

MAINE STATE LEGISLATURE

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L.D. 1125

(Filing No. H-399)

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

COMMITTEE AMENDMENT "A" to H.P. 813, L.D. 1125, Bill, "An Act to Amend the Natural Resources Protection Act"

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. 12 MRSA §685-B, sub-§1, ¶C, as amended by PL 1987, c. 769, Pt. A, §49, is further amended to read:

C. No person may commence any construction or operation of any development without a permit issued by the commission.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Development Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards and rules adopted by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; ~~the Wetlands Law, Title 38, sections 471 to 478; the Great Ponds Law, Title 38, chapter 3, subchapter I, article 1-A; or the Stream Alteration Law, Title 38, chapter 3, subchapter I, article 2-A~~ or the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed

1 development does not meet the requirements of the Site
2 Location of Development Law, Title 38, sections 481 to 488;
3 the Minimum Lot Size Law, sections 4807 to 4807-G; the
4 ~~Wetlands Law, Title 38, sections 471 to 478; the Great Ponds~~
5 ~~Law, Title 38, section 422; or the Stream Alteration Law,~~
6 ~~Title 38, chapter 3, subchapter I, article 2-A~~ or the
7 natural resource protection laws, Title 38, chapter 3,
8 subchapter I, article 5-A; and the rules adopted with
9 respect to any of such statutes, as any of such statutes,
10 rules or regulations may apply.

11
12 The commission may establish standards within which
13 authority may be delegated to its staff, to approve with
14 reasonable conditions or deny applications submitted
15 hereunder. Any person aggrieved by a decision of the staff
16 shall have the right to a review of such that decision by
17 the commission members.

18
19 The commission shall establish coordination and assistance
20 procedures for all land use permits issued by agencies of
21 the State for proposed development within the unorganized
22 townships and plantations. Such Those procedures shall, to
23 the extent practicable, ensure: The availability to the
24 public of necessary information concerning such those land
25 use permits; the provision of assistance to applicants in
26 obtaining such those permits from such state agencies; the
27 coordination of application procedures, time schedules,
28 application forms and similar requirements so as to reduce
29 delay and duplication of effort by applicants and the
30 issuing agencies. Such State permit issuing agencies shall
31 cooperate with the commission in the development and
32 effectuation of such coordination and assistance procedures.

33
34 **Sec. 2. 12 MRSA §685-B, sub-§4, ¶A,** as amended by PL 1985, c.
35 819, Pt. A, §19, is further amended to read:

36
37 A. Adequate technical and financial provision has been made
38 for complying with the requirements of the state's air and
39 water pollution control and other environmental laws, and
40 those standards and regulations adopted with respect
41 thereto, including without limitation the Site Location of
42 Development Law, Title 38, sections 481 to 488, the Minimum
43 Lot Size Law, sections 4807 to 4807-G, ~~the Wetlands Law,~~
44 ~~Title 38, sections 471 to 478, the Great Ponds Law, Title~~
45 ~~38, chapter 3, subchapter 1, article 1-A, and the Stream~~
46 ~~Alteration Law, Title 38, chapter 3, subchapter I, article~~
47 2-A and the natural resource protection laws, Title 38,
48 chapter 3, subchapter I, article 5-A, for solid waste
49 disposal, for controlling of offensive odors and for the
50 securing and maintenance of sufficient healthful water
51 supplies; and

52
53 **Sec. 3. 38 MRSA §480-B, sub-§§2 and 4,** as enacted by PL 1987,
54 c. 809, §2, are amended to read:

55

1 2. Coastal wetlands. "Coastal wetlands" means all tidal
2 and subtidal lands, including all areas below any identifiable
3 debris line left by tidal action; all areas with vegetation
4 present that is tolerant of salt water and occurs primarily in a
5 salt water or estuarine habitat; and any swamp, marsh, bog,
6 beach, flat or other contiguous lowland which is subject to tidal
7 action ~~or annual storm flowage at any time excepting periods of~~
8 maximum storm activity during the maximum spring tide level as
9 identified in tide tables published by the National Ocean
10 Service. Coastal wetlands may include portions of coastal sand
11 dunes.

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

15 A. Of 10 or more contiguous acres, or of less than 10
16 contiguous acres and adjacent to a surface water body,
17 excluding any river, stream or brook, such that in a natural
18 state, the combined surface area is in excess of 10 acres;

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

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

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

33 **Sec. 4. 38 MRSA §480-C, sub-§3, as enacted by PL 1987, c. 809,**
34 **§2, is amended to read:**

37 3. Application. This section applies to all protected
38 natural resources statewide without regard to whether they have
39 been mapped pursuant to section 480-I, except that significant
40 wildlife habitat must be mapped before this section applies.

