

2012 Legislative Bill Summaries and Enacted
Laws for the States of
Maine, New Hampshire and Vermont

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MAINE Legislative Digest of Bill Summaries and Enacted Laws
Second Regular Session, 125th Legislature (2012)
Prepared by the Office of Policy and Legal Analysis and the Office of Fiscal and
Program Review

AGRICULTURE, CONSERVATION AND FORESTRY

LD 1649 - An Act To Authorize the Registration of Farmland

Enacted Law Summary:

Public Law 2011, chapter 608 allows a landowner to register farmland on an ongoing basis beginning on July 1, 2012. The purpose of farmland registration is to ensure a farmer's ability to engage in agricultural practices without adversely affecting neighboring landowners. An owner of abutting land may not develop or use land within 50 feet of farmland registered on or after July 1, 2012 for a well, drinking water spring or water supply intake. To retain the registration of farmland registered in 1990 or 1991, a landowner must submit documentation of the original registration. When such documentation is provided, the registration is renewed with the protections provided under the original registration. An owner of land abutting farmland registered in 1990 or 1991 is restricted in the use of land within 100 feet of the registered farmland. All landowners with registered farmland must renew registration every 5 years. Farmland registered on or after July 1, 2012 is not required to be enrolled under the Farm and Open Space Tax law.

Public Law 2011, chapter 608 was enacted as an emergency measure with an effective date of July 1, 2012.

**LD 1734 - Resolve, Regarding Legislative Review of Portions of Chapter 41:
Special Restrictions on Pesticide Use, a Major Substantive Rule of the
Department of Agriculture, Food and Rural Resources, Board of
Pesticides Control**

Enacted Law Summary:

Resolve 2011, chapter 118 authorizes final adoption of amendments to a Board of Pesticides Control rule pertaining to the sale and use of BT corn seed, seeds with a plant incorporated protectant. The revisions to rule Chapter 41 remove the requirement that a seed dealer ensure that purchasers are trained prior to selling them seed and extends the length of time between required refresher training for growers from 2 to 3 years.

Resolve 2011, chapter 118 was finally passed as an emergency measure effective March 5, 2012.

LD 1739 - An Act To Change Regulation of Forestry Activities

Enacted Law Summary:

Public Law 2011, chapter 599 directs the Commissioner of Conservation to adopt rules to allow wood to be placed in stream channels for the purpose of enhancing cold water fisheries habitat. The Commissioner is required to consult with the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources in developing techniques to be used by licensed foresters to implement habitat enhancement. Only licensed foresters trained in these techniques are allowed to implement the habitat enhancement known as "chop and drop." It provides an exemption from permit requirements under the Natural Resources Protection Act for the placement of wood in stream channels when the placement is in compliance with rules adopted by the Department of Conservation for this activity.

Chapter 599 transfers responsibility for the regulation of timber harvesting and timber harvesting activities in protection and management districts within the jurisdiction of the Maine Land Use Regulation Commission to the Maine Forest Service beginning November 1, 2012. It provides for the Maine Forest Service to also administer and enforce the construction and maintenance of land management roads, water crossings and gravel pits of less than 5 acres in these areas. It allows the Maine Forest Service to establish a fee schedule for activities relating to timber harvesting, land management roads, water crossings and gravel pits in protection and management districts. It provides for the Bureau of Forestry to administer and enforce timber harvesting and timber harvesting activities in shoreland areas for certain municipalities before the 252 -municipality threshold for adoption of statewide standards is reached.

LD 1798 - An Act To Reform Land Use Planning in the Unorganized Territory

Enacted Law Summary:

Public Law 2011, chapter 682 changes the name of the Maine Land Use Regulation Commission to the Maine Land Use Planning Commission (LUPC). It increases the commission's membership from 7 to 9 and specifies that the Governor nominates only 1 member of the commission. Each of the 8 counties with the most acreage in the commission's jurisdiction nominates one member. All nominations are subject to review by the legislative committee of jurisdiction and confirmation by the Senate. All nominees must meet certain qualifications established in statute.

Chapter 682 requires commission meetings to be held within the jurisdiction or in a convenient location approved by the commission Chair. It requires field offices to be in or close to the jurisdiction and LUPC employees to receive regular training on customer service.

It defines "planned subdistrict" and authorizes the commission to designate planned subdistricts and establish unique standards for each. It removes the standard in statute that development districts be areas that are "discernible as having patterns of intensive use," requiring instead that the areas are "appropriate for" such use. It removes statutory language prohibiting a change in a land use district

boundary unless the proposed land use district "satisfies a demonstrated need in the community or area."

Chapter 682 authorizes but does not require the commission to delegate certain permitting and enforcement functions to a county. It specifies that LUPC retains jurisdiction over a planned subdistrict if a municipality or plantation in which the planned subdistrict is located assumes authority for land use planning and regulation unless the owner of the land delineated as a planned subdistrict agrees to the transfer of authority. It transfers responsibility for permitting grid-scale wind energy development in the unorganized and deorganized areas to the Department of Environmental Protection (DEP). LUPC retains authority to review and permit community-based offshore wind development projects and non-grid-scale wind energy development. LUPC must receive certification from DEP prior to issuing a permit for non-grid-scale wind energy development.

