

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1468

H. P. 1163

House of Representatives, March 23, 1979

Referred to the Committee on Energy and Natural Resources in concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Masterton of Cape Elizabeth.

Cosponsor: Mr. Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Allow the Board of Environmental Protection to Regulate Activities Affecting Sand Dunes under the Alteration of Coastal Wetlands Program.

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

Sec. 1. 38 MRSA § 471, as enacted by PL 1975, c. 595, § 3, is amended to read:

§ 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; **or bulldoze, remove, add or displace sand, or build any permanent structure in, on or over any coastal sand dune** without first obtaining a permit therefor from the Board of Environmental Protection or a municipality acting under the provisions of sections 473 and 474; nor shall any action be taken in violation of the conditions of such permit, once obtained.

Sec. 2. 38 MRSA § 472, as enacted by PL 1975, c. 595, § 3, is repealed and the following enacted in its place:

§ 472. Definition

As used in the alteration of coastal wetlands law, unless the context otherwise indicates, the following terms shall have the following meanings:

1. Coastal sand dunes. "Coastal sand dunes" are sand deposits within a marine beach system above high tide including, but not limited to, beach berms, frontal dune ridges, back dune areas and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into the coastal wetlands.

2. Coastal wetlands. "Coastal wetlands" are 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. Coastal wetlands may include portions of coastal sand dunes.

Sec. 3. 38 MRSA § 474, as enacted by PL 1975, c. 595, § 3, is repealed and the following enacted in its place:

§ 474. Permits; standards

1. Wetlands Permit. If the applicant for a wetlands 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 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 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 of the above 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, but if approved by the board in less than 30 days then the effective date shall be the date of approval. 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 receipt 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 otherwise alter such coastal wetland.

2. **Sand dunes permit.** If the applicant for a sand dune permit demonstrates to the satisfaction of the board or municipality, as appropriate, that the proposed activity will not: unreasonably interfere with existing recreational or wildlife uses; unreasonably interfere with the natural supply or movement of sand within or to the sand dune system; unreasonably increase the erosion hazard to the sand dune system; or cause an unreasonable flood hazard to structures built in, on or over any coastal sand dune or neighboring property, the board or municipality shall grant the permit upon such terms as necessary to insure that the proposed activity will comply with the foregoing standards.

3. **Single permit.** In the event that a project affects both wetland areas and sand dune areas, the board or municipality, as appropriate, shall grant a single permit upon such terms as are necessary to comply with the foregoing standards.

Sec. 4. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

	1979-80	1980-81
BOARD OF ENVIRONMENTAL PROTECTION		
Positions		
Personal Services	\$6,158	\$12,316
All Other	1,250	2,500
Total	\$7,408	\$14,816

STATEMENT OF FACT

Sand dunes provide an effective natural barrier to storm wave impacts and flooding. During storms, wave energy is expended eroding sand from the dunes, rather than impacting directly on structures, thus reducing the potential of damage to structures. Following storms sand is naturally replaced on dunes by normal action of waves and winds. In addition, since sea level is rising along the Maine coast, the impact of future storms on upland areas and structures will be increasingly intensified. For this reason, the maintenance of the natural sand dunes system will become increasingly important to provide a buffer for upland areas and structures.

This bill will permit the Board of Environmental Protection to regulate activities which have the potential to destroy the natural sand dune system and subject adjacent areas and structures to damages from erosion and flooding.

In addition, a number of superfluous words are deleted for the word "person" as defined in Title 38, section 361-A, subsection 4, which includes these legal entities.