

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

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House of Representatives, March 8, 1991

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.
Received by the Clerk of the House on March 6, 1991. Referred to the Committee on Energy and Natural Resources and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

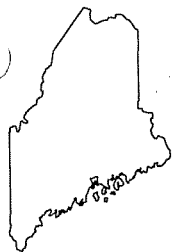
EDWIN H. PERT, Clerk

Presented by Representative ANDERSON of Woodland.
Cosponsored by Representative GOULD of Greenville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Amend the Mandatory Zoning and Subdivision Control Laws.



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

2
4 Sec. 1. 38 MRSA c. 3, sub-c. I, art. 2-B, first 3 lines, are repealed
and the following enacted in their place:

6 Article 2-B
7 MANDATORY SHORELAND ZONING

8 Sec. 2. 38 MRSA §436-A, sub-§5, as amended by PL 1989, c. 403,
10 §4, is further amended to read:

12 5. **Freshwater wetlands.** "Freshwater wetlands" means
14 freshwater swamps, marshes, bogs and similar areas, other than
forested wetlands, which are:

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

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

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

32 Sec. 3. 38 MRSA §436-A, sub-§11-A, as enacted by PL 1989, c.
34 403, §5, is amended to read:

36 11-A. **Stream.** "Stream" means a free-flowing body of water
38 from the outlet of a great pond or the point of confluence of 2
perennial streams as depicted on the most recent edition of a
40 United States Geological Survey 7.5-minute series topographic
map, or if not available, a 15-minute series topographic map, to
42 the point where the body of water becomes a river or flows to
another water body or wetland within a shoreland area.

44 Sec. 4. 38 MRSA §438-A, sub-§3, as affected by PL 1989, c.
46 890, Pt. A, §40 and amended by Pt. B, §44, is further amended to
read:

48 3. **Commissioner approval.** Municipal ordinances, amendments
and any repeals of ordinances are not effective unless approved
50 by the commissioner. In determining whether to approve municipal
ordinances or amendments, the commissioner shall consider the
legislative purposes described in section 435, the minimum

2 guidelines and any special local conditions which, in the
3 judgment of the commissioner, justify a departure from the
4 requirements of the minimum guidelines in a manner not
5 inconsistent with the legislative purposes described in section
6 435. Recognizing that the guidelines are intended as minimum
7 standards, the commissioner shall approve a municipal ordinance
8 that imposes more restrictive standards than those in the
9 guidelines. If an ordinance or an amendment adopted by a
10 municipality contains standards inconsistent with or less
11 stringent than the minimum guidelines, the commissioner, after
12 notice ~~and hearing~~ to the municipality, may approve the proposed
13 ordinances or amendment with conditions imposing the minimum
14 guidelines in place of the inconsistent or less stringent
15 standard or standards. Those conditions are effective and
16 binding within the municipality and must be administered and
17 enforced by the municipality. If the commissioner fails to act
18 on any proposed municipal ordinance or amendment within 45 days
19 of the commissioner's receipt of the proposed ordinance or
20 amendment, the ordinance or amendment is automatically approved.
21 Any application for a shoreland zoning permit submitted to a
22 municipality within the 45-day period is governed by the terms of
23 the proposed ordinance or amendment if the ordinance or amendment
24 is approved under this subsection. A municipality may appeal to
25 the board a decision of the commissioner under this subsection.

26 **Sec. 5. 38 MRSA §438-A, sub-§4,** as affected by PL 1989, c.
27 890, Pt. A, §40 and repealed and replaced by Pt. B, §45, is
28 amended to read:

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

2 Sec. 6. 38 MRSA §439-A, sub-§2, as enacted by PL 1987, c. 815,
3 §§7 and 11, is amended to read:

4
5 2. Jurisdiction. Notwithstanding the scope of shoreland
6 areas as identified in section 435, the jurisdiction of municipal
7 shoreland zoning and land use control ordinances adopted under
8 this article may include any structure built on, over or abutting
9 a dock, wharf, pier or other structure extending below the normal
10 high-water line of a water body or within any wetland.
11 Accordingly, municipalities may enact ordinances affecting
12 structures which extend over the water or are placed on lands
13 lying between high and low ~~watermarks~~ waterlines or within
14 wetlands.