Chapter 682 provides for all projects reaching the threshold for review under the Site Location of Development law (Title 38, Chapter 3, Subchapter 6) to be reviewed by DEP rather than LUPC except for projects proposed within a planned subdistrict that was approved or accepted for review prior to September 1, 2012. LUPC retains authority to review and permit development within these areas. Certification from LUPC is required prior to DEP issuing a permit for a project within the unorganized or deorganized areas under the site location of development law.

Chapter 682 requires legislative approval of the comprehensive land use plan (the CLUP) prior to final adoption. It provides for involvement of the commission in developing and implementing regional comprehensive plans when a county or counties request the commission's assistance. It requires the commission to submit an annual performance report to the legislative committee of jurisdiction.

Chapter 682 directs LUPC to establish a process by which an applicant can request a public preapplication meeting with the LUPC commissioners to discuss a proposed project. It also directs LUPC to initiate prospective zoning and to provide information on the initiatives in their January 2013 report. It contains provisions for the transition from the Land Use Regulation Commission to the Land Use Planning Commission and for the transfer of certain project review and permitting functions to DEP.

LD 1819 RESOLVE 151 - Resolve, Regarding Legislative Review of Chapter 26: Producer Margins, a Major Substantive Rule of the Maine Milk Commission

Enacted Law Summary:

Resolve 2011, chapter 151 does not authorize final adoption of the target prices for the dairy stabilization program that were provisionally adopted in Chapter 26: Producer Margins, a provisionally adopted major substantive rule of the Maine Milk Commission. Resolve 2011, chapter 151. The Joint Standing Committee on Agriculture, Conservation and Forestry reported out a bill to establish revised target prices for the dairy stabilization program. See the bill summary for LD 1905.

Resolve 2011, chapter 151 was finally passed as an emergency measure effective April 9, 2012.

LD 1869 PUBLIC 625 - An Act To Establish the Dairy Improvement Fund

Enacted Law Summary:

Public Law 2011, chapter 625 provides a process for the distribution of 1% of the net slot machine revenues under the Maine Revised Statutes, Title 8, section 1036, subsection 2-A, paragraph K credited to support payments under the dairy stabilization program. Effective July 1, 2013, the 1% credited for dairy stabilization payments will be reduced to 1/2 of 1%, with the other 1/2 of 1% being credited to the Dairy Improvement Fund established in the bill. It provides for the Dairy Improvement Fund to be deposited with and maintained by the Finance Authority of Maine. The fund provides loans to dairy farmers for capital improvements.

Public Law 2011, chapter 625 was enacted as emergency measure effective April 12, 2012.

ENVIRONMENT AND NATURAL RESOURCES

LD 693 - An Act Concerning Solid Waste Facility Citizen Advisory Committees

Enacted Law Summary:

Public Law 2011, chapter 543 prohibits the Department of Environmental Protection from issuing a license, permit, order or approval, or an amendment to a license, permit, order or approval for alterations that are not minor alterations, to a state-owned solid waste disposal facility unless the owner or operator of the facility sends:

1. To each municipality and any other entity that appoints members to the relevant citizen advisory committee, a copy of the application; and
2. To each member of the citizen advisory committee, a notice that the application has been sent to the appointing authorities as required.

LD 1648 - An Act To Clarify the Site Location of Development Laws Regarding Exemptions for Previously Developed Sites

Enacted Law Summary:

Public Law 2011, chapter 551 amends certain existing exemptions and adds new exemptions to the laws governing site location of development.

1. It amends the existing exemption for development in existence on January 1, 1970, by providing that:
 - A. Reuse of a building and associated facilities in existence on January 1, 1970, is exempt from review; and
 - B. When reviewing an application under the laws governing site location of development or determining whether the laws governing site location of development apply to a project, the Department of Environmental Protection

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may not take into consideration any development that is exempt from review due to its pre-1970 status.

2. It amends the existing exemption for former military bases by providing that:
 - A. Reuse of a building and associated facilities in existence on September 29, 1995, on a former military base is exempt from review;
 - B. Unless exempt, development that meets the definition of "development of state or regional significance that may substantially affect the environment" is subject to review;
 - C. When reviewing an application under the laws governing site location of development, the department may not take into consideration any development that is exempt from review; and
 - D. Subsequent lease of a former base or a portion of the base does not affect the exemption.
3. It adds an exemption for certain development at ski areas that hold a permit pursuant to the laws governing site location of development. The exemption is similar to the existing exemption for manufacturing facilities.
4. It adds an exemption for certain development on educational institution campuses that hold a permit pursuant to the laws governing site location of development. The exemption is similar to the existing exemption for manufacturing facilities. The law clarifies that the exemption does not authorize activity on a parcel of land affected by an order or permit issued by the department that is contrary to that order or permit.
5. It clarifies that, unless specifically provided, nothing in the laws governing site location of development exempts any activity from any requirements under the Maine Revised Statutes, Title 38, rules adopted pursuant to Title 38 or the terms or conditions of a license, permit or order issued by the Board of Environmental Protection or the Commissioner of Environmental Protection.

