

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 838

6
7 H.P. 567

House of Representatives, February 28, 1985

8 On Motion of Representative Michaud of Medway, referred to the
9 Committee on Energy and Natural Resources. Sent up for concurrence and
ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Mitchell of Freeport.

11 Cosponsored by Senator Usher of Cumberland, Representative Michaud
of Medway and Representative Holloway of Edgecomb.

12 STATE OF MAINE
13

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

17 AN ACT to Protect Freshwater Wet Lands.
18

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

21 Sec. 1. 38 MRSA §349, sub-§4, ¶¶G and H, as
22 amended by PL 1983, c. 796, §18, are further amended
23 to read:

24 G. Title 12, section 4757; (Regulations for
25 state-held wetlands); and

26 H. Title 12, chapter 421 and orders thereunder;
27 (Wetlands zoning); and

28 Sec. 2. 38 MRSA §349, sub-§4, ¶K is enacted to
29 read:

30 K. Section 408; (alteration of freshwater wet-
31 lands).

32 Sec. 3. 38 MRSA c. 3, Art. 1-C, §405 is enacted
33 to read:

1 §405. Statement of findings and purpose

2 The Legislature finds and declares that the
3 freshwater wetlands of Maine are invaluable, irre-
4 placeable and fragile resources for flood prevention,
5 water supply, water pollution control and habitat.
6 These marshes, swamps and bogs provide numerous bene-
7 fits to the people of Maine, including, but not lim-
8 ited to, the following:

9 1. Sedimentation and filtrations basins. Pro-
10 tection of water quality by serving as sedimentation
11 and filtration basins which absorb silt, organic mat-
12 ter and heavy metals;

13 2. Flood water control. Control of flood and
14 storm water by storage and absorption of heavy rain-
15 fall and reduction of flood flows;

16 3. Erosion control. Control of erosion by re-
17 taining and slowly releasing water;

18 4. Habitat. Important habitat for waterfowl and
19 wildlife, and critical habitat for unique plant life;

20 5. Uniform stream flow. Maintenance of uniform
21 stream flow by augmentation of low-flow during dry
22 periods;

23 6. Recreation. Recreation in the form of hunt-
24 ing, fishing, boating, hiking, birdwatching, photog-
25 raphy, camping and other nonintensive uses;

26 7. Nutrients, fish sanctuaries. Source of
27 nutrients in freshwater food cycles, nursery grounds
28 and sanctuaries for fish; and

29 8. Scientific areas. Unique and scientific ar-
30 reas.

31 The Legislature further finds that freshwater
32 wetlands have been destroyed or are in danger of de-
33 struction by unregulated use, including filling,
34 dredging and the diversion or obstruction of water
35 flow, all of which have despoiled, polluted and elim-
36 inated freshwater wetlands. The activities unregu-
37 lated will continue to have significant adverse eco-
38 nomical and environmental impact.

1 The Legislature intends to conserve and regulate
2 the use of freshwater wetlands for the health, wel-
3 fare and safety of the citizens of this State.

4 Sec. 4. 38 MRS §407, sub-§5 is enacted to read:

5 5. Identification of freshwater wetlands. The
6 department may periodically review and revise the
7 identification of freshwater wetlands. At least 90
8 days prior to the adoption of an addition or deletion
9 to the map, the commissioner shall send a map of the
10 affected area to the municipal officers or their des-
11 ignees, send a notice to each person recorded as own-
12 ing the affected land and publish notice in newspa-
13 pers of general circulation throughout the State and
14 in the area affected. During the 90-day review period
15 after notice has been given, alteration of the af-
16 ected wetland shall be prohibited.

17 Sec. 5. 38 MRS §§408, 409, 410, 410-A, 410-B,
18 410-C, 410-D and 410-E, are enacted to read:

19 §408. Prohibitions

20 No person may dredge or cause to be dredged,
21 drain or cause to be drained, fill or cause to be
22 filled or erect or cause to be erected any permanent
23 structure in, on or over a freshwater wetland as de-
24 finied by sections 406 and 407 without first obtaining
25 a permit from the Board of Environmental Protection;
26 nor may any action be taken in violation of the con-
27 ditions of the permit, once obtained.

28 §409. Standards

29 If the applicant for a wetlands' permit demon-
30 strates, to the satisfaction of the board, that the
31 proposed activity will not unreasonably result in any
32 of the following, the board shall grant the permit
33 upon such terms as are necessary to ensure that the
34 proposed activity will comply with the standards:

35 1. Interference with recreation or navigation.
36 Interfere with existing recreation or navigational
37 uses;

38 2. Erosion. Cause soil erosion;

1 3. Habitat. Harm aquatic, plant or wildlife
2 habitat;

3 4. Lower water quality. Lower the quality of
4 any waters;

5 5. Obstruct natural flow of waters. Obstruct
6 the natural flow of surface or subsurface waters
7 across or from the alteration area;

8 6. Reduce the absorptive capacity. Reduce the
9 absorptive capacity of the alteration area so as to
10 cause or increase the flooding of the alteration area
11 or adjacent properties; or

12 7. Increase the flow of surface waters. In-
13 crease the flow of surface waters across or the dis-
14 charge of surface waters from the alteration area so
15 as to threaten injury to the alteration area or to
16 downstream properties by erosion, sedimentation,
17 flooding or otherwise.

18 The department shall adopt procedural rules to
19 coordinate administration of this Article with other
20 environmental permit requirements.

