

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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H.P. 813

House of Representatives, April 11, 1989

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

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

Ed Pert

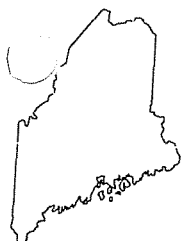
EDWIN H. PERT, Clerk

Presented by Representative MARSH of West Gardiner.
Cosponsored by Representative JACQUES of Waterville.

STATE OF MAINE

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

An Act to Amend the Natural Resources Protection Act.



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

3 Sec. 1. 38 MRSA §480-B, sub-§§2, 4 and 5, as enacted by PL 1987,
5 c. 809, §2, are amended to read:

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

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

21 A. Of 10 or more contiguous acres;

23 B. Characterized---predominantly---by---wetland---vegetation
25 Inundated or saturated by surface or ground water at a
27 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

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

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

37 5. Great ponds. "Great ponds" means any inland bodies of
39 water and their associated wetlands which in a natural state have
a surface area in excess of 10 acres and any inland bodies of
water artificially formed or increased which have a surface area
in excess of 30 acres.

41 Sec. 2. 38 MRSA §480-C, sub-§4 is enacted to read:

43 4. Refusal of application. The Board of Environmental
45 Protection shall not accept for processing any application which
47 is for an activity not approvable under rules adopted pursuant to
this article.

49 Sec. 3. 38 MRSA §480-D, sub-§2, as enacted by PL 1987, c. 809,
51 §2, is amended to read:

1 In some instances, however, vegetation alone is not a sufficient
3 determinant. This change adds soils and hydrology to the
5 definition to be used for establishing a wetland boundary.
7 Wetlands of any size which are contiguous to a lake are currently
regulated by the department as part of the lake. This additional
language clarifies the department's authority for this regulation.

9 A great deal of the department's staff time is taken up
11 processing applications for activities which cannot be approved
13 under existing regulations. An example is an application to
15 build a house in a high hazard flood zone or in a sand dune
17 system. The proposed activity is prohibited by the sand dune
19 rules, but an application can still be filed and must be
processed by the department. Further, the denial decision by the
commissioner can then be appealed to the Board of Environmental
Protection even though the decision has been mandated by the
rule. Section 2 would allow the commissioner to refuse any
application for an activity prohibited by regulation.

21 Strict application of subsection 2 under the Maine Revised
23 Statutes, section 480-D, would prevent virtually all erosion
25 control activities from being approved. Section 3 adds
"unreasonably" to the standard to clarify that some erosion
control work is approvable.

27 The Natural Resources Protection Act eliminated exemptions
29 for private stream crossing activities such as roads and
31 waterlines. Section 4 establishes an exemption for maintenance
and repair work, such as culvert replacements, provided that
erosion of soil and sedimentation of the water are prevented, and
no blockage of fish passage in the watercourse occurs.

33 The Maine Land Use Regulation Commission has responsibility
35 for regulating activities on lakes, streams and wetlands in the
37 unorganized territory of the State. Section 5 clarifies that
activities in the unorganized territory continue to be regulated
39 by the commission and not the Department. This section also
provides an exemption for soil borings which are typically taken
as part of the data collection phase of a project.