

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE

(Filing No. H-685)

HOUSE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 662, L.D. 836, Bill, "AN ACT to Allow Municipal Approval of Routine Great Ponds Permits."

Amend said Amendment by striking out everything after the Title and inserting in place thereof the following:

'Amend said Bill in section 2 by striking out everything after the amending clause and inserting in place thereof the following:

§422-A. Dredging permits and related activities in great ponds

1. Permits required. An application for a permit, by written notice of intent to alter a great pond, including such plans as necessary to describe the proposed activity, shall be filed with the municipal officers in the municipality affected and with the Board of Environmental Protection, hereinafter called "the board," on forms prescribed and in the manner designated by the board.

All permits shall be issued by the municipal officials, except that the board shall, at the request of the municipal officials, or may, by so notifying the municipal officials within 20 days, assume all responsibility connected with issuing the permit.

However, no municipality shall have the power to grant permits until such time as it has:

- A. Established a planning board; and
- B. Adopted a zoning ordinance approved by the board and the Land Use Regulation Commission, pursuant to Title 12, chapter 424; and

C. Made provision by ordinance or regulation for prompt notice to the public upon receipt of application and written notification to the applicant and the board of the issuance of or denial of a permit stating the reasons therefor.

In the event the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the board determines that a municipality may be failing to exercise its permit granting authority in accordance with its approved procedures or the purposes of this Article as embodied in the standards set forth in subsection 3, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment thereon. Following such hearing, if it finds such deficiencies, it may revoke the municipality's permit granting authority. The municipality may reapply for authority at any time.

2. Great pond defined. For the purposes of this chapter, "great pond" shall include any inland body of water which in its natural state has a surface area in excess of 10 acres and any body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned

2 or more persons, firms, corporations or other legal entities.

3. Standards and issuance of permits. If the applicant for the permit demonstrates to the satisfaction of the board or municipality, as appropriate, that the proposed activity will not unreasonably interfere with existing recreational and navigational, scenic and aesthetic uses; nor otherwise unreasonably interfere with or harm the natural environs of the great pond; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm any fish or wildlife habitat; nor lower the quality of any waters, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

After receipt of a completed application for a permit, the municipality or the board, as appropriate, within 30 days shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 20 days of the order, for which hearing adequate public notice shall be given. Within 20 days after the adjournment of such hearing, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor.

Appeal may be taken to the Superior Court within 30 days after the denial of a permit or the issuance of a conditional permit 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 which constitutes the equivalent of a taking without compensation.

In the event that the activity is proposed within an unorganized township, the county commissioners shall act in the place of municipal officers. In the event that the activity is proposed in 2 or more municipalities, the respective municipal officers shall act concurrently.

The board shall issue no permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by said municipality.

When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, 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 erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure in, on or over or on land adjacent to any great pond in such a manner that any dredged spoil, fill or structure may fall or be washed into such waters or proceed with a project in any manner.

4. Penalty for violation. 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 great pond or on land adjacent to any great pond in such a manner that any dredged spoil, fill or structure may fall or be washed into the great pond in violation of this section shall be punished by a fine of not more than \$200 for each day of such violation.

A violation is defined as the doing or causing to be done of any of the acts requiring a permit as stated in subsection 3, either without a valid permit or contrary to the provisions of a valid permit without regard to whether the violation was intentional or unintentional. Any violation, whether witnessed or not by the enforcement officer, shall be prima facie evidence that the owner of land adjacent to the great pond caused the violation.

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

6. Injunctions; 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.

7. Exemptions. The Board of Environmental Protection may by rule or regulation exempt from this section such activity or activities or waive such procedural requirements as it deems not inconsistent with the purposes of this section.

8. Exception. Nothing in this section 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 any great pond provided that the maintenance and repair does not substantially alter the great pond.'

Further amend said Bill by inserting before the Statement of Fact the following:

'Sec. 3. Effective date. The effective date of this Act shall be December 14, 1975.'

Statement of Fact

These changes will enable 75% or more of all great pond 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 great pond permits are of a minor nature and frequently are to be accomplished by the property owner with no outside assistance.

Filed by Mr. Morton of Farmington.

Reproduced and distributed under the direction of the Clerk of the House.
6/9/75

(Filing No. H-685)