

MAINE STATE LEGISLATURE

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Date: 3/27/6
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(Filing No. H-883)

3 **Natural Resources**

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5 **STATE OF MAINE**
6 **HOUSE OF REPRESENTATIVES**
7 **122ND LEGISLATURE**
8 **SECOND REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to H.P. 1388, L.D. 1981, "Resolve, Regarding
10 Legislative Review of Portions of Chapter 335: Significant Wildlife Habitat, a Major
11 Substantive Rule of the Department of Environmental Protection"

12 Amend the resolve by striking out all of section 1 (page 1, lines 14 to 18 in L.D.) and
13 inserting in its place the following:

14 **'Sec. 1. Adoption. Resolved:** That final adoption of portions of Chapter 335:
15 Significant Wildlife Habitat, a provisionally adopted major substantive rule of the
16 Department of Environmental Protection that has been submitted to the Legislature for
17 review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is
18 authorized only if the rule is amended as follows:

19 1. Language is added to define the term "practicable" to mean available and feasible
20 considering cost, existing technology and logistics based on the overall purpose of the
21 project;

22 2. Language is amended to provide that the Department of Environmental Protection
23 may require that construction activities occur during a time when impacts on protected
24 habitats, wildlife, fisheries and aquatic life will be minimized;

25 3. Language is amended to remove from the rule the requirement that a
26 preapplication and presubmission meeting and an individual permit under the natural
27 resources protection laws under the Maine Revised Statutes, Title 38 are required for any
28 activity that takes place in, on or over a significant wildlife habitat, or adjacent to a
29 significant wildlife habitat contained within a freshwater wetland. A note must remain in
30 the rules that activities requiring a permit are described in Title 38, section 480-C and that
31 exemptions are described in Title 38, section 480-Q;

32 4. Language is amended to require a narrative describing whether a practicable
33 alternative to an alteration exists that would be less damaging to the environment and
34 what alternatives were considered during the project design;

35 5. Language is amended to require a narrative of the site description and impact
36 instead of a report;

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- 1 6. Language is added to indicate that maps of seabird nesting islands are available
2 from either the Department of Environmental Protection or the Department of Inland
3 Fisheries and Wildlife;
- 4 7. A notation is amended to provide that tracking studies of adult pool-breeding
5 amphibians have shown that they can travel over 1/3 mile away from their breeding pool;
- 6 8. A notation is added to provide that more information on identifying vernal pools is
7 available in the 2003 publication of the Maine Audubon Society titled "Maine Citizens'
8 Guide to Locating and Documenting Vernal Pools" or in the Department of
9 Environmental Protection's fact sheet titled "Locating and Documenting Significant
10 Vernal Pools";
- 11 9. Language is added to provide that examples of vernal pool-dependent state-listed
12 endangered or threatened species include, but are not limited to, Blanding's turtle, spotted
13 turtles and boghaunter dragonflies;
- 14 10. A notation is added to provide that if additional rare indicator species are present,
15 they are likely to be associated with a significant vernal pool from early spring through
16 September and that additional rare indicator species include ribbon snakes, wood turtles
17 and four-toed salamanders;
- 18 11. A notation is amended to provide that optimal times for counting egg masses of
19 pool-breeding amphibians vary according to geographic location and weather;
- 20 12. Language is amended to provide that:
 - 21 A. An individual may voluntarily submit documentation to the Department of
22 Environmental Protection or the Department of Inland Fisheries and Wildlife
23 regarding the significance of a vernal pool on that individual's property;
 - 24 B. Documentation must be completed by an individual who has experience and
25 training in either wetland ecology or wildlife ecology, and therefore has
26 qualifications sufficient to identify and document a significant vernal pool, or the
27 documentation must be field-verified by either the Department of Environmental
28 Protection or the Department of Inland Fisheries and Wildlife prior to its inclusion on
29 a geographic information system data layer maintained by either the Department of
30 Inland Fisheries and Wildlife or the Department of Environmental Protection; and
 - 31 C. A landowner will receive written confirmation of such documentation from the
32 department;
- 33 13. Language is added regarding verification of significance that provides that:
 - 34 A. A significant vernal pool documented on a geographic information system data
35 layer maintained by either the Department of Inland Fisheries and Wildlife or the
36 Department of Environmental Protection is eligible for removal from that data layer
37 following verification by the Department of Inland Fisheries and Wildlife of 3
38 consecutive years of data demonstrating that a vernal pool no longer meets the
39 criteria in the rules regarding abundance and rarity;
 - 40 B. A written request to remove a significant vernal pool from the data layer must be
41 submitted to both the Department of Inland Fisheries and Wildlife and the
42 Department of Environmental Protection and include documentation made during the

