

# MAINE STATE LEGISLATURE

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SMG  
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L.D. 470

Date:

5/31/13

(Filing No. H-302)

## ENVIRONMENT AND NATURAL RESOURCES

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### STATE OF MAINE HOUSE OF REPRESENTATIVES 126TH LEGISLATURE FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 320, L.D. 470, Bill, "An Act Regarding Working Waterfront Projects"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 38 MRSA §439-A, sub-§6, as amended by PL 2007, c. 292, §22, is further amended to read:

**6. Clearing of vegetation.** Within the shoreland area, municipal ordinances ~~shall~~ must provide for effective vegetative screening between buildings and shorelines. Notwithstanding any provision in a local ordinance to the contrary, vegetative screening requirements ~~shall~~ must be no less restrictive than the following:

A. Within a strip extending 100 feet inland from the normal high-water line of a great pond classified as GPA under section 465-A or a river that flows to a great pond classified as GPA under section 465-A or within a strip extending 75 feet inland from the normal high-water line of other water bodies or the upland edge of a wetland, there shall may be no cleared opening or openings, except for approved construction, greater than 250 square feet and a well-distributed stand of vegetation shall must be retained. The restrictions in this paragraph do not apply to the construction of a structure or the establishment of a land use within 75 feet of the normal high-water line of a water body or upland edge of a wetland that is specifically allowed by municipal ordinance in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner;

B. Within a shoreland area zoned for resource protection abutting a great pond there ~~shall~~ may be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and

C. ~~Selective~~ Except as otherwise provided in this paragraph, selective cutting of no more than 40% of the total volume of trees 4.5 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, as long

# COMMITTEE AMENDMENT

1 ~~as a well distributed stand of trees and other natural vegetation remains.~~ Rules  
2 adopted by the board may allow for 70% of a lot to be nonvegetated in a general  
3 development district, commercial fisheries and maritime activities district or other  
4 equivalent zoning district approved by the commissioner.

5 The board may adopt more restrictive guidelines consistent with the purposes of this  
6 subchapter, which ~~shall~~ must then be incorporated into local ordinances.

7 **Sec. 2. 38 MRSA §439-A, sub-§6-A** is enacted to read:

8 **6-A. Clearing of vegetation; exception.** The following exceptions to the standards  
9 governing the clearing of vegetation apply.

10 A. The standards in subsection 6, paragraphs A and C do not apply to properties that  
11 are located within areas designated as commercial fisheries and maritime activities  
12 districts or other equivalent zoning districts approved by the commissioner that  
13 support commercial fisheries and maritime activities if:

14 (1) The commissioner determines that special local conditions exist and a local  
15 municipal ordinance is approved in accordance with section 438-A, subsection 3;  
16 and

17 (2) The districts are in existence at the time this subsection becomes effective.

18 B. The standards in subsection 6, paragraphs A and C and any standards related to  
19 the clearing of vegetation contained in a municipal ordinance enacted in accordance  
20 with section 438-A, subsection 3 do not apply to remediation activities that are  
21 necessary to clean up contamination on a site in a general development district,  
22 commercial fisheries and maritime activities district or other equivalent zoning  
23 district approved by the commissioner that is part of a state or federal brownfields  
24 program or a voluntary response action program under section 343-E and that is  
25 located along:

26 (1) A coastal wetland; or

27 (2) A river that does not flow to a great pond classified as GPA under section  
28 465-A.

29 **Sec. 3. 38 MRSA §480-B, sub-§§11 and 12** are enacted to read:

30 **11. Working waterfront activity.** "Working waterfront activity" means an activity  
31 that qualifies a parcel of land as working waterfront land. "Working waterfront activity"  
32 includes commercial fishing activities; commercial boat building and repair; commercial  
33 hauling, launching, storage and berthing of boats; marine construction; marine freight and  
34 passenger transportation; and other similar commercial activities that are dependent on  
35 the waterfront. As used in this subsection, "commercial fishing activities" has the same  
36 meaning as in Title 36, section 1132, subsection 3.

37 **12. Working waterfront land.** "Working waterfront land" means a parcel of land,  
38 or a portion thereof, abutting water to the head of tide, land located in the intertidal zone  
39 or submerged land that is used primarily or predominantly to provide access to or support  
40 the conduct of a working waterfront activity.

**Sec. 4. 38 MRSA §480-BB, sub-§2, ¶B**, as enacted by PL 2011, c. 362, §1, is amended to read:

B. If a vernal pool depression is bisected by a property boundary and a landowner proposing to cause an impact does not have permission to enter the abutting property, only that portion of the vernal pool depression located on property owned or controlled by that landowner may be considered in determining whether the vernal pool is significant. A written department determination that a vernal pool is not significant pursuant to this paragraph remains valid regardless of timeframe.

**Sec. 5. 38 MRSA §480-BB, sub-§2, ¶C is enacted to read:**

C. Rules adopted under this section may not require an applicant for a license for a working waterfront activity on working waterfront land that is part of a state or federal brownfields program or a voluntary response action program under section 343-E to compensate for lost habitat function with a function of equal or greater value or to provide a compensation fee pursuant to section 480-Z.<sup>1</sup>

## SUMMARY

This amendment replaces the bill. It amends the standards for clearing of vegetation in the laws governing shoreland zoning and provides exceptions to those standards. It amends the Natural Resources Protection Act by amending the definition in the bill of "working waterfront activity" and exempting from compensation requirements working waterfront activities on working waterfront land that is part of a brownfields program or a voluntary response action program.

**FISCAL NOTE REQUIRED**  
(See attached)



# 126th MAINE LEGISLATURE

LD 470

LR 556(02)

## An Act Regarding Working Waterfront Projects

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

*A" (H-302)*

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### Fiscal Note

Minor cost increase - Other Special Revenue Funds

#### Fiscal Detail and Notes

Any additional costs incurred by the Department of Environmental Protection related to rulemaking activities addressing clearing of vegetation in certain districts located in the shoreland zone and the department's consideration of special vegetation clearing exceptions can be absorbed within existing budgeted resources.