

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1185

S. P. 392

In Senate, March 9, 1981

Referred to the Committee on Energy and Natural Resources. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsors: Representative J. Mitchell of Freeport and Representative Hall of Sangerville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Regulate the Alteration of Freshwater Wetlands.

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

Sec. 1. 30 MRSA § 3851, first ¶, as repealed and replaced by PL 1977 c. 52, § 1, is further amended by adding at the end a new sentence to read:

A conservation commission may administer and enforce the provisions of Title 38, chapter 17, which requires permits for the alteration of freshwater wetlands. Commissions must receive prior approval from the municipal officers in order to assume this regulatory authority.

Sec. 2. 38 MRSA c. 17 is enacted to read:

CHAPTER 17

FRESHWATER WETLANDS

§ 1701. Statement of findings

1. Resources. The Legislature finds and declares that the freshwater or inland wetlands of Maine form significant, vital and irreplaceable and fragile resources which are strongly linked with the great ponds, rivers, streams and brooks of the State and are essential to hydrological stability.

2. Benefits. The Legislature further finds and declares that the freshwater wetlands provide numerous benefits to the people of the State including, but not limited to the following:

- A.** Protection of water quality by serving as sedimentation and filtering basins which absorb silt and organic matter;
- B.** Control of flood and storm water by storing and absorbing heavy rainfall and reducing peak flood flows;
- C.** Control of erosion by releasing water slowly;
- D.** Important, if not critical, habitat for breeding, nesting and feeding waterfowl, shorebirds and many forms of wildlife;
- E.** Maintenance of uniform stream flow by augmenting the low-flow during dry periods;
- F.** Recreation in the form of hunting, fishing, boating, hiking, birdwatching, photography, camping and other non-intensive uses;
- G.** Source of nutrients in freshwater food cycles, nursery grounds and sanctuaries for fish; and
- H.** Unique and scientific areas.

3. Coordination. The Legislature further recognizes that although there are a number of existing state agencies administering various statutes and programs relating to freshwater wetlands, all of which are worthwhile and worthy of continuing support, the critical nature of the problem attending freshwater wetlands requires coordination and leadership.

4. Unregulated activities. The Legislature further finds that many freshwater wetlands have been destroyed or are in danger of destruction because of unregulated use by reason of deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated freshwater wetlands. Moreover, such unregulated activity will continue to have significant, adverse, economic and ecologic impact.

5. Conservation. The Legislature intends to conserve freshwater wetlands for their essential role in the health, welfare and safety of the citizens of Maine.

§ 1702. Applicability

This chapter applies only to wetland activities conducted in a municipality and only if the municipal officers have authorized the municipality's conservation commission to administer and enforce this chapter. "Conservation commission" means a conservation commission established pursuant to Title 30, section 3851. In granting this authority to the conservation commission, the municipal officers shall act by ordinance, adopted after notice and hearing. Notice shall precede the hearing by at least 7 days and shall be given by publishing at least one article in a newspaper of general circulation in the municipality.

Areas under the jurisdiction of the Land Use Regulatory Commission are not covered by this chapter.

§ 1703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Freshwater wetland. "Freshwater wetland" means wet meadows, marshes, swamps, bogs and other areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for a plant community of freshwater wetland vegetation either seasonally or permanently. A freshwater wetland can be contiguous with or isolated from a great pond, stream, river or brook. A freshwater wetland for the purpose of this chapter includes areas of 5 acres or more in size.

Freshwater wetland vegetation includes, but is not limited to:

A. Wetland trees, including, among others, red maple, *Acer rubrum*; willows, *Salix* spp.; black spruce, *Picea mariana*; black ash, *Fraxinus nigra*; larch, *Larix laricina*; white cedar, *Chamaecyparis thyoides*;

B. Wetland shrubs, including, among others, alder, *Alnus* spp.; buttonbush, *Cephalanthus occidentalis*; bog rosemary, *Andromeda glaucophylla*; leatherleaf, *Chamaedaphne calyculata*; sweet gale, *Myrica gale*;

C. Emergent vegetation, including, among others, cattails, *Typha* spp.; pickerelweed, *Pontederia cordata*; bulrushes, *Scirpus* spp.; arrowheads, *Sagittaria* spp.; reed, *Phragmites communis*; wild rice, *Zizania aquatica*; bur reeds, *Sparganium* spp.; purple loosestrife, *Lythrum salicaria*;

D. Rooted, floating-leaved vegetation, including, among others, water lily, *Nymphaea odorata*; water shield, *Brasenia schreberi*; spatterdock, *Nuphar* spp.

E. Free-floating vegetation, including, among others, duck-wee, *Lemna* spp.;

F. Wet meadow vegetation, including, among others, sedges, *Carex* spp.; rushes, *Juncus* spp.; cattails, *Typha* spp.; spike rush, (*Eleocharis* spp.; Manna grass, (*Glyceria* spp.; and

G. Bog mat vegetation, including, among others, sphagnum moss, *Sphagnum* spp.; bog rosemary, *Andromeda glaucophylla*; leatherleaf, *Chamaedaphne calyculata*; pitcher plant, *Sarracenia purpurea*; cranberries, *Vaccinium* spp.; blueberry, *Vaccinium* spp.; laurel, *Kalmia* spp.; crowberry, *Empetrum nigrum*; bladderworts, *Utricularia* spp.; Labrador tea, *Ledum groenlandicum*; cotton grass, *Eriophorum* spp.