15 Sec. 7. 38 MRSA §439-A, sub-§5, as amended by PL 1989, c. 803,
16 §1; c. 838, §2 and c. 878, Pt. G, §7, is repealed and the
17 following enacted in its place:

18
19 5. Timber harvesting. Municipal ordinances must regulate
20 timber harvesting within the shoreland area. Notwithstanding any
21 provision in a local ordinance to the contrary, standards for
22 timber harvesting activities may not be less restrictive than the
23 following:

24
25 A. No more than 40% of the trees 4 inches or more in
26 diameter, measured at 4 1/2 feet above ground level, may be
27 selectively cut in any 10-year period, provided that a
28 well-distributed stand of trees and other natural vegetation
29 remains.

30
31 B. Within a shoreland area zoned for resource protection
32 abutting a great pond there may be no timber harvesting
33 within the strip of land extending 75 feet inland from the
34 normal high-water line except to remove safety hazards.

35
36 C. Any site within a shoreland area zoned for resource
37 protection abutting a great pond, beyond the 75-foot strip
38 restricted in paragraph B, where timber is harvested must be
39 reforested within 2 growing seasons after the completion of
40 the harvest, according to guidelines adopted by the board.
41 The board shall adopt guidelines consistent with minimum
42 stocking standards promulgated pursuant to Title 12, section
43 8869.

44
45 The board may adopt more restrictive guidelines consistent with
46 the purposes of this subchapter, which shall then be incorporated
47 into local ordinances. Timber harvesting operations exceeding
48 the 40% limitation in paragraph A may be allowed by a planning
49 board upon a clear showing, including a forest management plan
50

2 signed by a Maine licensed professional forester, that such an
3 exception is necessary for good forest management. The planning
4 board shall notify the commissioner of each exception allowed.

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

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

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

17
18 **Sec. 9. 38 MRSA §441, sub-§3, ¶C, as amended by PL 1989, c.**
19 **403, §11, is further amended to read:**

20 C. Keep a complete record of all essential transactions of
21 the office, including applications submitted, permits
22 granted or denied, variances granted or denied, revocation
23 actions, revocation of permits, appeals, court actions,
24 violations investigated, violations found and fees
25 collected. On an ~~annual~~ biennial basis, beginning in
26 1992, a summary of this record shall be submitted by March 1
27 to the Director of the Bureau of Land Quality Control within
28 the Department of Environmental Protection; and

29
30
31
32 **STATEMENT OF FACT**

33
34 Section 1. This section brings the heading of Article 2-A
35 in line with common usage and removes an unnecessary reference to
36 subdivision regulation.

37
38 Section 2. This section withdraws forested wetlands from
39 the class of freshwater wetlands that municipalities are required
40 to regulate. In general, forested wetlands are less wet, have
41 lower habitat values and are less likely to be in actual
42 shoreland areas than other wetlands. In addition, there is a
43 lack of resources, at the state and municipal level, for
44 accurately delineating forested wetlands.

45
46 Section 3. This section clarifies that streams flowing to
47 any shoreland zoned water body or wetland, as well as those
48 becoming rivers, are regulated.

49
50 Sections 4 and 5. These sections require that
51 municipalities be notified by the commissioner before minimum
52

2 guidelines are imposed. The requirement for a hearing in every
3 case is removed because it is administratively infeasible, and
4 adequate procedural protections are afforded by availability of
an appeal to or an initial decision by the board.

6 Sections 6 and 8. These sections replace the term
7 "high-water mark" with "high-water line" to be consistent with
8 the rest of Article 2-B.

10 Section 7. This section removes a reference to "forested
11 wetlands" in order to be consistent with the change in section
12 2. In addition, a new provision would allow local planning
13 boards to exceed the 40% limitation on cutting in the Maine
14 Revised Statutes, Title 38, section 439-A, subsection 5,
15 paragraph A, if procedural requirements are met. This
16 flexibility may be necessary for good forest management of
17 diseased or damaged stands.

18 Section 9. This section changes the annual reporting
19 requirement to a biennial one. The annual reports have not been
20 useful, in part due to the limited response by municipalities and
21 in part due to a lack of available department staff to analyze
22 the incoming data. With a biennial system, the department will
23 continue to receive data on a regular basis while reducing costs
24 to municipalities.

26