

# 2011 REPORT CARD FOR MAINE'S ENVIRONMENT

We traditionally release our Report Card at the end of each legislative session to grade the Legislature's performance on the major environmental issues of the year. But 2011 was very different, and this year's issues don't easily lend themselves to our usual letter grades. Rather, this was more of a pass/fail legislative session. On issue after issue, legislators were forced to decide whether to keep protections for Maine's land, air, water, and wildlife, or roll them back. And from our perspective they either "Passed" or "Failed" these individual tests, as described in this report.

Overall, we give the Legislature a passing grade for 2011. Although individual lawmakers introduced more rollback proposals than ever, the Legislature as a whole generally made the right decision and turned them down. Governor LePage's massive environmental rollback agenda announced in January was so strongly opposed by Maine people that lawmakers kept their distance, and most of the 50 environmental rollback bills that NRCM listed during our news conference on March 1 were defeated.

We are particularly pleased that lawmakers rejected proposals to rollback Maine's shoreland zoning law, bottle bill, ban on billboards, Kid-safe Products Act, and protections for vernal pools and other significant wildlife habitat. The Legislature also took the right step in rejecting bills that would have removed Maine from the Regional Greenhouse Gas Initiative (RGGI) and suspended our state's renewable energy portfolio standards.

But legislators failed several important tests. They failed to stand up for

## Legislature's Performance At a glance...

SUBJECT	PASS/FAIL
Stopping Rollbacks	Pass
Habitat Protection	Pass
Energy Efficiency	Fail
Reducing Toxic Chemicals	Pass
Pesticides	Fail
North Woods	Fail
Responsible Recycling	Pass

Maine people who want to be notified about aerial spraying of pesticides on adjacent properties. They failed to stand up for Maine's North Woods when they adopted a deeply flawed study commission that seems destined to propose dismantlement of the Land Use Regulation Commission. And they failed Maine homeowners by passing a bill to exempt 40 percent of Maine from the uniform energy code that requires new homes to be built to basic energy efficiency standards.

On some issues, the Legislature simply punted to next year. Most notably, they made no decision on a bond for the Land for Maine's Future program, despite overwhelming public support for this important conservation program.

Although we are reluctant to assign letter grades to the Legislature this year, we have no hesitation in giving Maine people an A+ for defending Maine's environment. A huge number of people contacted their legislators this year and demanded that they oppose environmental rollbacks. This made a big difference, as did the collective efforts of the 25 organizations belonging to Maine's Environmental Priorities Coalition.

We extend a special thanks to NRCM's members and activists. Your support and involvement helped to ensure that lawmakers knew the importance of these issues to their constituents, the people of Maine, and future generations. We appreciate the work of legislators who helped lead the debate against rollback bills. We'll need to keep it up, because major challenges to our environmental safeguards have not gone away.

—Pete Didisheim, Advocacy Director

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## Stopping Rollbacks **Pass**



Citizens stood up strongly in support of Maine's iconic bottle bill, one of many rollbacks under attack this legislative session.

On January 24, Governor LePage released his "Phase One Regulatory Reforms" that represented the most extreme attack on Maine's environmental laws that NRCM has ever seen. Separately, a group of lawmakers drafted more than 50 environmental rollback bills. "If this full slate of proposed rollbacks had been enacted, then Maine literally would be a different place—with more pollution, less wildlife habitat, and increased risks to human health," says NRCM Advocacy Director Pete Didisheim. "But that didn't happen, because these bills were completely out-of-step with the views of Maine people, who came out in droves to let their lawmakers know."

The Legislature defeated most of the rollbacks because Maine people delivered a strong and clear message: "Protect our environment!" At virtually every public hearing on a rollback bill, speakers who opposed the proposal outnumbered proponents. At some hearings, opponents continued to speak for hours after the proponents were done. The messengers were as diverse as are the people of Maine and included clambers and lawyers, lobstermen and academics, local officials and retirees, home builders and hunters, and people from every corner of Maine, including Republicans, Democrats, and Independents alike.