LD 1738 - An Act To Make Minor Adjustments to Laws Administered by the Department of Environmental Protection

Enacted Law Summary:

Public Law 2011, chapter 538 does the following.

1. It removes the authority of the Board to adopt rules necessary for the conduct of the Department's business and gives the Board authority to adopt rules necessary for the conduct of only the Board's business.
2. It removes the requirement that the Commissioner provide written notice and opportunity for a hearing prior to recommending that the Board modify or take corrective action on a license. It does not change the requirement that the board provide written notice and opportunity for a hearing prior to modifying or taking correction action on a license.

3. It clarifies that a license or permit amendment, revision or surrender is considered an application that is subject to a decision by the department.
4. It provides that administrative consent agreements may be enforced by the department or the Attorney General.
5. It provides that a proposed consent agreement and notice of the proposed consent agreement must be posted on the department's website.
6. It provides that if an administrative consent agreement is violated the Attorney General or the department may institute injunction proceedings.
7. It changes a NRPA exemption so that expansion of an existing residential or commercial "structure" that meets certain criteria would not require a NRPA permit.
8. It amends standards and application requirements to allow an agricultural pond to be constructed adjacent to a river, stream or brook.
9. It repeals a provision in law that requires adopted rules relating to oil storage facilities and the protection of groundwater to be submitted for review to the Natural Resources Committee.
10. It changes the term of an air emission license from 5 years to 10 years, with these exceptions: (A) A license for an air contaminant source subject to 40 CFR, Part 70 - term of 5 years; and (B) A license issued pursuant to the carbon dioxide cap-and-trade program for carbon dioxide budget units - no term.
11. It makes rules implementing the wellhead protection laws major substantive rules.
12. It authorizes the Commissioner of Environmental Protection to adopt initial routine technical rules allowing for the reconstruction of an existing structure in a frontal dune if certain criteria are met. Any amendments to those rules are major substantive rules adopted by the Board of Environmental Protection.

LD 1793 - RESOLVE 131 Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, a Major Substantive Rule of the Department of Environmental Protection

Enacted Law Summary:

Resolve 2011, chapter 131 authorizes the adoption of portions of Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, a major substantive rule of the Department of Environmental Protection.

Resolve 2011, chapter 131 was finally passed as an emergency measure effective March 18, 2012.

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LD 1797 - RESOLVE 140 Resolve, Regarding Legislative Review of Portions of Chapter 305: Permit by Rule, a Major Substantive Rule of the Department of Environmental Protection

Enacted Law Summary

Resolve 2011, chapter 140 authorizes the adoption of portions of Chapter 305: Permit by Rule, a major substantive rule of the Department of Environmental Protection.

Resolve 2011, chapter 140 was finally passed as an emergency measure effective March 29, 2012.

INLAND FISHERIES AND WILDLIFE

LD 1613 - An Act To Strengthen the Relationship between Land Users and Landowners

Enacted Law Summary:

Public Law of 2011, chapter 576 repeals the laws governing the supersport certificate and the landowner relations program in the Department of Inland Fisheries and Wildlife and replaces them with a new provision directing the Commissioner of Inland Fisheries and Wildlife to establish a broader and more inclusive landowner relations program. It authorizes the commissioner to establish and issue for a fee a certificate to persons wishing to be recognized as supporting the program. It establishes the Landowner Relations Fund to receive all fees from the sale of certificates as well as any other funds allocated or appropriated to the fund and any contributions from public or private sources. It also adds the Commissioner of Agriculture, Food and Rural Resources to the ex officio members of the Landowners and Sportsmen Relations Advisory Board.

Public Law 2011, chapter 576 also delays the repeal of the supersport certificate until January 1, 2013, and requires revenue from the sale of the certificate to be deposited in the Landowner Relations Fund.

LD 1747 PUBLIC 519 - An Act To Prohibit Municipalities from Imposing Fees on Ice Fishing Shacks

Enacted Law Summary:

Public Law 2011, chapter 519 prohibits a municipality or political subdivision of the State from enacting any ordinance, law or rule imposing a fee on ice fishing shacks on sources of public water supply and on coastal waters.

Public Law 2011, chapter 519 was enacted as an emergency measure effective March 16, 2012.

LD 1849 - An Act To Protect Landlocked Salmon Fisheries in Schoodic and Sebocis Lakes from Invasive Fish Species

Enacted Law Summary:

Public Law 2011, chapter 612 prohibits the construction of a fishway or fish bypass structure at the dams at the outlets of Schoodic Lake and Sebocis Lake that would allow the upstream passage of

invasive fish species known to be present downstream in the Piscataquis River or Penobscot River drainage. It also requires that the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources act jointly in requiring a fishway to be erected, maintained, repaired or altered on any dam within inland waters frequented by anadromous or migratory fish species. It also prohibits the commissioners from requiring or authorizing a fishway or fish bypass structure at the dams at the outlets of Schoodic Lake and Seboeis Lake. Public Law 2011, chapter 612 also requires both commissioners to participate in the review process and decision on the proposed construction of new dams on inland waters.

