

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1303

H. P. 944

House of Representatives, March 3, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mrs. Brown of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Clarify the Law Regulating the Alteration of Coastal Wetlands.

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

Sec. 1. R. S., T. 12, § 4701, amended. The first paragraph of section 4701 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as amended by section 1 of chapter 379 of the public laws of 1969, is further amended to read as follows:

No person, agency or municipality shall remove, fill, dredge, ~~or drain sanitary sewage into~~ or otherwise alter any coastal wetland, ~~or drain or deposit sanitary sewage into or on any coastal wetland~~, as defined herein, without ~~filing written notice of his intention to do so~~ first obtaining a valid permit. ~~Application for permit, by written notice of intent to alter coastal wetlands, including such plans as may be necessary to describe the proposed activity, shall be filed with the municipal officers in the municipality affected and with the Wetlands Control Board. Such notice shall be sent to each body by registered mail at least 60 days before such alteration is proposed to commence. The municipal officers shall hold a public hearing on the proposal within 30 days of receipt of the notice and shall notify by mail the person proposing the alteration applicant, the Wetlands Control Board, abutting owners and the public by publication in a newspaper published in the county where the wetlands are located, the Wetlands Control Board and all abutting owners of the hearing of the time and place of such hearing.~~

Sec. 2. R. S., T. 12, § 4701, amended. The last sentence of the 3rd paragraph of section 4701 of Title 12 of the Revised Statutes, as enacted by section 2 of chapter 379 of the public laws of 1969, is amended to read as follows:

The applicant shall not during the period of deferral remove, fill, dredge, drain, or deposit sanitary sewage into, or otherwise alter such coastal wetland.

Sec. 3. R. S., T. 12, § 4701, amended. The last paragraph of section 4701 of Title 12 of the Revised Statutes, as enacted by section 2 of chapter 379 of the public laws of 1969, is amended to read as follows:

Each such ~~notice of intention~~ application for permit 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. 4. R. S., T. 12, § 4702, amended. The first sentence of section 4702 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as amended by section 3 of chapter 379 of the public laws of 1969, is further amended to read as follows:

Permit to undertake the proposed alteration shall be issued by the municipal officers within 30 days of such hearing providing ~~both the municipality and the Wetlands Control Board approve~~ approve.

Sec. 5. R. S., T. 12, § 4702, amended. The 2nd paragraph of Title 12 of the Revised Statutes, as enacted by section 4 of chapter 379 of the public laws of 1969, is amended by adding at the end the following new sentence:

All permits issued under this chapter shall expire 3 years from the date of issuance.

Sec. 6. 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, and as amended by section 5 of chapter 379 of the public laws of 1969, is further 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 ~~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 the action appealed from~~

Sec. 7. R. S., T. 12, § 4705, amended. Section 4705 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as amended, is further amended to read as follows:

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, the Forest Commissioner and the Commissioner of Health and Welfare or their delegates.

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, and as amended by section 7 of chapter 379 of the public laws of 1969, is further amended to read as follows:

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, amended. The first paragraph of section 4709 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as repealed and replaced by section 8 of chapter 379 of the public laws of 1969, is amended to read as follows:

Whoever violates or causes a violation of any provision of this chapter shall be punished by a fine of not ~~more than \$100~~ less than \$100 nor more than \$500.

Sec. 10. R. S., T. 12, § 4709, amended. The 3rd paragraph of section 4709 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as repealed and replaced by section 8 of chapter 379 of the public laws of 1969, is amended to read as follows:

~~A continuing~~ violation is defined as any filling, dredging, draining, depositing, 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. Any such filling, dredging, draining, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such wetlands.

STATEMENT OF FACT

The purpose of this legislation is to clarify certain provisions of Title 12, chapter 421, with regard to procedures, and to amend provisions relating to definition of prohibitions and offenses, penalties for violation, substance of appeals, the elimination of limitation of the authority of the court in appeal cases and to provide that the doing of certain acts on a wetland were prima facie that they were done or caused to be done by the owner thereof.