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- 1 identification period by an individual who has experience and training in either
2 wetland ecology or wildlife ecology and therefore has qualifications sufficient to
3 identify and document the presence or absence of a significant vernal pool; and
- 4 C. A written department determination that a vernal pool is not significant remains
5 valid regardless of time frame;
- 6 14. That section of the rule that deals with the department's providing a written field
7 determination regarding the presence or absence of a significant vernal pool habitat is
8 amended and included in the section of the rule dealing with when a permit is not
9 required;
- 10 15. Language is added regarding habitat management standards for significant vernal
11 pools that provides that if more than 25% of the critical terrestrial habitat has been
12 previously developed, restoring a portion of that area through supplemental planting or
13 regrowth of native forest species may be considered toward meeting the habitat
14 management standards or toward standards for avoidance, minimization or compensation.
15 The language must also provide that developed area includes disturbed areas excluding
16 areas that are returned to a condition with the same drainage patterns and the same or
17 improved cover type that existed prior to the disturbance. The language must also
18 provide that to the greatest extent practicable, the following management practices must
19 be followed within a significant vernal pool habitat:
- 20 A. Cause no disturbance within the vernal pool depression;
- 21 B. Maintain a minimum of 75% of the critical terrestrial habitat as unfragmented
22 forest with at least a partly closed canopy of overstory trees to provide shade, deep
23 litter and woody debris;
- 24 C. Maintain or restore forest corridors connecting wetlands and significant vernal
25 pools;
- 26 D. Minimize forest floor disturbance; and
- 27 E. Maintain native understory vegetation and downed woody debris;
- 28 16. Language is added to provide that:
- 29 A. An activity occurring in, on, over or adjacent to a significant vernal pool or a
30 potential significant vernal pool is eligible for permit by rule as described in the
31 Department of Environmental Protection rule, chapter 305, section 19, provided that
32 the habitat management standards are met;
- 33 B. An applicant submitting a permit-by-rule notification is not required to provide a
34 seasonal assessment of significance;
- 35 C. Submission of a permit-by-rule notification does not negate an applicant's ability
36 to submit subsequent documentation to verify or negate application of the section of
37 the rule dealing with significant vernal pools provided that documentation is
38 completed during the identification period by an individual who has experience and
39 training in either wetland ecology or wildlife ecology;
- 40 D. Geographic information system data points specific to permit by rule will be
41 uploaded to the geographic information system data layer maintained by the
42 Department of Inland Fisheries and Wildlife only following submission and

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1 verification of such documentation by the Department of Environmental Protection or
2 the Department of Inland Fisheries and Wildlife; and

3 E. The permit-by-rule provisions do not apply to an activity that is not or will not be
4 in compliance with the terms and conditions of a permit issued under the site location
5 of development law, the storm water management law or the natural resources
6 protection law;

7 17. Language is added to include the following circumstances under which a permit
8 is not required for activities in, on, over or adjacent to a significant vernal pool:

9 A. If, upon request from a landowner, the Department of Environmental Protection
10 staff provides a written field determination or advisory opinion regarding the
11 presence or absence of a significant vernal pool, a landowner acting on that
12 determination or advisory opinion by carrying out an activity subsequently found to
13 be in violation is not required to obtain a permit for that activity and will not be
14 subject to enforcement action if jurisdiction or a penalty would be based solely on
15 that activity; and

16 B. Construction of overhead communications and electric lines, poles, guy anchors
17 and related overhead infrastructure located within a public or private right-of-way,
18 within 25 feet of the edge of the road right-of-way or within an existing clearing
19 created for a public or private road does not require a permit provided that poles are
20 not placed within a significant vernal pool depression;

21 18. Language is added to provide that the provisions of the rule regarding activities
22 in, on, over or adjacent to a significant vernal pool may not be enforced or implemented
23 until September 1, 2007;

24 19. Language is added to provide that high- and moderate-value waterfowl and
25 wading bird habitats subject to the rules are depicted on a geographic information system
26 data layer maintained by the Department of Inland Fisheries and Wildlife and are
27 available from either the Department of Inland Fisheries and Wildlife or the Department
28 of Environmental Protection;

29 20. Language is added regarding the verification of habitat value for high- and
30 moderate-value waterfowl and wading bird habitat that provides that:

31 A. An individual may voluntarily submit documentation to the Department of
32 Environmental Protection or the Department of Inland Fisheries and Wildlife
33 regarding the value of a waterfowl and wading bird habitat on that individual's
34 property;

35 B. Documentation must be completed by an individual who has experience and
36 training in either wetland ecology or wildlife ecology, and therefore has
37 qualifications sufficient to identify and document a high- or moderate-value
38 waterfowl and wading bird habitat, or the documentation must be field-verified by the
39 Department of Inland Fisheries and Wildlife;

40 C. Following review of the documentation, the Department of Inland Fisheries and
41 Wildlife may modify the boundary of a high- or moderate-value waterfowl and
42 wading bird habitat depicted on the applicable geographic information system data
43 layer; and

1 D. A landowner will receive written confirmation of the documentation from the
2 Department of Environmental Protection;

3 21. The section regarding department determinations of high- and moderate-value
4 waterfowl and wading bird habitat in the provisionally adopted rule is deleted and
5 replaced with a provision that provides that if, upon request from a landowner, the
6 Department of Environmental Protection staff provides a written field determination or
7 advisory opinion regarding the presence or absence of a high- or moderate-value
8 waterfowl and wading bird habitat, a landowner acting on that determination or advisory
9 opinion by carrying out an activity subsequently found to be in violation is not required to
10 obtain a permit for that activity and will not be subject to enforcement action if
11 jurisdiction or a penalty would be based solely on that activity;