JUDICIARY

LD 1465 - An Act To Amend the Laws Governing Freedom of Access

Enacted Law Summary

Public Law 2011, chapter 662 titles the Maine Revised Statutes, Title 1, chapter 13, subchapter 1 "the Freedom of Access Act." Chapter 662 adds software to the description of information technology elements that are excepted from the definition of "public records" to clarify that proprietary information, technology infrastructure, systems and software used by governmental entities are not public records.

Chapter 662 repeals and replaces the current section of law that lays out the process and fees concerning inspecting and copying public records, although much of the current language is retained. It allows inspection and copying of public records during reasonable office hours. The reasonable office hours must be posted. It requires the agency or official, when acknowledging the receipt of a request for public records, to provide a good faith estimate of when the response to the request will be complete. Although the time estimate is not binding, the agency or official must make a good faith effort to meet that time target.

The agency or official may not charge for inspection unless the requested public record is such that it cannot be inspected without being compiled or converted. If the agency or official must compile the record for inspection, then the agency or official may charge \$15 per hour, after the first hour, for the time it takes to enable inspection. If the agency or official must convert a public record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge for the actual cost to perform the conversion. The per hour cost for compiling a record is increased from \$10 to \$15, after the first hour.

Chapter 662 clarifies that a request for a public record does not have to be made in writing or in person. An agency or official is not required to create a record that does not exist in response to a request for a public record. An agency or official is not required to provide a requester with access to a computer terminal.

Chapter 662 requires an agency or official to provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the

requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

Chapter 662 creates the position of public access officer and requires each state agency, county, municipality, school administrative unit and regional or other political subdivision to designate an existing employee to serve in that capacity as a resource for freedom of access questions. Requests for public records do not have to be made to the public access officer. The public access officer must undergo the same freedom of access training as elected officials.

Chapter 662 requires government agencies, when making purchases of or contracting for computer software and other information technology resources, to consider maximizing public access to public records, as well as maximizing the exportability of public records while protecting confidential information.

Chapter 662 includes funding for a half-time Assistant Attorney General to serve as a Public Access Ombudsman in the Office of the Attorney General. This funding, when combined with funding for a half-time position provided in

Public Law 2011, chapter 655, provides funds for one full-time ombudsman position and related All Other costs.

LD 1530 - An Act To Amend the Housing Provisions of the Maine Human Rights Act

Enacted Law Summary:

Public Law 2011, chapter 613 amends the Maine Human Rights Act concerning unlawful housing discrimination. Chapter 613 revises the definition of "aggrieved person" to apply to persons aggrieved by unlawful housing discrimination differently than it applies to persons aggrieved by other kinds of discrimination under the Maine Human Rights Act. The definition of "aggrieved person" with regard to unlawful housing discrimination is amended to be consistent with federal law: "aggrieved person" includes any person who claims to have been injured by unlawful housing discrimination, which covers persons who may not have been personally subject to unlawful housing discrimination, but who have nonetheless been injured by it.

Chapter 613 adopts a definition of "alteration" to provide guidance as to what forms of normal maintenance, decorating and upgrades do not fall under the updated standards.

Chapter 613 revises the definition of "standards of construction" to ensure that the appropriate standard is applied to multifamily dwellings and public housing.

Chapter 613 provides that a design professional's statement that the plans of the facility meet the required standards of construction is based on professional judgment and that the statement is based on the plans as they exist at the time the statement is made.

Chapter 613 authorizes punitive damages for unlawful housing discrimination to be consistent with federal law, except that punitive damages are not available against a governmental entity or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of the employee's employment. Chapter 613 takes effect September 1, 2012.

LD 1605 - An Act To Promote Agricultural Activity in Maine by Limiting the Liability for Agritourism Activities

Enacted Law Summary:

Public Law 2011, chapter 609 limits the liability of agritourism professionals based on participants' assumption of the inherent risks of agritourism activities. Inherent risks include but are not limited to certain hazards, including surface and subsurface conditions and natural conditions of land, vegetation and waters; the behavior of wild and domestic animals, including but not limited to the depositing of manure; ordinary dangers of structures or equipment ordinarily used in farming and ranching operations; and the potential of injury to a participant or others if a participant acts in a negligent manner, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

An agritourism professional is not liable for any property damage or damages arising from the personal injury of a participant arising from the inherent risks of agritourism activities if the participant is given notice of the inherent risks and the assumption of those risks. Notice of the inherent risks of agritourism activities may be satisfied either by a statement signed by the participant or a sign or signs prominently displayed at the place or places where the agritourism activities are conducted.

