

MAINE STATE LEGISLATURE

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New Draft of: H. P. 945, L. D. 1304

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1704

H. P. 1299

House of Representatives, May 3, 1971

Reported by Mr. Herrick from Committee on Natural Resources and
printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Providing for the Protection of Coastal Wetlands.

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

Sec. 1. R. S., T. 12, c. 421, sub-c. II, additional. Chapter 421 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as amended, is further amended by adding a new subchapter II, to read as follows:

SUBCHAPTER II

ZONING

§ 4751. Purpose

The purpose of this subchapter is the promotion of the public safety, health and welfare, the protection of public and private property and the conservation of public or private water supplies, wildlife and freshwater, estuarine and marine fisheries.

§ 4752. Definition

For the purposes of this subchapter, "coastal wetlands" are as defined in section 4701.

§ 4753. Administration

This subchapter shall be administered by the Wetlands Control Board, as constituted in section 4705.

§ 4754. Orders

The board may, from time to time, for the purposes of this subchapter, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering any coastal wetland, or draining or depositing sanitary sewage into or on any coastal wetland, or otherwise polluting the same.

§ 4755. Hearing

The board, before adopting, amending, modifying or repealing any such order, shall hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, and shall give notice by mail to the municipal officers of such municipalities and to each assessed owner of such wetlands at least 21 days prior thereto, and to the public by publication in a newspaper published in the county where the wetlands are located, of the time and place of such hearing.

§ 4756. Recording

Upon the adoption of any such order or any order amending, modifying or repealing the same, the board shall cause a copy thereof, together with a plan of the wetlands affected and a list of the assessed owners of such wetlands to be recorded in the registry of deeds for the county in which such wetlands are located, and shall mail a copy of such order and plan to each assessed owner of such wetlands affected thereby, by registered or certified mail, return receipt requested.

§ 4757. Appeal procedure

Any person having a recorded interest in wetlands affected by any such order of the board may, within 90 days after notice thereof, appeal to the Superior Court for the county in which the wetland is situated for the purpose of determining whether such order so restricts the use of the property as to deprive the owner of the reasonable use thereof or constitutes the equivalent of a taking without compensation. If the court so finds, it shall enter a decree that such order shall not apply to the wetland of the appellant, provided that such decree shall not affect any wetland other than that of the appellant. The appeal shall be the exclusive method of determining the validity of said order of the board. Any decree that such order constitutes the equivalent of a taking without compensation shall not entitle the appellant or any other person to petition for the assessment of damages by reason of the adoption of such order.

The board shall cause a copy of such decree to be recorded in the registry of deeds for the county in which the wetland is situated. After a decree has been entered providing that any such order of the board shall not apply to the wetland involved in the appeal, the board may, after causing an appraisal to be made, negotiate for the purchase of such wetland, if it deems that acquisition of the same is necessary for the purposes of section 4702 or 4751. If purchase, or a written agreement therefor, has not been effected within 60 days after negotiations have begun, or in a lesser time if an emergency situation exists which would cause an immediate threat to the public safety, health and welfare, to the protection of public or private property, or to the con-

servation of public or private water supplies, wildlife, or freshwater, estuarine or marine fisheries, the board may declare that the public exigency requires the taking of such wetland, and, with the consent of the Governor and Council, may acquire in behalf of the State the fee of such wetland or any lesser interest therein by eminent domain, the proceedings for such taking to be in accordance with Title 35, chapter 263.

Such wetlands or lesser interests therein, so taken, shall thereupon be under the jurisdiction and control of the board which shall hold the same for the purposes of this subchapter and issue rules and regulations governing the use thereof.

Any violation of such rules and regulations shall be punishable by a fine of not more than \$100.

§ 4758. Violation; penalty

Whoever violates or causes a violation of any such order of the board or of any provision of this subchapter, shall be punished by a fine of not more than \$500.

The Superior Court shall have jurisdiction to restrain a continuing violation of any such order or of any provision of this subchapter at the suit of any person and, if necessary to preserve any of the values and purposes for which this subchapter was passed, shall order a restoration of the affected area to as near its original condition as possible, said restoration to be undertaken and costs borne by the property owner.

Sec. 2. Appropriation. There is appropriated to the Wetlands Control Board from the General Fund the sum of \$150,000 to carry out the purposes of this Act, which shall not lapse, but shall be a continuing carrying account. The breakdown shall be as follows:

	1971-72	1972-73
WETLANDS CONTROL BOARD		
Personal Services	(4) \$27,339	(4) \$28,600
All Other	46,661	42,400
Capital Expenditures	4,200	800
	<hr/> \$78,200	<hr/> \$71,800