

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2382

H.P. 1737 House of Representatives, February 29, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.

Cosponsored by President PRAY of Penobscot,
Representatives MICHAUD of East Millinocket and GOULD of
Greenville.

STATE OF MAINE

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

1 AN ACT Concerning Shoreline Alteration of
2 Artificially Created Great Ponds.
3

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

6 Sec. 1. 38 MRSA §391, as amended by PL 1983, c.
7 819, Pt. A, §62, is repealed.

8 Sec. 2. 38 MRSA §391-A is enacted to read:

1 §391-A. Prohibitions

2 1. Activities prohibited. Except as provided in
3 paragraph A, subparagraph (1), subsections 2 and 3 and
4 section 394, no person may perform or cause to be
5 performed any of the following activities without
6 first having obtained a permit from the Board of
7 Environmental Protection:

8 A. Dredging or removing materials from below the
9 normal high water line in a great pond, except:

10 (1) A permit for the dredging or removal of
11 materials from between the normal high water
12 line and the normal low water line in any
13 great pond that has been artificially formed
14 or increased and has a surface area in excess
15 of 30 acres may not be unreasonably withheld
16 when the areas to be dredged or altered are
17 high and dry due to pond drawdown;

18 B. Constructing or repairing any permanent
19 structure below the normal high water line in a
20 great pond;

21 C. Depositing any dredged spoil or fill below the
22 normal high water line in a great pond or on the
23 land adjacent to a great pond in such a manner
24 that the material may fall or be washed into the
25 great pond;

26 D. Bulldozing or scraping on land adjacent to a
27 great pond in such a manner that the material or
28 soil may fall or be washed into a great pond; or

29 E. Performing any action in violation of the
30 terms or conditions of a permit issued by the
31 board.

32 2. Permission of record owners. For purposes of
33 this section, the written permission of the record
34 owner or owners of submerged land shall be deemed
35 sufficient right, title or interest to confer standing
36 for submission of a permit application,

1 provided that the letter of permission specifically
2 identifies the activities being performed and the area
3 that may be used for that purpose. Notwithstanding
4 subsection 1, the board may not unreasonably deny a
5 permit application for any prohibited activity if the
6 owner or lessee of land adjoining a great pond has
7 made a diligent effort to locate and obtain permission
8 from the record owner or owners of submerged land and
9 has failed to do so.

10 3. Application. This section does not apply to
11 areas of the State within the jurisdiction of the
12 Maine Land Use Regulation Commission under Title 12,
13 chapter 206-A.

14 STATEMENT OF FACT

15 The purpose of this bill is to overcome present
16 requirements for legally binding right, title or
17 interest in submerged lands to make application for
18 great ponds alterations, and to allow permitting
19 agencies more flexibility in reviewing projects for
20 alterations affecting pond bottoms.

21 Presently, many such applications cannot be
22 accepted because landowners or lessees do not have
23 title to the lands below normal high or low water. In
24 many instances, especially Moosehead Lake, there are
25 several different owners of submerged lands and, in
26 some areas, individual or corporate owners of specific
27 submerged lands are not known, therefore making it
28 almost impossible to obtain sufficient right, title or
29 interest for improvements by upland owners and lessees.

30 In other instances, Federal Energy Regulatory
31 Commission regulations or corporate policies do not
32 permit the issuance of submerged lands leases, but do
33 permit the issuance of letters of permission for
34 specific projects to be undertaken on their lands.

35 The bill allows such letters of permission, which
36 specifically identify the work being allowed and the
37 area that may be used for that purpose, to serve as
38 sufficient right, title or interest to permit standing

1 for submission of great ponds permit applications to
2 regulatory review and permitting agencies.

3 Moreover, present laws do not differentiate
4 between natural and artificially created ponds,
5 therefore assuming that the majority of lands below
6 normal high water are normally flooded and therefore
7 offer aquatic and fisheries habitat and resources
8 which could be harmed by shoreline and lake bottom
9 alterations.

10 In cases of artificially created lakes, the area
11 between normal high and normal low water may
12 frequently be high and dry for several weeks or
13 months, reducing the values of these areas for aquatic
14 and fisheries habitat and resources. Allowing
15 alterations, by permit approval, in these areas when
16 the sites are dry would have minimal impact on the
17 lakes.

18

4208021988