

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 836

H. P. 662

House of Representatives, February 27, 1975

Referred to 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 Great Ponds Permits.

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

Sec. 1. 38 MRSA § 422, as last amended by PL 1973, c. 788, § 211, is repealed.

Sec. 2. 38 MRSA § 422-A is enacted to read:

§ 422-A. Dredging permits and related activities

1. Definition. For the purposes of this section, the term "great pond" includes 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.

2. Permit required. No person, firm, corporation, municipality, state agency or other legal entity shall construct a causeway, bridge, marina, wharf or other permanent structure in, on, over or abutting on a great pond, or deposit fill in, on, over or abutting a great pond, or dredge in a great pond without first obtaining a valid permit issued by the municipality or municipalities 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 must also approve the application before the municipality may issue the permit.

3. Application. A written application for a permit required by subsection 2 shall be filed with the municipal officers in the municipality affected by the

proposed activity and with the Board of Environmental Protection. This application shall include any plans which are necessary to describe the proposed activity. This application shall be sent to each body by registered mail at least 60 days before the activity 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 this fact, may defer action on the application for up to 120 days. The applicant shall not, during the period of deferment, construct a causeway, bridge, marina, wharf or other permanent structure in, on, over or abutting the great pond, or deposit fill in, on, over or abutting the great pond, nor dredge in the great pond.

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 portion of the great pond affected is 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 subsection 11.

6. Hearing required before Board of Environmental Protection disapproval. The Board of Environmental Protection shall not disapprove an application for a permit under this section 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.

7. Participation of Board of Environmental Protection 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 the 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.

8. 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 portion of the Great Pond affected is 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.

9. Approval. In order to gain the approval of the municipality or board or both, the applicant for a permit under this section shall demonstrate that the proposed activity will not unreasonably interfere with existing recreational, navigational, scenic and aesthetic uses; nor otherwise unreasonably interfere with or harm the natural environs of the great pond or tributary, river or stream; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor create or cause to be created unreasonable noise or traffic of any nature; nor unreasonably harm any fish or wildlife habitat; nor lower the quality of any waters, to the satisfaction of the municipality and, if necessary, to the board. Approval of any application by municipal officials or by the board may be conditioned upon the applicant amending his proposal to ensure that the proposed activity will comply with the foregoing standards.

10. Unorganized territory; 2 or more municipalities. 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.

11. **Appeal.** 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 constitutes the equivalent of a taking without compensation.

12. **Emergency action.** Subsections 2 and 9 shall not apply to any alteration of wetlands undertaken as a bona fide emergency action, providing that the person undertaking such action notifies the appropriate municipal officers and the Board of Environmental Protection within 3 days of commencing such action and providing that such action does not result in permanent alteration unless authorization is obtained pursuant to this section.

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

14. **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.

15. **Penalties and enforcement.** Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or removes or causes to be dredged or removed any materials from, or who erects or causes to be erected any causeway, bridge, marina, wharf, dock or permanent structure, or deposits fill in, on, over or abutting on any great pond without a permit from the municipal officials and the board as provided in this section shall be punished by a fine of not less than \$10 nor more than \$200 for each day of such violation. No action authorized under subsections 12 and 14 shall be considered a violation under this section.

In the event of the violation of this section, 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.

#### 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.