41 **Sec. 5. 38 MRSA §480-D, sub-§2, as enacted by PL 1987, c. 809,**
42 **§2, is amended to read:**

45 2. Soil erosion. The activity will not cause unreasonable
46 erosion of soil or sediment nor unreasonably inhibit the natural
47 transfer of soil from the terrestrial to the marine or freshwater
48 environment.

49 **Sec. 6. 38 MRSA §480-Q, sub-§2, as enacted by PL 1987, c. 809,**
50 **§2, is amended to read:**

1 2. Maintenance and repair. Maintenance and minor repair of
2 structures in fragile mountain areas, or to structures above the
3 high water line causing no additional intrusion of an existing
4 structure into the great pond, river, stream or brook, wetland or
5 sand dune; and maintenance and repair of private crossings of a
6 river, stream or brook, provided that:

7
8 A. Erosion control measures are taken to prevent
9 sedimentation of the water;

11 B. The crossing does not block fish passage in the
12 watercourse; and

13 C. There is no additional intrusion into the river, stream
14 or brook.

17 Sec. 7. 38 MRSA §480-Q, sub-§§7 and 8, as amended by PL 1987,
18 c. 890, §1, are further amended to read:

19
20 7. Forestry. Alteration ~~of a freshwater wetland~~ associated
21 with normal forestry management and harvesting activities in or
22 adjacent to a freshwater wetland is exempt from the provisions of
23 this article. The determination of what constitutes normal
24 forestry management and harvesting activities shall be made by
25 the Maine Land Use Regulation Commission regardless of whether
26 the freshwater wetland is located within the jurisdiction of the
27 commission and according to standards adopted by the commission.
28 For purposes of this subsection, "normal forestry management and
29 harvesting activities" means those activities which meet the
30 forestry standards of the Maine Land Use Regulation Commission;

31
32 8. Hydropower projects. Hydropower projects are exempt
33 from the provisions of this article to the extent provided in
34 section 634. Alteration of a freshwater wetland associated with
35 the operation of a hydropower project, as defined in section 632,
36 is exempt from the provisions of this article, but is subject to
37 chapter 5, subchapter I, article 1, subarticle 1-B, where
38 applicable; and

39 Sec. 8. 38 MRSA §480-Q, sub-§9, as enacted by PL 1987, c. 890,
40 §2, is amended to read:

43 9. Public works. A permit is not required for emergency
44 repair or normal maintenance and repair of existing public works
45 which affect any protected natural resource. An activity which
46 is exempt under this subsection shall employ erosion control
47 measures to prevent sedimentation of any surface water, shall not
48 block fish passage in any water course and shall not result in
49 any additional intrusion of the public works into the protected
50 natural resource. This exemption does not apply to any activity
51 on an outstanding river segment as listed in section 480-P+; and

1 Sec. 9. 38 MRSA §480-Q, sub-§10 is enacted to read:

3 10. Soil evaluation. Borings taken to evaluate soil
5 conditions in or adjacent to a great pond, river, stream or
7 brook, coastal wetland, freshwater wetland or sand dune are
 exempt from the provisions of this article provided that no area
 of wetland vegetation is destroyed or permanently removed.'

9
11 **STATEMENT OF FACT**

13 This amendment changes several provisions of the original
15 bill. First, language within the Maine Land Use Regulation
 Commission laws relating to permits now covered under the natural
 resources protection laws is updated.

17 The amendment updates the definition of coastal wetlands and
19 amends language defining a freshwater wetland to include wetlands
 adjacent to surface water bodies that are 10 acres in size when
 combined.

21 This amendment also removes the section of the bill that
23 would have allowed the Department of Environmental Protection to
 refuse applications for activities that are not approvable.

25 Section 4 of the amendment clarifies that the natural
27 resources protection law applies statewide. Section 5 of the
29 amendment is language from the original bill. It adds
 "unreasonably" to the standard to clarify that some erosion
 control work is approvable.

31 Section 6 adds to the language proposed in the bill to
33 include the stipulation that there be no additional intrusion of
35 fill for maintenance work on private crossings. This brings the
 requirements for private crossings into conformance with
 requirements for public crossings.

37 Section 7 includes exemptions to forestry activities in
39 areas adjacent to freshwater wetlands. Section 9 provides an
41 exemption for soil borings which are typically taken as part of
 the data collection phase of a project.

Reported by the Committee on Energy and Natural Resources
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