

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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Legislative Document

No. 644

H. P. 498

House of Representatives, February 5, 1971

Referred to Committee on Natural Resources. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Bustin of Augusta.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT Establishing the Flood Hazard Area Management Act of Maine.**

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

Sec. 1. R. S., T. 12, c. 5, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 5, to read as follows:

CHAPTER 5

FLOOD HAZARD AREA MANAGEMENT

§ 301. Title

This Act may be cited as the "Flood Hazard Area Management Act of Maine."

§ 302. Legislative findings

The Legislature finds that recurrent flooding of a portion of the State's land resources causes loss of life, damage to property, disruption of commerce and governmental services and insanitary conditions, all of which are detrimental to health, safety, welfare and property of the occupants of flooded lands and the people of this State, and the public interest necessitates management of flood-prone lands and waters as interrelated and scarce resources in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health, and reduce private and public economic losses.

The policy and purposes of this chapter are not to prohibit but rather to guide development of the flood hazard areas of this State consistent with enumerated legislative findings: To provide state coordination and assistance to local units in management of flood hazard areas; to coordinate federal, state and local management activities for flood hazard areas; to encourage

local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land use regulations; and to provide the Soil and Water Conservation Commission, heretofore established, with authority necessary to carry out a comprehensive flood hazard area management program for the State.

### § 303. Definitions

Unless the context otherwise requires, the following definitions apply throughout this chapter:

1. Artificial obstruction. "Artificial obstruction" shall mean any obstruction which is not a natural obstruction.
2. Coastal hazard area. "Coastal hazard area" shall mean the area adjoining an ocean which has been or may hereafter be covered by flood waters or subject to erosion damage.
3. Commission. "Commission" means the Soil and Water Conservation Commission.
4. Commission flood hazard areas. "Commission flood hazard areas," "commission coastal hazard areas," "commission floodway fringe areas" and "commission floodway areas" shall refer generally to flood hazard areas, coastal hazard areas, floodway fringe areas and floodway areas that have been delineated as regulatory areas by commission order.
5. Flood. "Flood" shall mean the condition existing when the waters of any watercourse, lake or ocean temporarily rise to an unusual height above the normal level of such watercourse, lake or ocean.
6. Flood hazard area. "Flood hazard area" is to be construed as a general term to refer to coastal hazard areas, floodway fringe areas and floodway areas.
7. Flood of 100-year frequency. "Flood of 100-year frequency" shall mean a flood magnitude expected to recur on the average once in every 100 years.
8. Flood proofing. "Flood proofing" shall mean any combination of structural and nonstructural additions, changes or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary facilities, structures and contents of buildings.
9. Floodway. "Floodway" shall mean the channel of a watercourse and adjacent land areas which are required to carry and discharge the flood water of the watercourse of a regulatory flood without substantially increased flood heights.
10. Floodway fringe. "Floodway fringe" shall mean the area adjoining a watercourse, not lying within a floodway which has been or may hereafter be covered by a regulatory flood.
11. Natural obstruction. "Natural obstruction" shall mean any rock, tree, gravel or other matter that has been located by a nonhuman cause.
12. Obstructions. "Obstructions" shall mean any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectifi-

cation, bridge, conduit, culvert, building wire, fence, rock, gravel, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or regulatory flood hazard area which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of the water might carry the same downstream to the damage of life or property.

13. Person. "Person" shall mean any natural person, firm, partnership, association or corporation, but does not include governmental units.

14. Regulatory flood. "Regulatory flood" shall mean a flood of 100-year frequency.

15. Structure. "Structure" shall mean anything constructed or erected on the ground, or attached to the ground, including, but not limited to the following: Docks, dams, fences, mobile homes, sheds and buildings.

16. Subdivision. "Subdivision" means the partitioning or dividing of a parcel or tract of land by the proprietor or by his heirs, executors, administrators, legal representative, successors or assigns for the purpose of sale, or lease of more than one year, or for building development, where the division creates 3 or more parcels of land each of which is 10 acres or less in area; or where 3 or more parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years.

17. Watercourse. "Watercourse" shall mean any depression 2 feet or more below the surrounding land serving to give direction to a current of water having a bed and well defined banks where the drainage area above the same is one square mile or more in extent, provided that it shall, upon rule or order of the commission, also include other generally and specifically designated areas where substantial flood damage may occur.

