

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1580

S.P. 528

In Senate, May 15, 1987

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator COLLINS of Aroostook.

Cosponsored by Representative ANDERSON of Woodland,
Representative HANLEY of Paris.

STATE OF MAINE

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

**AN ACT to Improve the Effectiveness of
Existing State Land Use Laws and to
Promote Consistency Among Them.**

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

7 Sec. 1. 38 MRSA c. 3, sub-c. I, art. 1-A, as
8 amended, is repealed.

9 Sec. 2. 38 MRSA c. 3, sub-c. I, art. 1-C, as
10 amended, is repealed.

11 Sec. 3. 38 MRSA c. 3, sub-c. I, art. 2-A, as
12 amended, is repealed.

13 Sec. 4. 38 MRSA c. 3, sub-c. I, art. 5, as
14 amended, is repealed.

1 4. Freshwater wetlands. "Freshwater wetlands"
2 means freshwater swamps, marshes, bogs and similar
3 areas which are:

4 A. Of 10 or more contiguous acres;

5 B. Characterized predominately by wetland vege-
6 tation; and

7 C. Not considered part of a great pond, coastal
8 wetland, river, stream or brook.

9 These areas may contain small inclusions of land that
10 do not conform to the criteria of this subsection.

11 5. Great ponds. "Great ponds" means any inland
12 bodies of water which in a natural state have a sur-
13 face area in excess of 10 acres and any inland bodies
14 of water artificially formed or increased which have
15 a surface area in excess of 30 acres.

16 6. Normal high-water line. "Normal high-water
17 line" means that line along the shore of a great
18 pond, river, stream or brook or other nontidal body
19 of water which is apparent from visible markings,
20 changes in the character of soils due to prolonged
21 action of the water or changes in vegetation and
22 which distinguishes between predominantly aquatic
23 and predominantly terrestrial land. In the case of
24 great ponds, all land below the normal high-water
25 line shall be considered the bottom of the great pond
26 for the purposes of this subchapter.

27 7. Permanent structures. "Permanent structures"
28 means any structures, including, but not limited to,
29 causeways, piers, docks, concrete slabs, piles,
30 marinas, retaining walls and buidlings which are
31 fixed in, on or over the water for a period exceeding
32 7 months each year.

33 §1922. Prohibitions

34 No person may perform or cause to be performed
35 in, on or over any freshwater or coastal wetland,
36 coastal sand dune system, river, stream, brook, great
37 pond or on land adjacent to a great pond, river,
38 stream or brook in such a manner that the material or

1 soil may fall or be washed into a great pond, river,
2 stream or brook, any of the following activities
3 without first obtaining a permit from the Board of
4 Environmental Protection:

5 1. Displacement of materials. Dredging,
6 bulldozing, removing or displacing soil, vegetation
7 or other materials;

8 2. Draining. Draining or otherwise dewatering;

9 3. Filling. Filling, including adding sand or
10 other material to a sand dune; or

11 4. Erections. Erecting any permanent structure.

12 §1923. Standards

13 The board shall grant a permit upon proper appli-
14 cation and upon such terms as it determines necessary
15 to fulfill the purposes of this chapter. In making
16 its findings on the standards set forth in this sec-
17 tion, the board shall consider the cumulative impacts
18 of the proposed project. The board shall grant a
19 permit when it finds that the applicant has demon-
20 strated that the proposed activity meets the follow-
21 ing standards.

22 1. Existing uses. The activity will not unrea-
23 sonably interfere with existing scenic, aesthetic,
24 recreational or navigational uses.

25 2. Soil erosion. The activity will not cause
26 unreasonable erosion of soil or sediment nor inhibit
27 the natural transfer of soil from the terrestrial to
28 the marine or freshwater environment.

29 3. Harm to habitats, fisheries. The activity
30 will not unreasonably harm any plant, aquatic or
31 wildlife habitat, travel corridor, freshwater
32 estuarine, marine fisheries or other aquatic life.

33 4. Interfere with natural waterflow. The activ-
34 ity will not unreasonably interfere with the natural
35 flow of any surface or subsurface waters.

