

MAINE STATE LEGISLATURE

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L.D. 2046

Date: 4/2/8

(Filing No. H-897)

NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1430, L.D. 2046, Bill, "An Act
Concerning Certain Excavations"

Amend the bill by striking out everything after the enacting clause and before the
summary and inserting the following:

'Sec. 1. 38 MRSA §480-GG is enacted to read:

**§480-GG. High and moderate value inland waterfowl and wading bird habitat and
excavations and quarries authorized pursuant to article 6, 7 or 8-A**

1. Excavation authorized before June 8, 2006. Unless a permit is required due to
the presence of a protected natural resource other than a high and moderate value inland
waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant
to article 6, 7 or 8-A before June 8, 2006 is not required to obtain a permit pursuant to
this article for excavation within the upland portion of a high and moderate value inland
waterfowl and wading bird habitat.

If a permit is required pursuant to this article due to the presence of a protected natural
resource other than a high and moderate value inland waterfowl and wading bird habitat,
an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8,
2006 is not required to meet standards associated solely with the upland portion of a high
and moderate value inland waterfowl and wading bird habitat.

2. Permits not authorized. The department may not issue a permit pursuant to this
article for an excavation or quarry authorized pursuant to article 6, 7 or 8-A and located
in, on or over the wetland portion of a high and moderate value inland waterfowl and
wading bird habitat.

The department may not issue a permit pursuant to this article for an excavation or quarry
requiring authorization pursuant to article 6, 7 or 8-A after June 8, 2006 and located in the
upland portion of a high and moderate value waterfowl and wading bird habitat.

Sec. 2. 38 MRSA §488, sub-§24 is enacted to read:

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1 **24. Nonmetallic mining accessory uses and facilities.** Accessory uses and
2 facilities within an excavation or quarry operating under the performance standards in
3 article 7 or 8-A are exempt from this article if the performance standards in article 7 or 8-
4 A or the rules implementing those articles are at a minimum as restrictive as the standards
5 imposed under this article. For the purposes of this subsection, "accessory uses and
6 facilities" means uses and facilities associated with the processing of material pursuant to
7 article 7 or 8-A such as screening and the crushing, loading and manufacture of ready-
8 mix concrete and bituminous concrete and associated products and weight scales, scale
9 shacks and maintenance garages. This subsection does not apply to a development
10 constructed during or after reclamation.

11 **Sec. 3. 38 MRSA §490-D, sub-§1,** as amended by PL 2007, c. 290, §11, is
12 further amended to read:

13 **1. Significant wildlife habitat and other protected areas.** Affected land may not
14 be located in, on or over a significant wildlife habitat or other type of protected natural
15 resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas
16 Program, Title 12, section 544. The department may allow excavation to occur in, on or
17 over a significant wildlife habitat or other type of protected natural resource provided a
18 permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in,
19 on or over high and moderate value inland waterfowl and wading bird habitat are also
20 governed by section 480-GG.

21 **Sec. 4. 38 MRSA §490-D, sub-§5-A,** as amended by PL 2007, c. 364, §2, is
22 further amended to read:

23 **5-A. Protected natural resource buffers.** A natural buffer strip must be maintained
24 between the working edge of an excavation and a river, stream, brook, great pond or
25 coastal wetland as defined in section 480-B. A natural buffer strip must also be
26 maintained between the working edge of an excavation and certain freshwater wetlands
27 as defined in section 480-B and having the characteristics listed in paragraph B.
28 Excavation activities conducted within 100 feet of a protected natural resource must
29 comply with the applicable permit requirement under article 5-A. The width
30 requirements for natural buffer strips are as follows.

31 A. A natural buffer strip at least 100 feet wide must be maintained between the
32 working edge of the excavation and the normal ~~high-water~~ high-water line of a great
33 pond classified as GPA, a river flowing to a great pond classified as GPA or a
34 segment of the Kennebec River identified in Title 12, section 403, subsection 7.

35 B. A natural buffer strip at least 75 feet wide must be maintained between the
36 working edge of the excavation and any other water body, river, stream, brook,
37 coastal wetland or significant wildlife habitat contained within a freshwater wetland
38 or a freshwater wetland consisting of or containing:

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

42 (2) Peat lands dominated by shrubs, sedges and sphagnum moss.

1 For purposes of this subsection, the width of a natural buffer strip is measured from the
2 upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of
3 the natural buffer strip is measured from the normal ~~high-water~~ high-water mark of a
4 great pond, river, stream or brook or the upland edge of a freshwater or coastal wetland.
5 The department may ~~not grant a variance from allow excavation to occur under this~~
6 subsection as long as a permit is obtained pursuant to article 5-A. An excavation is not
7 eligible for a permit by rule under department rules regarding activities adjacent to a
8 protected natural resource.

9 **Sec. 5. 38 MRSA §490-D, sub-§17** is enacted to read:

10 **17. Lighting.** Lighting must be shielded from adjacent highways and residential
11 areas.

