

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 674

H.P. 466

House of Representatives, February 26, 2013

An Act To Clarify the Natural Resources Protection Act

(EMERGENCY)

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LIBBY of Waterboro.
Cosponsored by Senator COLLINS of York and
Representatives: AYOTTE of Caswell, CAMPBELL of Newfield, CRAY of Palmyra,
DUNPHY of Embden, HARVELL of Farmington, LONG of Sherman, SIROCKI of
Scarborough, TIMBERLAKE of Turner.

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 these restrictions need to be eliminated as soon as
7 possible in order to provide economic benefit to the people of this State; 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, sub-§1,** as enacted by PL 2005, c. 116, §5, is
14 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 **Sec. 6. 38 MRSA §480-EE**, as enacted by PL 2007, c. 290, §9 and affected by
41 §15, is amended to read:

1 **§480-EE. Significant wildlife habitat criteria; inland open water**

2 Regardless of its identification on maps as a high or moderate value waterfowl and
3 wading bird habitat, an upland area adjacent to a great pond is not considered high or
4 moderate value waterfowl and wading bird habitat for purposes of this article unless the
5 upland area is within ~~250~~ 75 feet of one or more freshwater wetlands that are high or
6 moderate value waterfowl and wading bird habitat.

7 **Sec. 7. 38 MRSA §480-II** is enacted to read:

8 **§480-II. Compensation for lost property value**

9 Upon application by a landowner, the commissioner shall award financial
10 compensation equivalent to the loss in property value attributable to setback or buffer
11 zone restrictions imposed under section 480-CC if the restrictions are more stringent than
12 the restrictions in effect on January 1, 2014. The amount of compensation may not
13 exceed the difference between the value of the property in the absence of the more
14 stringent regulation under this article, as determined by the commissioner, and the current
15 assessed value of the property. The determination of the commissioner constitutes final
16 agency action under the Maine Administrative Procedure Act.

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

19 **SUMMARY**

20 This bill changes to 75 feet the setback for significant vernal pool habitat, high and
21 moderate value inland waterfowl and wading bird habitat and shorebird nesting, feeding
22 and staging areas. It also provides a mechanism to compensate landowners for the
23 property value losses incurred as a result of more stringent setback or buffer zone
24 regulations.