

MAINE STATE LEGISLATURE

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Date: 5/18/11

L.D. 1031

(Filing No. H-282)

Minority

ENVIRONMENT AND NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 765, L.D. 1031, Bill, "An Act To Amend the Laws Governing Significant Wildlife Habitat"

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

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

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

A. Significant vernal pool habitat consists of a significant vernal pool and that portion of the critical terrestrial habitat within 100 feet of the spring or fall high water mark of the vernal pool depression;

B. High and moderate value inland waterfowl and wading bird habitat consists of an inland wetland complex and a 100-foot-wide zone surrounding the wetland complex; and

C. A buffer zone surrounding a shorebird nesting, feeding or staging area may not exceed 100 feet;

Sec. 2. 38 MRSA §480-BB, sub-§2, as enacted by PL 2005, c. 116, §5, is repealed and the following enacted in its place:

2. Certain landowners not subject to regulation. Provide the following exemptions to regulation.

A. A landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat depression is not on property owned or controlled by that landowner.

B. If a vernal pool depression is bisected by a property boundary and a landowner proposing to cause an impact does not have permission to enter the abutting property,

COMMITTEE AMENDMENT

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only that portion of the vernal pool depression located on property owned or controlled by that landowner may be considered in determining whether the vernal pool is significant. A written department determination that a vernal pool is not significant pursuant to this paragraph remains valid regardless of timeframe;

Sec. 3. 38 MRSA §480-BB, sub-§4, as enacted by PL 2005, c. 116, §5, is amended to read:

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

Sec. 4. 38 MRSA §480-BB, sub-§5, as enacted by PL 2005, c. 116, §5, is amended to read:

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

Sec. 5. 38 MRSA §480-BB, sub-§6 is enacted to read:

6. Artificial vernal pool. Explicitly provide that an artificial vernal pool is exempt from regulation as long as the vernal pool was not created in connection with a compensation project pursuant to section 480-Z.

Sec. 6. 38 MRSA §480-CC, sub-§1, ¶B, as enacted by PL 2007, c. 290, §7 and affected by §15, is amended to read:

B. "Shorebird roosting area" means a shorebird feeding or staging area that is also a roosting area. "Shorebird roosting area" includes a ~~250-foot-wide~~ 100-foot-wide surrounding buffer referred to as "the roosting buffer."

Sec. 7. 38 MRSA §480-EE, as enacted by PL 2007, c. 290, §9 and affected by §15, is amended to read:

§480-EE. Significant wildlife habitat criteria; inland open water

Regardless of its identification on maps as a high or moderate value waterfowl and wading bird habitat, an upland area adjacent to a great pond is not considered high or moderate value waterfowl and wading bird habitat for purposes of this article unless the upland area is within ~~250~~ 100 feet of one or more freshwater wetlands that are high or moderate value waterfowl and wading bird habitat.

Sec. 8. PL 2007, c. 533, §3, sub-§1, ¶A is amended to read:

A. When a vernal pool habitat has not previously been determined to be significant and the Department of Environmental Protection or the Department of Inland Fisheries and Wildlife makes a determination concerning whether the vernal pool habitat is significant, either department may determine that the vernal pool habitat is not significant if:

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(1) The vernal pool is located in southern Maine and dries out after ~~spring~~ filling and before July 15th ~~based on winter, spring and early summer precipitation~~; or

(2) The vernal pool is located in northern Maine and dries out after ~~spring~~ filling and before July 31st ~~based on winter, spring and early summer precipitation~~.

Sec. 9. Routine technical rules. Notwithstanding the Maine Revised Statutes, Title 38, section 480-BB, rules adopted pursuant to this Act are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

SUMMARY

This amendment, which is the minority report of the committee, replaces the bill. The bill proposes to remove the mapped habitat provision in the exemption for forest management activities under the Natural Resources Protection Act. The amendment changes to 100 feet the setback for significant vernal pools, high and moderate value inland waterfowl and wading bird habitat and shorebird nesting, feeding and staging areas. The amendment also incorporates the provisions of the majority report, which direct the Department of Environmental Protection to amend its rules to:

- 1. Provide that if a vernal pool depression is bisected by a property boundary, only that portion of the vernal pool depression located on the property of the landowner proposing to cause an impact may be considered in determining whether the vernal pool is significant;
- 2. Provide that an artificial vernal pool is exempt from regulation as long as the vernal pool was not created in connection with a compensation project; and
- 3. Remove seasonal precipitation as a factor in determining that a vernal pool habitat is not significant.

**FISCAL NOTE REQUIRED
(See attached)**



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125th MAINE LEGISLATURE

LD 1031

LR 1522(03)

An Act To Amend the Laws Governing Significant Wildlife Habitat

Fiscal Note for Bill as Amended by Committee Amendment "B"
Committee: Environment and Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Minor revenue decrease - General Fund

Minor revenue decrease - Other Special Revenue Funds

Fiscal Detail and Notes

Requiring the Department of Environmental Protection (DEP) to amend its rules regarding vernal pools in the manner set forth by this bill and instituting a 100 foot setback for significant vernal pools will result in minor costs which DEP can absorb within existing budgeted resources and a negligible reduction in permit fee application revenues and penalty revenues to the DEP.