

MAINE STATE LEGISLATURE

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105

L.D. 1860

DATE: 3/17/6

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1300, L.D. 1860, Bill, "An Act Concerning Certain Provisions Regarding Protection of Natural Resources Related to Activities in Coastal Areas"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, provisionally adopted coastal sand dune rules of the Department of Environmental Protection are expected to be finally adopted by July 15, 2006; and

Whereas, the changes to those rules and the amendments proposed in this Act are interrelated, and it is necessary for the rule and statutory changes to become effective as close in time as possible; and

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

Further amend the bill by striking out all of section 2 and inserting in its place the following:

COMMITTEE AMENDMENT

19 07 95

2 'Sec. 2. 38 MRSA §480-W, as enacted by PL 1995, c. 230, §1,
is amended to read:

4 **§480-W. Emergency actions to protect threatened property**

6 Notwithstanding section 480-C, if the local code enforcement
officer or a state certified geologist determines that the
8 integrity of a seawall, bulkhead, retaining wall or similar
structure in a coastal sand dune system is destroyed or
10 threatened, the owner of property protected by the seawall,
bulkhead or similar structure may, without obtaining a permit
12 under this article:

14 **1. Protective materials.** Place riprap, sandbags or other
heavy nonhazardous material to shore up the threatened structure
16 and replace, repair or leave the materials in place until a
project designed to alleviate the threat is certified by the
18 department and by the local code enforcement officer, and that
project requires removal of the material, and

20 **2. Strengthening of structure.** Take such actions as are
22 necessary to strengthen the seawall, retaining wall or other
structure, including widening the footings and securing the
24 structure to the sand with belts.

26 **3. Emergency action exemption.** Notwithstanding section
480-C, if the local code enforcement officer, a state-licensed
28 professional engineer or a state-certified geologist determines
that the integrity of a seawall, bulkhead, retaining wall or
30 similar structure in a coastal sand dune system is destroyed or
threatened, the owner of property protected by the seawall,
32 bulkhead, retaining wall or similar structure may perform or
cause to be performed the following activities without obtaining
34 a permit under this article:

36 A. Place riprap, sandbags or other heavy nonhazardous
material to shore up the threatened structure and leave the
38 material in place until a project designed to repair or
replace the structure is permitted by the department. After
40 such emergency action is taken and within 5 working days
after the imminent threat, the property owner must provide
42 written notice to the department of the date the emergency
action was taken and a description of the emergency action
44 taken. Within 6 months following placement of any material
pursuant to this paragraph, the property owner must submit
46 to the department an application to repair or replace the
structure. The material placed pursuant to this paragraph
48 must be removed within 18 months from the date a permit is
issued by the department; or

50

2 B. Make permanent repairs, to the extent necessary to
4 alleviate the threat, to strengthen the seawall, bulkhead,
6 retaining wall or other structure, to widen the footings or
8 to secure the structure to the sand with tie-back anchors.
10 A state-certified geologist, state-licensed professional
12 engineer or other qualified professional must make the
14 determination that the actions taken by the property owner
16 in accordance with this section are only those actions
18 necessary to alleviate the imminent threat and do not
20 include increasing the height or length of the structure.

12 If a local code enforcement officer, state-licensed professional
14 engineer or state-certified geologist fails to determine within 6
16 hours of initial contact by the property owner whether the
18 integrity of a structure is destroyed or threatened, the property
20 owner may proceed as if the local code enforcement officer,
22 state-licensed professional engineer or state-certified geologist
24 had determined that the integrity of the structure was destroyed
26 or threatened.

22 4. Replacement after emergency action under permit by
24 rule. Notwithstanding any other provision of this chapter, the
26 department shall approve a permit by rule to repair or replace a
28 seawall, bulkhead, retaining wall or similar structure that has
30 been destroyed or threatened with a structure that is identical
32 in all dimensions and location as long as a property owner files
34 a completed permit-by-rule notification for the repair or
36 replacement of the structure and the following standards are met:

30 A. During project construction, disturbance of dune
32 vegetation must be avoided and native vegetation must be
34 retained on the lot to the maximum extent possible. Any
36 areas of dune vegetation that are disturbed must be restored
38 as quickly as possible. Dune vegetation includes, but is
40 not limited to, American beach grass, rugosa rose, bayberry,
42 beach pea, beach heather and pitch pine.

38 B. Sand may not be moved seaward of the frontal dune
40 between April 1st and September 1st unless the owner has
42 obtained written approval from the Department of Inland
44 Fisheries and Wildlife.

44 C. The replacement of a seawall may not increase the height,
46 length or thickness of the seawall beyond that which legally
48 existed within the 24 months prior to the submission of the
permit-by-rule notification. The replaced seawall may not
be significantly different in construction from the one that
previously existed.

COMMITTEE AMENDMENT "A" to H.P. 1300, L.D. 1860

~~If a local code enforcement officer fails to determine whether the integrity of a structure is destroyed or threatened within 12 hours of initial contact by the property owner, the property owner may proceed as if the code enforcement officer had determined that the integrity of the structure was destroyed or threatened.~~

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

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

SUMMARY

This amendment clarifies the emergency actions a property owner may take without a permit when the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened. It also provides standards for approval by the Department of Environmental Protection of a permit by rule for the repair or replacement of a structure that has been destroyed or threatened. It also adds an emergency preamble and clause.