NRCM staff members and others also brought facts to the process, relentlessly. Our policy experts testified on, and/or spoke with legislators about, more than 100 different pieces of legislation, including all of the rollback bills. Our work paid off: A bi-partisan group of legislators crafted an acceptable regulatory reform bill (LD 1) that focused on improving implementation of Maine's environmental laws, rather than weakening them. And bills to undermine Maine's billboard ban, bottle bill, toxic chemical phase-out laws, shoreland zoning, the Baxter State Park Authority, and participation in the Regional Greenhouse Gas Initiative (RGGI) were defeated, along with many other attempted rollbacks.

## Habitat Protection **Pass**



NRCM and our supporters fended off legislation that would have weakened protections for vernal pools—critically important for wildlife.

Vernal pools became a flash point for heated debate this legislative session. These temporary wetlands are critically important for a broad range of wildlife. Some people have developed (and perpetuated) significant misperceptions about the existing 250-foot buffer zone, which applies to a subset of the most significant vernal pools in Maine. As NRCM Staff Scientist Nick Bennett explains, "This protective distance is not a 'no-build zone.' It is simply a consultative zone, designed to protect these important habitats from being unnecessarily paved over. DEP has not denied a single permit to build within this buffer, but they have worked with developers to minimize impacts – which is a good thing."

But that certainly wasn't the position of the LePage Administration. At the April 25 public hearing, three commissioners from Maine's natural resource agencies testified in support of legislation to drastically reduce protection for vernal pools. Fortunately, members of the Environment and Natural Resources Committee spent long hours studying the issue and concluded that the science supports the existing level of protection. The Committee made small clarifications in existing law, and its members, led by Sen. Tom Saviello (R-Franklin), defeated the rollback threat both in Committee and on the floor.

Through a Freedom of Access Act (FOAA) request, NRCM secured draft testimony from the Department of Inland Fisheries and Wildlife that opposed weakening protections for vernal pools. The testimony cited 14 scientific studies that backed up the existing 250-foot buffer. "Those trying to roll back existing law presented no scientific data to support their position," said Bennett. "In this case, science won the day, over ideology and myth."

## Energy Efficiency **Fail**

Efforts to reduce energy costs and boost energy security through improvements in energy efficiency took a major beating this year. "Legislators failed to allow an increase in funding for Efficiency Maine that would have enabled more homeowners and businesses to cut energy costs," says NRCM's energy project director Dylan Voorhees. "The Legislature also made a colossal blunder in effectively repealing Maine's Uniform Building and Energy Code, designed to protect owners of new homes from getting substandard buildings that waste energy."



People buying new homes in smaller towns (less than 4,000 people) will have a much greater chance of being stuck with the high energy costs of substandard construction.

Although a bill that would have entirely repealed Maine's Uniform Building and Energy Code was unanimously defeated as a result of huge opposition during the public hearing, a separate bill to exempt all cities and towns with populations of less than 4,000 passed by a three-vote margin in the final days of the legislative session. This exemption means that people buying new homes in smaller towns (more than 400 of Maine's 526 towns) can be straddled with the high energy costs of substandard construction—in buildings that will last for generations. Maine will become a patchwork of building and energy codes, and return to being one of only 10 states in the nation without a uniform energy code. All this despite the clear outpouring of support for uniform building and energy codes from businesses and building trade groups, including a letter to the Governor signed by trade groups representing over 1,500 member businesses.

And at a time of rising concerns about energy costs, the Legislature failed to allow the Public Utilities Commission to increase funding for the Efficiency Maine program—even though more than 400 businesses urged the Legislature to make energy efficiency funding a high priority, and despite the fact that each dollar of energy efficiency investment generates three dollars in savings. The funding increase would have been achieved through an increase in the small system benefit charge to electric ratepayers; Maine has long had the lowest per capita rate of investment in energy efficiency of any New England state.

## Reducing Toxic Chemicals **Pass**

Although the Governor's regulatory reform proposals called for repealing Maine's landmark laws that phase-out toxic chemicals from consumer products, lawmakers refused to weaken those protections. The first major test came when rules to phase out the toxic chemical bisphenol-A (BPA) came before the Environment and Natural Resources Committee. The Governor attempted to block the rules, claiming that BPA's worst human health risk was that some women might grow "little beards." But this false and absurd statement backfired. At the public hearing, 20 people testified in support of the rules, not a single person testified against them, and the BPA ban was unanimously adopted as soon as the hearing was finished. The rules are now law, even though the Governor refused to sign the bill.



