MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1125

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.

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.



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Sec. 1.	38 MRSA	§480-B	, sub-§§2,	4 and 5,	as	${\tt enacted}$	by	PL	1987,
c. 809, §2,	are amend	ed to	read:						

- 2. Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action er-annual storm flowage at any time excepting periods of maximum storm aetivity 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.
- 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 inclusions of land that do not conform to the criteria of this subsection.
- 5. Great ponds. "Great ponds" means any inland bodies of 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.

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

- 4. Refusal of application. The Board of Environmental
 Protection shall not accept for processing any application which
 is for an activity not approvable under rules adopted pursuant to
 this article.
- Sec. 3. 38 MRSA §480-D, sub-§2, as enacted by PL 1987, c. 809, §2, is amended to read:

1	2. Soil erosion. The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural
3	transfer of soil from the terrestrial to the marine or freshwater environment.
5	Sec. 4. 38 MRSA §480-Q, sub-§2, as enacted by PL 1987, c. 809
7	\$2, is amended to read:
9	Maintenance and repair. Maintenance and minor repair of structures in fragile mountain areas, or to structures above the
11	high water line causing no additional intrusion of an existing structure into the great pond, river, stream or brook, wetland or
13	sand dune; and maintenance and repair of private crossings of a river, stream or brook, provided that erosion control measures
15	are taken to prevent sedimentation of the water and provided that the crossing does not block fish passage in the watercourse;
17	
19	Sec. 5. 38 MRSA §480-Q, sub-§§ 9 and 10 are enacted to read:
	9. Maine Land Use Regulation Commission jurisdiction.
21	Activities are exempt from this article provided that:
23	A. The Maine Land Use Regulation Commission's standards for the alterations will not be exceeded when standards are
25	established by the commission; or
27	B. A permit has been obtained from the Maine Land Use Regulation Commission for the alterations.
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31	10. Soil evaluation. Borings taken to evaluate soil conditions in or adjacent to a great pond, river, stream or
	brook, coastal wetland, freshwater wetland or sand dune are
33	exempt from the provisions of this article provided that no area
35	of wetland vegetation is destroyed or permanently removed.
37	
	STATEMENT OF FACT
39	mbig bill makes the following aboves to love administered
41	This bill makes the following changes to laws administered by the Department of Environmental Protection.
43	In section 1, the phrase "annual storm flowage at any time excepting periods of maximum storm activity" in the coastal
45	wetlands definition is vague which makes it difficult to establish the wetland boundary in the field. This change
47	replaces the phrase with "the maximum spring tide level as identified in tide tables published by the United States Coast
49	and Geodetic Survey." The Natural Resources Protection Act defines a "freshwater wetland" solely on the basis of wetland
51	vegetation.

In some instances, however, vegetation alone is not a sufficient determinant. This change adds soils and hydrology to the definition to be used for establishing a wetland boundary. Wetlands of any size which are contiquous 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.

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A great deal of the department's staff time is taken up processing applications for activities which cannot be approved under existing regulations. An example is an application to build a house in a high hazard flood zone or in a sand dune system. The proposed activity is prohibited by the sand dune 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 Section 2 would allow the commissioner to refuse any application for an activity prohibited by regulation.

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

The Natural Resources Protection Act eliminated exemptions for private stream crossing activities such as roads 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.

The Maine Land Use Regulation Commission has responsibility for regulating activities on lakes, streams and wetlands in the unorganized territory of the State. Section 5 clarifies that activities in the unorganized territory continue to be regulated 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.

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