whereas, current law enacted in 1999 that established an exemption for certain discharges of storm water to Class AA and SA waters has been disapproved by the United States Environmental Protection Agency; and

Whereas, this disapproval creates regulatory uncertainty for the legality of certain existing discharges of storm water, and potential future discharges of storm water, to Class AA and SA waters; and

Whereas, this uncertainty may have significant economic impacts on certain dischargers of storm water to Class AA and SA waters; and

Whereas, in order to avoid these adverse consequences, modification of the exemption for certain discharges of storm water to Class AA and SA waters is appropriate and necessary; 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. 38 MRSA §464, sub-§4, ¶F, as amended by PL 1991, c. 66, Pt. B, §1, is further amended by amending subparagraph (2) to read:

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality must be maintained and protected. For purposes of this paragraph, the following waters are considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; public reserved lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and, unless otherwise specified, listed under sections 467, 468 and 469.

Sec. 2. 38 MRSA §465, sub-§1, ¶C, as amended by PL 2021, c. 50, §§1 and 2, is further amended by amending subparagraph (1) to read:

(1) Storm water discharges that are in compliance with state and local requirements are allowed: if one or more of the following conditions are met:

(a) The storm water discharge existed prior to the waters' being classified as Class AA with a designation as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2), including storm water discharges that existed prior to designation of the waters as an outstanding national resource and are not licensed by the department or were not relicensed for some duration after the waters' designation as an outstanding national resource. This division does not authorize new or increased storm water discharge;

(b) For storm water discharges requiring a general permit for construction, the discharge is temporary and short term and does not permanently degrade water quality. For the purposes of this division, a discharge is temporary and short term if the discharge occurs only during the time necessary to construct a facility to make it operational. Best management practices must be used during such construction; or

(c) The Class AA water is not designated as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2) and sections 467 and 468.

Sec. 3. 38 MRSA §465-B, sub-§1, ¶C, as amended by PL 2013, c. 193, §5, is further amended by amending subparagraph (1) to read:

(1) Storm water discharges that are in compliance with state and local requirements; if one or more of the following conditions are met:

(a) The storm water discharge existed prior to the waters' being classified as Class SA with a designation as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2), including storm water discharges that existed prior to designation of the waters as an outstanding national resource and are not licensed by the department or were not relicensed for some duration after the waters' designation as an outstanding national resource. This division does not authorize new or increased storm water discharge;

(b) For storm water discharges requiring a general permit for construction, the discharge is temporary and short term and does not permanently degrade water quality. For the purposes of this division, a discharge is temporary and short term if the discharge occurs only during the time necessary to construct a facility to make it operational. Best management practices must be used during such construction; or

(c) The Class SA water is not designated as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2) and section 469;

Sec. 4. 38 MRSA §467, sub-§6-A, ¶B, as amended by PL 2017, c. 137, Pt. B, §6, is further amended by amending subparagraph (2) to read:

(2) West Branch of the Narraguagus River in T.22 M.D. B.P.P., T.16 M.D. B.P.P., T.10 S.D. B.P.P. and Cherryfield - Class AA. Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), the segment from the confluence of Pork Brook to the confluence of Manhanon Brook is not designated as an outstanding national resource.

Sec. 5. 38 MRSA §467, sub-§14, ¶A, as repealed and replaced by PL 1999, c. 277, §17, is amended by amending subparagraph (2) to read:

(2) From a point located 2,000 feet below the outlet of Little Pond to the confluence with Stevens Pond, from the outlet of Stevens Pond to the confluence with Trues Pond and from the outlet of Trues Pond to the confluence with

Sennebec Pond - Class AA. Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), the segment from the Ghent Road bridge to the Camden Road/Route 105 bridge is not designated as an outstanding national resource.

Sec. 6. 38 MRSA §467, sub-§15, ¶C, as amended by PL 2019, c. 333, §8 and c. 463, §11, is further amended by amending subparagraph (1), division (a) to read:

(a) From the confluence of Millinocket Stream and Munsungan Stream to the Route 11 bridge - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A. Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), the segment from the confluence of St. Croix Stream to the confluence of Scopan Stream and the segment starting 1,500 feet upstream from the confluence of the Machias River to the Route 11 bridge are not designated as outstanding national resources.