LD 1647 - Resolve, To Require Rulemaking Regarding Standing To Appeal in Proceedings before the Board of Environmental Protection and the Maine Land Use Regulation Commission

Enacted Law Summary:

Resolve 2011, chapter 144 directs the Board of Environmental Protection and the Maine Land Use Regulation Commission to adopt rules governing standing for administrative appeals to the board and commission, respectively. The standing for administrative appeals must be the same as the standing that has been established for persons to appeal decisions of the board or the commission to court. The rules are major substantive rules under the Maine Administrative Procedure Act and are subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters.

State and Local Government

LD 1596 - Resolve, To Review Laws and Policies Related to Discontinued and Abandoned Roads

Enacted Law Summary:

Resolve 2011, chapter 120 establishes a stakeholder group of no more than 10 members to review laws and policies related to discontinued and abandoned roads. The stakeholder group is directed to examine issues relating to continued access through public easements, damage caused by abutting land owners and members of the public, maintenance of private roads that have public easements, methods to address problems of road damage and ways to maintain access for intermittent users who need access to a road. The stakeholder group includes representatives of the Department of Transportation, up to two residents that live on a discontinued or abandoned road with a public easement and members from statewide organizations representing municipalities, small woodlot owners, producers of forest products, snowmobilers and other interested parties. The Department of Conservation is required to report the stakeholder group's findings to the joint standing committee of the Legislature having jurisdiction over state and local government matters no later than January 15, 2013, and the committee is authorized to report out legislation to the First Regular Session of the 126th Legislature.

Transportation

LD 1367 - An Act To Restore Maine's Secondary Roads

Enacted Law Summary:

Public Law 2011, chapter 652 establishes the Secondary Road Program Fund as a dedicated account within the Department of Transportation for the purpose of financing capital improvements to state aid minor collector highways and state aid major collector highways.

The law also renames the Urban-Rural Initiative Program as the Local Road Assistance Program. The law provides that 90% of the revenue derived from the use of statutory corridors owned by the Department of Transportation within energy infrastructure corridors must be deposited into the Secondary Road Program Fund and the remaining 10% must be deposited into the energy infrastructure benefits fund. The effective date of Public Law 2011, chapter 652 is July 1, 2013.

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**NEW HAMPSHIRE General Court - Bill Status
2012 Chaptered Final Version**

HOUSE BILL 648:

AN ACT relative to eminent domain by public utilities and establishing a commission to investigate the procedural rights of the landowner when a petition is presented to the public utilities commission by a utility seeking eminent domain, develop a framework for the state to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

AMENDED ANALYSIS

This bill:

- I. Modifies certain requirements pertaining to the taking of land or property rights by a utility.
- II. Prohibits public utilities from petitioning for permission to take private land or property rights for the construction or operation of an electric generating plant or an electric transmission project that is not eligible for regional cost allocation by ISO – New England or its successor regional system operator.
- III. Establishes a commission to investigate procedures for obtaining a hearing for landowners whose property is being considered for eminent domain, develop a framework to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

Various Effective Date, beginning March 5, 2012.

HOUSE BILL 382:

AN ACT relative to the maintenance of municipal public cemeteries.

AMENDED ANALYSIS

This bill removes the requirement that municipalities maintain sufficient fencing and gates surrounding municipal public cemeteries.

Effective Date: May 11, 2012

HOUSE BILL 108:

AN ACT relative to trees and roadside growth.

AMENDED ANALYSIS

This bill:

I. Modifies the method of appointing tree wardens.

II. Provides that governing bodies of cities and towns have authority over certain trees situated within the limits of town public ways, village commons, parks, cemeteries, and other public grounds.

Effective Date: May 2, 2012

HOUSE BILL 1356:

AN ACT classifying certain land in Litchfield as land to be retained by the state.

ANALYSIS

This bill classifies the Grassy Pond natural area in Litchfield, consisting of approximately 99.6 acres, more or less, as land to be retained by the state.

Effective Date: May 2, 2012

HOUSE BILL 1233:

AN ACT establishing a statute of limitations on wetlands filling and dredging.

ANALYSIS

This bill establishes a statute of limitations for persons who acquire property more than 5 years after an activity creating a violation of wetlands fill and dredge requirements has ended.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT establishing a statute of limitations on wetlands filling and dredging.

Be it Enacted by the Senate and House of Representatives in General Court convened:

55:1 New Section; Limitation on Enforcement Action. Amend RSA 482-A by inserting after section 14-b the following new section:

482-A:14-c Limitation on Enforcement Action. No person who acquires property, by any means, more than 5 years after an activity constituting a violation of this chapter has been completed, shall be subject to an enforcement action under this chapter for such violation, provided such person allows restoration of impacted areas, unless the person knew of the existence of the violation at the time that the person acquired the property. Nothing in this section shall limit any enforcement action for

14

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violation of this chapter, including injunctive relief requiring restoration of impacted areas, against the person who committed the violation. Nothing in this section shall limit any enforcement action with respect to any violation of this chapter, including injunctive relief requiring restoration of impacted areas, for which written notice of the violation has been provided to the owner by the department prior to January 1, 2013. In addition to any common law remedy, any person who suffers damages as a result of a violation of this chapter committed by another may seek compensation from the person who committed the violation, including diminution in property value and reasonable attorney's fees.

