

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1810

H.P. 1353

House of Representatives, May 17, 2001

**An Act to Implement the Recommendations of the Committee to Study
Access to Private and Public Lands in Maine.**

Reported by Representative MCKEE for the Joint Standing Committee on Agriculture,
Conservation and Forestry pursuant to Joint Order 1999, H.P. 1951.

Millicent M. MacFarland

MILLCENT M. MacFARLAND, Clerk

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

Sec. 1. 5 MRSA §6206, sub-§1, ¶E, as amended by PL 1999, c. 603, §4, is further amended to read:

E. On January 1, ~~1995 and on January 1st every 2 years thereafter~~ 1st of every odd-numbered year, report to the joint standing committee of the Legislature having jurisdiction over matters pertaining to state parks and public lands on expenditures from the Land for Maine's Future Fund and the Public Access to Maine Waters Fund and revisions to the strategies and guidelines. This report must include a description of access to land and interest in land acquired during the report period. If an acquisition has been made that does not include guaranteed public vehicular access to the land acquired, the board must provide justification for that acquisition and a plan for continuing efforts to acquire guaranteed public access to the land.

Sec. 2. 5 MRSA §6207, sub-§4, ¶¶B and C, as amended by PL 1993, c. 728, §10, are further amended to read:

B. Except as provided in section 6203, subsection 3, paragraph B and section 6203-A, subsection 3, paragraph B, capital improvements on any publicly owned facilities; and

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

Sec. 3. 5 MRSA §6207, sub-§4, ¶D is enacted to read:

D. The acquisition of land or interest in land unless the landowner conveying the land or interest in land also conveys rights guaranteeing public vehicular access to the parcel of land when the landowner has that legal right to convey.

Sec. 4. 12 MRSA §1817, sub-§7 is enacted to read:

7. Comprehensive outdoor recreation plan. Beginning January 1, 2003 and every 5 years thereafter, the director shall submit a state comprehensive outdoor recreation plan to the joint standing committee of the Legislature having jurisdiction over state parks and public lands matters, referred in this subsection as the "committee of legislative oversight." The plan submitted by the bureau for review and approval by the National Park Service to establish the bureau's eligibility for funding from the land and water conservation fund under 16 United States Code,

Section 4601-11 meets the requirements of this subsection. If federal funding is not available for updating the state plan, the bureau may make a written request to the committee of legislative oversight for an extension for submitting the plan. Upon receiving an extension request, the committee of legislative oversight shall discuss the advisability of an extension and the availability of state funds for preparation of the update. The committee may authorize an extension by writing to the director and stating the year by which an update must be received. A copy of the written extension must be filed by the committee with the Executive Director of the Legislative Council.

Sec. 5. 12 MRSA §1836, sub-§1, as enacted by PL 1997, c. 678, §13, is amended to read:

1. Authority to acquire lands. The bureau with the consent of the Governor and the commissioner may acquire lands or interests in lands on behalf of the State to be managed as nonreserved public lands. The bureau may not acquire land or interest in land unless the landowner conveying the land or interest in land also conveys rights guaranteeing public vehicular access to the parcel of land when the landowner has that legal right to convey. The bureau shall deliver to the State Archives within a reasonable period of time after their creation or acquisition the originals of all deeds, planbooks and surveyors' field and chainage notes, and any other materials the preservation of which it considers necessary, relating to the ownership, location and management of nonreserved public lands described in this subchapter.

Sec. 6. 12 MRSA §1850, sub-§1, as enacted by PL 1997, c. 678, §13, is amended to read:

1. Authority to acquire lands. With the consent of the Governor and the commissioner, the bureau may acquire lands or interests in lands on behalf of the State to be managed as public reserved lands. The bureau may not acquire land or interest in land unless the landowner conveying the land or interest in land also conveys rights guaranteeing public vehicular access to the parcel of land when the landowner has that legal right to convey. The bureau shall deliver to the State Archives within a reasonable period of time after their creation or acquisition the originals of all deeds, planbooks and surveyors' field and chainage notes, and any other materials the preservation of which it considers necessary, relating to the ownership, location and management of public reserved lands described in this subchapter.