21 §410. Delegation of permit granting authority to mu-
22 nicipality

23 All permits shall be issued by the Board of Envi-
24 ronmental Protection, except that a municipality may
25 apply, on forms provided by the board, to the board
26 for authority to issue the permits. The board shall
27 grant the authority if it finds that the municipality
28 has met the criteria established under section 473.

29 If at any time the board determines that a munic-
30 ipality may be failing to exercise its
31 permit-granting authority in accordance with its ap-
32 proved procedures or the purposes of this Article as
33 embodied in the standards set forth in sections 405
34 to 410-A, it shall notify the municipality of the
35 specific alleged deficiencies and shall order a pub-
36 lic hearing, of which adequate public notice shall be
37 given, to be held in the municipality to solicit pub-
38 lic or official comment. Following the hearing, if
39 it finds deficiencies, it may revoke the

1 municipality's permit-granting authority. The munic-
2 ipality may reapply for authority at any time.

3 §410-A. Permits; grants; denials; suspensions

4 The department shall process all permits under
5 this Article in accordance with chapter 2.

6 The board shall not issue a permit without noti-
7 fying the municipality in which the proposed altera-
8 tion is to occur and considering any comments filed
9 within a reasonable period by the municipality.

10 No permit issued by a municipality may become ef-
11 fective until 30 days subsequent to its issuance,
12 but, if approved by the board in less than 30 days,
13 the effective date shall be the date of approval. A
14 copy of the application for the permit and the permit
15 issued by the municipality shall be sent by regis-
16 tered mail, to the board immediately upon its issu-
17 ance. The board shall review the permit and either
18 approve, deny or modify it as it deems necessary.
19 Failure to the board to act within 30 days of the re-
20 ceipt of the permit by the municipality shall consti-
21 tute its approval and the permit shall be effective
22 as issued.

23 When winter conditions prevent the board or mu-
24 nicipality from evaluating a permit application, the
25 board or municipality, upon notifying the applicant
26 of that fact, may defer action on the application for
27 a reasonable period. The applicant shall not during
28 the period of deferral alter the freshwater wetland.

29 This Article shall not be construed to limit the
30 authority of any municipality to enact ordinances for
31 the protection of freshwater wetlands, provided that
32 these ordinances are not less stringent than the pro-
33 visions of this Article.

34 §410-B. Violations

35 A violation is any activity which takes place in
36 freshwater wetlands contrary to the provisions of a
37 valid permit or without a permit having been issued.
38 Any activity shall be prima facie evidence that it
39 was done or caused to be done by the owner of the
40 wetlands.

1 §410-C. Penalty

2 In addition to being subject to penalties under
3 section 349, any person, who knowingly violates any
4 provisions of sections 406 to 410-E, shall restore
5 the affected wetland to its condition prior to the
6 violation insofar as that is possible, unless the
7 restoration would have greater negative environmental
8 impacts than allowing the wetlands to remain in its
9 condition after the violation.

10 §410-D. Enforcement

11 Inland fisheries and wildlife wardens and all
12 other law enforcement officers enumerated in Title
13 12, section 7055, shall enforce this chapter.

14 §410-E. Exemptions

15 Draining a freshwater wetland for the purpose of
16 growing agricultural products shall be exempt from
17 the provisions of this Article. Alteration of a
18 freshwater wetland associated with normal forestry
19 management and harvesting activities are exempt from
20 this Article. Alteration of a freshwater wetland for
21 the purposes of exploring for and mining peat are ex-
22 empt from this Article, but are subject to Article 6
23 where applicable.

24 Alteration of a freshwater wetland associated
25 with the operation of a hydroelectric power project
26 are exempt from this Article, but are subject to
27 chapter 5, Article 1, subarticle 1-B, where applica-
28 ble.

29 The Board of Environmental Protection may by rule
30 exempt from this Article activities having insignifi-
31 cant impact on wetland values, including, but not
32 limited to, repairs and maintenance of existing
33 structures, or waive such procedural requirements as
34 it deems consistent with the purposes of this Arti-
35 cle. Nothing in this Article may prohibit the minor
36 repair of existing permanent structures which would
37 require less than a total of one cubic yard of mate-
38 rial to be filled, deposited, dredged, moved or re-
39 moved in any freshwater wetland or normal maintenance
40 or repair of presently existing ways, roads or rail-

1 program, alteration of freshwater wetlands will re-
2 quire a permit which will be granted if the altera-
3 tion meets certain standards. The bill also provides
4 for the delegation of permit-granting authority to a
5 municipality at the municipality's request. It con-
6 tains provisions defining a violation, authorizing
7 restoration as a penalty under certain circumstances,
8 and authorizing enforcement by certain law enforce-
9 ment officers. Exemptions are included for draining
10 for agriculture, normal forestry management and cer-
11 tain minor repairs and maintenance. Alterations of
12 wetlands related to peat mining and hydropower devel-
13 opment are regulated under separate statutes.

14 This bill adds violation of this proposed law to
15 a list of environmental statutes receiving uniform
16 penalties.

17 The appropriation requested provides for person-
18 nel consisting of one person in the main office of
19 the Department of Environmental Protection to process
20 permit applications, 2 persons in the field offices
21 to evaluate applications and one additional
22 clerk/typist. Capital and All Other includes desks,
23 a typewriter and mileage for site visits.

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