55:2 Effective Date. This act shall take effect January 1, 2013.

Approved: May 14, 2012

Effective Date: January 1, 2013

HOUSE BILL 1256:

AN ACT establishing a New Hampshire state register of historic places.

ANALYSIS

This bill establishes a New Hampshire state register of historic places.

Effective Date: July 13, 2012

HOUSE BILL 1448:

AN ACT requiring public access to any document and Internet content which is incorporated by reference in administrative rules.

ANALYSIS

This bill requires agencies to provide public access to any document and Internet content which is incorporated by reference in administrative rules.

Effective Date: July 13, 2012

HOUSE BILL 1380:

AN ACT relative to the development of wetland mitigation banks.

ANALYSIS

This bill permits the establishment of wetland mitigation banks.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the development of wetland mitigation banks.

Be it Enacted by the Senate and House of Representatives in General Court convened:

74:1 New Subdivision; Wetland Mitigation Banks Authorized. Amend RSA 482-A by inserting after section 33 the following new subdivision:

Wetland Mitigation Banks

482-A:34 Wetland Mitigation Banks Authorized. Any individual or public or private entity may establish a wetland mitigation bank, provided such bank complies with all federal and state regulations and all requirements of the Army Corps of Engineers.

74:2 Rulemaking; Funding for Mitigation Banks. Amend RSA 482-A:31, III(c) to read as follows:

(c) No project shall be funded with in lieu payments from losses that occurred outside the [~~hydrologic unit code 8 watershed, as developed by the United States Geological Survey,~~] *service area* in which the project is located. *A service area may be a hydrologic unit code 8 watershed, as developed by the United States Geological Survey, or a modification of a hydrologic unit code 8 watershed by the department as approved by the United States Army Corps of Engineers.*

74:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 23, 2012

Effective Date: July 22, 2012

SENATE BILL 250:

AN ACT relative to operation of ATVs and trail bikes on state lands.

AMENDED ANALYSIS

This bill adds specific exceptions to the evaluation criteria for the establishment of ATV and trail bike trails on state lands, and allows for OHRV operation on certain highways and trail crossings and connectors in Coos county.

Effective Date: May 23, 2012

HOUSE BILL 1144:

AN ACT establishing a commission to study the taxation of alternative fuel and electric-powered motor vehicles for the purpose of funding improvements to the state's highways and bridges

ANALYSIS

This bill establishes a commission to study the taxation of alternative fuel and electric-powered motor vehicles for the purpose of funding improvements to the state's highways and bridges.

Various Effective Dates, beginning May 29, 2012

HOUSE BILL 1392:

AN ACT relative to oyster aquaculture licenses.

AMENDED ANALYSIS

This bill requires the executive director of fish and game to adopt rules for a 5-year license for oyster aquaculture operations in the Great Bay estuary.

Effective Date: July 28, 2012

HOUSE BILL 1563:

AN ACT relative to Greenland's water rights.

AMENDED ANALYSIS

This bill expands the authority of the town of Greenland over the activities in the town of the city of Portsmouth's waterworks.

Effective Date: May 29, 2012

SENATE BILL 255:

AN ACT relative to liens for land use change tax assessments.

ANALYSIS

This bill increases the time before expiration of the lien created by the assessment of a land use change tax under RSA 79-A.

Effective Date: July 28, 2012

SENATE BILL 291:

AN ACT relative to the use of currently allowed impact fees by municipalities and making an appropriation to establish a North Country fire training facility.

AMENDED ANALYSIS

This bill:

- I. Allows municipalities to use revenue from existing impact fees for capital improvements to state highways within the municipality.
- II. Requires annual reports by a municipality with an impact fee ordinance.
- III. Makes an appropriation to establish a North Country fire training facility.

Various Effective Dates, beginning May 29, 2012

SENATE BILL 340:

AN ACT relative to locations for junkyards.

AMENDED ANALYSIS

This bill allows municipalities that have not adopted zoning ordinances to establish setback requirements for junk yards and automotive recycling yards.

Effective Date: July 28, 2012

SENATE BILL 238:

AN ACT establishing a committee to assess the form of government in towns that have elected the official ballot referendum form of meeting.

AMENDED ANALYSIS

This bill establishes a committee to assess the form of government in towns that have elected the official ballot referendum form of meeting pursuant to RSA 40:13.

Effective Date: June 5, 2012

SENATE BILL 265:

AN ACT relative to the definition of stormwater.

AMENDED ANALYSIS

This bill amends the definition of “stormwater” in the statute governing stormwater utilities.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the definition of stormwater.