Sec. 7. 12 MRSA §1893-A is enacted to read:

§1893-A. Recreational management areas

2 1. Definitions. As used in this section, the following
3 terms have the following meanings.

4 A. "Excavation" means an excavation for borrow, topsoil,
5 clay or silt, whether alone or in combination.

6 B. "Recreational management area" means an area formerly
7 used for excavation on which trails that have been designed
8 for all-terrain vehicle use are developed and on which
9 recreational use by the public is allowed.

10 2. Development of recreational management areas. An owner
11 or operator of an excavation site proposing to develop a
12 recreational management area and requesting a variance from
13 reclamation standards under Title 38, section 490-E shall request
14 the assistance of the division.

15 Upon receipt of a request for assistance, the division shall
16 assess the affected land for suitability for an all-terrain
17 vehicle trail system. The division shall advise the landowner of
18 funding, technical assistance and other assistance available
19 through the ATV Recreation Management Fund established in section
20 7854, subsection 4, paragraph B. When an initial assessment of
21 the affected land indicates the area is appropriate for an
22 all-terrain vehicle trail system, the division may assist the
23 owner or operator in developing a plan and completing a variance
24 application.

25 Sec. 8. 12 MRSA §7652, sub-§1, ¶A, as amended by PL 1989, c.
26 493, §49, is further amended to read:

27 A. The commissioner may acquire in the name of the State,
28 by gift, bequest or otherwise, real and personal property
29 for the location, construction and convenient operation of a
30 wildlife management area or public access sites to inland or
31 coastal waters. The commissioner may not acquire land or
32 interest in land unless the landowner conveying the land or
33 interest in land also conveys rights guaranteeing public
34 vehicular access to the parcel of land when the landowner
35 has that legal right to convey.

36 Sec. 9. 38 MRSA §490-D, sub-§14, as amended by PL 1995, 700,
37 §24, is further amended by amending the first paragraph to read:

38 14. Reclamation. The Except as provided in subsection 15,
39 the affected land must be restored to a condition that is similar
40 to or compatible with the conditions that existed before
41 excavation. Reclamation should be conducted in accordance with

the department's best management practices for erosion and sediment control, and must include:

Sec. 10. 38 MRSA §490-D, sub-§15 is enacted to read:

15. Recreational management areas. An owner or operator may request a variance to develop a recreational management area on the affected land as an alternative to reclamation in accordance with subsection 14. The department may grant a variance under section 490-E if the Off-road Recreational Vehicle Division determines the site is suitable under Title 12, section 1893-A.

Sec. 11. 38 MRSA §490-E, as amended by PL 1995, c. 700, §25, is further amended by adding after the 2nd paragraph a new paragraph to read:

When an owner applies for a variance to allow an excavation to be reclaimed as a pond of 10 acres or greater in size, the department may grant the variance only if the owner demonstrates that public access to the pond is ensured. The requirement for public access may be met by existing public rights or by granting an easement or other right including a right to travel a reasonable distance by foot to a designated area of the shoreline.

Sec. 12. Committee to Study Access to Private and Public Lands in Maine.

1. Committee membership; chairs. The legislative members appointed to the Committee to Study Access to Private and Public Lands in Maine pursuant to Joint Order 1999, House Paper 1951 shall continue to serve on that committee. The legislators serving as chairs shall continue to serve in that capacity.

2. Meetings. The chairs shall call and convene the first meeting of the committee within 30 days of adjournment of the First Regular Session of the 120th Legislature. The committee shall hold not more than 4 meetings.

3. Duties. The committee shall fulfill all the duties required by Joint Order 1999, House Paper 1951 and shall:

A. Determine the status of public access to flowed lakes in the State;

B. Review and report on the issue of the division and sale of land by timber companies and the private acquisition of large tracts of undeveloped land surrounding the State's great ponds;

2 C. Consider policy options to promote continued access to
public and private land; and

4 D. Work with the Department of Inland Fisheries and
Wildlife and the Maine Forest Service to develop a map that
6 shows significant areas in the State where public access is
restricted, prohibited or permitted with the payment of a
8 fee.

