

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 653

H. P. 536 House of Representatives, February 13, 1975
Referred to the Committee on Natural Resources. Sent up for concurrence
and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Stubbs of Hallowell.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Establish the Maine Flood Hazard Area Management Act.

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

37-A MRSA c. 5 is enacted to read:

CHAPTER 5

MAINE FLOOD HAZARD AREA MANAGEMENT ACT

§ 141. Title

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

§ 142. Statement of legislative findings, policy and purposes

1. Legislative findings. The Legislature finds that:

A. 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 unsanitary conditions, all of which are detrimental to the health, safety, welfare and property of the occupants of flooded lands and the people of this State; and

B. 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.

2. Policy and purposes. 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 include the National Flood Insurance Program; to encourage local governmental units to manage flood-prone lands, including the adoption, enforcement and administration of land use regulations; and to provide the bureau with authority necessary to manage a comprehensive flood hazard area program for the State.

§ 143. Definitions

Unless the context otherwise requires, the following words shall have the following meanings:

1. Artificial obstruction. "Artificial obstruction" shall mean any obstruction which is not a natural obstruction.
2. Bureau. "Bureau" means the Bureau of Civil Emergency Preparedness.
3. Coastal hazard area. "Coastal hazard area" shall mean the area adjoining an ocean or river which has been or may hereafter be covered by flood waters or subject to erosion damage.
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. Floodproofing. "Floodproofing" 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 increasing 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. National Flood Insurance Act. "National Flood Insurance Act" means the United States Congressional Enactment, Title 42, United States Code, sections 4001 to 4127 and the implementation and administration of the Act by the Secretary of the United States Department of Housing and Urban Development.

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 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.

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, walls, mobile homes, sheds and buildings.

16. 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 bureau, also include other generally and specifically designated areas where substantial flood damage may occur.

§ 144. Bureau powers to develop management plans for flood hazard areas

1. Bureau responsibilities. The Bureau of Civil Emergency Preparedness shall be responsible for coordinating all activities concerning management of flood hazard areas, flood control, flood damage prevention, shore erosion and the construction of dams, dikes, levees and reservoirs. The bureau shall 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, 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. Bureau authorization to cooperate, aid, negotiate or enter into agreements. The bureau is authorized, as the representative of the State, 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.

3. Bureau to delineate regulatory flood hazard areas. The bureau shall initiate a comprehensive program for the delineation of regulatory flood

hazard areas in the State. The bureau shall prepare a list of flood hazard areas to be studied and recommend the order in which studies shall be undertaken. The list shall be reviewed at least annually by the bureau. In establishing and revising the list, the bureau 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.

§ 145. Bureau aid to local units

1. Bureau to cooperate with local units. The bureau shall cooperate with and assist local units of government in studying, delineating, planning, regulating and managing flood hazard areas. The bureau shall also prepare model ordinances and educational materials to aid local units.

2. Bureau to establish minimum standards for local regulatory programs. The bureau shall establish minimum standards for local regulatory programs. Compliance with these standards will qualify local units for grants-in-aid for delineation of flood hazard areas and administration of regulations and for cost-sharing for federal flood control projects. Bureau standards may:

- A. Require delineation of regulatory flood levels, hazard areas, floodways and floodway fringes;
- B. Require adequate administration and enforcement of local regulations; and
- C. Require adoption of ordinance provisions in order to prevent location of damaging obstructions in floodway areas; to require flood protection for uses located in hazard areas through elevation of structures or uses, flood-proofing or other techniques; to set specifications for drainage and to require other action to reasonably minimize flood damages.

§ 146. Miscellaneous bureau powers

1. Bureau power to adopt administrative rules. The bureau 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.

2. Power of bureau agents and employees to enter upon lands or waters. The bureau, 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 statute.

STATEMENT OF FACT

The Maine Bureau of Civil Emergency Preparedness has been designated by the Governor as the State Coordinating Agency for the National Flood

Insurance Program. This includes the coordination of the program with the Federal Insurance Administration, Department of Housing and Urban Development, and through the County Civil Emergency Preparedness organizations to the cities and towns throughout the State. The program offers for the first time flood insurance to the communities and their citizens at a reasonable cost.

To date, the Secretary of HUD has listed 435 cities and towns as having flood hazard areas within their boundaries. Of these, flood hazard maps have been issued, delineating the flood-prone areas and the official identification dates in 169 communities.

As the federal law now stands, after July 1, 1975 or one year from the date on which a community is officially notified that it has been classified as flood-prone, whichever occurs later, any community which experiences a flood and is not enrolled in the program will not be eligible for federal disaster relief. But that is not the extent of the consequences for nonparticipation. In addition, banks would not be permitted to make any mortgage loans on homes in the areas designated as being flood-prone. Federal funds for such projects as sewage disposal plants would not be approved. Loans normally granted by the Small Business Administration, the Farmers Home Administration and the Veterans Administration would not be available. In short, virtually all federal moneys would be removed from the flood hazard area if the community does not participate in the new National Flood Insurance Program.

Plantations and unorganized townships are specifically not permitted to apply directly for participation in the National Flood Insurance Program, because they do not have jurisdiction over land use controls within their minor civil divisions' boundaries. However, the Maine Land Use Regulation Commission, which does have land use control in plantations and unorganized townships, can apply for them.