#### § 304. Plans

The Soil and Water Conservation Commission is authorized to prepare plans for management of flood-prone areas for the purposes of planning, coordinating and regulating all activities concerning management of flood hazard areas, flood control, flood damage prevention, shore erosion and the construction of dams, dikes, levees and reservoirs.

#### § 305. Permits

1. Permit. It shall be unlawful for any person to erect, construct or alter any dike, dam or levee, or to erect, construct or alter any structure or artificial obstruction in any lake, ocean or watercourse, or to alter or modify any lake, watercourse or coastal shore area without written permission of the commission.

2. — qualification. In addition, it shall be unlawful for any person to erect, construct or alter any structure or artificial obstruction, subject to the qualification set out in section 308, subsection 3, paragraph C in any regulatory flood hazard area without written permission from the commission.

3. Public nuisance. Failure to comply with subsections 1 and 2 and erection or alteration of any artificial obstruction or modification of any water-

course, lake or coastal shore area without written permission of the commission of the commission shall constitute a public nuisance. The commission may seek the removal of such nuisance pursuant to sections 306 or 311.

#### § 306. Penalties

Any person violating this chapter shall be guilty of a misdemeanor and shall be punished by a fine, in addition to any costs, expenses or damages, of not more than \$100 for each offense. Each day of continuing violation, 30 days after notification of the violation, shall be deemed a separate offense.

The commission may maintain an action in the Superior Court to enjoin any violation of this chapter.

The commission may maintain an action to order the abatement of any public nuisance, including, but not limited to, nuisances defined by section 305, subsection 3 which adversely affect the efficiency or unduly restricts the capacity of any watercourse or floodway or in any other manner interfere with the effectuation of this chapter. The commission may obtain a court order directing the removal or elimination of such public nuisance or authorizing the commission to remove or cause to be removed such public nuisance at the expense of the owner.

#### § 307. Management plans for flood hazard areas

1. Master plan. The commission shall, within 3 years of the effective date of this Act, make or arrange for a comprehensive study and investigation of all areas of the State affected by floods; determine the best combination of methods for managing these areas through flood hazard regulations, flood warning systems, flood insurance, public acquisition, tax adjustment policy, channel improvements, levees, reservoirs and other practical methods; adopt and establish a comprehensive or master plan to minimize flood damages in all areas of the State subject to floods; and prepare and periodically revise a schedule for implementation of the management plan.

2. Agreements. The commission is authorized, as the representative of the State of Maine, to cooperate with, aid, negotiate and enter into agreements with local units of government, authorized agencies representing any one or more states and authorized agencies of the Federal Government, for the purposes of flood data collection, delineation of flood hazard areas, other surveys and planning, participation in flood insurance programs, construction of flood control works and shore protection, and regulation of uses in flood hazard areas. If otherwise required by law, agreements or compacts shall become effective only after legislative approval.

3. List. The commission shall initiate a comprehensive program for the delineation of regulatory flood hazard areas in the State. The commission shall prepare a list of flood hazard areas to be studied and recommend the order in which such studies shall be undertaken. The list shall be reviewed at least annually by the commission. In establishing and revising the list, the commission shall consider:

A. The degree of danger to lives and property from flooding;

- B. The rate and type of development taking place in flood hazard areas;
- C. The ability and willingness of the political subdivision having jurisdiction over the area to make use of the data; and
- D. Other considerations pertinent to the situation.

§ 308. Joint state-local responsibility

1. State and subdivisions. Management of flood hazard areas shall be the joint responsibility of the commission and the following local units: Municipalities and county government in the absence of municipal government. The commission and local units shall cooperate in all phases of studying, delineating, planning and managing flood hazard areas.

2. Regulations for local units.

A. When, in the opinion of the commission, need exists in an area for regulation and sufficient data has been developed within the area for a local unit to reasonably delineate flood hazard area limits and to establish a flood hazard area regulatory program, the commission shall notify the local unit and require, by order, that the local unit adopt land use ordinances which meet or exceed the minimum standards of the commission. The commission shall specify a reasonable period of time for adoption of local regulations. In the event that a local unit fails to adopt adequate ordinances within this period or fails to adequately enforce ordinances at any time, the commission shall delineate, by order, commission flood hazard areas, and shall, by administrative rule, establish regulations for these areas. The commission shall administer the regulations until adequate local ordinances are adopted and enforced. Costs of adoption, administration and enforcement may be charged to the local unit as a special service and collected in the Superior Court.