10 **4. Report.** The committee shall submit its report, together
with any recommended implementing legislation, to the Joint
12 Standing Committee on Agriculture, Conservation and Forestry not
later than December 5, 2001. If the committee requires an
14 extension of time to make its report, it may apply to the
Legislative Council, which may grant the extension.

16 **5. Staff assistance.** Upon approval of the Legislative
18 Council, the Office of Policy and Legal Analysis shall provide
staffing assistance to the committee.

20 **6. Compensation.** Members of the committee are entitled to
22 receive the legislative per diem as defined in the Maine Revised
Statutes, Title 3, section 2 and reimbursement for travel and
24 other necessary expenses related to their attendance at
authorized meetings of the committee.

26 **7. Budget.** The chairs of the committee, with the assistance
28 from the committee staff, shall administer the committee's
budget. The committee may not incur expenses exceeding its
30 approved budget. Upon request from the committee, the Executive
Director of the Legislative Council shall promptly provide the
32 committee and its staff with a status report on the committee's
budget, expenditures incurred and remaining available funds.

34 **Sec. 10. Appropriation.** The following funds are appropriated
36 from the General Fund to carry out the purposes of this Act.

38 **2001-02**

40 **LEGISLATURE**

42 **Committee to Study Access to Private and**
44 **Public Lands in Maine**

46	Personal Services	\$1,100
	All Other	4,900

48 Provides funds for the per diem and expenses
of legislative members of the Committee to

2 Study Access to Private and Public Lands in
Maine and to print the required report.

4 **LEGISLATURE**
6 **TOTAL**

\$6,000

8 **FISCAL NOTE**

10 **2001-02**

12 **APPROPRIATIONS/ALLOCATIONS**

14 General Fund \$6,000

16 The Legislature will require an additional General Fund
18 appropriation of \$6,000 in fiscal year 2001-02 for the per diem
and expenses of legislative members of the Committee to Study
20 Access to Private and Public Lands in Maine and to print the
required report.

22 The additional costs associated with providing staffing
24 assistance to the committee during the interim between
legislative sessions can be absorbed by the Legislature utilizing
existing budgeted resources. If an extension of the reporting
26 deadline is granted and the committee requires staffing
assistance during the legislative session, the Legislature may
28 require an additional General Fund appropriation to contract for
staff services.

30
32 The Department of Inland Fisheries and Wildlife, the
Department of Conservation and the State Planning Office within
the Executive Department will incur some minor additional costs
34 to comply with ensuring that certain access requirements are met
when acquiring public lands. These costs can be absorbed within
36 the agencies' existing budgeted resources.

38 The Department of Environmental Protection will incur some
minor additional costs to grant certain variances from certain
40 permitting requirements. These costs can be absorbed within the
department's existing budgeted resources.

42

44

SUMMARY

46

48 This bill implements the recommendations of the Committee to
Study Access to Private and Public Lands in Maine. The Joint
Standing Committee on Agriculture, Conservation and Forestry is

2 authorized to report out legislation under Joint Order 1999, H.P.
1951. The bill does the following.

4 It requires the Land for Maine's Future Board to include in
its biennial report to the Legislature a description of access to
6 acquisitions made;

8 It prohibits the Land for Maine's Future Board, the
Department of Conservation, Bureau of Parks and Lands and the
10 Department of Inland Fisheries and Wildlife from acquiring land
or interest in land without rights guaranteeing public access by
12 vehicle to the land when the landowner has the rights to convey.

14 It allows an owner or operator of a gravel pit or excavation
site to receive a variance from reclamation standards required by
16 the Department of Environmental Protection when that owner or
operator, working with the Off-road Recreational Vehicle Division
18 within the Department of Conservation, designs or develops a
satisfactory plan for a recreational management area.

20
22 It reauthorizes the committee and directs it to continue its
work with a final report date of December 5, 2001.