

MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1635, L.D. 2265, Bill, "An Act to Reduce Nonpoint Source Pollution from Existing Sources"

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

'An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend the Shoreland Zoning Laws and Amend the Site Location of Development Laws'

Further amend the bill by striking out all of sections 1 to 3 and inserting in their place the following:

'Sec. 1. 38 MRSA §420-C, as amended by PL 1997, c. 502, §1, is further amended by inserting after the first paragraph a new paragraph to read:

A person who owns property that is subject to erosion because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials shall take measures in accordance with the dates established under this paragraph to prevent unreasonable erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. Adequate and timely temporary and permanent stabilization measures must be taken and maintained on that site to prevent unreasonable erosion and sedimentation. This paragraph applies on and after July 1, 2005 to property that is located in the watershed of a body of water most at risk as identified in the department's storm water rules adopted pursuant to section 420-D and that is subject to erosion of soil or sediment into a protected natural resource as defined in section

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2 480-B, subsection 8. This paragraph applies on and after July 1,
3 2010 to other property that is subject to erosion of soil or
4 sediment into a protected natural resource as defined in section
5 480-B, subsection 8.'

6 Further amend the bill by striking out all of section 5 and
7 inserting in its place the following:

8 'Sec. 5. 38 MRSA §439-A, sub-§4-A is enacted to read:

10 4-A. Alternative expansion requirement. Notwithstanding
11 subsection 4, a municipality may adopt an ordinance pursuant to
12 this subsection that permits expansions of principal and
13 accessory structures that do not meet the water setback
14 requirements approved by the Board of Environmental Protection if
15 the ordinance is no less restrictive than the requirements in
16 this subsection.

18 A. All new principal and accessory structures, excluding
19 functionally water-dependent uses, must meet the water
20 setback requirements approved by the Board of Environmental
21 Protection. An expansion of a legally existing
22 nonconforming structure pursuant to this subsection may not
23 create further nonconformity with the water setback
24 requirement.

26 B. Expansion of any portion of a structure within 25 feet
27 of the normal high-water line of a water body or upland edge
28 of a wetland is prohibited, even if the expansion will not
29 increase nonconformity with the water setback requirement.
30 Expansion of an accessory structure that is located closer
31 to the normal high-water line of a water body or upland edge
32 of a wetland than the principal structure is prohibited,
33 even if the expansion will not increase nonconformity with
34 the water setback requirement.

36 C. Legally existing nonconforming principal and accessory
37 structures that do not meet the water setback requirements
38 may be expanded or altered as follows, as long as other
39 applicable standards of land use adopted by the municipality
40 are met and the expansion is not prohibited by paragraph A
41 or B.

44 (1) For structures located less than 75 feet from the
45 normal high-water line of a water body or upland edge
46 of a wetland, the maximum combined total floor area for
47 all structures is 1,000 square feet, and the maximum
48 height of any structure is 20 feet or the height of the
49 existing structure, whichever is greater.

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(2) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total floor area for all structures is 1,500 square feet, and the maximum height of any structure is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line or upland edge of a wetland must meet the floor area and height limits in subparagraph (1).

Existing principal and accessory structures that exceed the floor area or height limits under this paragraph may not be expanded, except as provided in paragraph E.

For the purposes of this paragraph, a basement is not counted toward floor area.

D. When a basement is added to an existing structure or when a basement is constructed as part of a reconstruction or replacement structure, the structure and the basement must be placed so that the setback is met to the greatest practical extent, as determined by the municipal planning board or, if authorized by the municipal planning board, the certified code enforcement officer.

E. A municipality may permit an expansion that causes the maximum floor area limits established in paragraph C to be exceeded by not more than 500 square feet if:

(1) The principal structure is set back at least 50 feet from the normal high-water line of a water body or upland edge of a wetland;

(2) An existing well-distributed stand of trees and other vegetation, as defined in the minimum guidelines adopted by the Board of Environmental Protection, extends at least 50 feet inland from the normal high-water line or upland edge of a wetland for the entire width of the property or, if such a stand is not present, a written plan by the property owner to reestablish a buffer of native trees, shrubs and other ground cover within 50 feet of the shoreline is approved by the municipal planning board. The plan must be implemented at the time of construction and must be designed to meet the minimum guidelines adopted by the Board of Environmental Protection as the vegetation matures. Rules adopted pursuant to this

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2 subparagraph are routine technical rules pursuant to
3 Title 5, chapter 375, subchapter II-A; and

4 (3) The municipal planning board approves a written
5 mitigation plan. The plan must be developed,
6 implemented and maintained by the property owner. A
7 mitigation plan must provide for the following
8 mitigation measures.

10 (a) Unstabilized areas resulting in soil erosion
11 must be mulched, seeded or otherwise stabilized
12 and maintained to prevent further erosion and
13 sedimentation to water bodies and wetlands.

14 (b) Roofs and associated drainage systems,
15 driveways, parking areas and other nonvegetated
16 surfaces must be designed or modified, as
17 necessary, to prevent concentrated flow of storm
18 water runoff from reaching a water body or
19 wetland. Where possible, runoff must be directed
20 through a vegetated area or infiltrated into the
21 soil through the use of a dry well, stone apron or
22 similar device.

