

MAINE STATE LEGISLATURE

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L.D. 2374

(Filing No. H- 597)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1731, L.D. 2374,
Bill, "AN ACT to Extend and Strengthen the State's
Mandatory Shoreland Zoning Laws."

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Amend the bill in that part designated "§435." by
striking out all of the first paragraph and inserting
in its place the following:

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'To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, or within 250 feet of the upland edge of a coastal or freshwater wetland. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland

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1 and coastal waters; to conserve natural beauty and
2 open space; and to anticipate and respond to the
3 impacts of development in shoreland areas.'

4 Further amend the bill in that part designated
5 "§435." by inserting at the end the following:

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9 valid and shall continue in effect until rescinded,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

12 Further amend the bill in section 3, in that part
13 designated "§436-A." in subsection 5, by striking out
14 all of paragraphs A to C and inserting in their place
15 the following:

16 'A. Of 10 or more contiguous acres; and

17 B. Characterized predominately by wetland
18 vegetation.'

19 Further amend the bill in section 3, in that part
20 designated "§436-A." by striking out all of subsection
21 7 and inserting in its place the following:

22 '7. Great pond. "Great pond" means any inland
23 body of water which in a natural state has a surface
24 area in excess of 10 acres and any inland body of
25 water artificially formed or increased which has a
26 surface area in excess of 30 acres except for the
27 purposes of this article, where the artificially
28 formed or increased inland body of water is completely
29 surrounded by land held by a single owner and except
30 those privately owned inland bodies of water which are
31 held primarily as waterfowl and fishbreeding areas or
32 for hunting and fishing.'

33 Further amend the bill in section 3, in that part
34 designated "§436-A." by striking out all of subsection
35 9 and inserting in its place the following:

36 '9. Normal high-water line. "Normal high-water
37 line" means that line which is apparent from visible

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1 markings, changes in the character of soils due to
2 prolonged action of the water or changes in
3 vegetation, and which distinguishes between
4 predominantly aquatic and predominantly terrestrial
5 land.'

6 Further amend the bill in section 3, in that part
7 designated "\$436-A." by striking out all of subsection
8 12 and inserting in its place the following:

9 '12. Structure. "Structure" means anything built
10 for the support, shelter or enclosure of persons,
11 animals, goods or property of any kind, together with
12 anything constructed or erected with a fixed location
13 on or in the ground, exclusive of fences.'

14 Further amend the bill in section 5, in that part
15 designated "\$438-A." in the first paragraph, in the
16 4th line (page 6, line 1 in L.D.) by inserting after
17 the underlined word "legislation" the following: ',
18 under home rule authority'

19 Further amend the bill in section 5, in that part
20 designated "\$438-A." by striking out all of
21 subsections 2 and 3 and inserting in their place the
22 following:

23 '2. Municipal ordinances. In accordance with a
24 schedule adopted by the board and acting in accordance
25 with a local comprehensive plan, municipalities shall
26 prepare and submit to the board zoning and land use
27 ordinances which are consistent with, or are no less
28 stringent than, the minimum guidelines adopted by the
29 board and which address state land use management
30 policies cited in Title 30, chapter 239, subchapter VI
31 and, for coastal communities, the coastal management
32 policies cited in section 1801. When a municipality
33 determines that special local conditions of
34 urbanization within portions of the shoreland zone
35 require a different set of standards than those in the
36 minimum guidelines, the municipality shall document
37 the special conditions and submit them, together with
38 its proposed ordinance provisions, to the board for
39 review and approval.

40 3. Board approval. Municipal ordinances and any

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1 amendments shall not be effective unless approved by
2 the board. In determining whether to approve
3 municipal ordinances or amendments, the board shall
4 consider the legislative purposes described in section
5 435, the minimum guidelines and any special local
6 conditions which, in the judgment of the board,
7 justify a departure from the requirements of the
8 minimum guidelines in a manner which is not
9 inconsistent with the legislative purposes described
10 in section 435. Recognizing that the guidelines are
11 intended as minimum standards, the board shall approve
12 a municipal ordinance which imposes more restrictive
13 standards than those in the guidelines. If the board
14 fails to act on any proposed municipal ordinance or
15 amendment within 30 days of the board's receipt of the
16 proposed ordinance or amendment, the ordinance or
17 amendment is automatically approved. Any application
18 for a shoreland zoning permit submitted to a
19 municipality within the 30-day period shall be
20 governed by the terms of the proposed ordinance or
21 amendment if the ordinance or amendment is approved
22 under this subsection.'

23 Further amend the bill in section 5, in that part
24 designated "§438-A." in subsection 6, in the 5th line
25 (page 7, line 31 in L.D.) by striking out the
26 following: "30" and inserting in its place the
27 following: '20' and in the 4th line from the end (page
28 7, line 39 in L.D.) by inserting after the underlined
29 word "comments" the following: ', if submitted by the
30 commissioner prior to the action by the municipality.'

