

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2179

H.P. 1679

House of Representatives, March 19, 2002

**An Act Regarding the Clearing of Vegetation in Areas Adjacent to
Protected Natural Resources.**

(EMERGENCY)

Reported by Representative COWGER for the Joint Standing Committee on Natural
Resources pursuant to Resolve 1999, chapter 116.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

2 **Emergency preamble. Whereas,** Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** the provisions of this legislation must take effect
immediately to provide the statutory basis for major substantive
rules authorized to be finally adopted 90 days after adjournment
8 of the Legislature; and

10 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
12 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
14 safety; now, therefore,

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

18 **Sec. 1. 38 MRSA §480-B, sub-§9,** as amended by PL 1995, c. 460,
§2 and affected by §12, is further amended to read:

20 **9. River, stream or brook.** "River, stream or brook" means
22 a channel between defined banks. A channel is created by the
action of surface water and has 2 or more of the following
24 characteristics.

26 A. It is depicted as a solid or broken blue line on the
most recent edition of the U.S. Geological Survey 7.5-minute
28 series topographic map or, if that is not available, a
15-minute series topographic map.

30 B. It contains or is known to contain flowing water
32 continuously for a period of at least 3 6 months of the year
in most years.

34 C. The channel bed is primarily composed of mineral
36 material such as sand and gravel, parent material or bedrock
that has been deposited or scoured by water.

38 D. The channel contains aquatic animals such as fish,
40 aquatic insects or mollusks in the water or, if no surface
water is present, within the stream bed.

42 E. The channel contains aquatic vegetation and is
44 essentially devoid of upland vegetation.

46 "River, stream or brook" does not mean a ditch or other drainage
way constructed, or constructed and maintained, solely for the
48 purpose of draining storm water or a grassy swale.

2 **Sec. 2. 38 MRSA §480-C, sub-§1**, as repealed and replaced by PL
1995, c. 460, §4 and affected by §12, is amended to read:

4 **1. Prohibition.** A person may not perform or cause to be
performed any activity listed in subsection 2 without first
6 obtaining a permit from the department if the activity is located
in, on or over any protected natural resource or is located
8 adjacent to ~~and operated in such a manner that material or soil
may be washed into~~ any of the following:

10 A. A coastal wetland, great pond, river, stream or brook or
12 significant wildlife habitat contained within a freshwater
wetland; or

14 B. Freshwater wetlands consisting of or containing:

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

22 (2) Peatlands dominated by shrubs, sedges and sphagnum
24 moss.

A person may not perform or cause to be performed any activity in
26 violation of the terms or conditions of a permit.

28 **Sec. 3. 38 MRSA §480-D, sub-§3**, as amended by PL 1993, c. 296,
§2, is further amended to read:

30 **3. Harm to habitats; fisheries.** The activity will not
32 unreasonably harm any significant wildlife habitat, freshwater
wetland plant habitat, threatened or endangered plant habitat,
34 aquatic or adjacent upland habitat, travel corridor, freshwater,
estuarine or marine fisheries or other aquatic life.

36
38 In determining whether there is unreasonable harm to significant
wildlife habitat, the department may consider proposed mitigation
if that mitigation does not diminish in the vicinity of the
40 proposed activity the overall value of significant wildlife
habitat and species utilization of the habitat and if there is no
42 specific biological or physical feature unique to the habitat
that would be adversely affected by the proposed activity. For
44 purposes of this subsection, "mitigation" means any action taken
or not taken to avoid, minimize, rectify, reduce, eliminate or
46 compensate for any actual or potential adverse impact on the
significant wildlife habitat, including the following:

48 A. Avoiding an impact altogether by not taking a certain
50 action or parts of an action;

2 B. Minimizing an impact by limiting the magnitude, duration
4 or location of an activity or by controlling the timing of
an activity;

6 C. Rectifying an impact by repairing, rehabilitating or
8 restoring the affected environment;

10 D. Reducing or eliminating an impact over time through
12 preservation and maintenance operations during the life of
the project; or

14 E. Compensating for an impact by replacing the affected
significant wildlife habitat.

16 **Sec. 4. 38 MRSA §480-Q, sub-§7-A**, as amended by PL 2001, c.
18 431, §6, is repealed.

