

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 395**

H. P. 317

House of Representatives, January 28, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Morton of Farmington.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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### AN ACT to Allow Municipal Approval of Routine Wetlands Permits.

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

Sec. 1. 12 MRSA, § 4701, as last amended by PL 1973, c. 256, is repealed.

Sec. 2. 12 MRSA, § 4701-A is enacted to read:

§ 4701-A. Permit required to alter wetlands

1. Definition. For the purpose 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 normal storm flowage at any time excepting periods of maximum storm activity.

2. Permit required. No person, agency or municipality shall remove, fill, dredge or otherwise alter any coastal wetland, or drain or deposit sanitary sewage into or on any coastal wetland without first obtaining a valid permit issued by the municipality affected by the proposed activity. In order for a permit to be issued by a municipality, the municipal officials of the municipality affected by the proposed activity must approve the application for a permit covering the proposed activity. If the Board of Environmental Protection either participates in a municipal hearing on the application or orders a hearing on its own order, it also must approve the application before the municipality may issue the permit.

3. Application. An application for a 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 Board of Environmental Protection.

Such notice shall be sent to each body by registered mail at least 60 days before the alteration is proposed to commence. Each application for a permit filed with the municipality, shall if required by the municipal officers, be accompanied by a permit fee of not more than \$30, the exact amount, if any, to be determined by the municipal officers, to cover any administrative and advertising costs borne by the municipality in processing the permit application.

When winter conditions prevent a municipality or the Board of Environmental Protection 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 or deposit sanitary sewage into or otherwise alter such coastal wetland.

4. Municipal hearing on application. Within 7 days after receipt of an application, the municipal officers shall determine whether or not, in their discretion, the municipality shall hold a public hearing on the application. If they determine to hold a public hearing, they shall notify by mail the applicant, the Board of Environmental Protection, abutting owners and the public by publication in a newspaper published in the county where the wetlands are located of the time and place of such hearing. The hearing, if held, shall be held within 30 days of receipt of the application by the municipal officers. The municipal officers shall approve or disapprove the application within 7 days after the close of a hearing under this subsection.

5. Municipal procedure in the absence of a hearing. If the municipal officers determine not to hold a hearing, they shall approve or disapprove the application for the permit within 15 days after receipt of the application. They shall immediately notify the Board of Environmental Protection of their approval in the absence of a hearing.

A. If they approve the application without a hearing and if the Board of Environmental Protection has not scheduled a hearing on the application, they shall issue a permit within 30 days after receipt of the application.

B. If the municipal officials approve an application without a hearing, and if the board orders its own hearing, the municipality shall not issue a permit until the board approves the application.

C. If the municipal officers disapprove the application, the permit shall be deemed to be denied, and appeal may be taken to the Superior Court under section 4707.

Sec. 3. 12 MRSA, § 4702, as last amended by PL 1971, c. 618, § 11, is repealed.

Sec. 4. 12 MRSA, § 4702-A is enacted to read:

§ 4702-A. Action by Board of Environmental Protection on a permit application

1. Hearing required before board disapproval. The Board of Environmental Protection shall not disapprove an application for a wetlands permit

unless it has participated in a municipal hearing on the permit or, in the absence of a municipal hearing, in a hearing on the permit which it has itself ordered.

2. Participation in municipal hearing. The Board of Environmental Protection may participate in any public hearing ordered by the municipality on an application for a permit. If the board participates in a municipal hearing, it shall approve or disapprove the permit under this subsection within 7 days after the close of the public hearing. If the board does not participate in a hearing ordered by a municipality, the board shall be deemed to have approved the application. If the municipal officials have ordered a public hearing on an application, the Board of Environmental Protection shall not order any hearing in addition to that ordered by the municipality.

3. Board approval upon municipal approval without a hearing.

A. If the officials of a municipality approve an application for a permit without a hearing, the board shall be deemed to have approved that application unless the board orders a public hearing on the application to be held notwithstanding the approval of the application by the municipal officials.

B. If the board orders a public hearing in the absence of a municipal hearing, that hearing shall be held within 30 days after receipt of notification of the application and shall be preceded by notice to the applicant, to the municipal officials, to abutting owners and to the public by publication in a newspaper published within the county where the wetlands are located of the time and place of the hearing.

C. Upon notification by the board of its intent to hold a hearing on an application approved by a municipality without a hearing, the municipality shall not issue a permit under the application until the board has approved the application.

D. The board shall approve or disapprove the application within 7 days after the close of a hearing under this subsection.

Sec. 5. 12 MRSA, § 4702-B is enacted to read:

§ 4702-B. Approval

1. Conditional approval. Approval of any application by municipal officials or by the board may be conditioned upon the applicant amending his proposal to take whatever measures are deemed necessary by either the municipality or by the board to protect the public interest.

2. Disapproval. The municipal officers or the board may disapprove an application when in the opinion of either body the proposal would threaten the public safety, health or welfare, would adversely affect the value or enjoyment of the property of abutting owners, or would be damaging to the conservation of public or private water supplies or of wildlife or freshwater, estuarine or marine fisheries.

3. Permissive recording. Every permit issued by municipal officers may be recorded by the owner in the registry of deeds for the county in which the wetlands lie.

Sec. 6. 12 MRSA, § 4704-A is enacted to read:

§ 4704-A. Appeal and reconsideration

1. Appeal. An applicant may take an appeal to the Superior Court within 30 days after the refusal to approve or the conditional approval of an application for a permit by either municipal officials or by the board. This appeal shall be taken 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 so as to constitute the equivalent of a taking without compensation by municipal officials or by the Board of Environmental Protection.

2. Reconsideration. In the event that a denial of approval or conditional approval of a permit by municipal officers is determined to be an illegal taking or otherwise improper, the Board of Environmental Protection may participate in any new municipal hearing ordered by the Superior Court or may order a hearing before the board itself on the application.

Sec. 7. 12 MRSA, § 4708, as last amended by PL 1971, c. 336, § 8, is repealed and the following enacted in place thereof:

§ 4708. Exception

Nothing in this chapter shall prohibit the normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, nor maintenance and repair of any presently existing structure, installation, facility or landscape abutting or crossing said wetlands, provided no watercourse is substantially altered.

Sec. 8. 12 MRSA, § 4709 3rd ¶, as last amended by PL 1971, c. 336, § 10, is amended by adding a new sentence at the end to read:

No action authorized under section 4708 shall be considered a violation under this section.

## STATEMENT OF FACT

These changes will enable 75% or more of all permit applications to be handled at the local level because the Board of Environmental Protection is only likely to intervene in the application process when the description of the proposal indicates a major project is contemplated. The public will be better and faster served with less red tape and usually at lower cost. A large proportion of requests for wetland permits are of a minor nature and frequently are to be accomplished by the property owner with no outside assistance.