

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 612

S.P. 184

In Senate, February 8, 2001

An Act to Permit Excavations Within 25 Feet of Streams.

Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator McALEVEY of York.
Cosponsored by Senators: CARPENTER of York, FERGUSON of Oxford, KNEELAND of
Aroostook, SAVAGE of Knox, Representative: MURPHY of Berwick.

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

2
4 **Sec. 1. 38 MRSA §490-D, sub-§5-A,** as amended by PL 1995, c.
700, §24, is further amended to read:

6 **5-A. Protected natural resources.** A natural buffer strip
7 must be maintained between the working edge of an excavation and
8 a river, stream, brook, great pond or coastal wetland as defined
9 in section 480-B. A natural buffer strip must also be maintained
10 between the working edge of an excavation and certain freshwater
11 wetlands as defined in section 480-B and having the
12 characteristics listed in paragraph B. Excavation activities
13 conducted within 100 feet of a protected natural resource must
14 comply with the applicable permit requirement under article 5-A.
15 The width requirements for natural buffer strips are as follows.

16 A. A natural buffer strip at least 100 feet wide must be
17 maintained between the working edge of the excavation and
18 the normal high water line of a great pond classified as GPA
19 or a river flowing to a great pond classified as GPA.

22 B. A natural buffer strip at least 75 feet wide must be
23 maintained between the working edge of the excavation and
24 any other water body, river, stream, brook, coastal wetland
25 or significant wildlife habitat contained within a
26 freshwater wetland or a freshwater wetland consisting of or
27 containing:

28 (1) Under normal circumstances, at least 20,000 square
29 feet of aquatic vegetation, emergent marsh vegetation
30 or open water, except for artificial ponds or
31 impoundments; or

34 (2) Peat lands dominated by shrubs, sedges and
35 sphagnum moss.

36
37 For purposes of this subsection, the width of a natural buffer
38 strip is measured from the upland edge of floodplain wetlands; if
39 no floodplain wetlands are present, the width of the natural
40 buffer strip is measured from the normal high water mark of a
41 great pond, river, stream or brook or the upland edge of a
42 freshwater or coastal wetland. The department may not grant a
43 variance from this subsection, except that the department may
44 grant a variance from paragraph B to permit a lesser width
45 requirement between the working edge of the excavation and a
46 river, stream or brook, as long as the variance will not result
47 in the natural buffer strip being reduced to less than 25 feet
48 and as long as the owner or operator undertakes safety measures
49 required by the department.

2 **Sec. 2. 38 MRSA §490-E, 2nd ¶**, as enacted by PL 1995, c. 700,
§25, is amended to read:

4 The department shall adopt rules that set forth the
standards for granting a variance from the performance standards
6 in this article. These rules are major substantive rules as
defined in Title 5, chapter 375, subchapter II-A. ~~These rules~~
8 ~~must be provisionally adopted and submitted to the Legislature~~
~~for review not later than January 1, 1997.~~ Notwithstanding Title
10 5, section 8072, subsection 3, the Executive Director of the
Legislative Council shall immediately assign those provisionally
12 adopted rules to the joint standing committee of the Legislature
having jurisdiction over natural resources matters.

14 **Sec. 3. 38 MRSA §490-Z, sub-§5**, as enacted by PL 1995, c. 700,
16 §35, is amended to read:

18 **5. Protected natural resources.** A natural buffer strip
must be maintained between the working edge of an excavation and
20 a river, stream, brook, great pond or coastal wetland as defined
in section 480-B. A natural buffer strip must also be maintained
22 between the working edge of an excavation and certain freshwater
wetlands as defined in section 480-B and have the characteristics
24 listed in paragraph B. Excavation activities conducted within
100 feet of a protected natural resource must comply with the
26 applicable permit requirements under article 5-A. The width
requirements for natural buffer strips are as follows.

28 A. A natural buffer strip at least 100 feet wide must be
maintained between the working edge of the excavation and
30 the normal high water line of a great pond classified as GPA
or a river flowing to a great pond classified as GPA.

34 B. A natural buffer strip at least 75 feet wide must be
maintained between the working edge of the excavation and a
36 body of water other than as described in paragraph A, a
river, stream or brook, coastal wetland or significant
38 wildlife habitat contained within a freshwater wetland
consisting of or containing:

40 (1) Under normal circumstances, at least 20,000 square
42 feet of aquatic vegetation, emergent marsh vegetation
or open water, except for artificial ponds or
44 impoundments; or

46 (2) Peat lands dominated by shrubs, sedges and sphagnum
48 moss.

50 For purposes of this subsection, the width of a natural buffer
strip is measured from the upland edge of a floodplain wetland.

2 If no floodplain wetlands are present, the width is measured from
the normal high water mark of the river, stream or brook. The
4 width is measured from the normal high water mark of a great pond
and upland edge of a freshwater or coastal wetland.

6 The department may not grant a variance from this subsection,
8 except that the department may grant a variance from paragraph B
to permit a lesser width requirement between the working edge of
10 the excavation and a river, stream or brook, as long as the
variance will not result in the natural buffer strip being
12 reduced to less than 25 feet and as long as the applicant
undertakes safety measures required by the department.

14

16 SUMMARY

16

18 This bill amends the performance standards for excavations
and for quarries by allowing the Department of Environmental
20 Protection to grant a variance from the width requirement of a
buffer strip from a river, stream or brook, provided the buffer
strip is no less than 25 feet.