

MAINE STATE LEGISLATURE

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ENERGY & NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1312, L.D. 1767, Bill, "An Act to Acquire Lake and Ocean Frontage to be Preserved for the Public"

Amend the bill by striking out the title and substituting the following:

'An Act to Establish the Public Access to Maine Waters Fund'

Further 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'Sec. 1. 5 MRSA c. 353, first 2 lines are repealed and the following enacted in their place:

CHAPTER 353

LAND FOR MAINE'S FUTURE BOARD

Sec. 2. 5 MRSA §6200, first ¶, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

The Legislature finds that Maine is blessed with an abundance of natural resources unique to the northeastern United States; that these natural resources provide Maine residents and visitors to the State with an unparalleled unparalleled diversity of outdoor recreation opportunities during all seasons of the year and a quality of life unmatched in this nation; that the continued availability of public access to these recreation opportunities and the protection of the scenic and natural environment are essential for preserving the State's high quality of life; that public acquisition programs have not kept pace with

COMMITTEE AMENDMENT

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2 the State's expanding population and changing land use patterns
3 so that Maine ranks low among the states in publicly owned land
4 as a percentage of total state area; that rising land values are
5 putting the State's real estate in shoreland and resort areas out
6 of reach to most Mainers Maine citizens and that sensitive lands
7 and resources of statewide significance are currently not well
8 protected and are threatened by the rapid pace of development;
9 and that public interest in the future quality and availability
10 for all Maine people of lands for recreation and conservation is
11 best served by significant additions of lands to the public
12 domain.

13 **Sec. 3. 5 MRSA §6201, sub-§3**, as enacted by PL 1987, c. 506,
14 §§1 and 4, is amended to read:

15 **3. Matching funds.** "Matching funds" means any combination
16 of public and private funds used in conjunction with the Land for
17 Maine's Future Fund or the Public Access to Maine Waters Fund for
18 the purpose of this chapter, including, but not limited to:
19 ~~Private~~ private contributions of cash or securities; money from
20 municipal or other public agencies; money from a federal matching
21 program, subject to the limitations of applicable federal and
22 state laws, in an amount authorized by the federal program;
23 contributions of real property, or interest in real property,
24 that serves the acquisition needs of the State as determined by
25 the Land for Maine's Future Board; in-kind contributions; or any
26 combination thereof of those funds. Contributions of land or
27 interest in land shall must be valued, for purposes of this
28 section, in the amount of their appraised value.

29 **Sec. 4. 5 MRSA §6203**, as enacted by PL 1987, c. 506, §§1 and
30 4, is amended to read:

31 **§6203. Land for Maine's Future Fund**

32 **1. Fund established.** There is established a ~~fund to be~~
33 ~~known as~~ the Land for Maine's Future Fund, ~~hereinafter called the~~
34 ~~"fund."~~ that is administered by the board. The fund ~~shall~~
35 ~~consist~~ Land for Maine's Future Fund consists of the proceeds
36 from the sale of any bonds authorized for the purposes of ~~this~~
37 ~~chapter~~ set forth in subsection 3 and any funds received as
38 contributions from private and public sources for those purposes.
39 ~~The fund shall~~ Land for Maine's Future Fund must be held separate
40 and apart from all other money, funds and accounts. Eligible
41 investment earnings credited to the assets of the ~~fund shall~~ Land
42 for Maine's Future Fund become part of the fund assets of that
43 fund. Any balance remaining in the ~~fund~~ Land for Maine's Future
44 Fund at the end of any fiscal year shall must be carried forward
45 for the next fiscal year.

50

2 **2. Fund available.** The fund--shall--be Land for Maine's
3 Future Fund is available to state agencies and designated
4 cooperating entities upon authorization of the Land-for-Maine's
Future-Board board for the purposes identified in subsection 3.