1 5. Lower water quality. The activity will not
2 unreasonably lower the quality of any surface or sub-
3 surface water.

4 6. Flooding. The activity will not unreasonably
5 cause or increase the flooding of the alteration area
6 or adjacent properties.

7 7. Sand supply. If the activity is on or adja-
8 cent to a sand dune, it will not unreasonably inter-
9 fere with the natural supply or movement of sand
10 within or to the sand dune system.

11 8. Outstanding river segments. If the proposed
12 activity is a crossing of any outstanding river seg-
13 ment as identified in section 1930, the applicant
14 must demonstrate that no reasonable alternative ex-
15 ists which would have less adverse effect upon the
16 natural and recreational features of the river seg-
17 ment.

18 §1924. Permits; grants; denials; suspensions

19 The department shall process all permits under
20 this chapter in accordance with chapter 2.

21 The board shall not issue a permit without noti-
22 fying the municipality in which the proposed activity
23 is to occur and considering any comments filed by the
24 municipality within a reasonable period as estab-
25 lished by the board.

26 If the resource subject to alteration or the un-
27 derlying ground water is utilized by a water company,
28 municipality or water district as a source of supply,
29 the applicant for the permit shall forward, at the
30 time of filing an application, a copy of the applica-
31 tion to the water company, municipality or water dis-
32 trict by certified mail and the board shall consider
33 any comments filed within a reasonable period, as es-
34 tablished by the board.

35 When winter conditions prevent the board or mu-
36 nicipality from evaluating a permit application, the
37 board or municipality, upon notifying the applicant
38 of that fact, may defer action on the application for
39 a reasonable period. The applicant shall not alter

1 the resource area in question during the period of
2 deferral.

3 §1925. Delegation of permit-granting authority to
4 municipality

5 All permits shall be issued by the Board of Envi-
6 ronmental Protection, subject to delegation to the
7 commissioner as provided by law, except that a munic-
8 ipality may apply to the board for authority to issue
9 such permits. The board shall grant such authority
10 if it finds that the municipality has:

11 1. Planning board. Established a planning
12 board;

13 2. Adopted comprehensive plan and implementation
14 program. Adopted a comprehensive plan and implemen-
15 tation program consistent with the criteria set forth
16 in section 484;

17 3. Notice. Made provisions by ordinance or reg-
18 ulation for prompt notice to the board and the public
19 upon receipt of application and written notification
20 to the applicant and the board of the issuance of or
21 denial of a permit stating the reasons for denial;
22 and

23 4. Application form. Provided that the applica-
24 tion form is the same as that provided by the Board
25 of Environmental Protection.

26 No permit issued by a municipality may become ef-
27 fective until 30 days, subsequent to its receipt by
28 the board, but if approved by the board in less than
29 30 days then the effective date shall be the date of
30 approval. A copy of the application for the permit
31 and the permit issued by the municipality shall be
32 sent to the board immediately upon its issuance by
33 registered mail. The board shall review that permit
34 and either approve, deny or modify it as it deter-
35 mines necessary. Failure of the board to act within
36 30 days of its receipt of the permit by the munic-
37 ipality shall constitute its approval and the permit
38 shall be effective as issued, except that, within
39 this 30 days, the board may extend the time for its
40 review an additional 30 days.

1 §1926. Periodic review of delegated authority

2 If the board finds that a municipality has failed
3 to satisfy one or more of the criteria listed in sec-
4 tion 1925, it shall notify the municipality accord-
5 ingly and make recommendations through which it may
6 establish compliance. The municipality may then sub-
7 mit a modified application for approval.

8 If, at any time, the board determines that a mu-
9 nicipality may be failing to exercise its
10 permit-granting authority in accordance with its ap-
11 proval procedures or the purposes of this chapter, it
12 shall notify the municipality of the specific alleged
13 deficiencies and shall order a public hearing to be
14 held in the municipality to solicit public or offi-
15 cial comment on the alleged deficiencies. Following
16 the hearing, if the board finds these deficiencies,
17 it shall revoke the municipality's permit-granting
18 authority. The municipality may reapply for authori-
19 ty at any time.