2. Permanent structure. "Permanent structure" means any structure which is fixed to land or water for a period exceeding 7 months each year.

§ 1704. Prohibitions

No person, firm, corporation, municipality, state agency or other legal entity may fill or cause to be filled, drain or cause to be drained dredge or caused to be dredged or erect or cause to be erected any permanent structure in, on or over a freshwater wetland or the adjoining 250 feet horizontal distance as measured from that point where the vegetation changes from predominantly aquatic to predominantly terrestrial, without first obtaining a permit from the municipal conservation commission. Nor may any action be taken in violation of the conditions attached to a permit once obtained. Draining a freshwater wetland for the purpose of growing agriculture products is exempt from this chapter. Alteration of a freshwater wetland for the purposes of exploring for and mining peat also shall be exempt from this chapter, but shall be subject to sections 481 to 490, where applicable.

§ 1705. Permits; standards; appeal

1. **Conditions.** The municipal conservation commission may grant a permit upon such reasonable conditions as are necessary to ensure conformity with the following standards, if it makes a positive finding, based on all the information presented, that the proposed activity:

- A. Will not unreasonably interfere with existing recreational, navigational or scenic uses;
- B. Will not unreasonably obstruct the natural flow of surface or subsurface waters across or from the alteration area;
- C. Will not unreasonably impound surface waters and will not unreasonably reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties.
- D. Will not unreasonably increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to downstream lands by erosion, sedimentation or otherwise;
- E. Will not unreasonably damage spawning grounds or habitat for aquatic life, birds or other wildlife;
- F. Will not lower the quality of any waters; and
- G. Will not cause unreasonable soil erosion.

2. **Time limitation.** Within 30 days after receipt of a complete application for a permit, the commission may either:

- A. Issue the permit;
- B. Deny the permit, setting forth the reasons for denial; or
- C. Order a hearing on the permit request within 30 days of the order, after giving adequate public notice.

3. **Issuance or denial following hearing.** Within 30 days after adjournment of the hearing if one is ordered, the commission may either issue the permit or deny the permit, setting forth the reasons. In the event that a permit applied for is denied by the commission without a hearing, the applicant may request a hearing before the commission, with reasonable public notice being given. Once granted, a permit becomes effective immediately.

4. **Winter conditions.** When winter conditions prevent the commission from evaluating a permit application, the commission, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. During that period of deferral, the applicant may not conduct any activity requiring a permit.

5. **Appeal.** An appeal may be taken from a decision made under this section by any person aggrieved to the Superior Court, pursuant to the Maine Rules of Civil Procedure, Rule 80B.

§ 1706. Penalties

A violation is defined as any filling, dredging, draining, depositing, altering, erecting or removal of materials which takes place in freshwater wetlands contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this chapter or without knowledge of this chapter. Any such filling, dredging, draining, depositing, altering or removal of materials is *prima facie* evidence that it was done or caused to be done by the owner of the freshwater wetland.

Any person, firm, corporation, municipality, state agency or other legal entity who violates this chapter is guilty of a Class E crime for each day of violation.

§ 1707. Enforcement

The conservation commission is responsible for giving notice by certified mail, return receipt requested, to any person, firm or other legal entity violating this chapter and ordering appropriate corrective action. Where a violator fails to obey the commission's order, the commission shall refer the violation to the municipal officers for prosecution. If a violator is successfully prosecuted, any fine awarded by the court shall inure to the municipality.

In prosecuting a violation of this chapter, the municipality may also seek to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

Inland fisheries and wildlife wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 7055 shall have authority to enforce this chapter.

§ 1708. Smaller wetlands; home rule authority

This chapter is not intended to preempt the authority of a municipality to adopt

local ordinance provisions which regulate freshwater wetlands under 5 acres. Any municipal ordinance regulating freshwater wetlands of any size must be at least as stringent as this chapter.

§ 1709. Exemptions

Nothing in this chapter prohibits the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any freshwater wetland or normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair or installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing a freshwater wetland, provided no watercourse is substantially altered.

STATEMENT OF FACT

Conservation commissions presently play a strictly advisory role in local government administration and land use regulations. The purpose of section 1 of the bill is to give commissions the authority to administer the proposed freshwater wetlands statute after having received the approval of the municipal officers.

The purpose of section 2 of this bill is to authorize municipalities through their conservation commissions to regulate freshwater wetlands and the adjoining 250 feet. These wetlands receive only piecemeal protection under existing statutes. The system of regulation outlined in this bill is patterned after the statute regulating coastal wetlands. This bill will not govern the activities in freshwater wetlands unless a municipality's municipal officers have authorized the municipal conservation commission to assume the administration and enforcement of the proposed Title 38, chapter 17. When a municipality wants to regulate freshwater wetlands by local ordinance rather than pursuant to the proposed Title 38, chapter 17, the provisions of the local ordinance must be at least as restrictive as these statutory provisions.