

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1538

H.P. 1082

House of Representatives, December 21, 2009

An Act To Close Loopholes in Environmental Laws

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Received by the Clerk of the House on December 17, 2009. Referred to the Committee on Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WELSH of Rockport.
Cosponsored by Senator NASS of York and
Representatives: DUCHESNE of Hudson, EBERLE of South Portland, MAZUREK of
Rockland, Senator: GOODALL of Sagadahoc.

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

2 **Sec. 1. 38 MRSA §414, sub-§8**, as enacted by PL 1997, c. 794, Pt. A, §21, is
3 amended to read:

4 **8. Effect of license.** Issuance of a license under ~~this chapter~~ section 413 does not
5 convey any property right of any sort, or exclusive privilege. Except for toxic effluent
6 standards and prohibitions imposed under the Federal Water Pollution Control Act,
7 Section 307, as amended, compliance with a license issued under section 413 during its
8 terms constitutes compliance with ~~this chapter~~ sections 413 to 414-C and section 423-D.
9 It is not a defense for a licensee in an enforcement action that it would have been
10 necessary to halt or reduce the licensed activity in order to maintain compliance with the
11 conditions of the license. The licensee shall take all reasonable steps to minimize or
12 prevent any discharge in violation of a license that has a reasonable likelihood of
13 adversely affecting human health or the environment.

14 **Sec. 2. 38 MRSA §420-D, sub-§7, ¶A**, as enacted by PL 1995, c. 704, Pt. B, §2
15 and affected by PL 1997, c. 603, §§' and 9, is amended to read:

16 A. Forest management activities, including associated road construction or
17 maintenance, do not require review pursuant to this section if any road construction is
18 used primarily for forest management activities ~~and is not used primarily to access~~
19 ~~development and the forest management activities and associated roads do not~~
20 constitute a change in land use under rules adopted by the Department of
21 Conservation, Bureau of Forestry concerning forest regeneration and clear-cutting.

22 **Sec. 3. 38 MRSA §439-A, sub-§9** is enacted to read:

23 **9. Ownership of nonconforming lots.** Notwithstanding any provision in a local
24 ordinance to the contrary, when determining whether 2 or more contiguous
25 nonconforming lots or parcels are owned by the same person and are treated as a single
26 lot under this article, the municipal planning board may consider whether the same person
27 owns or has a financial interest in both lots, even if the ownership or financial interest is
28 jointly held with other persons or as a member, officer or shareholder of a corporation.

29 **Sec. 4. 38 MRSA §480-Q, sub-§7-A, ¶D**, as amended by PL 2001, c. 618, §4, is
30 further amended to read:

31 D. Any road construction is not used to access development but is used primarily
32 for forest management activities, unless the road is removed and the site restored to
33 its prior natural condition. Roads must be the minimum feasible width and total
34 length consistent with forest management activities. This exemption does not apply
35 to roads that provide access to ~~development in~~ a subdivision as defined in Title 30-A,
36 section 4401, subsection 4, for the organized portions of the State, or Title 12, section
37 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B,
38 for portions of the State under the jurisdiction of the Maine Land Use Regulation
39 Commission;

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SUMMARY

2 This bill clarifies the "permit shield" provision of the waste discharge law to replace a
3 reference to "this chapter" with a reference to the relevant sections.

4 The bill also clarifies the forest management exemption of the storm water
5 management law to include some language from a similar exemption in the Natural
6 Resources Protection Act.

7 The bill provides that when a municipal planning board is determining whether 2 or
8 more contiguous nonconforming lots must be treated as a single lot under shoreland
9 zoning because they are owned by the same person, the planning board may consider
10 whether the same person owns or has a financial interest in both lots, even if such
11 ownership or financial interest is jointly held with other persons or as a member, officer
12 or shareholder of a corporation.

13 The bill clarifies the exemption from the Natural Resources Protection Act for road
14 construction used primarily for forest management activities and not used to access
15 development. The exemption currently does not apply to roads that provide access to
16 development in a subdivision, and the bill changes the text from "to development in a
17 subdivision" to "to a subdivision."