20 §1927. Violations

21 A violation is any activity which takes place
22 contrary to the provisions of a valid permit issued
23 under this chapter or without a permit having been
24 issued for that activity. Each day of a violation
25 shall be considered a separate offense. A finding
26 that any such violation has occurred shall be prima
27 facie evidence that the activity was performed or
28 cause to be performed by the owner of the property
29 upon which the violation is found to have occurred.

30 §1928. Enforcement

31 Employees of the Department of Environmental Pro-
32 tection, Inland Fisheries and Wildlife game wardens,
33 Department of Marine Resources coastal wardens and
34 all other law enforcement officers enumerated in Ti-
35 tle 12, section 7055, shall enforce this chapter.

36 §1929. Exemptions

37 The following shall be exempt from the provisions
38 of this chapter.

1 1. Water lines and utility cables. The place-
2 ment of water lines to serve a single-family house or
3 the installation of cables for utilities, such as
4 telephone and power cables provided that the:

5 A. Excavated trench to access the water is back-
6 filled and riprapped to prevent erosions;

7 B. Excavated trench on the landward side of the
8 riprapped area is seeded and mulched to prevent
9 erosion; and

10 C. Department of Conservation, Bureau of Public
11 Lands has been contacted to obtain the right to
12 place the cable across the area.

13 2. Maintenance and repair. Maintenance and minor
14 repair above the high-water line causing no addition-
15 al intrusion of an existing structure into the great
16 pond, river, stream, brook, wetland or sand dune.

17 3. Peat mining. Alteration of a freshwater
18 wetland for the purpose of exploring for or mining
19 peat, subject to the provisions of chapter 3, sub-
20 chapter I, article 6, sections 481 to 490, where ap-
21 licable.

22 4. Interstate pipelines. Alteration of
23 freshwater wetlands associated with the construction,
24 operation, maintenance or repair of an interstate
25 pipeline, subject to the provisions of chapter 3,
26 subchapter I, article 6, where applicable.

27 5. Maine Land Use Regulation Commission juris-
28 isdiction. Notwithstanding section 1922, a permit
29 shall not be required from the board for areas of the
30 State within the jurisdiction of the Maine Land Use
31 Regulation Commission under Title 12, sections 681 to
32 689.

33 6. Panning for gold. Notwithstanding section
34 1922, a permit shall not be required for panning
35 gold, provided that stream banks are not disturbed
36 and no unlicensed discharge is created.

37 §1930. Special protection for outstanding river seg-
38 ments

1 In accordance with Title 12, section 402, out-
2 standing river segments include:

3 1. Aroostook River. The Aroostook River from
4 the Canadian border to the Masardis and T.10, R.6,
5 W.E.L.S. townline, excluding the segment in T.9, R.5,
6 W.E.L.S., including its tributaries the Big Machias
7 River from the Aroostook River to the Ashland and
8 Garfield Plantation townline and the St. Croix
9 Stream from the Aroostook River in Masardis to the
10 Masardis and T.9, R.5, W.E.L.S. townline;

11 2. Carrabassett River. The Carrabassett River
12 from the Kennebec River to the Carrabassett Valley
13 and Mt. Abram Township townline;

14 3. Crooked River. The Crooked River including
15 the Songo River, from its inlet into Sebago Lake in
16 Casco to the Waterford and Albany Township townlines;

17 4. Dennys River. The Dennys River from the
18 railroad bridge in Dennysville Station to the outlet
19 of Meddybemps Lake, excluding the western shore in
20 Edmunds Township and No. 14 Plantation;

21 5. East Machias River. The East Machias River,
22 including the Maine River, from the old powerhouse in
23 East Machias to the East Machias and T.18, E.D.,
24 B.P.P. townline, from the T.19, E.D., B.P.P. and Wes-
25 ley townline to the outlet of Crawford Lake and from
26 the No. 21 Plantation and Alexander townline to the
27 outlet of Pocomoonshine Lake, excluding Hadley Lake,
28 Lower Mud Pond and Upper Mud Pond;

