

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 730

H. P. 590

House of Representatives, February 20, 1975

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

EDWIN H. PERT, Clerk

Presented by Mrs. Hutchings of Lincolnville.

Cosponsor: Mr. Blodgett of Waldoboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to the Dredging, Filling or otherwise Altering
Coastal Wetlands.

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

Sec. 1. 12 MRSA §§ 4701 - 4709, as enacted by PL 1967, c. 348 and as amended, are repealed.

Sec. 2. 38 MRSA c. 3, sub-c. I, Art. 4, as enacted by PL 1967, c. 475, § 12 and as amended, is repealed.

Sec. 3. 38 MRSA c. 3, sub-c. I, Art. 5 is enacted to read:

ARTICLE 5

ALTERATION OF COASTAL WETLANDS

§ 471. Prohibitions

No individual person, firm, corporation, municipality, state agency or other legal entity shall dredge or cause to be dredged, drain or cause to be drained, fill or cause to be filled or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure in, on or over any coastal wetland without first obtaining a permit therefor from the Board of Environmental Protection; nor shall any action be taken in violation of the conditions of such permit, once obtained.

§ 472. Definition

For the purposes of this subchapter, coastal wetland is defined as all tidal and subtidal lands including all areas below any identifiable debris line left

by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

§ 473. Permits; standards

If the applicant for the permit demonstrates to the satisfaction of the board that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters, the board shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

The Board of Environmental Protection shall notify the municipality in which the proposed alteration is to occur and shall consider any comments filed within a reasonable period by said municipality.

When winter conditions prevent the Board of Environmental Protection from evaluating a permit application, the board, upon notifying the applicant of such fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral fill or cause to be filled, dredge or cause to be dredged, drain or cause to be drained or otherwise alter such coastal wetland.

§ 474. Penalties

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or causes to be dredged, drains or causes to be drained, fills or causes to be filled or erects or causes to be erected, any causeway, bridge, marina, wharf, dock or other permanent structure in, on or over any coastal wetland in violation of this subchapter shall be punished by a fine of not less than \$100 nor more than \$500 for each day of such violation.

A violation is defined as any filling, dredging, draining, depositing, altering, erecting 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 subchapter or without knowledge of this subchapter 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 coastal wetlands.

§ 475. Enforcement

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 2003 shall enforce this subchapter.

§ 476. Injunction; restoration

In the event of the violation of this subchapter, the **Attorney General** may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

§ 477. Exemptions

The Board of Environmental Protection may by rule or regulation exempt from this subchapter such activity or activities or waive such procedural requirements as it deems not inconsistent with the purposes of this subchapter. Nothing in this subchapter 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, abutting or crossing said coastal wetlands, provided no watercourse is substantially altered.

STATEMENT OF FACT

Section 1 repeals the existing wetlands control law with the intention of placing wetland control in Title 38. Title 38 contains most of the environmental protection statutes administered by the Department of Environmental Protection.

Section 2 repeals sections dealing with air pollution control study authorization. This authorization was passed in 1967 and is no longer needed for Title 38, sections 581 through 605 has implemented the results of the study authorized by these sections.

Section 3 places the alteration of coastal wetlands in Title 38. The current Wetlands Control Act has been in effect since 1967 and is designed to prevent degradation of our invaluable coastal resources. However, the Board of Environmental Protection, the Department of Maine Resources and the Attorney General's office have found the law to be procedurally cumbersome, ambiguous in part, confusing to applicants and difficult to enforce in some cases. The suggested revision provides standards for board consideration, clarifies definitions and is consistent with the similar Great Ponds Act and Stream Alterations Act. Municipal status is changed from an approving authority to a reviewing authority to save duplication and cost for all parties.