12 **Sec. 6. 38 MRSA §490-Z, sub-§1**, as amended by PL 2007, c. 290, §12, is
13 further amended to read:

14 **1. Significant wildlife habitat and other protected areas.** Affected land may not
15 be located in, on or over a significant wildlife habitat or other type of protected natural
16 resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas
17 Program, Title 12, section 544. The department may allow excavation to occur in, on or
18 over a significant wildlife habitat or other type of protected natural resource provided a
19 permit is obtained pursuant to article 5-A. Permit requirement for certain excavations in,
20 on or over high and moderate value inland waterfowl and wading bird habitat are also
21 governed by section 480-GG.

22 **Sec. 7. 38 MRSA §490-Z, sub-§5**, as amended by PL 2007, c. 364, §3, is further
23 amended to read:

24 **5. Protected natural resource buffers.** A natural buffer strip must be maintained
25 between the working edge of an excavation and a river, stream, brook, great pond or
26 coastal wetland as defined in section 480-B. A natural buffer strip must also be
27 maintained between the working edge of an excavation and certain freshwater wetlands
28 as defined in section 480-B and have the characteristics listed in paragraph B.
29 Excavation activities conducted within 100 feet of a protected natural resource must
30 comply with the applicable permit requirements under article 5-A. The width
31 requirements for natural buffer strips are as follows.

32 A. A natural buffer strip at least 100 feet wide must be maintained between the
33 working edge of the excavation and the normal ~~high-water~~ high-water line of a great
34 pond classified as GPA, a river flowing to a great pond classified as GPA or a
35 segment of the Kennebec River identified in Title 12, section 403, subsection 7.

36 B. A natural buffer strip at least 75 feet wide must be maintained between the
37 working edge of the excavation and a body of water other than as described in
38 paragraph A, a river, stream or brook, coastal wetland or significant wildlife habitat
39 contained within a freshwater wetland consisting of or containing:

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

1 (2) Peat lands dominated by shrubs, sedges and sphagnum moss.

2 For purposes of this subsection, the width of a natural buffer strip is measured from the
3 upland edge of a floodplain wetland. If no floodplain wetlands are present, the width is
4 measured from the normal ~~high-water~~ high-water mark of the river, stream or brook. The
5 width is measured from the normal ~~high-water~~ high-water mark of a great pond and
6 upland edge of a freshwater or coastal wetland.

7 The department may ~~not grant a variance from~~ allow excavation to occur under this
8 subsection as long as a permit is obtained pursuant to article 5-A. A quarry is not eligible
9 for a permit by rule under department rules regarding activities adjacent to a protected
10 natural resource.

11 **Sec. 8. 38 MRSA §490-Z, sub-§15** is enacted to read:

12 **15. Lighting.** Lighting must be shielded from adjacent highways and residential
13 areas.

14 **Sec. 9. Inland waterfowl and wading bird habitat.** The Department of
15 Environmental Protection, referred to in this section as "the department," shall compile all
16 current and accurate information on the designation of high and moderate value inland
17 waterfowl and wading bird habitat on all licensed or approved excavations and quarries in
18 existence prior to June 8, 2006. The department shall convey to all affected operations
19 the compiled information with an explanation of the resource values of the inland
20 waterfowl and wading bird habitat designated on the property of the affected operation.
21 The department shall strongly encourage property owners with licensed or approved, but
22 unexcavated, areas within the inland waterfowl and wading bird habitat to consult with
23 the Department of Inland Fisheries and Wildlife and the department on:

24 1. Management practices that avoid impacts on wading birds and waterfowl during
25 nesting season and that maintain or enhance the inland waterfowl and wading bird
26 habitat; and

27 2. Reclamation strategies for each excavated portion of the inland waterfowl and
28 wading bird habitat.

29 These practices and strategies must be compatible with excavation and quarry
30 operations.'

31 SUMMARY

32 This amendment replaces the bill. The amendment clarifies the Natural Resources
33 Protection Act permitting requirements for excavation within high and moderate value
34 inland waterfowl and wading bird habitat. The amendment exempts from the site
35 location of development law accessory uses and facilities within an excavation or quarry
36 operating under the performance standards as long as the performance standards are at
37 least as restrictive as the standards imposed under the site law. The amendment adds a
38 lighting standard to the performance standards for gravel pits and quarries. The
39 amendment directs the Department of Environmental Protection to compile and share

COMMITTEE AMENDMENT "A" to H.P. 1430, L.D. 2046

1 information regarding inland waterfowl and wading bird habitat with gravel pits and
2 quarries that were authorized prior to June 8, 2006.

3 **FISCAL NOTE REQUIRED**
4 **(See attached)**



Approved: 03/20/08 *MAC*

123rd MAINE LEGISLATURE

LD 2046

LR 3134(02)

An Act Concerning Certain Excavations

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

Committee: Natural Resources

Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Revenue				
Other Special Revenue Funds	\$0	(\$2,750)	(\$2,750)	(\$2,750)

Fiscal Detail and Notes

This legislation will result in a reduction of dedicated revenue to the Department of Environmental Protection of \$2,750 annually. This estimate is based on approximately 11 borrow pits per year not having to obtain a Natural Resource Protection Act permit and pay the required \$250 fee.