

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 207**

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H. P. 169

House of Representatives, February 1, 1977

Referred to Committee on Natural Resources. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Rollins of Dixfield.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Allow Municipal Approval of Routine Great Pond 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Sec. 1. 38 MRSA § 422, as last amended by PL 1975, c. 388, §§ 3 and 4, is repealed.

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

§ 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. The board shall not charge a fee for processing of an application unless the board has assumed all responsibility for issuing the permit.

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. An application for a permit by written notice of intent to take an action described in subsection 1, including such plans as are necessary to describe the proposed activity, shall be filed with the municipal officers in the municipality affected and with the Board of Environmental Protection 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.

4. Unorganized or multiple municipalities; appeal.

A. 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.

B. 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.

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 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. 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.

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.

Nothing in this section shall prohibit the maintenance and repair of any existing structure, installation, facility, landscaping, existing way, road or railroad bed or the maintenance and repair of installations and facilities or any utility as defined in Title 23, section 255, abutting or crossing a great pond.

Sec. 3. **Effective date.** The effective date of this Act shall be December 31, 1977.

#### STATEMENT OF FACT

The purpose of this bill is to allow municipal approval of routine great pond permits. 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.