The Governor attempted to block rules banning BPA from consumer products, but the ban was unanimously adopted by the Maine Legislature.

The next test came with a bill to eviscerate the Kid-safe Products Act, the underlying law that identified BPA as a "chemical of high concern." The bill was drafted by the American Chemical Association, but it was completely reworked and combined with another bill designed to improve implementation of the law. The final bi-partisan bill earned broad support from environmental groups, businesses, and the Maine Chamber of Commerce. Separately, legislators defeated a bill that would have weakened Maine's phase-out of a toxic chemical used as a flame retardant for plastic pallets that transport food and other merchandise.

# 1 Legislative Session

## Pesticides

# Fail



The Legislature ignored testimony from moms, children, physicians, and others by refusing to adopt a bill to limit pesticides at playgrounds and daycare facilities.

For people concerned about the potential health effects of pesticides, this legislative session was a disaster. The Legislature repealed Maine's aerial pesticide notification program, refused to adopt a bill to limit pesticides at school playgrounds and day care facilities, and changed the composition of Maine's Board of Pesticides Control by eliminating the previous requirement that two of its

citizen members "have a demonstrated interest in environmental protection." Powerful testimony was delivered by moms, children, physicians, and other concerned Mainers about the health risks of pesticides. Some of the nearly 2,000 people on Maine's existing pesticide notification registry urged that the system be preserved, so that they can take precautions before major pesticide applications occur near their homes. New studies were cited about the linkage between pesticides and lower IQ scores in children. But a majority of the members of the Agriculture, Conservation, and Forestry Committee, where these bills were considered, did not seem to be listening. These actions were among the most disappointing setbacks of the session.

## North Woods

# Fail



Although bills to abolish LURC failed, the Legislature voted to create a study commission that seems heavily biased toward proposing the abolishment next year.

Maine's North Woods are largely made up of the 10.3 million acres of unorganized territories for which the Land Use Regulation Commission (LURC) acts as the planning, permitting, and zoning board. The majestic, unfragmented forestlands of the North Woods retain their unique character in no small part because of efforts of LURC to direct development toward areas that are more appropriate, and away from areas that are less appropriate. This year several bills were introduced to abolish LURC, which almost certainly would result in scattered development throughout the North Woods and an end of this landscape as we know it today. Although those efforts failed, the Legislature voted to create a study commission that seems heavily biased toward proposing the abolishment of LURC next year.

At the public hearing, opposition to abolishing LURC was very strong—including from many residents of the unorganized territories who worry about the potential negative consequences of transferring LURC responsibilities to the counties. Near the end of the legislative session, lawmakers had two options before them: a proposal to create a study commission that seems rigged to reach a predetermined outcome of abolishing LURC, and an alternative proposal that would create a more balanced study group aimed at improving LURC. Unfortunately, a majority of both the House and Senate opted for the former.

"The proposals to abolish LURC were seriously flawed, and one lawmaker after another acknowledged that to us, yet they still voted for a study process that seems destined to put a rubber stamp on a bill to abolish LURC," said NRCM North Woods Project Director Cathy Johnson. "Where's the leadership to stand up for the resource in Maine that makes us different from every other place east of the Mississippi?"

## Responsible Recycling

# Pass



A bill crafted by the beverage industry would have repealed outright Maine's bottle bill program, but the bill's sponsor abandoned the legislation within hours of an NRCM press conference.

Maine's bottle bill is our state's most successful recycling program, with a consistent recycling rate of between 85 and 95 percent. It has reduced roadside trash, generated 1,300 jobs at redemption centers, and relieved towns and taxpayers of the physical and financial burdens and costs of paying to collect and recycle these containers. Yet out-of-state beverage giants Coca-Cola and Pepsi have long opposed bottle redemption programs, and they thought this year might be the year when they could weaken or eliminate Maine's bottle bill.

