

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

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Legislative Document

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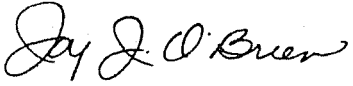
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S.P. 585

In Senate, May 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.

  
JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator PEARSON of Penobscot.  
Cosponsored by Representative SIMPSON of Casco.

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STATE OF MAINE

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

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An Act to Amend the Mandatory Shoreland Zoning Law.

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

3 **Sec. 1. 12 MRSA §4812-D**, as enacted by PL 1985, c. 488, §3,  
5 is reallocated to 38 MRSA §448.

7 **Sec. 2. 12 MRSA §4818**, as enacted by PL 1985, c. 236, is  
9 reallocated to 38 MRSA §449.

11 **Sec. 3. 38 MRSA §435, 3rd ¶**, as repealed and replaced by PL  
13 1987, c. 815, §§1 and 11, is amended to read:

15 Zoning ordinances adopted pursuant to this article need not  
17 depend upon the existence of a zoning ordinance for all of the  
19 land and water areas within a municipality, notwithstanding Title  
21 30 ~~30-A~~, section 4962 ~~4503~~, as it is the intention of the  
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.

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

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

37 3. **Densely developed area.** "Densely developed area" means  
39 any commercial, or industrial ~~or compact residential~~ area of 10  
41 or more acres with a density of at least one principal structure  
per 2 acres or any compact residential area with a density of at  
least 3 dwelling units per 200 feet of frontage.

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

47 A. Of 10 or more contiguous acres; and

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

1  
3 C. Not considered part of a great pond, coastal wetland,  
river, stream or brook.

5 Freshwater wetlands may contain small inclusions of land that do  
7 not conform to the criteria of this subsection.

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

19 11. River. "River" means a free-flowing body of water  
including its associated flood plain wetlands from that point at  
21 which it provides drainage for a watershed of 25 square miles to  
its mouth; except that, effective July 1, 1991, that point at  
23 which a river begins shall be from the outlet of a great pond or  
point of confluence of 2 perennial streams as depicted on the  
25 most recent edition of a United States Geological Survey 7.5 or  
15-minute series topographic map.

27 Sec. 5. 38 MRSA §437, sub-§4, as reallocated by PL 1985, c.  
29 481, Pt. A, §25, is amended to read:

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

37 Sec. 6. 38 MRSA §438-A, sub-§2, as enacted by PL 1987, c. 815,  
39 §§5 and 11, is amended to read:

41 2. Municipal ordinances. In accordance with a schedule  
adopted by the board and acting in accordance with a local  
43 comprehensive plan, municipalities shall prepare and submit to  
the board zoning and land use ordinances which are consistent  
45 with, or are no less stringent than, the minimum guidelines  
adopted by the board and which address state land use management  
47 policies cited in Title 30 30-A, chapter 239 191, subchapter ~~VI~~  
and, for coastal communities, the coastal management policies  
49 cited in section 1801. When a municipality determines that  
special local conditions of urbanization within portions of the  
51 shoreland zone require a different set of standards than those in  
the minimum guidelines, the municipality shall document the  
special conditions and submit them, together with its proposed  
53 ordinance provisions, to the board for review and approval.

1  
3           **Sec. 7. 38 MRSA §439-A, sub-§§4, 5 and 6**, as enacted by PL 1987,  
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 39 30-A, section 4963 4504, 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~~  
~~shall be consistent with the board's guidelines which~~  
27 Notwithstanding any 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  
well-distributed stand of trees and other natural vegetation  
remains; and

35           B. Within a shoreland area zoned for resource protection  
37 abutting a great pond there shall be no timber harvesting  
39 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~~  
~~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  
51 restrictive than the following:

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

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

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

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

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

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

**Sec. 9. 38 MRSA §441, sub-§1**, as amended by PL 1987, c. 737, Pt. C, §§87 and 106, is further amended to read:

1. **Appointment.** In every municipality, the municipal officers shall annually by July 1st appoint or reappoint a code enforcement officer, whose job may include being a local plumbing inspector or a building inspector and who may or may not be a resident of the municipality for which he the code enforcement officer is appointed. The municipal officers may appoint the

1 planning board to act as the code enforcement officer. The  
2 municipal officers may remove a code enforcement officer for  
3 cause, after notice and hearing. This removal provision shall  
4 only apply to code enforcement officers who have completed a  
5 reasonable period of probation as established by the municipality  
6 pursuant to Title 30-A, section 2701 2601. If not reappointed by  
7 a municipality, a code enforcement officer may continue to serve  
8 until a successor has been appointed and sworn.

9  
10 **Sec. 10. 38 MRSAs §441, sub-§3, ¶C**, as amended by PL 1985, c.  
11 737, Pt. A, §111, is further amended to read:

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

22  
23 **Sec. 11. 38 MRSAs §444, first ¶**, as reallocated by PL 1985, c.  
24 481, Pt. A, §32, is amended to read:

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

29  
30 **Sec. 12. 38 MRSAs §445, sub-§§1, 2 and 3**, as enacted by PL 1985,  
31 c. 481, Pt. A, §94, are amended to read:

32  
33 **1. New principal structures.** New principal structures,  
34 except for structures related to hydropower facilities, shall be  
35 set back a minimum of 125 feet from the normal high-water ~~mark~~  
36 line of the river. These structures shall be screened from the  
37 river by existing vegetation.

