

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1968

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H. P. 1538

House of Representatives, May 24, 1973

Reported by Mr. Herrick from the Committee on Natural Resources and printed under Joint Rules No. 18.

E. LOUISE LINCOLN, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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**AN ACT to Extend the Deadline for Mandatory Shoreland Zoning.**

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**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature has determined that it is in the public interest to encourage municipalities to zone land areas within 250 feet of a body of water; and

Whereas, the effective date for carrying out this public purpose is June 30, 1973; and

Whereas, resources for establishing the necessary guidelines have only recently been made available to the Department of Environmental Protection; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. R. S., T. 12, § 4811, amended.** Section 4811 of Title 12 of the Revised Statutes, as enacted by chapter 535 of the public laws of 1971, and as amended by section 50 of chapter 622 of the public laws of 1971, is further amended to read as follows:

### § 4811. Shoreland areas

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas defined as land within 250 feet of the normal high water mark of any navigable pond, lake, river or salt water body be subjected to zoning and subdivision controls. The purposes of such controls shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

**Sec. 2. R. S., T. 12, § 4811-A, additional.** Title 12 of the Revised Statutes is amended by adding a new section 4811-A, to read as follows:

#### § 4811-A. Definitions

For purposes of this chapter, pond shall include any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held by a single owner. A river is defined as any free flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth. The State Planning Office shall prepare and publish a list of such rivers for the use of the municipalities no later than November 1, 1973.

**Sec. 3. R. S., T. 12, § 4812, repealed and replaced.** Section 4812 of Title 12 of the Revised Statutes, as enacted by chapter 535 of the public laws of 1971, is repealed and the following enacted in place thereof:

#### § 4812. Municipal control

Cities and towns pursuant to presently existing enabling legislation are authorized to plan, zone and control the subdivision of land. With respect to the shoreland areas defined in section 4811, cities and towns, hereafter called municipalities, shall adopt zoning and subdivision control ordinances according to the following schedule.

1. Prior to July 1, 1973. Prior to July 1, 1973 the municipal officers of each city or town shall have appointed an appropriate municipal body with responsibility for preparing such ordinances as are necessary for compliance with this chapter and shall certify such appointment to the State Planning Office.

2. Prior to July 1, 1974. Prior to July 1, 1974 each municipality shall have:

A. Prepared a comprehensive plan adequate to comply with the requirements of Title 30, section 4961 and this chapter and notified the State Planning Office;

B. Adopted shoreland protection, subdivision and zoning ordinances adequate to comply with the requirements of this chapter for shoreland protection and filed a copy of said ordinances with the State Planning Office.

In order to aid municipalities in meeting the requirements of this chapter, the Department of Inland Fisheries and Game shall, prior to January 1, 1973, identify all of those areas in municipalities which it finds to be areas of moderate to high waterfowl breeding areas.

Sec. 4. R. S., T. 12, § 4812-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 4812-A, to read as follows:

#### § 4812-A. Requirements

In addition to controls required by this chapter, municipalities may adopt zoning and subdivision controls applicable to other bodies of water as required to protect the public health, safety and welfare and further the purposes of this chapter.

Zoning ordinances adopted pursuant to this chapter shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted pursuant to this chapter need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30, section 4962 to the contrary, it being the intention of the Legislature to recognize that it is reasonable for municipalities to treat specially with shoreland areas and to choose to immediately zone around water bodies rather than to wait until such time as it enacts zoning ordinances for all of the land within its boundaries. However, the provisions of ordinances, which zone shoreland areas only, must relate solely to measures necessary to protect and enhance water quality, preserve and enhance the aesthetics of water bodies and views therefrom, protect shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use and to encourage and insure the integrity of points of access to water bodies.

Sec. 5. R. S., T. 12, § 4813, repealed and replaced. Section 4813 of Title 12 of the Revised Statutes, as enacted by chapter 535 and as amended by section 12 of chapter 618, both of the public laws of 1971, is repealed and the following enacted in place thereof:

#### § 4813. Municipal failure to accomplish purposes

If any municipality fails to adopt ordinances as required by section 4182 for shoreland areas as defined in section 4811 or if the Board of Environmental Protection and the Maine Land Use Regulation Commission determine that particular municipal ordinances because of their laxity and permissiveness do not adequately prevent and control water pollution, protect wildlife habitat, conserve shore cover or otherwise fail to accomplish the purposes outlined in section 4811, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, following consultation with the State Planning Office, with respect to these shoreland areas, adopt suitable ordinances for these municipalities, which ordinances the respective municipalities shall then administer and enforce.

The Department of Environmental Protection and the Maine Land Use Regulation Commission, acting pursuant to the administrative direction of the State Planning Office, shall by December 15, 1973 adopt minimum guidelines for the protection of shoreland areas reflecting considerations of preventing and controlling water pollution, protecting spawning grounds, fish, aquatic life, bird and other wildlife habitat, location and size of structures and signs and conserving shore cover. The incorporation of such guidelines into a municipal regulatory ordinance shall be deemed sufficient to meet the requirements of this section.

**Sec. 6. R. S., T. 12, § 4814, repealed and replaced.** Section 4814 of Title 12 of the Revised Statutes, as enacted by chapter 535 and as amended by section 12 of chapter 618, both of the public laws of 1971, is repealed and the following enacted in place thereof:

**§ 4814. Cooperation; enforcement**

The Board of Environmental Protection and the Maine Land Use Regulation Commission, municipalities and all state agencies shall mutually cooperate to accomplish the objectives of this chapter. To that end, the board and the commission shall consult with the governing bodies of municipalities and to whatever extent necessary with other state agencies to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor. The State Planning Office shall be responsible for coordinating the efforts and responsibilities of the Board of Environmental Protection and the Maine Land Use Regulation Commission acting pursuant to this chapter.

If a municipality fails to administer and enforce zoning ordinances adopted by it or the State, pursuant to the requirements of this chapter, the Attorney General shall seek an order of the Superior Court of the county in which the municipality lies, requiring the municipal officials to enforce such zoning ordinance.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.