

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 872

S.P. 276

In Senate, March 8, 2011

An Act To Clarify the Natural Resources Protection Act

(EMERGENCY)

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

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator COLLINS of York.

Cosponsored by Senator THIBODEAU of Waldo, Representative CHASE of Wells and Senators: SAVIELLO of Franklin, THOMAS of Somerset, Representatives: BURNS of Alfred, CEBRA of Naples, PARRY of Arundel, WATERHOUSE of Bridgton.

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,** excessive setbacks and buffer zones for significant vernal pool habitat,
4 high and moderate value inland waterfowl and wading bird habitat and shorebird nesting,
5 feeding and staging areas are preventing landowners from deriving economic benefit
6 from developing their land; and

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

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

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

14 **1. Definition of buffer area.** Include a definition of the buffer area to be regulated;
15 For purposes of this section:

16 A. Significant vernal pool habitat consists of a significant vernal pool and that
17 portion of the critical terrestrial habitat within 75 feet of the spring or fall high water
18 mark of the vernal pool depression;

19 B. High and moderate value inland waterfowl and wading bird habitat consists of an
20 inland wetland complex and a 75-foot-wide zone surrounding the wetland complex;
21 and

22 C. A buffer zone surrounding a shorebird nesting, feeding or staging area may not
23 exceed 75 feet;

24 **Sec. 2. 38 MRSA §480-CC, sub-§1, ¶A,** as enacted by PL 2007, c. 290, §7 and
25 affected by §15, is amended to read:

26 A. "Shorebird feeding area" means a shorebird feeding or staging area that is not a
27 roosting area. "Shorebird feeding area" includes a ~~100-foot-wide~~ 75-foot-wide
28 surrounding buffer referred to as "the feeding buffer."

29 **Sec. 3. 38 MRSA §480-CC, sub-§1, ¶B,** as enacted by PL 2007, c. 290, §7 and
30 affected by §15, is amended to read:

31 B. "Shorebird roosting area" means a shorebird feeding or staging area that is also a
32 roosting area. "Shorebird roosting area" includes a ~~250-foot-wide~~ 75-foot-wide
33 surrounding buffer referred to as "the roosting buffer."

34 **Sec. 4. 38 MRSA §480-CC, sub-§2, ¶A,** as enacted by PL 2007, c. 290, §7 and
35 affected by §15, is amended to read:

36 A. Cutting or removal of vegetation within a roosting buffer is prohibited except as
37 approved by the department for:

- 1 (1) Removal of a safety hazard;
- 2 (2) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet
3 in width as measured between tree trunks and shrub stems. The footpath may not
4 result in a cleared line of sight to the water; ~~and~~
- 5 (3) Cutting or removal of vegetation determined to be necessary by the
6 department in order to conduct other activities approved by the department
7 pursuant to section 480-C and in accordance with the standards of this article and
8 rules adopted pursuant to this article, including but not limited to avoidance,
9 minimization and no unreasonable impact. The department may not approve
10 cutting or removal of vegetation for purposes of creating a view unless the
11 department in consultation with the Department of Inland Fisheries and Wildlife
12 determines there will be no unreasonable impact on the protected resource; ~~and~~
- 13 (4) Cutting or removal of vegetation to allow for grazing areas and access to the
14 water for livestock.

15 Any cutting or removal of vegetation under this paragraph must be done in
16 consultation with and as approved by the Department of Inland Fisheries and
17 Wildlife.

18 **Sec. 5. 38 MRSA §480-CC, sub-§2, ¶B**, as enacted by PL 2007, c. 290, §7 and
19 affected by §15, is amended to read:

20 B. Cutting or removal of vegetation within a feeding buffer is prohibited except as
21 approved by the department for:

- 22 (1) Cutting or removal of vegetation that meets the vegetative screening
23 standards set forth in ~~Title 38~~, section 439-A, subsection 6. In interpreting and
24 enforcing these standards, the department shall rely upon the department's
25 shoreland zoning rules regarding cutting or removal of vegetation for activities
26 other than timber harvesting and apply the cutting standards applicable within 75
27 feet of a coastal wetland ~~to the entire 100-foot feeding buffer; and~~
- 28 (2) Cutting or removal of vegetation determined to be necessary by the
29 department in order to conduct other activities approved by the department
30 pursuant to section 480-C and in accordance with the standards of this article and
31 rules adopted pursuant to this article, including but not limited to avoidance,
32 minimization and no unreasonable impact; ~~and~~
- 33 (3) Cutting or removal of vegetation to allow for grazing areas and access to the
34 water for livestock.

35 This paragraph may not be construed to limit a municipality's authority under home
36 rule to adopt ordinances containing stricter standards than those contained in this
37 paragraph.

38 **Sec. 6. 38 MRSA §480-EE**, as enacted by PL 2007, c. 290, §9 and affected by
39 §15, is amended to read:

