

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE

(Filing No. H-529)

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

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. 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 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 without first obtaining a permit therefor from the
Board of Environmental Protection or a municipality as
provided in subsection 3 nor shall any action be taken in
violation of the conditions of such permit, once obtained.

The board may, pursuant to the Administrative Code, adopt,
amend and repeal such regulations, establish such hearing
procedures and charge such fees as it deems necessary to
properly administer this section. Fees collected shall
accrue to the board and shall be expended by it for expenses
incurred in carrying out its duties prescribed by this
section.

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

3. Permit granting authority.

A. All permits shall be issued by the Department of Environmental Protection, except that a municipality may apply, on forms provided by the board, to the Board of Environmental Protection for authority to issue such permits.

B. The board shall grant such authority if it finds that the municipality has:

- (1) Established a planning board; and
- (2) Adopted a zoning ordinance approved by the board and the Land Use Regulation Commission, pursuant to Title 12, chapter 424; and
- (3) Made provision by ordinance or regulation for standards for granting permits which shall be no less restrictive than those adopted by the board as provided in subsection 5 and for prompt notice to the board upon receipt of application and written notification to the applicant and the board of the issuance or denial of a permit stating the reasons therefor; and

- (4) Developed a suitable field review procedure;
and
- (5) Public hearing procedures; and
- (6) Public notice procedures; and
- (7) The application form shall be the same as that supplied by the board to those applying for permits directly to the board except that the municipality may by regulation require additional information.

In the event that 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.

When a municipality has been authorized by the board to grant permits under this section, applicants shall apply to the municipality for permits required by this section when the property in question is located within the municipality. When the property is located in more than one municipality, the applicant shall apply only to the board.

4. Municipal authority revoked; when. If at any time the board determines that a municipality has failed to exercise its permit granting authority in accordance with its approved procedures or the purposes of this section as embodied in the standards set forth in subsection 5, 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 that such deficiencies will persist, it shall revoke the municipality's permit granting authority. A municipality which has its permit granting authority revoked may apply to the Board of Environmental Protection for reinstatement of such authority at any time.

5. 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.

Within 30 days after receipt of a completed application for a permit, the board or municipality shall either issue the

permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order, for which hearing adequate public notice shall be given. Within 30 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. In the event that a permit applied for is denied either by the municipality or the board, the applicant may request a hearing before either the municipality or the board, whichever denied the permit, with reasonable public notice given.

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.

No permit issued by a municipality shall become effective until 30 days subsequent to its issuance. A copy of the application for the permit and the permit issued by the municipality shall be sent to the board immediately upon its issuance by registered mail. The board shall review such permit and either approve, deny or modify it as it deems necessary. Failure of the board to act within 30 days of the issuance of the permit by the municipality shall constitute its approval and the permit shall be effective as issued.

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.

6. 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 1 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.

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

8. 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.

9. 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.'

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.

Reported by the Majority of the Committee on Natural Resources.

Reproduced and distributed under the direction of the Clerk of the House.
5/29/75

(Filing No. H-529)