Be it Enacted by the Senate and House of Representatives in General Court convened:

132:1 Stormwater Utilities; Definitions. Amend RSA 149-I:6-a, II to read as follows:

II. "Stormwater" means [~~stormwater runoff from precipitation, snow melt runoff, and street wash waters related to street cleaning or maintenance, infiltration, and drainage~~] *surface runoff and drainage that is generated from precipitation and snowmelt, including any debris, chemicals, sediment, or other substances carried along with the water.*

132:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 5, 2012

Effective Date: August 4, 2012

SENATE BILL 344:

AN ACT allowing the department of resources and economic development to cut vegetation in shoreland areas where public safety is of concern.

ANALYSIS

This bill permits the department of resources and economic development to cut vegetation within the protected shoreland when there is a public safety concern.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT allowing the department of resources and economic development to cut vegetation in shoreland areas where public safety is of concern.

Be it Enacted by the Senate and House of Representatives in General Court convened:

137:1 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(D)(vi) to read as follows:

(vi) Owners of lots and holders of easements on lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns, gardens, landscaped areas, beaches, and rights-of-way for public utilities, public transportation, and public access, and may repair existing utility structures within the waterfront buffer. Conversion to or planting

19

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of cleared areas with non-invasive species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraph (g)(2) or (g)(3), or RSA 483-B:11, II. *In addition, the commissioner of the department of resources and economic development may order vegetation on lands or properties owned by, leased to, or otherwise under the control of the department of resources and economic development within the protected shoreland to be cut when overgrowth of vegetation impairs law enforcement activities and endangers public safety. If such cutting will exceed that which is allowed under subparagraph (iv), the commissioner of the department of resources and economic development shall provide written notification to the department of environmental services identifying the areas to be cut and an explanation of the need for the cutting at least 2 weeks prior to the undertaking.*

137:2 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(b)(2)(A) to read as follows:

(A) Within the natural woodland buffer of a given lot the vegetation, except lawn, within at least 25 percent of the area outside the waterfront buffer shall be maintained unaltered or improved with additional vegetation. Owners of lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area to be maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased. *In addition, the commissioner of the department of resources and economic development may order vegetation on lands or properties owned by, leased to, or otherwise under the control of the department of resources and economic development within the protected shoreland to be cut when overgrowth of vegetation impairs law enforcement activities and endangers public safety. If such cutting will exceed that which is allowed under this subparagraph, the commissioner of the department of resources and economic development shall provide written notification to the department of environmental services identifying the areas to be cut and an explanation of the need for the cutting at least 2 weeks prior to the undertaking.*

137:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 5, 2012

Effective Date: August 4, 2012

HOUSE BILL 1636:

AN ACT relative to the extension of fill and dredge in wetlands permits.

AMENDED ANALYSIS

This bill provides that certain fill and dredge in wetlands permits shall expire 10 years from the date the permit was issued.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the extension of fill and dredge in wetlands permits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

145:1 Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-A:3, XIV-a to read as follows:

XIV-a.(a) *With the exception of permits issued under subparagraph (b)*, all permits issued pursuant to this chapter shall be valid for a period of 5 years. Requests for extensions of such permits may be made to the department. The department shall grant one extension of up to 5 additional years, provided the applicant demonstrates all of the following:

~~[(a)]~~ (1) The permit for which extension is sought has not been revoked or suspended without reinstatement.

~~[(b)]~~ (2) Extension would not violate a condition of law or rule.

~~[(c)]~~ (3) The project is proceeding towards completion in accordance with plans and other documentation referenced by the permit.

~~[(d)]~~ (4) The applicant proposes reasonable mitigation measures to protect the public waters of the state from deterioration during the period of extension.

(b) Any permit issued to repair or replace shoreline structures to maintain the integrity and safety of such structures including, but not limited to docks, sea walls, breakwaters, riprap, access ramps and stairs, that are damaged by storms or ice, shall expire 10 years from the date the permit was issued as long as any work performed after the initial permitted work complies with the following:

(1) The work is not in violation of the original permit or subparagraphs (a)(1)-(4).

(2) All structures are repaired or replaced to the original permitted location and configuration.

(3) All significant work is reported to the department in accordance with the reporting requirements for the original permit.

145:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 7, 2012

Effective Date: August 6, 2012

HOUSE BILL 1721:

AN ACT relative to permitting for the replacement of sewage disposal systems and relative to oil spillage prevention, control, and countermeasure plans.

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AMENDED ANALYSIS

This bill allows certain sewage disposal systems to be replaced after approval by the department of environmental services and requires the department of environmental services to adopt rules regarding requirements for oil spill prevention, control, and countermeasure (SPCC) plans.

Various Effective dates, beginning June 7, 2012.

SENATE BILL 241:

AN ACT relative to expiration and extension of terrain alteration permits and extending the report date for the commission to study water infrastructure sustainability funding.

AMENDED ANALYSIS

This bill:

- I. Provides that a terrain alteration permit shall be valid for 5 years and authorizes an extension of the permit if the applicant meets specified criteria.
- II. Provides an exception for a terrain alteration permit associated with the ongoing excavation or mining of materials from the earth, which shall not expire during the life of the project if the permit holder submits a written status update to the department of environmental services every 5 years.
- III. Extends the final report date for the commission to study water infrastructure sustainability funding.

