

# MAINE STATE LEGISLATURE

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R. of S

L.D. 1647

(Filing No. S- 267)

STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 585, L.D. 1647, Bill, "An Act to Amend the Mandatory Shoreland Zoning Law"

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 §4812-D, as enacted by PL 1985, c. 488, §3, is reallocated to 38 MRSA §449.

Sec. 2. 12 MRSA §4818, as enacted by PL 1985, c. 236, is repealed.

Sec. 3. 38 MRSA §435, as repealed and replaced by PL 1987, c. 815, §§1 and 11, is amended to read:

**§435. Shoreland areas**

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, or within 250 feet of the upland edge of a coastal or freshwater wetland, or within 75 feet of the high-water line of a stream. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

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1 It is further declared that, in accordance with Title 12,  
 3 section 402, certain river and stream segments, as identified in  
 5 the Department of Conservation's 1982 Maine Rivers Study and as  
 7 specifically delineated in section 437, are significant river  
 segments and deserve special shoreland zoning controls designed  
 to protect their natural and recreational features.

9 Zoning ordinances adopted pursuant to this article need not  
 11 depend upon the existence of a zoning ordinance for all of the  
 13 land and water areas within a municipality, notwithstanding Title  
 15 30 30-A, section 4962 4503, as it is the intention of the  
 17 Legislature to recognize that it is reasonable for municipalities  
 to treat shoreland areas specially and immediately to zone around  
 water bodies rather than to wait until such time as zoning  
 ordinances may be enacted for all of the land within municipal  
 boundaries.

19 All existing municipal ordinances dealing with subjects of  
 21 this section currently in effect and operational on April 18,  
 23 1986, are declared to be valid and shall continue in effect until  
 rescinded, amended or changed according to municipal ordinance,  
 charter or state law.

25 **Sec. 4. 38 MRSA §436-A, sub-§§1, 5, 7 and 11,** as enacted by PL  
 27 1987, c. 815, §§3 and 11, are amended to read:

29 **1. Coastal wetlands.** "Coastal wetlands" means all tidal  
 31 and subtidal lands; all lands below any identifiable debris line  
 33 left by tidal action; all lands with vegetation present that is  
 35 tolerant of salt water and occurs primarily in a salt water or  
 estuarine habitat; and any swamp, marsh, bog, beach, flat or  
 other contiguous low land which is subject to tidal action ~~or~~  
~~normal-storm-flowage-at-any-time-except~~ during periods of the  
maximum storm-activity spring tide level as identified in tide  
tables published by the National Ocean Service. Coastal wetlands  
 37 may include portions of coastal sand dunes.

39 **5. Freshwater wetlands.** "Freshwater wetlands" means  
 41 freshwater swamps, marshes, bogs and similar areas which are:

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

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

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1 Freshwater wetlands may contain small stream channels or  
 3 inclusions of land that do not conform to the criteria of this  
 subsection.

5 **7. Great pond.** "Great pond" means any inland body of water  
 7 which in a natural state has a surface area in excess of 10 acres  
 and any inland body of water artificially formed or increased  
 9 which has a surface area in excess of 30 acres except for the  
 purposes of this article, where the artificially formed or  
 11 increased inland body of water is completely surrounded by land  
 held by a single owner ~~and except those privately owned inland~~  
 13 ~~bedies--of--water--which--are--held--primarily--as--waterfowl--and~~  
~~fishbreeding areas or for hunting and fishing.~~

15 **11. River.** "River" means a free-flowing body of water  
 17 including its associated flood plain wetlands from that point at  
 which it provides drainage for a watershed of 25 square miles to  
 19 its mouth.

21 **Sec. 5. 38 MRSA §436-A, sub-§11-A** is enacted to read:

23 11-A. Stream. "Stream" means a free-flowing body of water  
from the outlet of a great pond or the point of confluence of 2  
 25 perennial streams as depicted on the most recent edition of a  
United States Geological Survey 7.5-minute series topographic  
 27 map, or if not available, a 15-minute series topographic map, to  
the point where the body of water becomes a river.

