

# MAINE STATE LEGISLATURE

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1  
2 FIRST REGULAR SESSION

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3 ONE HUNDRED AND THIRTEENTH LEGISLATURE

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5 Legislative Document

NO. 138

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7 H.P. 113 House of Representatives, January 28, 1987  
8 Referred to the Committee on Energy and Natural  
Resources. Sent up for concurrence and ordered printed.

9 EDWIN H. PERT, Clerk  
10 Presented by Representative HOLLOWAY of Edgecomb.  
Cosponsored by Senator SEWALL of Lincoln, Representatives  
MITCHELL of Freeport, and SMALL of Bath.

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12 STATE OF MAINE

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

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17 AN ACT Clarifying Municipal Home Rule  
18 Authority as it Relates to Shoreland Areas.  
19

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

22 Sec. 1. 38 MRSA §435, 3rd ¶, as enacted by PL  
23 1985, c. 737, Pt. A, §110, is amended to read:

24 Notwithstanding Pursuant to municipal home rule  
25 authority and notwithstanding the definition of  
26 shoreland areas in this section, the jurisdiction of  
27 municipal shoreland zoning ordinances may include any  
28 structure built on, over or abutting a dock, wharf,  
29 pier or other structure extending beyond the normal  
30 high water mark of a water body. Municipalities may  
31 enact restrictions on that structure. Nothing in  
32 this paragraph may be construed to permit a municipi-  
33 ality to regulate, under this chapter, a structure

1 which is located more than 250 feet above the normal  
2 high water mark.

3 Sec. 2. 38 M RSA §435, as amended by PL 1985, c.  
4 737, Pt. A, §110, is further amended by adding at the  
5 end a new paragraph to read:

6 All existing municipal ordinances dealing with  
7 the subjects of this section currently in effect and  
8 operation on April 18, 1986, are declared to be valid  
9 and shall continue in effect until rescinded, amended  
10 or changed according to municipal ordinance.

11 STATEMENT OF FACT

12 This bill seeks to clarify several points.  
13 First, this law, as it pertains to mandatory zoning  
14 and subdivision control of shoreland areas, does not  
15 detract from preexisting municipal home rule authori-  
16 ty to regulate in that regard. Second, municipal or-  
17 dinances which were already regulating shoreland ar-  
18 eas are valid pending local rescission or amendment.  
19 Finally, the Legislature did not intend to preempt  
20 existing local ordinance authority when it enacted  
21 the Maine Revised Statutes, Title 38, section 435,  
22 3rd paragraph.

23 This bill is in response to the decision rendered  
24 in Boothbay Harbor v. Sirois, No. CV-86-102 (Me.  
25 Dist. Ct. 6, S.Lin., October 31, 1986.) In that  
26 case, the court invalidated a local ordinance, en-  
27 acted on July 29, 1985, which sought to regulate a  
28 structure located beyond the high water mark. In the  
29 court's view, this ordinance predated the 112th  
30 Legislature's recognition of municipal jurisdiction  
31 over such a structure, as manifested in the Maine Re-  
32 vised Statutes, Title 38, section 435, 3rd paragraph  
33 and was therefore void. The court failed to recog-  
34 nize that the Town of Boothbay Harbor, pursuant to  
35 its extensive home rule powers, had acted within its  
36 municipal authority when it originally passed the or-  
37 dinance at issue. The town did not require advance  
38 legislative endorsement of its specific action.

1           This bill seeks to correct the fallacious judi-  
2           cial impression that coastal municipalities needed  
3           precise legislative permission before they could reg-  
4           ulate structures beyond the high water mark. It also  
5           serves to emphasize that any municipal ordinance  
6           dealing with this particular subject, which was in  
7           effect and operation as of April 18, 1986, the effec-  
8           tive date of the Maine Revised Statutes, Title 38,  
9           section 435, 3rd paragraph, remains valid pending a  
10          local rescission, amendment or change.

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