

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

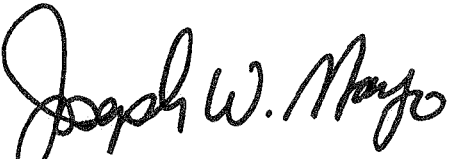
No. 2092

H.P. 1493

House of Representatives, January 20, 1998

**An Act to Clarify Certain Laws Pertaining to the Department of
Environmental Protection, Bureau of Land and Water Quality.**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative COWGER of Hallowell.

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

2
4 **Sec. 1. 38 MRSA §480-B, sub-§1**, as enacted by PL 1987, c. 809,
§2, is amended to read:

6 **1. Coastal sand dune systems.** "Coastal sand dune systems"
means sand and gravel deposits within a marine beach system,
8 including, but not limited to, beach berms, frontal dunes, dune
ridges, back dunes and other sand and gravel areas deposited by
10 wave or wind action. Coastal sand dunes dune systems may extend
into the coastal wetlands.

12 **Sec. 2. 38 MRSA §488, sub-§18, ¶E**, as enacted by PL 1995, c.
14 493, §7, is amended to read:

16 E. For purposes of this subsection only, "roundwood" means
logs, bolts and other round sections of wood as they are cut
18 from the tree and split firewood.

20 **Sec. 3. 38 MRSA §488, sub-§19**, as amended by PL 1997, c. 485,
§1, is further amended by amending the first paragraph to read:

22 **19. Municipal capacity.** A structure, as defined in section
24 482, subsection 6, that is from 3 acres up to and including 7
acres or a subdivision, as defined in section 482, subsection 5,
26 that is made up of 15 or more lots for single-family, detached,
residential housing, common areas or open space with an aggregate
28 area of from 30 acres up to and including 100 acres is exempt
from review under this article if ~~located--wholly--within--a~~
30 ~~municipality--or--municipalities--having--delegated--review--pursuant~~
~~to--section--489--A--or--meeting~~ the criteria in paragraphs A to D are
32 met as determined by the department. The planning board of the
municipality in which the development is located or an adjacent
34 municipality may petition the commissioner to review such a
structure or subdivision if it has regional environmental
36 impacts. This petition must be filed within 20 days of the
receipt of the application by the municipality. State
38 jurisdiction must be exerted, if at all, within 30 days of
receipt of the completed project application by the commissioner
40 from the municipality or within 30 days of receipt of any
modification to that application from the municipality. Review
42 by the department is limited to the identified regional
environmental impacts. The criteria are as follows:

44 **Sec. 4. 38 MRSA §490-D, sub-§3-A**, as amended by PL 1995, c.
46 700, §24, is further amended to read:

48 **3-A. Medium borrow pits unlicensed on October 1, 1993.**
Notwithstanding subsection 3, the following provisions apply to a

2 medium borrow pit that on October 1, 1993 was not licensed under
3 article 6 and on which gravel had been extracted to a level less
4 than 5 feet above, at or below the seasonal high water table.

5 The medium borrow pit owner or operator may not further excavate
6 in areas where gravel had been extracted to a level less than 5
7 feet above, at or below the seasonal high water table unless a
8 variance is granted by the department.

10 A. The department may not require the medium borrow pit
11 owner or operator to elevate the medium borrow pit floor to
12 5 feet or more above the seasonal high water table as a
13 condition of operation.

14 C. The medium borrow pit owner or operator may reclaim as a
15 pond that area of the medium borrow pit ~~less than 5 feet~~
16 above on which gravel had been extracted to a level at or
17 below the seasonal high water table.

18
19 **Sec. 5. PL 1995, c. 704, Pt. A, §23, sub-§3,** as amended by PL 1997,
20 c. 502, §12, is further amended to read:

21
22 3. A municipality with delegated authority pursuant to the
23 Maine Revised Statutes, Title 38, section 489-A prior to the
24 effective date of this Act continues to have delegated authority
25 following the effective date of this Act ~~and is presumed to have~~
26 ~~capacity pursuant to Title 38, section 488, subsection 19 as of~~
27 ~~the effective date of this Act.~~ If a municipality with delegated
28 authority for a specific type of development is determined to
29 have capacity for that type of development, the Department of
30 Environmental Protection shall terminate delegated authority for
31 that type of development.

32
33 **Sec. 6. PL 1995, c. 704, Pt. C, §2** is amended to read:

34
35 **Sec. C-2. Effective date.** This Act takes effect July 1, 1997,
36 except section 1 of this Part takes effect 90 days after
37 adjournment of the Second Regular Session of the 117th
38 Legislature. The following provisions take effect September 19,
39 1997: Part A, section 10 that amends the Maine Revised Statutes,
40 Title 38, section 484, subsection 4; Part A, section 11 that
41 enacts Title 38, section 484, subsection 4-A; and that portion of
42 Part B, section 2 that enacts Title 38, section 420-D.

43
44 **Sec. 7. Retroactivity.** That section of this Act that amends
45 Public Law 1995, chapter 704, Part C, section 2 applies
46 retroactively to July 1, 1997.

SUMMARY

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4 This bill clarifies the definition in the natural resources
6 protection laws of coastal sand dune systems to provide that
8 these systems may include areas containing coarser materials such
10 as gravel. A technical correction is also made, changing
12 "coastal sand dunes" to "coastal sand dune systems," to use the
14 defined term. This bill amends the site location of development
law's exemption for roundwood and lumber storage yards to
specifically include split firewood. It also corrects a
substantive conflict in the site location of development laws by
providing that a municipality may have delegated authority to
review developments or developments in the same municipality may
be exempt under the capacity exemption, but not both.

16

18 This bill clarifies a provision in the performance standards
20 for excavation for borrow, clay, topsoil or silt laws that allows
22 a medium pit owner or operator not licensed under the site laws
24 on October 1, 1993 to reclaim certain areas as ponds. It
26 provides that further excavation is not allowed, without a
variance from the department, in areas previously excavated
within 5 feet of the seasonal high water table, or at or below
the seasonal high water table. The bill also changes the
effective date of the site location of development law's erosion
and stormwater standards and the new stormwater management law
from July 1, 1997 to September 19, 1997.