

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "**B**" to H.P. 129, L.D. 173, Bill, "An Act to Amend the Definition of Freshwater Wetlands in the Natural Resources Protection Act"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Protect Freshwater Wetlands'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 38 MRSA §480-B, sub-§4, as enacted by PL 1987, c. 809, §2, is amended to read:

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

A. ~~Of-10-or-more-contiguous-acres;~~

B. ~~Characterized---predominantly---by---wetland---vegetation~~
Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

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

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

1 **Sec. 2. 38 MRSA §480-Q, sub-§§7 and 8**, as enacted by PL 1987,
c. 809, §2, are amended to read:

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5 **7. Forestry.** Alteration of a freshwater wetland associated
7 with normal forestry management and harvesting activities is
9 exempt from the provisions of this article. The determination of
11 what constitutes normal forestry management and harvesting
13 activities shall be made by the Maine Land Use Regulation
15 Commission regardless of whether the freshwater wetland is
located within the jurisdiction of the commission and according
to standards adopted by the commission. For purposes of this
subsection, "normal forestry management and harvesting
activities" means those activities which meet the forestry
standards of the Maine Land Use Regulation Commission; and

17 **8. Hydropower projects.** Hydropower projects are exempt
19 from the provisions of this article to the extent provided in
21 section 634. Alteration of a freshwater wetland associated with
the operation of a hydropower project, as defined in section 632,
is exempt from the provisions of this article, but is subject to
chapter 5, article 1, subarticle 1-B, where applicable. ;

23 **Sec. 3. 38 MRSA §480-Q, sub-§9**, as amended by PL 1989, c. 306,
25 §2, is further amended to read:

27 **9. Public works.** A permit is not required for emergency
29 repair or ~~normal~~ maintenance, reconstruction and repair of
existing public works which affect any protected natural
resource. An activity which is exempt under this subsection
shall employ erosion control measures to prevent sedimentation of
any surface water, shall not block fish passage in any water
course and shall ~~not result in minimize~~ any additional intrusion
of the public works into the protected natural resource.
33 Conformance with these provisions shall be subject to rule making
35 by the department. This exemption does not apply to any activity
37 on an outstanding river segment as listed in section 480-P or
coastal wetland or to new construction involving the addition of
travel lanes, roads or bridges in new locations; and

39 **Sec. 4. 38 MRSA §480-Q, sub-§10**, as enacted by PL 1989, c.
41 306, §3, is amended to read:

43 **10. Aquaculture.** Aquaculture activities regulated by the
45 Department of Marine Resources under Title 12, section 6072.
Ancillary activities, including, but not limited to, building or
altering docks or filling of wetlands, are not exempt from the
47 provisions of this article. ; and

49 **Sec. 5. 38 MRSA §480-Q, sub-§11** is enacted to read:

51 11. Freshwater wetlands. In freshwater wetlands which are
not considered part of a great pond, river, stream or brook and

1 are either less than 10 acres in size or are characterized by
2 predominantly forest vegetation, the following activities are
3 exempt from the requirements of 480-C:

5 A. Maintenance, repair or replacement of any existing
6 structure or fill, provided that there is no additional
7 intrusion of the structure or fill into the wetland;

9 B. Placement of any electric, telephone and cable
10 television utility cables, water supply utility pipeline or
11 sewerage pipeline across the wetland, provided that if any
12 excavation occurs, the wetland is restored to its original
13 condition;

15 C. Placement of road crossing fill in the wetland, provided
16 that the crossing has a culvert or bridge or is otherwise
17 designed to prevent restriction of, and to withstand,
18 expected high water conditions, and provided that no more
19 than 200 linear feet of road bed is constructed in the
20 wetland; and

21 D. Placement of fill in the wetland which results in
22 alteration of less than one acre of wetland, provided the
23 applicant gives written notification by certified mail,
24 return receipt requested, to the department at least 20 days
25 prior to commencing the project. The notification shall
26 include the name, address and telephone number of the
27 applicant; the location of the planned project; a brief
28 description of the proposed project including its purpose,
29 the size of the wetland alteration and any other information
30 which the applicant believes is appropriate.

31 The applicant may proceed with the project if the
32 commissioner has not notified the applicant that an
33 application is required and at least 20 days have passed
34 since the commissioner received the notification.

35 If the commissioner finds that there is reasonable
36 likelihood that the project will not satisfy the standards
37 found in section 480-D, the commissioner shall, within 20
38 days after the commissioner's receipt of the notification,
39 advise the applicant of the commissioner's finding that a
40 permit is required for the proposed project.

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FISCAL NOTE

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45 It is expected that the Department of Conservation will need
46 approximately \$150,000 annually to continue mapping wetlands, and
47 that the Department of Environmental Protection will need
48 additional enforcement personnel.'

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STATEMENT OF FACT

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This amendment proposes to regulate activities in wetlands that are below 10 acres in size. Certain exemptions from the natural resources protection laws apply. These are:

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1. Normal maintenance and repair;

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2. Above-ground placement of utility cables;

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3. Limited placement of fill for up to 200 linear feet of a road crossing; and

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4. Placement of less than 1 acre of fill with prior notification of the Department of Environmental Protection. The Department of Environmental Protection retains the option of in-depth review if commissioner, within 20 days, finds a likelihood of violation of natural resources protection laws.

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Reported by the Minority of the Committee on Energy and Natural Resources
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6/16/89

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