

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1527

S. P. 469

In Senate, May 20, 1969

Reported by Majority from Committee on Natural Resources. Printed under Joint Rules No. 18.

JERROLD B. SPEERS, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Revising the Law Regulating the Alteration of Wetlands.

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

Sec. 1. R. S., T. 12, § 4701, amended. The first sentence of section 4701 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is amended to read as follows:

No person, agency or municipality shall remove, fill, dredge or drain sanitary sewage into, or otherwise alter any ~~swamp, marsh, bog, beach, flat or other wetland bordering coastal waters, or fill, dredge or drain sanitary sewage into such waters within such area~~ coastal wetland, as defined herein, without filing written notice of his intention to do so, including such plans as may be necessary to describe the proposed activity, with the municipal officers in the municipality affected and with the Wetlands Control Board.

Sec. 2. R. S., T. 12, § 4701, amended. Section 4701 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is amended by adding at the end the following:

For purposes of this chapter, coastal wetland is defined as any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or coastal storm flowage at any time including periods of maximum tide action or storm activity.

When winter conditions prevent a municipality or the Wetlands Control Board from evaluating a permit application, the municipality or board upon notifying the applicant of such fact may defer action on the application for up to 120 days. The applicant shall not during the period of deferral remove,

fill, dredge, drain sanitary sewage into, or otherwise alter such coastal wetland.

The results of the public hearing shall be reported to the Wetlands Control Board by the municipal officers within 7 days of such hearing.

Each such notice of intention filed with the municipality shall be accompanied by a permit fee of \$30 to cover the administrative costs of the municipality in processing the permit application.

Sec. 3. R. S., T. 12, § 4702, amended. The first 2 sentences of section 4702 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, are amended to read as follows:

Permit to undertake the proposed alteration shall be issued by the municipal officers within ~~7~~ 30 days of such hearing providing the Wetlands Control Board approves. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are deemed necessary by either the municipality or the Wetlands Control Board to protect the public interest.

Sec. 4. R. S., T. 12, § 4702, amended. Section 4702 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is amended by adding at the end the following:

Every permit issued by municipal officers shall be recorded by the owner in the registry of deeds for the county in which the wetland lies. Any permit not recorded within 30 days of its issuance shall be void.

Sec. 5. R. S., T. 12, § 4704, amended. Section 4704 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is amended to read as follows:

§ 4704. Appeal

Appeal may be taken to the Superior Court within 30 days after the denial of a permit or the issuance of a conditional permit for the purpose of determining whether the action appealed from so restricts the use of the property as to deprive the owner of the reasonable use thereof, ~~or is~~ and is therefore an unreasonable exercise of police power, or which constitutes the equivalent of a taking without compensation. The court upon such a finding may set aside ~~or amend~~ the action appealed from.

Sec. 6. R. S., T. 12, § 4705, amended. Section 4705 of Title 12 of the Revised Statutes as enacted by chapter 348 and as amended by section 32 of chapter 544, both of the public laws of 1967, is further amended to read as follows:

§4705. Wetlands Control Board

The Wetlands Control Board shall be composed of the Commissioners of Sea and Shore Fisheries and of Inland Fisheries and Game, the Chairman of the Water and Air Environmental Improvement Commission, the Chairman of the State Highway Commission ~~and~~, the Forest Commissioner ~~and the~~ Commissioner of Health and Welfare or their delegates.

Sec. 7. R. S., T. 12, § 4706, amended. Section 4706 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is amended by adding at the end the following :

Nothing in this chapter shall apply to the waters and territory within the limits of the City of South Portland which pursuant to the provisions of the private and special laws of 1917, chapter 192, section 4, are within the jurisdiction of the Board of Harbor Commissioners for the Harbor of Portland.

Sec. 8. R. S., T. 12, § 4708, amended. Section 4708 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is amended to read as follows :

§ 4708. Exception

Nothing in this chapter shall prohibit the normal maintenance or repair of presently existing ways, roads or railroad beds nor the construction, maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255 or of private roads and bridges required or convenient to agriculture, or in a logging or lumbering operation, abutting or crossing said wetlands, provided no watercourse is substantially altered.

Sec. 9. R. S., T. 12, § 4709, repealed and replaced. Section 4709 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, is repealed and the following enacted in place thereof :

§ 4709. Violation

Whoever violates any provision of this chapter shall be punished by a fine of not more than \$100.

The Superior Court shall also have jurisdiction to restrain a continuing violation of this chapter at the suit of any person and, if necessary, to preserve any of the values and purposes for which this chapter was passed, as outlined in section 4702, 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.

A continuing violation is defined as any filling, dredging, draining, altering or removal of materials which takes place in coastal wetlands contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this chapter or only innocently undertaken.

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in section 2003, shall enforce this chapter.