38  
39 **2. New roads.** Developers of new permanent roads, except  
40 for those providing access to a structure or facility allowed in  
41 the 250-foot zone, shall demonstrate that no reasonable  
42 alternative route outside of the zone exists. When roads must be  
43 located within the zone, they shall be set back as far as  
44 practicable from the normal high-water ~~mark~~ line and screened  
45 from the river by existing vegetation.

46  
47 **3. New gravel pits.** Developers of new gravel pits shall  
48 demonstrate that no reasonable mining site outside of the zone  
49 exists. When gravel pits must be located within the zone, they  
50 shall be set back as far as practicable from the normal  
51 high-water ~~mark~~ line and no less than 75 feet and screened from  
the river by existing vegetation.

1                   **Sec. 13. 38 MRSA §446**, as enacted by PL 1985, c. 481, Pt. A,  
3 §95, is amended to read:

5                   **§446. Municipal ordinance review and certification**

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

23  
25                   **STATEMENT OF FACT**

27                   Sections 1 and 2 move shoreland zoning provisions from Title  
12 to Title 38.

29                   Sections 3, 6, 7, 8, 9 and 11 correct references to the  
31 recodified Maine Revised Statutes, Title 30 which was replaced by  
Title 30-A.

33                   Section 4 deletes the phrase "normal storm flowage at any  
35 time excepting periods of maximum storm activity" in the coastal  
37 wetlands definition. This phrase is vague, making it difficult  
to establish the wetland boundary in the field. The phrase is  
39 replaced with the "maximum spring tide level" as identified in  
tide tables published by the National Oceanic and Atmospheric  
Administration.

41                   Section 4 also redefines "densely developed area" as it  
43 relates to residential structures, to be more realistic with  
45 actual shoreland development densities. The Natural Resources  
Protection Act defines a "freshwater wetland" solely on the basis  
47 of wetland vegetation. In some instances, however, vegetation  
alone is not a sufficient determinant. Section 4 adds soils and  
49 hydrology to the definition to be used where vegetation is either  
absent or insufficient for establishing a wetland boundary.



1           In addition, section 4 clarifies that wetlands of any size  
3 which are contiguous to a lake are currently regulated by the  
Department of Environmental Protection as part of the lake. The  
5 exemption for privately owned bodies of water which are held  
primarily as waterfowl and fish breeding areas or for hunting and  
7 fishing is removed. These water bodies should not be exempt  
simply because they are used primarily for these purposes.

9           Statewide shoreland zoning was established in part, to  
11 preserve and protect both water quality as well as public  
enjoyment and use of that water. Water quality is directly  
13 affected by land adjoining that water. The present law now  
provides for shoreland zoning along only 15% of Maine's flowing  
15 water. Despite significant strides taken to improve water  
quality through waste treatment, much more must be done to  
17 improve water quality through regulation of land-use activities  
adjacent to waters. The vast majority of our lakes, ponds,  
19 coastal and freshwater wetlands, saltwater and rivers are  
dependent on the quality of water passed on to them from  
21 upstream. Protection only the land adjoining our larger rivers  
falls far short of the intended purpose of this bill. In  
23 addition, for Maine's valuable fisheries, larger rivers are mere  
access corridors to the vital spawning, nursery and production  
25 areas found in the smaller headwater systems. Section 4 will  
increase protection from the present 15% coverage of shoreland  
27 miles to about 50% coverage. Additionally, this section makes it  
clear that associated flood-plain wetlands are considered to be  
29 part of the river. This is consistent with other Department of  
Environmental Protection laws.

31           Section 5 designates additional mileage along the Fish River  
in Wallagrass as "significant" because that town no longer is  
33 under the Land Use Regulation Commission's jurisdiction. The  
Land Use Regulation Commission's ordinance provided adequate  
35 protection for the river, but local shoreland zoning in itself  
does not sufficiently protect that river section.

37           Section 7 deletes the phrase "an accessory structure  
39 attached to" because a structure attached to a principal  
structure is part of the principal structure, not an accessory  
41 structure.

43           Section 7 clarifies that minimum "timber harvesting"  
standards supercede anything in a local ordinance which may be  
45 less restrictive.

47           Section 7 clarifies the minimum "clearing of vegetation"  
standards supercede anything in a local ordinance which may be  
49 less restrictive.

1           Section 8 makes changes to reflect the replacement of Title  
3           38, section 422 with section 438-A, subsection 1 and the update  
            of section 436, subsection 1-B to section 436, subsection 3.

5           Section 10 clarifies that the Director of the Bureau of Land  
7           Quality Control is within the Department of Environmental  
            Protection.

9           Section 12 eliminates the term normal high-water "mark" and  
11          replaces it with normal high water "line" to be consistent  
            throughout the law.

13          Section 13 corrects a statutory cross-reference.