B. In determining the need for local regulation and sufficiency of data for an area, the commission shall consider the severity of the flooding threats to persons and property, the rate of development, the urban or rural nature of the area and other relevant factors. The commission may establish varying standards for the sufficiency of data. Where the public interest necessitates immediate regulation, the commission may require adoption of interim regulations based on limited data until comprehensive studies are undertaken. The commission may, over a period of time, require upgrading of data and regulations.

3. Commission approval of local regulations.

A. The commission shall adopt general or special rules setting minimum standards for the content, administration and enforcement of local ordinances. Local ordinances may include encroachment limits, zoning, subdivision regulations, building codes, housing codes and other land use regulations.

B. All local flood hazard ordinances or ordinances containing provisions relating to flood hazards proposed subsequent to the effective date of this

Act, whether prepared pursuant to a commission order or independently, shall be submitted by local units to the commission for review and approval prior to adoption. All regulations in existence prior to the effective date of this Act shall be submitted for review and approval by the commission. If the commission determines that the ordinances will provide effectively administered and enforced regulations which meet or exceed minimum commission standards, the commission shall approve the ordinances. Amendments to local ordinances, as they relate to flood hazards, must be submitted to the commission for review prior to adoption. The commission may require that local units submit special exceptions and variances, as they relate to flood hazards, to the commission for review prior to issuance.

C. In the event that local ordinances for commission flood hazard areas are approved as meeting minimum commission standards and the regulations are effectively administered, permits from the commission for development shall not be required for uses specified in section 305, subsection 2. However, commission approval shall continue to be necessary for uses specified in section 305, subsection 1, including dams, dikes, levees, channel modifications, obstructions in channels and public uses specified in section 310.

D. The commission may contribute up to 50% annually to local units for the administration of local regulations which meet minimum commission standards.

#### 4. Regulation of commission flood hazard areas.

A. The commission may designate, by order, the following commission flood hazard areas: "commission coastal hazard areas," "commission floodways" and "commission floodway fringes." The orders shall designate boundaries for the commission flood hazard areas. The commission shall base the boundaries upon the regulatory flood. The determination of the discharge and the boundaries of the regulatory flood shall take into account the effects of probable future developments. The position of the lines shall, insofar as practical, equitably affect properties and interests depending upon topography, existing uses and probable future uses, shall be interdependent throughout the reaches of the waterway; and shall conform with the requirements of the Federal Government imposed as conditions for the construction of flood control projects.

B. The commission shall establish by rule categories of uses which may be allowed as of right, prohibited or conditionally allowed in commission flood hazard areas, and shall establish by rule standards for evaluating permits and conditions which may be attached to issuance of permits. The rules may prohibit the location of damaging obstructions in floodway areas; require flood protection for uses in hazard areas through elevation, flood-proofing or other techniques; require adequate provision be made for internal drainage; require adequate water and sewage facilities be provided; and establish other restrictions to promote sound management and use of flood hazard areas. Rules shall establish procedures for obtaining permits.

C. No order or rule shall be issued under subsection 4, paragraph A or B, or until notice of such proposed order or rule has been published 3 times, at weekly intervals, in a newspaper having general circulation in the area involved and a public hearing has been held in the area. The notice shall specify a hearing date at least one week from the date of the last publication. Any person or local unit of government aggrieved by an order or rule of the commission may appeal such order or rule within 30 days from the date of the entry of the order or rule to the Superior Court. Service of notice of appeal shall be made upon the chairman of the commission.

5. Permits.

A. Any person desiring to erect, construct, locate, relocate or alter a structure or obstruction in any commission flood hazard area or for another activity requiring a permit as specified in section 305 shall file a written application with the commission setting forth material facts, including any information which the commission may require. The commission, acting as a body or through a designated administrative official shall, within 90 days reject or approve the application upon such terms and conditions as it may prescribe. Grounds for refusal shall be stated in writing. The commission or designated officer shall take into account the legislative findings and policy of this chapter and particularly the suitability of the area for the proposed use, the threat to loss of lives and property, the effect of the proposed use on floodway capacity, the effect of similar encroachments and other factors material to minimization of flood damage and threats to health and safety while allowing, so far as practical, reasonable use of the land. The assistance of appropriate federal, state and local agencies shall be secured in making this review.