One bill crafted by the beverage industry would have completely repealed Maine's bottle bill. Fortunately, the bill sponsor abandoned the legislation within hours of NRCM's press conference labeling it as one of the 50 worst rollback proposals of the legislative session. The next major threat then came from bills to exempt larger containers, remove wine bottles from the program, or study alternatives to Maine's bottle bill—but all of these measures were defeated.

Maine's bottle bill has thus far been fully preserved, and the Legislature also expanded our highly successful electronic waste (e-waste) recycling program to cover small businesses, schools and hospitals. "With these actions, Maine remains a state with a strong and expanding recycling culture where citizens and businesses are working together to minimize waste in our landfills and recapture materials that can be reused and turned back into products," says NRCM Toxics Project Director Matt Prindiville.

## Water Quality

# Pass



The Legislature said no to a bill that weakened water quality by reducing the 250-foot buffer in existing law down to 75 feet.

Maine has some of the clearest and cleanest lakes in the nation, and they are a draw for tourists and Mainers alike. We are the envy of nearby New England states, where lakes are significantly less clear and summer algal blooms are commonplace. So when a bill was proposed this year to drastically weaken Maine's shoreland zoning, which is largely credited with reducing pollution and preserving the character of Maine's lakes, people came out of the woodwork to cry foul.

Maine's Shoreland Zoning Law was enacted in the early 1970's as awareness was growing about the threat of development to our water resources. The law is based on a large body of scientific research that unequivocally shows that undeveloped "buffer areas" of trees and vegetation around lakes and stream can effectively remove and treat a wide range of pollutants that may flow from developed areas. The proposed bill would have reduced the 250-foot shoreland zone to 75 feet. Ken Bailey, Executive Director of the Megunticook Watershed Association, captured the general sentiment of the overwhelming majority of people who came to testify against the bill when he said: "Why would Maine—well known for its beautiful lakes and ponds—want to relax shoreland protection that has been in place and has proven to help protect our fragile waters?"

Why indeed? Lawmakers unanimously rejected the proposal.



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[www.nrcm.org](http://www.nrcm.org)

Protecting, restoring, and conserving  
Maine's environment, now and for  
generations to come.

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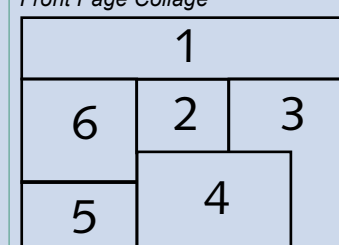
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6 / Kayaking at Ovens Mouth, Allison Childs Wells

# PREVIEW for 2012

We'll face a new round of issues starting in January 2012, in part because the Legislature decided to postpone action on several bills this year, and also as a result of new bills that will be introduced later this year. Among the major issues we already anticipate are the following:

**Takings Bills** Legislators this year turned down a bill that would have allowed landowners to demand compensation from Maine taxpayers if they felt that land use and environmental laws reduced the value of their property. An identical statute in Oregon was quickly repealed after \$20 billion in claims were filed. Lawmakers did, however, create a study commission to review the issue, develop recommendations, and propose legislation by December 2011. We believe the "takings" issue has been successfully managed since 1996, when the Legislature established a mediation process to address such claims.

## Land for Maine's Future



BIRCH POINT STATE PARK, OWLS HEAD BY ALLISON WELLS

The state's highly successful land conservation program needs additional funding, but the Legislature failed to approve any bonds this year. We will work with LMF supporters throughout Maine to build support for a bond next year.

**Land Use Regulation Commission** The future of Maine's North Woods hangs in the balance next year as lawmakers return to the question of whether to abolish the Land Use Regulation Commission, or improve it through a package of reforms. The Study Commission on Reform of the Governance of Land Use Planning in the Unorganized Territory will present its findings in early January 2012.

**State Planning Office** Although Governor LePage's proposed state budget this year included a measure to abolish the State Planning Office (SPO), the Appropriations Committee scaled back the language so that lawmakers could carefully consider the matter in 2012. A 10-member working group comprised mostly of Administration officials, with two representatives of local or regional government, will report their recommendations and proposed legislation to the Appropriations Committee by December 2011. The working group likely will describe how SPO should be dismantled, but the Legislature will have full discretion to reject any proposal.

