

# 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)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

(New Title)  
(New Draft of H.P. 1961, L.D. 1934)  
SECOND REGULAR SESSION

---

ONE HUNDRED AND TENTH LEGISLATURE

---

**Legislative Document** **No. 2094**

---

H. P. 2236 House of Representatives, March 25, 1982  
Reported by Representative Mitchell from the Committee on  
Energy and Natural Resources and printed under Joint Rule No. 2.  
EDWIN H. PERT, Clerk

---

STATE OF MAINE

---

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

---

**AN ACT to Identify Freshwater Wetlands.**

---

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

Sec. 1. 38 MRSA, c. 3, subc. 1, Art. I-C is enacted to  
read:

ARTICLE I-C

FRESHWATER WETLANDS

§406. Definitions

For the purposes of this Article, unless the context  
otherwise indicates, the following terms shall have the fol-  
lowing meanings.

1           1. Wetland. "Wetland" means freshwater swamps,  
2 marshes, bogs and similar areas of 10 or more contiguous  
3 acres that have been designated as freshwater wetlands under  
4 section 407.

5           2. Wetland soils. "Wetland soils" means soils that  
6 have been classified as Atherton, Biddeford, Burnham, fresh  
7 water marsh, Halsey, muck, peat and muck, Saco, Scarborough,  
8 Washburn, Whately or Whitman soil types.

9           3. Wetland vegetation. "Wetland vegetation" means  
10 carex, rushes, redtop, reed grasses, manna grasses, prairie  
11 cordgrass, mints, plume grass, rice cut-grass, sedges, giant  
12 burweed, cattails, arrowheads, pickerelweed, smartweeds,  
13 spike rushes, wild rice, pondweeds, duckweeds, coontail,  
14 spatterdock, wild celery, water milfoil, water lillies,  
15 alder, dogwood, willow, buttonbush, sweet gale, labrador  
16 tea, leatherleaf, cranberries, cotton grass, sphagnum moss,  
17 stunted black spruce and stunted tamarack; provided that  
18 such vegetation is growing in generally waterlogged areas or  
19 water-covered areas.

20 §407. Identification of freshwater wetlands

21           1. Study. The commissioner shall conduct a study to  
22 identify freshwater wetlands in the portion of the State not  
23 subject to the jurisdiction of the Maine Land Use Regulation  
24 Commission under Title 12, chapter 206-A. Within one year  
25 of the effective date of this Article, the commissioner  
26 shall publish the results of this study in the form of pro-  
27 posed maps delineating the boundaries of wetlands that meet  
28 the criteria of this section. The department may use inven-  
29 tories of the Department of Inland Fisheries and Wildlife,  
30 State Soil and Water Conservation Commission and other  
31 available information as guides in designating freshwater  
32 wetlands.

33           2. Criteria. Areas identified as freshwater wetlands  
34 shall be limited to areas:

35           A. Which are of 10 or more contiguous acres;

36           B. Which are characterized predominantly by wetland  
37 soils and vegetation; and

38           C. Are not subject to the jurisdiction of sections 391  
39 to 396, sections 471 to 478 or Title 12, sections 7776  
40 to 7780.

41 These areas may contain small inclusions of land that does  
42 not conform to the criteria of this subsection.

1           3. Assistance. The Department of Agriculture, Food  
2 and Rural Resources, Department of Conservation, Department  
3 of Inland Fisheries and Wildlife and the State Planning  
4 Office shall assist the department in identifying freshwater  
5 wetlands.

6           4. Procedures. The identification of freshwater wet-  
7 lands shall be subject to the rule-making requirements of  
8 the Maine Administrative Procedure Act, Title 5, chapter  
9 375, except as provided in this section.

10           A. Upon completion of proposed maps delineating the  
11 boundaries of wetlands, the commissioner shall send the  
12 maps of each municipality to the respective municipal  
13 officers. The municipal officers, or their designees,  
14 shall review these maps for accuracy, and verify that  
15 areas identified meet the criteria of this section.

16           B. Upon receipt of the proposed maps, the municipal  
17 officers of each municipality shall:

18                   (1) Post notice that the maps are available for  
19 review;

20                   (2) Send a notice by mail to each person who is  
21 recorded as owning land that has been tentatively  
22 identified as a wetland;

23                   (3) Hold a public meeting to discuss the iden-  
24 tification and delineation of wetland; and

25                   (4) Take any other action they deem appropriate  
26 to increase public participation in this identifi-  
27 cation and delineation.

28           The commissioner shall publish a notice in newspapers  
29 of general circulation throughout the State that the  
30 proposed maps have been completed and that they are  
31 available for public inspection at the department's  
32 offices in Augusta and at municipal offices.

33           Municipal officers and members of the general public  
34 shall have 6 months from the date of receipt of the  
35 maps to comment to the department.

36           C. The commissioner may hold public hearings on the  
37 identification of wetlands to resolve problems identi-  
38 fied by municipal officers or their designees. Within  
39 one year of the completion of the proposed maps and  
40 after the comment period in paragraph B has expired,

1 the commissioner shall adopt final maps delineating the  
2 boundaries of wetlands.

3 **Sec. 2. Legislative intent.** It is the intent of the  
4 Legislature that the maps produced under section 1 of this  
5 Act be submitted for review to the joint standing committee  
6 of the Legislature having jurisdiction over natural  
7 resources. The committee shall review these maps and deter-  
8 mine whether a regulatory program should be instituted, and  
9 how any such regulatory program would be coordinated with  
10 existing permit requirements. The committee shall report  
11 its findings and recommendations to the First Regular  
12 Session of the 112th Legislature.

13 **Sec. 3. Appropriation.** The following funds are appro-  
14 priated from the General Fund to carry out the purposes of  
15 this Act.

16 1982-83

17 ENVIRONMENTAL PROTECTION,  
18 DEPARTMENT OF

19 All Other \$30,000

20 FISCAL NOTE

21 The Department of Environmental Protection will need to  
22 put into the fiscal year budget for 1984 the necessary funds  
23 to hire personnel to conduct the public participation pro-  
24 gram required by this Article. It is estimated that this  
25 amount will be \$30,000.

26 STATEMENT OF FACT

27 This new draft establishes a program to identify and  
28 map the freshwater wetlands of the State. This mapping  
29 allows the Legislature to determine whether a regulatory  
30 program to protect freshwater wetlands is necessary. The  
31 Department of Environmental Protection is directed to com-  
32 plete the tentative mapping within one year, and send the  
33 maps to each municipality for comment. Each municipality is  
34 required to post notice of the maps, send notice by mail to  
35 each person who owns land that may be affected, and to hold  
36 a public meeting on the identification and delineation of  
37 the freshwater wetlands. The department is required to pub-

1 lish the final revised maps within 6 months of the close of  
2 the public comment period.

3       The new draft also directs the joint standing committee  
4 of the Legislature having jurisdiction over natural  
5 resources to review the maps, and determine whether a  
6 regulatory program to protect freshwater wetlands is neces-  
7 sary. They are to report their findings to the First  
8 Regular Session of the 112th Legislature.

9

5295031982