29 6. Fish River. The Fish River from the bridge
30 in Fort Kent Mills to the Fort Kent and Wallagrass
31 Plantation townline, from the T.16, R.6, W.E.L.S.
32 and Eagle Lake townline to the Eagle Lake and
33 Winterville Plantation townline and from the T.14,
34 R.6, W.E.L.S. and Portage Lake townline to the Por-
35 tagage Lake and T.13, R.7, W.E.L.S. townline, excluding
36 Portage Lake;

37 7. Kennebago River. The Kennebago River from
38 its inlet into Cupsuptic Lake to the Rangeley and
39 Lower Cupsuptic Township townline;

1 8. Kennebec River. The Kennebec River from the
2 Route 148 bridge in Madison to the Caratunk and The
3 Forks Plantation townline, excluding the western
4 shore in Concord Township, Pleasant Ridge Plantation
5 and Carrying Place Township and excluding Wyman Lake;

6 9. Machias River. The Machias River from the
7 Route 1 bridge to the Northfield and T.19, M.D.,
8 B.P.P. townline, including its tributaries, the Old
9 Stream from the Machias River to the northern most
10 crossing of the Wesley and T.31, M.D., B.P.P.
11 townline, excluding the segments in T.25, M.D.,
12 B.P.P. and T.31, M.D., B.P.P.;

13 10. Mattawamkeag River. The Mattawamkeag River
14 from the Penobscot River to the Mattawamkeag and
15 Kingman Township townline and from the Reed Planta-
16 tion and Bancroft townline to the East Branch, in-
17 cluding its tributaries, the West Branch from the
18 Mattawamkeag River to the Haynesville and T.3, R.3,
19 W.E.L.S. townline and from its inlet into Upper
20 Mattawamkeag Lake in Island Falls to the Hersey and
21 Moro Plantation townline; the East Branch from the
22 Mattawamkeag River to the Haynesville and Forkstown
23 Township townline and from the T.4, R.3, W.E.L.S. and
24 Oakfield townline to the Smyrna and Dudley Township
25 townline; the Fish Stream for the West Branch of the
26 Mattawamkeag River to the Crystal and Patten
27 townline; the Molunkus Stream from the Silver Ridge
28 Township and Benedicta townline to the East Branch
29 Molunkus Stream; the Macwahoc Stream from the Silver
30 Ridge Township and Sherman townline to the outlet of
31 Macwahoc Lake; and the Baskehegan Stream from the
32 Mattawamkeag River to the Danforth and Brookton Town-
33 ship townline and from the Brookton Township and
34 Topsfield townline to the Topsfield and Kossuth Town-
35 ship townline, excluding Baskehegan Lake and Crooked
36 Brook Flowage;

37 11. Narraguagus River. The Narraguagus River
38 from the ice dam above the railroad bridge in
39 Cherryfield to the Beddington and Devereaux Township
40 townline, excluding Beddington Lake;

41 12. Penobscot River. The Penobscot River from
42 the Bangor Dam in Bangor to the Veazie Dam and its
43 tributary the East Branch of the Penobscot from the

1 Penobscot River to the East Millinocket and
2 Grindstone Township townline;

3 13. Piscataquis River. The Piscataquis River
4 from the Penobscot River to the Monson and Blanchard
5 Plantation townline, including its tributaries, the
6 East and West Branches of the Piscataquis River from
7 the Blanchard Plantation and Shirley townline to the
8 Shirley and Little Squaw Township townline; the
9 Seboeis Stream from its confluence with the
10 Piscataquis River in Howland to the Howland and
11 Mattamiscontis Township townline and from the
12 Mattamiscontis and Maxfield townline to the Maxfield
13 and Seboeis Plantation townline, excluding Shirley
14 Pond and West Shirley Bog;

15 14. Pleasant River. The Pleasant River from the
16 dam in Columbia Falls (formerly the Hathaway Dam) to
17 the Columbia and T.18, M.D., B.P.P. townline and from
18 the T.24, M.D., B.P.P. and Beddington townline to the
19 outlet of Pleasant River Lake in Beddington;