Sec. 7. 38 MRSA §467, sub-§15, ¶C, as amended by PL 2019, c. 333, §8 and c. 463, §11, is further amended by amending subparagraph (2), division (d) to read:

(d) Machias River, from the outlet of Big Machias Lake to the Aroostook River - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A. Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), the segment from one mile upstream of the Garfield Road bridge to the confluence with the Aroostook River is not designated as an outstanding national resource.

Sec. 8. 38 MRSA §469, sub-§2, ¶D, as amended by PL 2017, c. 137, Pt. B, §18, is further amended by amending subparagraph (2) to read:

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W., except those waters of Broad Cove lying west of a line running from the point of land immediately south of the cove northerly to Navigation Can #7 - Class SA. Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), those waters lying within 500 feet of a stormwater discharge licensed by the department on December 31, 2021 in accordance

with rules adopted by the department are not designated as outstanding national resources.

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

Effective March 16, 2022.

CHAPTER 504

S.P. 636 - L.D. 1809

An Act To Allow Exceptions to the Height Limitations under the Shoreland Zoning Laws

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

Sec. 1. 38 MRSA §436-A, sub-§1-C is enacted to read:

1-C. Area of special flood hazard. "Area of special flood hazard" means land in a floodplain having a 1% or greater chance of flooding in any given year, as identified in the effective federal flood insurance study and corresponding flood insurance rate maps.

Sec. 2. 38 MRSA §436-A, sub-§7-A, as enacted by PL 2011, c. 231, §1, is repealed and the following enacted in its place:

7-A. Height. "Height" means:

A. With respect to existing principal or accessory structures, including legally existing nonconforming structures, located within an area of special flood hazard that have been or are proposed to be relocated, reconstructed, replaced or elevated to be consistent with the minimum elevation required by a local floodplain management ordinance, the vertical distance between the bottom of the sill of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area; and

B. With respect to new principal or accessory structures and to existing principal or accessory structures other than those described in paragraph A, including legally existing nonconforming structures, the vertical distance between the mean original grade at the downhill side of the structure, prior to construction, and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area.

Sec. 3. 38 MRSA §439-A, sub-§4, ¶C-1 is enacted to read:

C-1. Notwithstanding the limitations on height imposed under paragraphs B and C, the height of a structure that is a legally existing nonconforming principal or accessory structure may be raised to,

but not above, the minimum elevation necessary to be consistent with the local floodplain management elevation requirement or to 3 feet above base flood elevation, whichever is greater, as long as the structure is relocated, reconstructed, replaced or elevated within the boundaries of the parcel so that the water body or wetland setback requirement is met to the greatest practical extent. This paragraph applies to structures that:

(1) Have been or are proposed to be relocated, reconstructed, replaced or elevated to be consistent with the local floodplain management elevation requirement; and

(2) Are located in an area of special flood hazard.

See title page for effective date.

CHAPTER 505

S.P. 637 - L.D. 1810

An Act Regarding Examinations and Applications for Professional Engineers and Engineer-interns

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

Sec. 1. 32 MRSA §1352-A, first ¶, as amended by PL 2005, c. 315, §20, is further amended to read:

To be eligible for licensure as a professional engineer, an applicant must submit 5 references with the application for licensure as a professional engineer, 3 of which must be from licensed professional engineers from this State or another state, territory or possession of the United States, District of Columbia or any foreign country having personal knowledge of the applicant's engineering experience. To be eligible for certification as an engineer-intern, an applicant must submit 3 ~~character~~ references with the application for certification. Each applicant shall demonstrate that the applicant is trustworthy and competent to engage in the practice of professional engineering in such a manner as to safeguard the interests of the public.

Sec. 2. 32 MRSA §1353, first ¶, as amended by PL 2013, c. 296, §4, is further amended to read:

Application for licensure as a professional engineer or certification as an engineer-intern must be made on a form prescribed ~~and furnished~~ by the board, contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical experience and contain references as set forth in section 1352-A, none of which may be from members of the board. An applicant who fails to complete the application process within 5 years must reapply to the