6 **3. Fund proceeds.** The proceeds of the fund Land for Maine's
7 Future Fund may be applied and expended to:

8 A. Acquire property or an interest in property which that
9 is determined by the board to be of state significance under
10 the guidelines of this chapter; and

11 B. Fund minor capital improvements on lands acquired lands
12 by proceeds from the Land for Maine's Future Fund to improve
13 accessibility, as long as these improvements do not exceed
14 5% of the appraised value of the acquired property.

15 **Sec. 5. 5 MRSA §6203-A** is enacted to read:

16 **§6203-A. Public Access to Maine Waters Fund**

17 **1. Fund established.** There is established the Public
18 Access to Maine Waters Fund that is administered by the board.
19 The Public Access to Maine Waters Fund consists of the proceeds
20 from the sale of bonds authorized for the purposes set forth in
21 subsection 3 and funds received as contributions from private and
22 public sources for those purposes. The Public Access to Maine
23 Waters Fund must be held separate and apart from all other money,
24 funds and accounts. Eligible investment earnings credited to the
25 assets of the Public Access to Maine Waters Fund become part of
26 the assets of that fund. Any balance remaining in the Public
27 Access to Maine Waters Fund at the end of a fiscal year must be
28 carried forward for the next fiscal year.

29 **2. Fund available.** The Public Access to Maine Waters Fund
30 is available to state agencies and designated cooperating
31 entities upon authorization of the board for the purposes
32 identified in subsection 3.

33 **3. Fund proceeds.** The proceeds of the Public Access to
34 Maine Waters Fund may be applied and expended to:

35 A. Acquire property or interests in property abutting fresh
36 or coastal waters when public access to those waters does
37 not exist or when the board determines that existing points
38 of public access are not sufficient; and

39 B. Provide minor capital improvements on lands acquired by
40 proceeds from the Public Access to Maine Waters Fund to
41 provide public access or improve accessibility, as long as

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2 these improvements do not exceed 5% of the appraised value
3 of the acquired property.

4 **Sec. 6. 5 MRSA §6204**, as amended by PL 1989, c. 502, Pt. B,
5 §2, is further amended to read:

6 **§6204. Board composition**

7
8 **1. Composition.** The board shall--~~consist~~ consists of 11
9 members, 6 ~~of whom shall be appointed~~ who are private citizens
10 and 5 ~~of whom shall be~~ who are permanent members. The permanent
11 members shall--~~be~~ are the Commissioner of Conservation; the
12 Commissioner of Inland Fisheries and Wildlife; the Commissioner
13 of Marine Resources; the Commissioner of Agriculture, Food and
14 Rural Resources; and the Director of the State Planning Office.

15
16 **2. Appointments.** The 6 appointed private citizen--~~members~~
17 shall--~~be~~ citizens are appointed by the Governor, subject to
18 review by the joint standing committee of the Legislature having
19 jurisdiction over natural resources matters and to confirmation
20 by the Legislature.

21
22 **3. Qualifications.** The 6 appointed--~~members shall~~ private
23 citizens must be selected based--~~on~~ for their knowledge of the
24 State's natural resources and landscape and their demonstrated
25 commitment to land conservation. Appointments shall--~~be made to~~
26 must provide broad geographic representation.

27
28 **4. Terms; compensation.** The appointed private citizen
29 members shall--~~be~~ are appointed to staggered 4-year terms. The
30 initial appointments shall--~~be as follows are~~: Two members for
31 2-year terms; 2 members for 3-year terms; and 2 members for
32 4-year terms. Appointed private citizen members may not serve no
33 more than 2 consecutive 4-year terms. The appointed members
34 shall receive the legislative per diem pursuant to chapter 379.

35
36 **5. Chair.** The chairman Governor shall appoint the chair of
37 the Land--~~for Maine's Future Board shall be appointed by the~~
38 Governer board.

39
40 **6. Assistance.** The Department of Conservation; the
41 Department of Inland Fisheries and Wildlife; the Department of
42 Transportation; the Department of Agriculture, Food and Rural
43 Resources; and the State Planning Office; and all other state
44 agencies shall provide staff support and assistance as--~~deemed~~
45 considered necessary by the board to fulfill the objectives
46 established--~~by~~ of this chapter. If agency assistance is not
47 available, consultants may be hired from the proceeds of either
48 the Land for Maine's Future Fund or the Public Access to Maine

Waters Fund to assist the board in carrying out its responsibilities.

