

# 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)



# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

---

Legislative Document

No. 1014

S.P. 331

March 6, 2007

### **An Act To Ensure Reasonable and Equitable Land Use Opportunities near Shorebird, Wading Bird and Waterfowl Habitat**

(EMERGENCY)

---

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator RAYE of Washington.

Cosponsored by Representatives: CLARK of Millinocket, JOY of Crystal, TIBBETTS of Columbia, Representative VALENTINO of Saco and Senators: BENOIT of Sagadahoc, BROMLEY of Cumberland, DAMON of Hancock, DOW of Lincoln, GOOLEY of Franklin, HASTINGS of Oxford, HOBBS of York, McCORMICK of Kennebec, NUTTING of Androscoggin, PLOWMAN of Penobscot, ROSEN of Hancock, SAVAGE of Knox, SCHNEIDER of Penobscot, SHERMAN of Aroostook, SMITH of Piscataquis, SNOWE-MELLO of Androscoggin, TURNER of Cumberland, Representatives: ANNIS of Dover-Foxcroft, AYOTTE of Caswell, BLANCHETTE of Bangor, CARTER of Bethel, CLEARY of Houlton, CRAVEN of Lewiston, CROSTHWAITE of Ellsworth, CURTIS of Madison, EDGECOMB of Caribou, EMERY of Cutler, FINLEY of Skowhegan, GILES of Belfast, HOLMAN of Fayette, LEWIN of Eliot, LUNDEEN of Mars Hill, MacDONALD of Boothbay, MAZUREK of Rockland, McDONOUGH of Scarborough, McFADDEN of Dennysville, McLEOD of Lee, PERRY of Calais, PIEH of Bremen, PILON of Saco, RICHARDSON of Carmel, SAVIELLO of Wilton, TARDY of Newport, THERIAULT of Madawaska, WALKER of Lincolnville.

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

3       **Whereas,** Resolve 2005, chapter 183 authorized Chapter 335: Significant Wildlife  
4 Habitat, a major substantive rule of the Department of Environmental Protection; and

5       **Whereas,** the implementation of Chapter 335 has created a significant barrier for  
6 many coastal property owners to use their land and has resulted in the potential loss of  
7 property value; and

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

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

13       **Sec. 1. 38 MRSA §480-BB,** as enacted by PL 2005, c. 116, §5, is amended to  
14 read:

15 **§480-BB. Significant wildlife habitat; major substantive rules**

16       The Department of Inland Fisheries and Wildlife shall adopt rules that define  
17 "significant vernal pool habitat," "high and moderate value waterfowl and wading bird  
18 habitat" and "shorebird nesting, feeding and staging areas" under section 480-B,  
19 subsection 10, paragraph B. The Department of Environmental Protection shall adopt  
20 rules regarding the criteria used to determine whether an area is significant vernal pool  
21 habitat, high and moderate value waterfowl and wading bird habitat or shorebird nesting,  
22 feeding and staging areas under section 480-B, subsection 10, paragraph B. The rules, as  
23 applicable, must:

24       **1. Definition of area.** Include a definition of the ~~buffer~~ area to be regulated; except  
25 that in that definition the department may not establish a building setback requirement  
26 that is in excess of:

27       A. Seventy-five feet from shorebird feeding and staging areas excluding roosting  
28 areas;

29       B. One hundred and fifty feet from shorebird roosting areas; or

30       C. One hundred feet from the edge of an inland wetland complex that has  
31 documented outstanding use by waterfowl or wading birds;

32       **2. Certain landowners not subject to regulation.** Provide that a landowner  
33 proposing to cause an impact on the buffer area defined for a significant vernal pool  
34 habitat is not subject to regulation pursuant to the rule if the significant vernal pool  
35 habitat is not on property owned or controlled by that landowner;

36       **3. Department of Environmental Protection must provide written field**  
37 **determination.** Require that the Department of Environmental Protection provide a

1 written field determination upon the request of a landowner whose land may be affected  
2 by the definitions and criteria adopted in a rule;

3 **4. Department of Environmental Protection may not assess fine in certain cases.**  
4 Provide that the Department of Environmental Protection may not assess a fine against a  
5 landowner who acted in accordance with a written field determination if the fine would  
6 be based solely on information in the written field determination; ~~and~~

7 **5. Process for voluntary identification.** Include a process for a landowner to  
8 voluntarily identify the landowner's land as a significant vernal pool habitat and to  
9 provide the Department of Inland Fisheries and Wildlife the authority to map the  
10 significant vernal pool habitat; and

11 **6. Exemptions. Exempt:**

12 A. Existing building lots. For the purposes of this paragraph, "existing building lot"  
13 means a building lot whose boundaries were in existence on September 12, 2006 and  
14 were so described in a deed recorded on or before that date; and

15 B. Activities of a holder of a commercial shellfish license pursuant to Title 12,  
16 section 6601 who fishes for clams and activities of a holder of a marine worm  
17 digger's license pursuant to Title 12, section 6751.

18 Rules adopted pursuant to this section are major substantive rules as defined in Title  
19 5, chapter 375, subchapter 2-A.

20 **Emergency clause.** In view of the emergency cited in the preamble, this  
21 legislation takes effect when approved.

22 **SUMMARY**

23 This bill provides that the Department of Environmental Protection may not establish  
24 building setbacks that are in excess of 75 feet from shorebird feeding and staging areas;  
25 150 feet from shorebird roosting areas; or 100 feet from inland wading bird and  
26 waterfowl areas. The bill exempts from department rules existing building lots and  
27 activities of clammers and worm diggers.