20 15. Rapid River. The Rapid River from the
21 Magalloway Plantation and Upton townline to the out-
22 let of Pond in the River;

23 16. Saco River. The Saco River from the Little
24 Ossipee River to the New Hampshire border;

25 17. St. Croix River. The St. Croix River from
26 the cotton mill dam in Milltown to the Calais and
27 Baring Plantation townline, from the Baring Planta-
28 tion and Baileyville townline to the Baileyville and
29 Fowler Township townline and from the Lambert Lake
30 Township and Vanceboro townline to the outlet of
31 Spednik Lake, excluding Woodland Lake and Grand Falls
32 Flowage;

33 18. St. George River. The St. George River from
34 the Route 90 bridge in Warren to the outlet of Lake
35 St. George in Liberty, excluding White Oak Pond, Sev-
36 en Tree Pond, Round Pond, Sennebec Pond, Trues Pond,
37 Stevens Pond and Little Pond;

38 19. St. John River. The St. John River from the
39 Hamlin Plantation and Van Buren townline to the Fort
40 Kent and St. John Plantation townline and from the

1 St. John Plantation and St. Francis townline to the
2 Allagash and St. Francis townline;

3 20. Sandy River. The Sandy River from the Ken-
4 nebec River to the Madrid and Township E townline;

5 21. Sheepscot River. The Sheepscot River from
6 the Head Tide Dam in Alna to the Halldale Road in
7 Montville, excluding Long Pond and Sheepscot Pond,
8 including its tributary the West Branch of the
9 Sheepscot from its confluence with the Sheepscot River
10 in Whitefield to the outlet of Branch Pond in
11 China;

12 22. West Branch Pleasant River. The West Branch
13 Pleasant River from the East Branch to the Brownville
14 and Williamsburg Township townline; and

15 23. West Branch Union River. The West Branch
16 Union River from the Route 181 bridge in Mariaville
17 to the outlet of Great Pond in the Town of Great
18 Pond.

19 §1931. Rules; performance and use standards

20 In fulfilling its responsibilities to adopt rules
21 pursuant to section 343-A, the board shall, to the
22 extent practicable, adopt performance and use stan-
23 dards for activities regulated by this chapter.

24 §1932. Identification of freshwater wetlands

25 1. Identification by maps. The department shall
26 map areas meeting the definition of freshwater wet-
27 lands set forth in this chapter and shall periodical-
28 ly review and revise the maps identifying these areas
29 adopted by the commissioner.

30 2. Procedures. The adoption or amendment of
31 maps identifying freshwater wetlands shall be subject
32 to the rule-making requirements of the Maine Adminis-
33 trative Procedure Act, Title 5, chapter 375, except
34 as provided in this section.

35 A. At least 90 days prior to the adoption or
36 amendment of a map, the commissioner shall:

1 (1) Send the map of the affected area to
2 the municipal officers or their designees;

3 (2) Send a notice to each person recorded
4 as owning the affected land; and

5 (3) Publish notice in newspapers of general
6 circulation throughout the State and in the
7 area affected.

8 B. Upon receipt of the proposed maps, the munic-
9 ipal officers of each municipality shall:

10 (1) Post notice that the maps are available
11 for review;

12 (2) Hold a public meeting to discuss the
13 identification and delineation of wetlands;
14 and

15 (3) Take any other action they deem appro-
16 priate to increase public participation in
17 this identification and delineation.

18 3. Prohibition. During the 90-day period after
19 the notice has been given, alteration of the affected
20 resource areas shall be prohibited without a permit.

21 §1933. Maps

22 Maps delineating the boundaries of freshwater
23 wetlands that meet the criteria of this section shall
24 be available at the office of the municipality in
25 which the resources are located.

26 §1934. Data bank

27 The Department of Environmental Protection shall
28 maintain, in cooperation with other state agencies, a
29 data bank containing all the known information per-
30 taining to all resources of state significance, as
31 enumerated in this chapter, within the State. All
32 governmental agencies, state or federal, shall make
33 available to the department such information in their
34 possession relating to these resources.