29 **Sec. 6. 38 MRSA §437, sub-§4**, as reallocated by PL 1985, c.  
 31 481, Pt. A, §25, is amended to read:

33 **4. Fish River.** The Fish River from the bridge in Fort Kent  
 Mills to the ~~Fort Kent and~~ outlet of Eagle Lake in Wallagrass  
 35 ~~Plantation townline~~, and from the Portage Lake and T.14, R.6,  
 townline to the Portage Lake and T.13, R.7, W.E.L.S. townline,  
 37 excluding ~~Portage~~ Portage Lake;

39 **Sec. 7. 38 MRSA §438-A, sub-§§2 to 4**, as enacted by PL 1987, c.  
 815, §§5 and 11, are amended to read:

41 **2. Municipal ordinances.** In accordance with a schedule  
 43 adopted by the board and acting in accordance with a local  
 comprehensive plan, municipalities shall prepare and submit to  
 45 the board zoning and land use ordinances which are consistent  
 with, or are no less stringent than, the minimum guidelines  
 47 adopted by the board and ~~which address state land use management~~  
~~policeies cited in Title 30, chapter 239, subchapter VI and~~, for  
 49 coastal communities, which address the coastal management  
 policies cited in section 1801. When a municipality determines  
 51 that special local conditions ~~of urbanization~~ within portions of  
 the shoreland zone require a different set of standards than from

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1 those in the minimum guidelines, the municipality shall document  
2 the special conditions and submit them, together with its  
3 proposed ordinance provisions, to the board for review and  
4 approval.

5  
6 **3. Board approval.** Municipal ordinances ~~and---any~~ <sup>and</sup>  
7 amendments and any repeals of ordinances shall not be effective  
8 unless approved by the board. In determining whether to approve  
9 municipal ordinances or amendments, the board shall consider the  
10 legislative purposes described in section 435, the minimum  
11 guidelines and any special local conditions which, in the  
12 judgment of the board, justify a departure from the requirements  
13 of the minimum guidelines in a manner which is not inconsistent  
14 with the legislative purposes described in section 435.  
15 Recognizing that the guidelines are intended as minimum  
16 standards, the board shall approve a municipal ordinance which  
17 imposes more restrictive standards than those in the guidelines.  
18 If an ordinance or an amendment adopted by a municipality  
19 contains standards which are inconsistent with or less stringent  
20 than the minimum guidelines, the board may approve the proposed  
21 ordinances or amendment with conditions imposing the minimum  
22 guidelines in place of the inconsistent or less stringent  
23 standard or standards. Those conditions shall be effective and  
24 binding within the municipality and shall be administered and  
25 enforced by the municipality. If the board fails to act on any  
26 proposed municipal ordinance or amendment within 30 45 days of  
27 the board's receipt of the proposed ordinance or amendment, the  
28 ordinance or amendment is automatically approved. Any  
29 application for a shoreland zoning permit submitted to a  
30 municipality within the 30-day 45-day period shall be governed by  
31 the terms of the proposed ordinance or amendment if the ordinance  
32 or amendment is approved under this subsection.

33  
34 **4. Failure to adopt ordinances.** If a municipality fails to  
35 adopt ordinances as required under this article or if the board  
36 determines that an ordinance which a municipality has adopted  
37 does not satisfy the requirements and purposes under this  
38 article, and that the board is unable to make the ordinance  
39 consistent with the minimum guidelines by the imposition of  
40 conditions, as set forth in subsection 3, the board, acting in  
41 accordance with Title 5, chapter 375, subchapter II, shall adopt  
42 suitable ordinances, or suitable provisions of ordinances, on  
43 behalf of the municipality. Notwithstanding subsections 2 and 3,  
44 if the board determines that special water quality considerations  
45 on a great pond warrant more restrictive standards than those  
46 contained in the minimum guidelines, the board may adopt the  
47 additional standards for all municipalities outside the  
48 jurisdiction of the Maine Land Use Regulation Commission which  
49 abut those waters. Following adoption by the board, these  
50 ordinances or provisions shall be effective and binding within  
51 the municipality and shall be administered and enforced by that  
municipality.