**More Regulatory Reform** This year's regulatory reform bill (LD 1) included provisions that will be implemented over the next several years, including a rulemaking on the beneficial reuse of hazardous and solid waste. These rules must first be approved by the Board of Environmental Protection, and then by the Legislature. Governor LePage also has said that his Administration will propose additional regulatory reform proposals next year. We'll be on the lookout!

**Renewable Energy** More than a dozen bills were introduced in 2011 regarding wind power development in Maine, mostly with the intent to restrict wind power. These bills were defeated and replaced with a broad list of additional issues for the Governor's Office of Energy Independence and Security to evaluate as part of its assessment of wind power development in Maine. The report is due February 1, 2012, and could lead to additional legislation. Separately, the Public Utilities Commission is required to submit to the Legislature by January 31, 2012 a study about the policies that require electricity providers in Maine to increase the amount of renewable energy they supply, until they meet a goal of 10 percent new renewable power sources by 2017.



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## A Call for Nominations for NRCM's 6<sup>th</sup> annual People's Choice Award



- We are now accepting nominations for our 6th annual People's Choice Award. Perhaps you would like to nominate someone in your community? We are looking for people who have worked tirelessly to protect a special place, or have helped pass legislation safeguarding Maine's environment, or have stopped polluting companies from contaminating our state. Someone who selflessly goes above and beyond to make sure future generations will enjoy the kind of Maine we all know and love.
- We'll accept nominations through Friday, August 12. NRCM will compile the nominees and post finalists on our website, where, through Friday, September 9, you, your friends, and your family can vote for the person you think most deserves to be this year's People's Choice Award winner. (Please note that we cannot consider someone who currently sits on a regulatory board or who is in the Legislature, or who is or was serving in a paid position while carrying out the work for which you feel they should be nominated. The People's Choice Award is to honor volunteers.) The winner will be presented with the award at our Annual Meeting this fall – watch for details. Send us your nomination today!

• Candidate's Name \_\_\_\_\_

• Address \_\_\_\_\_

• Telephone \_\_\_\_\_

• Please describe below why you believe this person deserves the 2011 People's Choice Award (and include any of the nominee's organizational affiliations). Please be as specific as possible about accomplishments for Maine's environment.

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\_\_\_\_\_

• Your name \_\_\_\_\_

• Address \_\_\_\_\_

• Telephone \_\_\_\_\_

• Email \_\_\_\_\_

• **Thank you!** We will notify you and your nominee, if that person is selected as a finalist for NRCM's People's Choice Award. Please return this form to Beth Dimond, NRCM, 3 Wade Street, Augusta, ME 04330-6317. You can also nominate online at [www.nrcm.org](http://www.nrcm.org).

### SAVE THE DATES!

**The Art of Local Food: Tasting Party & Art Sale**

**OCTOBER 30**

**Sunday, October 30, 4:30 to 6:30 p.m.**

The Summit at Point Lookout, Northport

Join us for NRCM's 3rd annual Art of Local Food. Come savor the best of Maine: delicious local foods prepared by great chefs, works by talented Maine artists, a spectacular view of Penobscot Bay, and the camaraderie of folks committed to protecting the nature of Maine. Visit [www.nrcm.org/artoflocalfood.asp](http://www.nrcm.org/artoflocalfood.asp) for updates on restaurants, artists, and ticket sales.

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**NRCM Polar Bear Dip & Dash: Run, Walk, Make a Splash!**

A benefit for NRCM's work to reduce climate-changing pollution!

**DECEMBER 31**

**Saturday, December 31, 2011, East End Beach, Portland, Maine**

Walk or run a 5k, plunge into the Atlantic Ocean, or both! Join NRCM for this fun way to raise awareness about the threat of global warming on Maine's coastline, and in raising funds for our energy work to help prevent the threats from becoming reality. Every cent you help us raise will go toward our energy efficiency and renewable energy work. **Listen for news about this special event on 98.9FM WCLZ radio—Maine's first carbon-neutral radio station—our media sponsor, as the date approaches!** Sign up now at [www.nrcm.org/attendanevent.asp](http://www.nrcm.org/attendanevent.asp).