Various Effective Dates, beginning June 7, 2012.

SENATE BILL 388:

AN ACT relative to the use of land along Silver Lake that is below the public trust boundary.

AMENDED ANALYSIS

This bill:

- I. Permits certain landowners of properties along Silver Lake that are below the public trust boundary to use such property for certain purposes.
- II. Prohibits construction of new structures on public trust land.
- III. Requires the department of environmental services to reassess the high water mark of Silver Lake, and report its determination to the senate energy and natural resources committee and the house resources, recreation and development committee.

Effective Date: August 6, 2012

SENATE BILL 395:

AN ACT relative to construction of an access road on land in current use.

ANALYSIS

This bill clarifies that land in current use upon which an access road is constructed does not lose its status for current use taxation.

Effective Date: June 7, 2012

SENATE BILL 237-FN:

AN ACT relative to field purchases and transfers of funds for the state park system and the bureau of trails, and the use of gifts and donations to the division of parks and recreation.

ANALYSIS

This bill:

I. Eliminates the deadline on field purchases and transfers of funds for the state park system and the bureau of trails.

II. Establishes a fund to collect gifts and donations to the state park system.

This bill is a request of the department of resources and economic development, division of parks and recreation.

Effective Date: June 11, 2012

SENATE BILL 359:

AN ACT relative to civil actions involving accessibility standards for public buildings.

AMENDED ANALYSIS

This bill provides that, in an action to enforce accessibility standards for public buildings, the court may award attorneys fees to the prevailing party. The bill also defines prevailing party in such cases.

Effective Date: August 12, 2012

HOUSE BILL 514:

AN ACT relative to entry on private land and establishing a committee to study issues relating to entry on private land.

AMENDED ANALYSIS

This bill prohibits certain entry on private property for data gathering without a warrant or the consent of the landowner.

This bill also establishes a committee to study issues relating to entry on private land.

Effective Date: June 13, 2012

HOUSE BILL 1223-FN:

AN ACT relative to remedies under the right-to-know law.

ANALYSIS

This bill clarifies the remedies for violations of the right-to-know law.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to remedies under the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

206:1 Right-to-Know Law; Remedies. RSA 91-A:8 is repealed and reenacted to read as follows:

91-A:8 Remedies.

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than \$250 and not more than \$2,000. Upon such finding, such person or persons

24

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may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.

V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

206:2 Effective Date. This act shall take effect January 1, 2013.

Approved: June 13, 2012

Effective Date: January 1, 2013

HOUSE BILL 1551:

AN ACT clarifying the liability of landowners, lessees, and occupants of premises who allow other persons to use the premises for hunting, fishing, and other recreational purposes or to remove fuel wood, and relative to the losing claimant's payment of the prevailing party's costs in actions against such landowners, lessees, and occupants barred by liability immunity provisions.

AMENDED ANALYSIS

This bill clarifies the liability of landowners, lessees, and occupants of premises who allow other persons to use the premises for hunting, fishing, and other recreational purposes or to remove fuel wood. This bill also requires the claimant to pay the attorney's fees and court costs in actions against such landowners, lessees, and occupants barred by liability immunity provisions.

Effective Date: June 13, 2012

HOUSE BILL 574:

AN ACT relative to the taking of private property during a state of emergency.

AMENDED ANALYSIS

This bill prohibits the state from taking personal property owned or used by individuals or families during a declared state of emergency. The bill also limits the provisions taken by the state in an emergency to those in excess of the reasonable needs of the owner and the owner's household during the expected duration of the emergency.

Effective Date: August 17, 2012

SENATE BILL 19:

AN ACT relative to the definition and designation of "prime wetlands."

AMENDED ANALYSIS

This bill modifies the definition of “prime wetlands.”

This bill modifies the process for designating prime wetlands.

Effective Date: August 17, 2012

HOUSE BILL 256-FN:

AN ACT relative to the administrative appeals process of the department of environmental services and establishing a committee to study the appeal process of the department of environmental services.

AMENDED ANALYSIS

This bill modifies the administrative appeals process of the department of environmental services.

This bill establishes a committee to examine the appeal process of the department of environmental services.

Effective Date: June 18, 2012

HOUSE BILL 1211:

AN ACT establishing a committee to study the promotion of lease of state-owned land for use for beginning farmers.

ANALYSIS

This bill establishes a committee to study the promotion of lease of state-owned land for use for beginning farmers.

Various Effective dates, beginning June 18, 2012

HOUSE BILL 1484:

AN ACT relative to fees for state parks and relative to limitations for nonconforming structures located within protected shoreland.

AMENDED ANALYSIS

This bill:

- I. Provides that a change to the fees for access to or use of the state park system proposed by the commissioner of the department of resources and economic development shall take effect no later than 60 days after such change is proposed, unless the fee change is denied by the fiscal committee.
- II. Adds provisions relating to alterations to nonconforming structures located within protected shoreland.

III. Changes eligibility requirements for free admission to the state park system for members of the armed forces.

Various Effective Dates, beginning June 19, 2012