Sec. 7. 5 MRSA §6205, as amended by PL 1989, c. 503, Pt. B, §22, is further amended to read:

§6205. Board meetings; rules and administrative proceedings

1. **Meetings.** The board shall meet at least 4 times each year ~~at the~~. ~~The chair shall call of the chairman meetings of~~ the board.

2. **Rules.** The board, acting in accordance with ~~Title--5,~~ section 8052, may adopt rules it deems considers necessary for the conduct of its business.

3. **Compensation.** Appointed members ~~shall~~ are entitled to receive compensation equal to legislative per diem and travel expenses as allowed under ~~Title--5,~~ section 12004-G, subsection 29, while engaged in board activities.

4. **Quorum.** A quorum of the board for the transaction of business ~~shall-be~~ is 7 members.

5. **Personal bias.** ~~Upon filing in good faith by a party of a timely~~ If a charge of bias or personal financial interest, direct or indirect, of is filed against a member in--a--proceeding requesting that member to disqualify--himself withdraw from a proceeding of the board, that member shall determine the-matter as-a whether or not to withdraw and shall make that determination part of the record of that proceeding.

Sec. 8. 5 MRSA §6206, as repealed and replaced by PL 1987, c. 858, §4, is amended to read:

§6206. Board responsibilities

1. **Responsibilities.** ~~The purpose-of-the board is-to~~ shall:

A. ~~By--June--1988,--complete~~ Complete an assessment of the State's public land acquisition needs and develop a strategy and guidelines, based on ~~this~~ that assessment, for use in allocating the proceeds of the Land for Maine's Future Fund and the Public Access to Maine Waters Fund. Both the assessment and the development of a strategy and guidelines ~~shall~~ must be conducted with opportunities for participation by ~~the--Maine--Advisory--Commission--on--Outdoor--Recreation,~~ interested state agencies and the public;

2 ~~B. By September 1988, report the board's findings, strategy~~
and ~~guidelines to the joint standing committee of the~~
4 ~~Legislature having jurisdiction over natural resources;~~

6 C. Receive and review funding requests from state agencies
and cooperating entities for acquisition projects meeting
8 state guidelines;

10 D. Authorize In accordance with the strategy and guidelines
developed under paragraph A, authorize distribution of
12 proceeds from the fund Land for Maine's Future Fund and the
Public Access to Maine Waters Fund for land acquisitions in
14 accordance with the approved strategy of property or
interests in property; and

16 E. Report biennially On January 1, 1995 and on January 1st
every 2 years thereafter, report to the joint standing
18 committee of the Legislature having jurisdiction over
natural resources matters on expenditure of the fund
20 expenditures from the Land for Maine's Future Fund and the
Public Access to Maine Waters Fund and revisions to the
22 strategies and guidelines.

24 Sec. 9. 5 MRSA §6206-A, as amended by PL 1989, c. 607, is
further amended to read:

26 **§6206-A. Nominations**

28
30 Prior to taking an action to designate land for negotiation
for acquisition, the board shall send by certified mail or
32 otherwise deliver a notice of this intention to the owner or
owners of land within the area proposed by the board for
acquisition, as the identity and address of such owner or owners
34 is shown on the tax maps or other tax records of the municipality
in which the land is located. ~~In the event that~~ If the land is
36 located within the unorganized territory, such notice shall must
be sent to the owner or owners as shown on the tax maps or other
38 tax records of the State Tax Assessor. After the completion of
negotiations, the board shall also publish a notice of its intent
40 to designate land for acquisition in a newspaper or newspapers of
general circulation which that identifies the land proposed by
42 the board for acquisition and which that notifies the residents
of the area that the board will accept public comments on the
44 proposed acquisition.