1           **Sec. 8. 38 MRSA §439-A, sub-§§4, 5 and 6,** as enacted by PL 1987,  
3       c. 815, §§7 and 11, is amended to read:

5           **4. Setback requirements.** Notwithstanding any provision in  
7       a local ordinance to the contrary, all new principal and  
9       accessory structures and substantial expansions of such  
11       structures within the shoreland zone as established by section  
13       435 ~~must~~ shall meet the water setback requirements approved by  
15       the board, except structures which require direct access to the  
17       water as an operational necessity, such as piers, docks and  
19       retaining walls. For purposes of this subsection, a substantial  
21       expansion of a building shall be an expansion which increases  
      either the volume or floor area by 30% or more. This subsection  
      is not intended to prohibit a municipal board of appeals from  
      granting a variance, subject to the requirements of this article  
      and Title 30 ~~30-A~~, section 4963 ~~4353~~, nor is it intended to  
      prohibit a less than substantial expansion of an--accessory  
      ~~structure-attached-to~~ a legally existing nonconforming structure,  
      provided that the expansion does not create further nonconformity  
      with the water setback requirement.

23           **5. Timber harvesting.** Municipal ordinances shall regulate  
25       timber harvesting within the shoreland area. ~~These regulations~~  
27       ~~shall be consistent with the board's guidelines which~~  
      Notwithstanding any provision in a provision in a local ordinance  
      to the contrary, timber harvesting activities shall be no less  
      restrictive than the following:

29           A. Selective cutting of no more than 40% of the trees 4  
31       inches or more in diameter, measured at 4 1/2 feet above  
33       ground level, in any 10-year period, provided that a  
35       well-distributed stand of trees and other natural vegetation  
      remains; and

37           B. Within a shoreland area zoned for resource protection  
39       abutting a great pond there shall be no timber harvesting  
      within the strip of land extending 75 feet inland from the  
      normal high-water line except to remove safety hazards.

41       The board may adopt more restrictive guidelines consistent with  
43       the purposes of this subchapter, which shall then be incorporated  
      into local ordinances.

45           **6. Clearing of vegetation.** Within the shoreland ~~zone~~ area,  
47       municipal ordinances shall provide for effective vegetative  
49       screening between buildings and shorelines. ~~These ordinances~~  
51       ~~must be consistent with the board's guidelines which~~  
      Notwithstanding any provision in a local ordinance to the  
      contrary vegetative screening requirements shall ~~not~~ be no less  
      restrictive than the following:

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1       A. Within a strip extending 75 feet inland from the normal  
2       high-water mark, there shall be no cleared opening or  
3       openings, except for approved construction, and a well  
4       distributed stand of vegetation shall be retained;

5  
6       B. Within a shoreland area zoned for resource protection  
7       abutting a great pond there shall be no cutting of  
8       vegetation within the strip of land extending 75 feet inland  
9       from the normal high-water mark except to remove safety  
10      hazards; and

11  
12      C. Selective cutting of no more than 40% of the trees 4  
13      inches or more in diameter, measured at 4 1/2 feet above  
14      ground level, is allowed in any 10-year period, provided  
15      that a well-distributed stand of trees and other natural  
16      vegetation remains.

17  
18      The board may adopt more restrictive guidelines consistent with  
19      the purposes of this subchapter, which shall then be incorporated  
20      into local ordinances.