B. Any person or governmental unit aggrieved by issuance of a permit or refusal to grant a permit may apply within 30 days to the commission for reconsideration and a public hearing. The commission shall, within 30 days, reconsider the application and within said 30-day period shall either issue a written decision granting in whole or part the relief sought in the application for reconsideration or shall set the matter for hearing. The decision shall set forth the commission's findings and conclusions. The commission shall, within 30 days of the hearing, issue a decision.

§ 309. Subdivisions of land

1. Approval. Any land use rules, regulations, approvals, permits, etc., promulgated by any state or local agency shall in their enforcement and administration give consideration to the purposes and intent of this chapter and the recommendations of the commission as set forth in this chapter. In the absence of such jurisdiction of other agencies, commission approval shall be required, subject to the qualification contained in subsection 3 for the subdivision of any lands lying wholly or partially within:

A. A commission flood hazard area;

B. Any flood hazard area delineated by a local ordinance;



C. All lands within 1,000 feet of a river, stream, watercourse, lake or ocean; and

D. Any other area subject to possible flooding threats, designated by the commission, except lands subject to site location review, or subject to the Land Use Regulation Commission.

2. Rules. The commission shall adopt rules for the platting of subdivisions. The rules shall specify platting procedures and plat specifications. The rules may require that:

A. The subdivider submit engineering and other information to the commission that will aid in determining the flood threat;

B. Reasonable fill or other improvements be provided to assure that the subdivided area will be suited for the proposed use;

C. The subdivider provide necessary flood protection for road, sewer and water facilities; and

D. All flood hazard areas be clearly shown and labeled on the plat.

3. — local units. Nothing in this chapter shall limit the power of a local government to adopt or continue in force local subdivision regulations. If the commission determines that the subdivision regulations of a local unit meet or exceed minimum commission standards for content, administration and enforcement, the commission shall no longer require commission approval of subdivisions for lands in that local unit. The commission shall by rule establish minimum standards for local subdivision regulations.

### § 310. Public uses

All state departments, agencies, local units of government and public utilities, prior to any expenditure of funds for, or construction of, buildings, structures, roads, bridges or other facilities in regulatory flood hazard areas, areas subject to local flood hazard regulations and other locations which may be subject to flood damage shall submit the specifications of such facilities to the commission for review and approval and shall furnish such additional information as the commission may reasonably require for its review in order to avoid the uneconomic, hazardous or unnecessary use of flood hazard areas in connection with such facilities.

With respect to existing publicly owned facilities which have suffered flood damage or which may be subject thereto, the commission may require conspicuous markings of past and probable flood heights so as to assist in creating public awareness and knowledge of flood hazards.

Where economically feasible, departments, agencies and local units of government responsible for publicly owned facilities shall apply flood-proofing measures to existing facilities in order to reduce potential flood damage.

### § 311. Miscellaneous powers

The commission shall adopt administrative rules, pursuant to methods provided by law, for the transaction of its business and for the administration and exercise of its powers and duties.

The commission, its agents, engineers, surveyors and other employees may enter upon any lands or waters of the State subject to procedures required by law for the purpose of undertaking any investigation, examination, survey or other activity authorized by this chapter.

The commission may purchase or condemn and remove or cause to be removed structures or obstructions, both artificial and natural, in water-courses, or oceans, other flood hazard areas, which increase flood hazards or constitute a hazard to life or property. Purchase or condemnation shall not be necessary for removal of public nuisances as specified in section 306. Purchase or condemnation shall be pursuant to procedures specified in the laws of this State.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the Soil and Water Conservation Commission the sum of \$156,400 to carry out the purposes of this Act. The breakdown shall be as follows:

SOIL AND WATER CONSERVATION COMMISSION

	1971-72		1972-73
Personal Services	(6) \$54,400	(6)	\$57,000
All Other	18,000		20,000
Capital Expenditures	5,000		2,000
	\$77,400		\$79,000

STATEMENT OF FACT

The purpose of this bill is to develop comprehensive flood hazard area management programs in Maine. The report continues the initial efforts of the New England River Basins Commission (NERBC) to promote wise flood hazard area use.

Effective coordination of diverse flood hazard area management tools can be best accomplished by clearly fixing within a single state agency the responsibility for leading and coordinating all state activities related to flood hazard area management. This single agency would retain specific authority for flood damage reduction and secondary authority to coordinate the activities of other agencies as they relate to use of or use in flood hazard areas.

Any comprehensive flood hazard area management program must combine all available means, both structural and nonstructural, to limit flood losses resulting from the unwise use of flood-prone lands.