46 Any owner of land, ~~which~~ that has been nominated for
acquisition and is subject to the notice requirements of this
48 section, may submit a properly sworn affidavit to the board
indicating the owner's unwillingness to sell. ~~Such an~~ The
50 affidavit is notice to the board that continued evaluation of

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2 that land is inappropriate and, unless the board intends to
4 acquire an interest in the land through the use of eminent domain
pursuant to section 6207-A, the board may not consider that land
for acquisition.

6 **Sec. 10. 5 MRSA §6207**, as amended by PL 1989, c. 876, Pt. B,
§1, is further amended to read:

8 **§6207. Acquisition criteria**

10 1. **Distribution of funds.** The board shall authorize the
12 distribution of funds from the Land for Maine's Future Fund and
14 the Public Access to Maine Waters Fund to state agencies and
cooperating entities ~~as set forth in section 6203, subsection 3,~~
16 for the acquisition of natural lands ~~which~~ that meet the criteria
set forth in this chapter.

18 2. **Determination of state significance.** In determining
whether a proposed acquisition shall must be funded, in full or
20 in part, by the Land for Maine's Future Fund or the Public Access
to Maine Waters Fund, the board shall consider whether the site
22 is of state significance and:

24 A. Contains recreation lands, prime physical features of
the Maine landscape, areas of special scenic beauty,
26 farmland or open space, undeveloped shorelines, wetlands,
fragile mountain areas or lands with other conservation or
28 recreation values;

30 B. Is habitat for plant or animal species or natural
communities considered rare, threatened or endangered in the
32 State; or

34 C. Provides public access to recreation opportunities or
those natural resources identified in this section.

36 3. **Priorities.** Whenever possible, the ~~fund shall~~ Land for
38 Maine's Future Fund and the Public Access to Maine Waters Fund
must be used for land acquisition projects when matching funds
40 are available from cooperating entities, provided that the
proposed acquisition meets all other criteria set forth in this
42 chapter. ~~Priority For acquisitions funded by the Land for Maine's~~
Future Fund, the board shall also-be-given give priority to these
44 projects ~~which~~ that conserve lands with multiple outstanding
resource or recreation values or a single exceptional value,
46 provide geographic representation and build upon or connect
existing holdings.

48 4. **Nonqualifying expenditures.** The board shall may not fund:

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2 A. Facilities for organized recreational activities,
including, but not limited to, ballparks, tennis courts or
4 playgrounds;

6 B. ~~Capital~~ Except as provided in section 6203, subsection
3, paragraph B and section 6203-A, subsection 3, paragraph
8 B, capital improvements on any publicly owned facilities,
~~except for those lands acquired with fund money and then~~
10 ~~only for necessary access improvements up to a maximum of 5%~~
~~of the particular property's appraised value; and~~

12 C. The acquisition of land of which the primary use value
14 has been and will be as commercially harvested or
harvestable forest land.

16 **Sec. 11. 5 MRSA §6207-A**, as repealed and replaced by PL 1989,
18 c. 603, §2, is amended to read:

20 **§6207-A. Use of eminent domain**

22 The board may expend funds to acquire an interest in land
obtained by the use of eminent domain only if the expenditure or
24 acquisition has been approved by the Legislature or is with the
consent of the owner or owners of ~~sueh~~ the land, as the identity
26 and address of ~~sueh~~ the owner or owners is shown on the tax maps
or other tax records of the municipality in which ~~sueh~~ the land
28 is located. ~~In the event that~~ If the land is located within the
unorganized territory, for purposes of this section the identity
30 of the owner or owners ~~shall~~ must be as shown on the tax maps or
other tax records of the State Tax Assessor.

32 **Sec. 12. 5 MRSA §6208**, as amended by PL 1989, c. 603, §3, is
34 further amended to read:

36 **§6208. Municipal approval**

38 1. **Approval.** Approval by the elected municipal officials
~~shall be~~ is required when more than 1% of a municipality's state
40 valuation is considered for acquisition under ~~the~~ a bond issue.