21  
22      **Sec. 9. 38 MRSA §440, 4th ¶**, as enacted by PL 1985, c. 794,  
23      Pt. A, §8, is amended to read:

24  
25      Zoning ordinances adopted or amended pursuant to this  
26      section shall designate as a resource protection zone or its  
27      equivalent, as defined in the guidelines adopted pursuant to  
28      section 442 438-A, subsection 1, all areas within the floodway of  
29      the 100-year flood plain along rivers and in the velocity zone in  
30      areas subject to tides, based on detailed flood insurance studies  
31      and as delineated on the Federal Emergency Management Agency's  
32      Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.  
33      This provision does not apply to areas zoned for general  
34      development or its equivalent, as defined in the guidelines  
35      adopted pursuant to section 442 438-A, subsection 1, as of the  
36      effective date of this paragraph, or within areas designated by  
37      ordinances as densely developed. The determination of which areas  
38      are densely developed shall be based on a finding that, as of the  
39      effective date of this paragraph, existing development meets the  
40      definition in section 436, subsection 1-B 3.

41  
42      **Sec. 10. 38 MRSA §441, sub-§1**, as amended by PL 1987, c. 737,  
43      Pt. C, §§87 and 106, is further amended to read:

44      **1. Appointment.** In every municipality, the municipal  
45      officers shall annually by July 1st appoint or reappoint a code  
46      enforcement officer, whose job may include being a local plumbing  
47      inspector or a building inspector and who may or may not be a  
48      resident of the municipality for which he is appointed. The  
49      municipal officers may appoint the planning board to act as the  
50      code enforcement officer. The municipal officers may remove a  
51      code enforcement officer for cause, after notice and hearing.

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1 This removal provision shall only apply to code enforcement  
3 officers who have completed a reasonable period of probation as  
established by the municipality pursuant to Title 30-A, section  
2791 2601. If not reappointed by a municipality, a code  
5 enforcement officer may continue to serve until a successor has  
been appointed and sworn.

7  
8 **Sec. 11. 38 MRSA §441, sub-§3, ¶C**, as amended by PL 1985, c.  
9 737, Pt. A, §111, is further amended to read:

11 C. Keep a complete record of all essential transactions of  
12 the office, including applications submitted, permits  
13 granted or denied, variances granted or denied, revocation  
actions, revocation of permits, appeals, court actions,  
15 violations investigated, violations found and fees  
collected. On an annual basis, a summary of this record  
17 shall be submitted to the Director of the Bureau of Land  
Quality Control and within the Department of Environmental  
19 Protection; and

21 **Sec. 12. 38 MRSA §444, first ¶**, as reallocated by PL 1985, c.  
22 481, Pt. A, §32, is amended to read:

23  
24 Any person who orders or conducts any activity in violation  
25 of a municipal ordinance adopted under this chapter shall be  
penalized in accordance with Title 30 30-A, section 4966 4506.

27  
28 **Sec. 13. 38 MRSA §445**, as enacted by PL 1985, c. 481, Pt. A,  
29 §94, is amended to read:

31 **§445. Guidelines for shoreland zoning along significant river**  
32 **segments**

33  
34 In addition to the guidelines adopted under section 438  
35 438-A, the following guidelines for the protection of the  
shorelands shall apply along significant river segments  
37 identified in section 437. These guidelines are intended to  
maintain the special values of these particular river segments by  
39 protecting their scenic beauty and undeveloped character.

41 1. **New principal structures.** New principal structures,  
except for structures related to hydropower facilities, shall be  
43 set back a minimum of 125 feet from the normal high-water ~~mark~~  
line of the river. These structures shall be screened from the  
45 river by existing vegetation.

47 2. **New roads.** Developers of new permanent roads, except for  
those providing access to a structure or facility allowed in the  
49 250-foot zone, shall demonstrate that no reasonable alternative  
route outside of the zone exists. When roads must be located  
51 within the zone, they shall be set back as far as practicable



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1 from the normal high-water mark line and screened from the river  
by existing vegetation.

3  
5 3. New gravel pits. Developers of new gravel pits shall  
demonstrate that no reasonable mining site outside of the zone  
7 exists. When gravel pits must be located within the zone, they  
shall be set back as far as practicable from the normal  
9 high-water mark line and no less than 75 feet and screened from  
the river by existing vegetation.