31 Amend the bill in section 7, in that part
32 designated "§439-A." in subsection 2, in the 7th line
33 (page 8, line 17 in L.D.) by striking out the
34 underlined word "mark" and inserting in its place the
35 following: 'line'

36 Further amend the bill in section 7, in that part
37 designated "439-A." by striking out all of subsections
38 4, 5 and 6 and inserting in their place the following:

39 '4. Setback requirements. Notwithstanding any
40 provision in a local ordinance to the contrary, all
41 new principal and accessory structures and substantial
42 expansions of such structures within the shoreland

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1 zone as established by section 435 must meet the water
2 setback requirements approved by the board, except
3 structures which require direct access to the water as
4 an operational necessity, such as piers, docks and
5 retaining walls. For purposes of this subsection, a
6 substantial expansion of a building shall be an
7 expansion which increases either the volume or floor
8 area by 30% or more. This subsection is not intended
9 to prohibit a municipal board of appeals from granting
10 a variance, subject to the requirements of this
11 article and Title 30, section 4963, nor is it intended
12 to prohibit a less than substantial expansion of an
13 accessory structure attached to a legally existing
14 nonconforming structure, provided that the expansion
15 does not create further nonconformity with the water
16 setback requirement.

17 5. Timber harvesting. Municipal ordinances shall
18 regulate timber harvesting within the shoreland area.
19 These regulations shall be consistent with the board's
20 guidelines which shall be no less restrictive than the
21 following:

22 A. Selective cutting of no more than 40% of the
23 trees 4 inches or more in diameter, measured at 4
24 1/2 feet above ground level, in any 10-year
25 period, provided that a well-distributed stand of
26 trees and other natural vegetation remains; and

27 B. Within a shoreland area zoned for resource
28 protection abutting a great pond there shall be no
29 timber harvesting within the strip of land
30 extending 75 feet inland from the normal
31 high-water line except to remove safety hazards.

32 6. Clearing of vegetation. Within the shoreland
33 zone, municipal ordinances shall provide for effective
34 vegetative screening between buildings and
35 shorelines. These ordinances must be consistent with
36 the board's guidelines which shall not be less
37 restrictive than the following:

38 A. Within a strip extending 75 feet inland from
39 the normal high-water mark, there shall be no
40 cleared opening or openings, except for approved
41 construction, and a well distributed stand of

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1 vegetation shall be retained;

2 B. Within a shoreland area zoned for resource
3 protection abutting a great pond there shall be no
4 cutting of vegetation within the strip of land
5 extending 75 feet inland from the normal
6 high-water mark except to remove safety hazards;
7 and

8 C. Selective cutting of the trees no more than
9 40% of the trees 4 inches or more in diameter,
10 measured at 4 1/2 feet above ground level, is
11 allowed in any 10-year period, provided that a
12 well-distributed stand of trees and other natural
13 vegetation remains.'

14 Further amend the bill by striking out all of
15 section 11 and inserting in its place the following:

16 'Sec. 11. Transition; effective date. This Act
17 shall take effect on January 1, 1989. Municipal
18 shoreland zoning ordinances in effect on or before
19 January 1, 1989, shall continue in effect until
20 rescinded, amended or changed according to municipal
21 ordinance, charter or state law.'

22 STATEMENT OF FACT

23 The amendment reinserts the term "saltwater body"
24 from the current shoreland zoning law to ensure
25 complete coverage along the coast.

26 The amendment clarifies the point from which the
27 shoreland zone begins along wetlands.

28 The amendment strikes a proposed purpose statement
29 from the introductory section of the bill.

30 The amendment reinserts a provision of existing
31 shoreland zoning law which had been enacted to
32 reaffirm certain municipal ordinances.

33 The amendment makes a technical amendment to the
34 definition of a freshwater wetland to insure that the
35 legislative intent to include freshwater wetlands

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1 along great ponds and rivers is achieved.

2 The amendment reinserts an existing exemption for
3 certain water bodies from the shoreland zoning law.

4 The amendment revises the definition of normal
5 high-water line to conform with its use for fresh and
6 salt water. The definition is also amended to delete
7 unnecessary language.

8 The amendment reinserts an existing exemption from
9 the definition of the term "structure."

10 The amendment adds a reference to municipal home
11 rule authority to reaffirm the basic source of
12 municipal land use authority.

13 The amendment reinserts a phrase inadvertently
14 dropped from the original bill.

15 The bill inserts a provision for automatic
16 approval of municipal ordinances if the Department of
17 Environmental Protection fails to act within 30 days.
18 Provision is also made for applications made to the
19 municipality for shoreland zone permits during the
20 30-day period.

21 The amendment clarifies a requirement that the
22 Commissioner of Environmental Protection's comments on
23 a variance application be considered in the local
24 decision-making process only if the comments are
25 received in a timely fashion.

26 The amendment strikes reference to replacement
27 structures in the setback requirements and reinserts
28 the term "retaining walls" in the same section from
29 existing law.

30 The amendment replaces the provisions for timber
31 harvesting and vegetation clearing with provisions
32 that:

33 1. Establish a general rule of 40% removal of
34 trees for timber harvesting;

35 2. Establish a no-cutting zone of 75 feet along

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1 the shoreline of great ponds zoned for resource
2 protection; and

3 3. Eliminate the current allowance for "view
4 corridors."

5 Finally, the amendment adds a transition provision
6 to make it clear that existing local shoreland zoning
7 ordinances continue in force until the Department of
8 Environmental Protection has enacted and implemented
9 the new minimum guidelines for local shoreland zoning
10 under this bill

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