35 §1935. Research

1 The Department of Environmental Protection, in
2 cooperation with other state agencies, is authorized
3 to conduct research and studies to determine how the
4 values of resources of state significance can be re-
5 stored and enhanced.

6 §1936. Funds

7 The Department of Environmental Protection is the
8 public agency of the State authorized to accept
9 funds, public and private, for the purposes of this
10 chapter.

11 §1937. Lake Restoration and Protection Financial Aid
12 Program

13 1. Fund purposes and administration. There is
14 established a nonlapsing Lake Restoration and Protec-
15 tion Fund from which the department may pay up to 50%
16 of the eligible costs incurred in a lake restoration
17 or protection project. Eligible costs include all
18 costs, except those related to land acquisition, le-
19 gal fees and debt service. All money credited to
20 that fund shall be used by the department for
21 projects to improve or maintain the quality of lake
22 waters in the State and for no other purpose. The
23 Commissioner of Environmental Protection may autho-
24 rized the State Controller to draw his warrant for
25 such funds as may be necessary to pay the lawful ex-
26 penses of the lake restoration or protection project,
27 up to the limits of the money duly authorized. Any
28 balance remaining in the fund shall continue without
29 lapse from year to year and remain available for the
30 purposes for which the fund is established and for no
31 other purpose.

32 2. Money. Money in the Lake Restoration and
33 Protection Fund may not be used for projects in or on
34 lakes for which public access is not provided.

35 §1938. Bulkheads and retaining walls on Scarborough
36 River; permit requirements

37 Nothing in this chapter prohibits the rebuilding,
38 replacement or new construction of a bulkhead, re-
39 taining wall or similar structure provided that the
40 applicant for a permit demonstrates to the board or

1 municipality, as appropriate, that the following con-
2 ditions are met:

3 1. Bulkhead or similar structure constructed.
4 The bulkhead or similar structure to be constructed,
5 rebuilt or replaced is located along some or all of
6 the north-northeasterly property lines of land abut-
7 ting the Scarborough River from the jetty to the
8 Scarborough town landing; and

9 2. Bulkhead or similar structure terminus. The
10 terminus of any bulkhead or similar structure, in-
11 cluding any wing wall, unless connected to another
12 bulkhead or similar structure, shall terminate at
13 least 25 feet from any abutting property.

14 Any permit issued under this section for a bulk-
15 head or similar structure which is not connected at
16 both ends to another bulkhead or similar structure
17 shall be subject to only the standard conditions ap-
18 plicable to all permits granted under this chapter,
19 as well as the following conditions. The permit ap-
20 plicant or applicants shall be responsible for rea-
21 sonably maintaining the bulkhead or similar structure
22 and for repairing damage to the frontal sand dune
23 which occurs between the end of the bulkhead of simi-
24 lar structure and the Scarborough town landing and
25 which is caused by the existence of the bulkhead or
26 similar structures. The applicant or applicants
27 shall submit a report prepared by a state-certified
28 geologist to the commissioner every 2nd year follow-
29 ing issuance of the permit or until such time as the
30 commissioner deems the report need not be filed or
31 can be filed at longer intervals. The report shall
32 describe the status of the frontal sand dune between
33 the end of the bulkhead or similar structure and the
34 Scarborough town landing and contain whatever recom-
35 mendations the geologist determines are reasonably
36 required to maintain the frontal sand dune in that
37 area and the applicant or applicants shall follow the
38 recommendations.

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STATEMENT OF FACT

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The purpose of this bill is to consolidate into a single law and clarify the language of those law protecting resources of state significance that are subject to the State permitting: Great ponds; stream alterations; coastal wetlands; sand dunes; and inland wetlands.

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This bill continues a process of providing greater consistency in standards, statutory language and approaches to administration of these laws. It also recognizes in law the need to consider the cumulative impacts of development in project reviews and adds an explicit permit review criterion relating to public access.

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