11 Sec. 14. 38 MRSA §446, as enacted by PL 1985, c. 481, Pt. A,  
§95, is amended to read:

13 §446. Municipal ordinance review and certification

15 Each municipality with shorelands along significant river  
17 segments, as identified in section 438 437, shall review the  
adequacy of the zoning on these shorelands to protect the special  
19 values cited for these river segments by the Department of  
Conservation's 1982 Maine Rivers Study and for consistency with  
21 the guidelines established under section 445. Prior to December  
15, 1984, each such municipality shall certify to the Board of  
23 Environmental Protection either that its existing zoning for  
these areas is at least as restrictive as the guidelines  
25 established under section 445, or that it has amended its zoning  
for this purpose. This certification shall be accompanied by the  
27 ordinances and zoning maps covering these areas. Failure to  
accomplish the purposes of this subsection shall result in  
29 adoption of suitable ordinances for these municipalities, as  
provided for in section 442 438-A.

31 Sec. 15. 38 MRSA §448 is enacted to read:

33 §448. Municipalities establish commercial fishing and maritime  
35 activity zones

37 A municipality may, within coastal shoreland areas of that  
municipality, adopt zoning ordinances establishing a commercial  
39 fishing and maritime activity zone. In creating that zone, the  
municipality shall consider at least the following:

41  
43 1. Utilization. The number of commercial fishermen and the  
utilization of the shoreland area;

45 2. Availability. The availability of shoreland area for  
commercial fishing;

47  
49 3. Demand for property. The demands for shoreland property  
for commercial and residential purposes not related to commercial  
fishing or maritime activity; and

4. Access. Access to the shore and availability of space appropriate for commercial fishing and maritime activities.'

## STATEMENT OF FACT

Section 1 of this amendment reallocates a section relating to shoreland zoning from the Maine Revised Statutes, Title 12, to Title 38.

Section 2 of the amendment repeals a section relating to shoreland zoning in the Maine Revised Statutes, Title 12.

Sections 3, 7, 8, 10 and 12 of the amendment correct references to the recodified Maine Revised Statutes, Title 30, which was replaced by Title 30-A.

Section 4 of the amendment adds soils and hydrology to the definition of "freshwater wetland" to be used where vegetation is either absent or insufficient for establishing a wetland boundary. Language has also been added in this revised version of the bill to make the definition consistent with changes made in the amended version of LD 1125, "An Act to Amend the Natural Resources Protection Act."

Section 4 of the amendment also removes an exemption for privately owned bodies of water which are held primarily as waterfowl and fish breeding areas or for hunting and fishing. These water bodies should not be exempt simply because of their use.

Section 4 of the amendment will increase protection around Maine's streams from the present 15% coverage of shoreland miles to about 50% coverage. Additionally, this section makes it clear that associated flood plain wetlands are considered to be part of the river. This is consistent with other Department of Environmental Protection laws.

Section 5 of the amendment defines the term "stream."

Section 6 of the amendment designates additional mileage along the Fish River in Wallagrass as being designated as "significant" because that town no longer is under the Maine Land Use Regulation Commission's jurisdiction. The Maine Land Use Regulation Commission's ordinance provided adequate protection for the river but local shoreland zoning in itself does not sufficiently protect that river section.

Section 7 of the amendment deletes references to local comprehensive planning. With the enactment of the growth management laws in the Second Regular Session of the 113th

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1     Legislature, a separate timetable has been set up for  
3     municipalities to follow in coming up with their comprehensive  
   plans.

5             Section 7 of the amendment also adds new provisions that  
   will allow the Board of Environmental Protection to approve with  
7     conditions, or partially approve locally adopted ordinances.  
   Current language allows only total approval or total denial of an  
9     ordinance. This section also extends the time period for review  
   and approved of ordinances by the Board of Environmental  
11    Protection.

13            Sections 8 to 12 of the amendment do not change from the  
   original bill. Sections 13 and 14 correct cross-references and  
15   section 15 enacts in Title 38 a provision of law deleted from  
   Title 12 in section 2.

Reported by Senator Kany for the Committee on Energy and  
Natural Resources. Reproduced and Distributed Pursuant to  
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