12 22. Language is added to provide that high- and moderate-value shorebird habitats
13 subject to the rule are depicted on a geographic information system data layer maintained
14 by the Department of Inland Fisheries and Wildlife and available from either the
15 Department of Inland Fisheries and Wildlife or the Department of Environmental
16 Protection;

17 23. Language is added regarding the verification of habitat value for shorebird
18 nesting, feeding and staging areas that provides that:

19 A. An individual may voluntarily submit documentation to the Department of
20 Environmental Protection or the Department of Inland Fisheries and Wildlife
21 regarding the value of a shorebird nesting, feeding or staging area;

22 B. Documentation must be completed by an individual who has experience and
23 training in either wetland ecology or wildlife ecology, and therefore has
24 qualifications sufficient to identify and document a high- or moderate-value shorebird
25 nesting, feeding or staging area, or the documentation must be field-verified by the
26 Department of Inland Fisheries and Wildlife;

27 C. Following review of the documentation, the Department of Inland Fisheries and
28 Wildlife may modify the boundary of a high- or moderate-value shorebird nesting,
29 feeding or staging area depicted on the applicable geographic information system
30 data layer; and

31 D. A landowner will receive written confirmation of the documentation from the
32 Department of Environmental Protection; and

33 24. The section regarding department determinations of shorebird nesting, feeding
34 and staging areas in the provisionally adopted rule is deleted and replaced with a
35 provision that provides that if, upon request from a landowner, the Department of
36 Environmental Protection staff provides a written field determination or advisory opinion
37 regarding the presence or absence of a high- or moderate-value shorebird nesting, feeding
38 or staging area, a landowner acting on that determination or advisory opinion by carrying
39 out an activity subsequently found to be in violation is not required to obtain a permit for
40 that activity and will not be subject to enforcement action if jurisdiction or a penalty
41 would be based solely on that activity; and be it further

42 **Sec. 2. Implementation date; significant vernal pool habitat rule.**
43 **Resolved:** That the provisions regarding the regulation of activities in, on, over or

1 adjacent to a significant vernal pool habitat in the rule authorized pursuant to this resolve
2 may not be implemented prior to September 1, 2007. The Department of Environmental
3 Protection may not require a permit for an activity that takes place in, on, over or adjacent
4 to a significant vernal pool habitat pursuant to the Maine Revised Statutes, Title 38,
5 chapter 3, subchapter 1, article 5-A prior to September 1, 2007; and be it further

6 **Sec. 3. Report; significant wildlife habitat rules. Resolved:** That, by
7 January 1, 2009, the Department of Environmental Protection shall submit a report on the
8 implementation of Chapter 335: Significant Wildlife Habitat Rules to the joint standing
9 committee of the Legislature having jurisdiction over natural resources matters. The
10 report must include, but is not limited to:

11 1. The number of field determinations requested under the rule and the number of
12 field determinations completed;

13 2. The number of individual permit applications received under the rule and the
14 department's response to and status of those applications;

15 3. The number of permit-by-rule notifications regarding significant vernal pool
16 habitats received by the department;

17 4. The number of permit-by-rule notifications regarding significant vernal pool
18 habitats that required individual permits;

19 5. The number and type of voluntary identifications of significant vernal pool
20 habitats submitted to the department and the department's response to those voluntary
21 identifications; and

22 6. Public education and outreach provided by the department; and be it further

23 **Sec. 4. Authority to report out legislation. Resolved:** That the joint standing
24 committee of the Legislature having jurisdiction over natural resources matters may
25 report out legislation relating to the significant wildlife habitat rules report submitted
26 pursuant to section 3 of this resolve to the First Regular Session of the 124th Legislature.'

27 **SUMMARY**

28 This amendment authorizes final adoption of Chapter 335: Significant Wildlife
29 Habitat Rules, a provisionally adopted major substantive rule of the Department of
30 Environmental Protection that has been submitted to the Legislature for review pursuant
31 to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, if certain specified
32 changes are made to the rule. The amendment also provides an implementation date of
33 September 1, 2007 for the provisions of the rule regarding significant vernal pool
34 habitats. It also requires the Department of Environmental Protection to report on the
35 implementation of the significant wildlife habitat rules to the joint standing committee of
36 the Legislature having jurisdiction over natural resources matters by January 1, 2009.
37 The joint standing committee of the Legislature having jurisdiction over natural resources
38 matters is authorized to report out legislation relating to the report to the First Regular
39 Session of the 124th Legislature.

FISCAL NOTE REQUIRED
(See attached)



Approved: 03/23/06 *mac*

122nd MAINE LEGISLATURE

LD 1981

LR 3109(02)

Resolve, Regarding Legislative Review of Portions of Chapter 335: Significant Wildlife Habitat, a Major Substantive Rule of the Department of Environmental Protection

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund