

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 2264  
6

7 S.P. 840

In Senate, March 15, 1984  
8

9 Approved for introduction by the Legislative Council pursuant to Joint  
Rule 26.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Danton of York.  
11

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FOUR  
16

17 AN ACT to Clarify the Sand Dunes Law.  
18

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

21 Sec. 1. 38 MRSA §472, sub-§1, as enacted by PL  
22 1979, c. 504, §2, is amended to read:

23 1. Coastal sand dunes. "Coastal sand dunes" are  
24 sand deposits within a marine beach system above high  
25 tide including, but not limited to, beach berms,  
26 frontal dune ridges, back dune areas and other sand  
27 areas deposited by wave or wind action. Coastal sand  
28 dunes may extend into the coastal wetlands, but do  
29 not include those land areas beyond 250 feet from  
30 mean high tide where vegetation and development of  
31 dwelling structures indicate a stable dune system.

32 Sec. 2. 38 MRSA §474, sub-§2, as enacted by PL  
33 1979, c. 504, §3, is amended to read:

1           2. Sand dunes permit. If the applicant for a  
2 sand dunes permit demonstrates to the satisfaction of  
3 the board or municipality, as appropriate, that the  
4 proposed activity will not unreasonably interfere  
5 with existing recreational or wildlife uses; unrea-  
6 sonably interfere with the natural supply or movement  
7 of sand within or to the sand dune system; unreason-  
8 ably increase the erosion hazard to the sand dune  
9 system; or cause an unreasonable flood hazard to  
10 structures built in, on or over any coastal sand dune  
11 or neighboring property, the board or municipality  
12 shall grant the permit upon such terms as are neces-  
13 sary to insure that the proposed activity will comply  
14 with the foregoing standards.

15           A. Nothing in this subchapter may prohibit, in a  
16 sand dune system, the rebuilding of a permanent  
17 dwelling structure that has been damaged in ex-  
18 cess of 50% of its current appraised value or the  
19 building of a new permanent dwelling structure as  
20 a replacement for a permanent dwelling structure  
21 that has been dismantled or removed because of  
22 erosion to the sand dune system, provided that  
23 the applicant demonstrates to the satisfaction of  
24 the board or municipality, as appropriate, that  
25 the following conditions are met.

26           (1) The rebuilt or replacement dwelling  
27 structure shall be located as far back on  
28 the subject lot as possible.

29           (2) The rebuilt or replacement dwelling  
30 structure is raised on posts so that the  
31 lowest portion of the structural members of  
32 the lowest floor is at least one foot above  
33 the elevation of the 100-year flood.

34           (3) The rebuilt or replacement dwelling  
35 structure shall be certified by a Maine reg-  
36 istered engineer or architect to withstand a  
37 100-year storm event without substantial  
38 damage.

39           (4) The rebuilt or replacement dwelling  
40 structure shall not cover a surface area  
41 larger than the surface area occupied by the  
42 dwelling structure prior to its damage, dis-  
43 mantling or removal, as the case may be.

1           B. For purposes of this subsection, the 100-year  
2           flood is the flood with a 1% chance of occurring  
3           in any given year, and the 100-year storm event  
4           is the low pressure system accompanied by winds  
5           and precipitation with a 1% chance of occurring  
6           in any given year. This subsection shall apply  
7           regardless of the lapse of time between the dam-  
8           age, dismantling or removal, as the case may be,  
9           of the dwelling structure and the time the appli-  
10           cant applies for a sand dune permit.

11           Sec. 3. 38 MRSA §474, sub-§2-A is enacted to  
12           read:

13           2-A. Protection of existing dwelling struc-  
14           tures. Nothing in this subchapter may prohibit the  
15           rebuilding, replacement or new construction of a  
16           seawall, bulkhead, retaining wall or similar struc-  
17           ture in a coastal wetlands or sand dune system, pro-  
18           vided that the applicant for a wetlands or sand dunes  
19           permit demonstrates to the satisfaction of the board  
20           or municipality, as appropriate, that the proposed  
21           activity is reasonably necessary to protect existing  
22           dwelling structures.

23           Sec. 4. 38 MRSA §474, sub-§4 is enacted to read:

24           4. Legislative review. The board shall by order  
25           establish or amend reasonable rules to clarify the  
26           criteria for obtaining a permit under this section.  
27           The rules shall be referred to the joint standing  
28           committee of the Legislature having jurisdiction over  
29           the subject matter. The committee may recommend to  
30           the Legislature that advisory opinions on the rules  
31           be adopted. The rules shall not take effect until  
32           they have been reported to the committee at the be-  
33           ginning of the next regular session of the Legisla-  
34           ture following promulgation and until 90 days after  
35           the date of adjournment of that session.

36           Sec. 5. Applicability. The provisions of any  
37           rules promulgated pursuant to the Revised Statutes,  
38           Title 38, sections 471 to 478, shall not be applied  
39           until further public hearings are held at times con-  
40           venient for affected property owners and reviewed  
41           pursuant to Title 38, section 474, subsection 4, dur-  
42           ing the next regular session of the Legislature.

1 STATEMENT OF FACT

2 This bill clarifies the application of the sand  
3 dune law. The bill is designed to allow the rebuild-  
4 ing and replacement of permanent dwelling structures  
5 within the sand dune system. The bill also clarifies  
6 that property owners may rebuild, replace or con-  
7 struct bulkheads, retaining walls or similar struc-  
8 tures reasonably necessary to protect existing dwell-  
9 ing structures. The bill further provides for delay-  
10 ing the continued application of the rules presently  
11 in effect so concerned property owners and others may  
12 comment adequately and then to allow for legislative  
13 review of the rules promulgated.

14 5170030684