

MAINE STATE LEGISLATURE

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L.D. 1918

DATE: *March 30, 1998*

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STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to H.P. 1368, L.D. 1918, Bill, "An Act to Clarify the Definition of Functionally Water-dependent Use as it Pertains to the Shoreland Zone"

Amend the bill in section 1 by striking out all of subsection 6 (page 1, lines 6 to 23 in L.D.) and inserting in its place the following:

'6. Functionally water-dependent uses. "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and ~~which cannot~~ that can not be located away from these waters. These uses include commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that ~~cannot~~ can not reasonably be located or operated at an inland site and uses ~~which~~ that primarily provide general public access to ~~marine or tidal~~ coastal or inland waters.'

Further amend the bill by inserting after section 1 the following:

'Sec. 2. 38 MRSA §438-A, sub-§7 is enacted to read:

7. Exclusion of recreational boat storage buildings.
Notwithstanding subsection 3, the exclusion of recreational boat

storage buildings from the definition of "functionally water-dependent uses" is deemed to be incorporated into each municipal shoreland zoning ordinance on the effective date of this subsection, regardless of any prior approval of the ordinance by the commissioner.

Sec. 3. 38 MRSA §439-A, sub-§4, as amended by PL 1989, c. 403, §8, is further amended to read:

4. **Setback requirements.** Notwithstanding any provision in a local ordinance to the contrary, all new principal and accessory structures and substantial expansions of such structures within the shoreland zone as established by section 435 shall ~~must~~ meet the water setback requirements approved by the board, except ~~structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls~~ functionally water-dependent uses. For purposes of this subsection, a substantial expansion of a building shall be is an expansion ~~which~~ that 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-A, section 4353, nor is it intended to prohibit a less than substantial expansion of a legally existing nonconforming structure, ~~provided that~~ as long as the expansion does not create further nonconformity with the water setback requirement.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The Department of Environmental Protection will incur some minor additional costs to amend certain rules and to notify municipalities about a definition change in the shoreland zoning laws. These costs can be absorbed within the department's existing budgeted resources.'

SUMMARY

This amendment clarifies that recreational boat storage buildings are not functionally water-dependent uses for purposes of mandatory shoreland zoning, and that retaining walls are functionally water-dependent uses. The amendment also provides that the exclusion of recreational boat storage buildings from the definition of "functionally water-dependent uses" is deemed to be incorporated into each municipal shoreland zoning ordinance. Finally, the amendment clarifies that functionally

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2 water-dependent uses are exempt from the water setback
requirements approved by the Board of Environmental Protection,
4 within the Department of Environmental Protection.

6 The amendment also adds a fiscal note to the bill.

8 SPONSORED BY: J. Nutting
10 (Senator NUTTING)

12 COUNTY: Androscoggin
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