

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1059

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H. P. 785

House of Representatives, February 21, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Bustin of Augusta.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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**AN ACT Establishing the Floodplain 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

FLOODPLAIN MANAGEMENT

§ 301. Title

This Act may be cited as the "Floodplain 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 fed-

eral, 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

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

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. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Natural obstruction. "Natural obstruction" shall mean any rock, tree, gravel or other matter that has been located by a nonhuman cause.

11. Obstructions. "Obstructions" shall mean any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, 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.

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

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

14. 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.

15. 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.

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 of 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.

#### § 305. 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. Commission review 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 hazard proposed subsequent to the effective date of this Act, shall be submitted by local units to the commission for review and comment prior to adoption. All regulations in existence prior to the effective date of this Act shall be submitted for review and comment by the commission. 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 related to flood hazards, to the commission for review prior to issuance.

#### § 306. 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.

#### § 307. 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 flood hazard areas, areas subject to local flood hazard regulations and other locations which may be sub-

ject 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.

§ 308. 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.

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:

	1973-74	1974-75
SOIL AND WATER CONSERVATION COMMISSION		
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 floodplain 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 floodplain management program must combine all available means, both structural and nonstructural, to limit flood losses resulting from the unwise use of flood-prone lands.