24 The written plans required pursuant to subparagraphs 2 and 3
25 must be filed in the registry of deeds of the county in
26 which the property is located.

28 A copy of all permits issued pursuant to this paragraph must
29 be forwarded by the municipality to the department within 14
30 days of the issuance of the permit.

32 **Sec. 6. 38 MRSA §488, sub-§15, as corrected by RR 1995, c. 2,**
33 **§97, is amended to read:**

36 **15. Exemption for former military bases.** Development on a
37 military base at the time ownership of the military base is
38 acquired by a state or local development authority is exempt from
39 review under this article. Subsequent transfer of ownership of a
40 former military base or any portion of a former military base by
41 a state or local development authority to another entity does not
42 affect the exemption granted under this subsection. Development
43 proposed or occurring on a former military base after ownership
44 of the military base is acquired by a state or local development
45 authority is subject to review under this article, except that
46 section 482, subsection 2, paragraph E does not apply to the
47 development to the extent that the development reuses a building
48 and associated facilities in existence on September 29, 1995.

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For purposes of this subsection, "military base" means all property under the ownership or control of a federal military authority prior to the acquisition of ownership by a state or local development authority, the ownership of which is subsequently acquired by a state or local development authority. For purposes of this subsection, "ownership" means a fee interest or leasehold interest in property.'

Further amend the bill in section 6 in subsection 1 in the 4th line (page 6, line 16 in L.D.) by inserting after the following: "streams" the following: ', except that the report may not address buffer strips on land used for agricultural or silvicultural activities'

Further amend the bill in section 6 in subsection 2 in the last line (page 6, line 32 in L.D.) by inserting after the following: "areas" the following: ', particularly those abutting clam flats and other shellfish harvesting areas'

Further amend the bill in section 6 by inserting after subsection 2 the following:

'3. The department shall evaluate the availability of nonphosphorous fertilizer for use on lawns and other domestic areas and recommend measures for increasing consumer use of nonphosphorous fertilizers.'

Further amend the bill by inserting after section 7 the following:

'Sec. 8. Report; shoreland zoning. By January 15, 2003, the Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding compliance with the Maine Revised Statutes, Title 38, section 439-A, subsection 4-A. The report must evaluate use of and compliance with the alternative expansion provisions of that subsection and evaluate the environmental benefit of the provisions in comparison with the measures permissible under Title 38, section 439-A, subsection 4.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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

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The Department of Environmental Protection will incur some minor additional costs to administer certain changes in the shoreland zoning guidelines. These one-time costs can be covered by using available federal funds.

The Department of Environmental Protection will also incur some minor additional costs to submit certain required reports to the Legislature. These costs can be absorbed within the department's existing budgeted resources.

The additional costs associated with working with the Department of Environmental Protection on an evaluation of certain subsurface disposal systems can be absorbed by the Department of Human Services utilizing existing budgeted resources.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$86.45 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.

SUMMARY

The amendment does the following.

1. It strikes section 1 from the bill, which authorized the Maine Municipal Bond Bank to make loans from the clean water revolving loan fund to nonprofit organizations.
2. It strikes section 2 from the bill, which restricted the use of fertilizer containing phosphorous on lawns and similar areas within a lake or pond watershed.
3. It provides that erosion and sedimentation prevention provisions apply to certain property in an organized area of the State subject to erosion of soil or sediment into a protected natural resource because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials. The amendment requires the property owner to take

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measures by certain dates to prevent unreasonable erosion of soil or sediment into a protected natural resource. The prevention provisions apply on and after July 1, 2005 on property that is located in the watershed of a body of water most at risk as identified in the Department of Environmental Protection's storm water rules and that is subject to erosion of soil or sediment into a protected natural resource. The prevention provisions apply on and after July 1, 2010 on other property that is subject to erosion of soil or sediment into a protected natural resource. The erosion and sedimentation measures do not apply to agricultural fields. Forest management activities conducted in accordance with applicable standards of the Maine Land Use Regulation Commission are deemed to comply with the erosion and sedimentation control provisions.

4. It strikes from section 5 of the bill a proposed mandatory shoreland zoning law requirement that a municipal planning board approve a written plan to mitigate nonpoint source pollution before the issuance of a permit for certain significant construction involving a structure that does not meet water setback requirements. It retains the provisions of the bill that amend the mandatory shoreland zoning laws to allow a municipality to adopt an ordinance that permits the expansion of nonconforming structures using standards different from the current 30% expansion rule. The amendment also adds a requirement that the Department of Environmental Protection report by January 15, 2003 on how the environmental benefits of these measures compare with the 30% expansion rule.

5. It amends the site location of development laws by exempting certain development on former military bases from the traffic threshold that triggers a review of that development under the law. A development given this exemption is one that reuses a building and associated facilities on the former military base that was in existence on September 29, 1995.

6. It prohibits the study in section 6 of the bill on nonpoint source pollution from addressing buffer strips on land used or agricultural or silvicultural purposes. It also requires the study to evaluate the availability of nonphosphorous fertilizers for use on lawns and other domestic areas.