42 2. **Transactions.** Any acquisition by eminent domain funded
by the board, when the land exceeds either 50 acres or \$100,000
44 in assessed value, ~~shall be~~ is subject to the approval of the
municipality in which the land is located. ~~Sueh~~ That approval
46 may be obtained either from the elected municipal officials or,
~~in the event that sueh~~ if those officials do not approve, by vote
48 of the town meeting or by referendum of the electorate. ~~In the~~
~~event that~~ If the land involved is located within the unorganized
territory, this requirement ~~shall~~ does not apply.

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2 **Sec. 13. 5 MRSA §6209**, as enacted by PL 1987, c. 506, §§1 and
4, is amended to read:

4 **§6209. Ownership; title; management**

6 1. **Uses of funds.** The fund board may be--used--for--the
8 acquisition--of use the Land for Maine's Future Fund and the
10 Public Access to Maine Waters Fund to acquire real property in
12 both fee and less-than-fee simple interest, including, but not
14 limited to, conservation easements, access easements, scenic
easements, other permanent interests in land and long-term leases
of at least 99 years, provided that those acquisitions are
primarily natural lands meeting the criteria set forth in this
chapter.

16 2. **Title.** Title to all lands acquired pursuant to this
18 chapter shall must be vested solely in the State. Management
responsibilities for the acquired lands may be contracted by the
20 land-owning state agency to cooperating entities, subject to
appropriate lease arrangements, upon the recommendation of the
agency's commissioner and approval of the board.

22 3. **Matching funds.** ~~For projects when~~ When matching funds
24 for a project include cash not derived from a bond request, an
26 allocation of up to 20% of the appraised value of the acquired
land or the amount of cash, whichever is less, may be put into
the stewardship account of the state agency holding title to the
28 land.

30 4. **Payments.** Payments from the fund may be made to
32 cooperating entities for qualifying lands acquired on behalf of
the State, provided that a state agency has issued to the
34 cooperating entity a letter of intent requesting assistance in
the acquisition. Upon submission to the state agency of a
36 cooperating entity's direct expenses for acquisition and related
costs of an authorized acquisition, the board shall authorize
38 payment of those expenses, provided that the total of all
expenses does not exceed the appraised value of the acquired
40 property. Expenses shall must be paid at intervals during the
acquisition process, as determined by the board.

42 5. **Land evaluated.** All lands acquired with fund money shall
44 from the Land for Maine's Future Fund or the Public Access to
Maine Waters Fund must be evaluated for rare, threatened or
46 endangered species of plants and animals, exemplary natural
communities, features of historic significance and other high
48 priority natural features and ecologic functions as determined by
the board, with reference to the best inventory data available to
the State. Subsequent management by state agencies holding
50 properties found to have such important features and functions

shall must reflect the objective of maintaining and protecting those features and functions.

6. **Legislative approval.** No-lands Land acquired under this chapter shall may not be sold or used for purposes other than those stated in this chapter, unless approved by a 2/3 majority of the Legislature.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

This bill establishes the Public Access to Maine Waters Fund to be funded by the sale of General Fund bonds and other contributions. No companion legislation to authorize a General Fund bond issue for this purpose is currently before the Legislature.

The Department of Conservation, the Department of Inland Fisheries and Wildlife, the Department of Transportation and the Department of Agriculture, Food and Rural Resources, as well as the State Planning Office and all other involved state agencies, will incur some minor additional costs related to the inclusion of the Public Access to Maine Waters Fund under the Land for Maine's Future Board. These costs can be absorbed within the agencies' existing budgeted resources.'

STATEMENT OF FACT

This amendment replaces the bill.

The amendment establishes the Public Access to Maine Waters Fund. The fund is administered by the Land for Maine's Future Board, but remains separate from the Land for Maine's Future Fund established by the Legislature in 1987.

The primary purpose of the new fund is to provide public access to fresh or coastal waters that presently have either no public access or very limited public access. The amendment directs the board to use money in the fund to buy land or interests in land to provide that access.

The amendment also adds a fiscal note to the bill and conforms existing law to current drafting standards.