20 **Sec. 5. 38 MRSA §480-Q, sub-§7-B** is enacted to read:

22 7-B. Forestry. Forestry management activities, including
24 associated road construction or maintenance, in or adjacent to
26 protected natural resources as long as the activities comply with
28 rules containing statewide standards for timber harvesting in
30 shoreland areas administered by the Department of Conservation,
Maine Forest Service. This exemption does not apply to a road
constructed in freshwater wetlands when used to access
development as a result of a change in land use following a
timber harvest unless the road is removed and the site restored
to its prior natural condition;

32 **Sec. 6. 38 MRSA §480-Q, sub-§§23, 24 and 25** are enacted to read:

34 23. Cutting or clearing subject to mandatory shoreland
36 zoning laws. Cutting or clearing of upland vegetation adjacent
38 to those protected natural resources listed in section 480-C,
subsection 1, paragraphs A or B for a purpose other than forest
management as long as:

40 A. The cutting or clearing is subject to the jurisdiction
42 of a municipality pursuant to chapter 3, subchapter I,
article 2-B; or

44 B. If the cutting or clearing is not subject to the
46 jurisdiction of a municipality pursuant to chapter 3,
subchapter I, article 2-B, vegetation within the adjacent
area is maintained as follows:

48

2 (1) There is no cleared opening greater than 250
4 square feet in the forest canopy as measured from the
6 outer limits of the tree crown, except that a footpath
8 may be constructed for the purpose of access to water
 if it does not exceed 6 feet in width as measured
 between tree trunks and has at least one bend in its
 path to divert channelized runoff;

10 (2) Any selective cutting of trees within the buffer
12 strip leaves a well-distributed stand of trees and
 other natural vegetation.

14 (a) For the purposes of this subparagraph, a
16 "well-distributed stand of trees and other natural
18 vegetation" is defined as maintaining a rating
 score of 8 or more points in a 25-foot by 25-foot
 square area as determined by the following rating
 system.

20 (i) A tree with a diameter at 4 1/2 feet
22 above ground level of 2 to 4 inches has a
 point value of one.

24 (ii) A tree with a diameter at 4 1/2 feet
26 above ground level of more than 4 inches and
 up to and including 12 inches has a point
 value of 2.

28 (iii) A tree with a diameter at 4 1/2 feet
30 above ground level of more than 12 inches has
 a point value of 4.

32 (b) In applying this point system:

34 (i) The 25-foot by 25-foot square plots must
36 be established where the landowner or lessee
38 proposes clearing within the required buffer;

40 (ii) Each successive plot must be adjacent
 to, but may not overlap, a previous plot;

42 (iii) Any plot not containing the required
44 points may have no vegetation removed except
 as otherwise allowed by this subsection; and

46 (iv) Any plot containing the required points
48 may have vegetation removed down to the
 minimum points required or as otherwise
50 allowed by this subsection;

2 (3) In addition to the requirements of subparagraph
4 (2), no more than 40% of the total volume of trees 4
 inches or more in diameter, measured 4 1/2 feet above
 ground level, is selectively cut in any 10-year period;

6 (4) In order to protect water quality and wildlife
8 habitat, existing vegetation under 3 feet in height and
10 other ground cover is not removed except for
 construction of a footpath as provided in subparagraph
 (1);

12 (5) Tree branches are not pruned except on the bottom
14 1/3 of the tree as long as tree vitality will not be
 adversely affected; and

16 (6) In order to maintain a buffer strip of vegetation,
18 when the removal of storm-damaged, diseased, unsafe or
20 dead trees results in the creation of cleared openings
 in excess of 250 square feet, these openings are
22 replanted with native tree species unless there is
 existing new tree growth.

24 Cleared openings legally in existence on September 1,
 2002 may be maintained but may not be enlarged.

26 This subsection applies to an area with vegetation composed
28 primarily of shrubs, trees or other woody vegetation without
 regard to whether the area was previously cut or cleared;

30 **24. Existing lawns and gardens.** Maintenance, but not
32 enlargement of, lawns and gardens in existence on September 1,
34 2002 that are adjacent to a river, stream or brook not regulated
 by a municipality under chapter 3, subchapter I, article 2-B; and

36 **25. Existing agricultural fields and pastures.**
38 Maintenance, but not enlargement of, agricultural fields and
 pastures in existence on September 1, 2002 that are adjacent to a
40 river, stream or brook not regulated by a municipality under
 chapter 3, subchapter I, article 2-B.

42 **Emergency clause.** In view of the emergency cited in the
 preamble, this Act takes effect when approved.

44

46

FISCAL NOTE

48 The implementation of certain statutory provisions
50 pertaining to the cutting and removal of vegetation will result
 in insignificant increases of dedicated revenue to the Maine
 Environmental Protection Fund within the Department of
 Environmental Protection from additional application fees.

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SUMMARY

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6 This bill is the unanimous report of the Joint Standing
Committee on Natural Resources and is reported pursuant to
Resolve 1999, chapter 116.

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10 This bill makes changes to the natural resources protection
laws administered by the Department of Environmental Protection
12 to provide the necessary statutory basis for major substantive
rules to be adopted by the department that regulate the cutting
and removal of vegetation, other than timber harvesting
14 activities, in areas adjacent to protected natural resources.
This bill is an emergency to ensure that the statutory changes
16 take effect prior to the effective date of the major substantive
rules approved earlier this session.