

# MAINE STATE LEGISLATURE

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Date: 2/26/24

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**ENVIRONMENT AND NATURAL RESOURCES**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**131ST LEGISLATURE**

**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 858, L.D. 2030, "An Act to Exempt Certain Emergency Activities and Structure Elevation Increases in Flood Zones from Permit Requirements Under the Natural Resources Protection Act"

Amend the bill by striking out the title and substituting the following:

**'An Act to Amend the Natural Resources Protection Act to Enhance the State's Ability to Respond to and Prepare for Significant Flood Events and Storm Surge'**

Amend the bill by inserting after the title and before the enacting clause the following:

**'Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** in recent months, the State has experienced multiple significant storm events causing widespread and devastating flooding and damaging public and private infrastructure across the State with particular impact along the coast, which has experienced historically high and dangerous tides; and

**Whereas,** with an ever-increasing frequency of such storm events and the associated risks to persons, property and resources, the State, local governments and citizens of the State must respond quickly and effectively during these storms and be able to enhance the resilience of public and private infrastructure to the effects of these storms; and

**Whereas,** proposed changes to the Natural Resources Protection Act, which will serve to better prepare the State and infrastructure across the State to withstand such storm events, must take effect immediately to facilitate the development of critical coastal and inland resiliency measures; and

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

Amend the bill by inserting after the enacting clause the following:

**COMMITTEE AMENDMENT**

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Sec. 1. 38 MRSA §480-E, sub-§16 is enacted to read:

16. Height increase upon reconstruction or replacement of pier, wharf or dock in, on or over coastal wetland. Notwithstanding any provision of this article to the contrary, the department may authorize through a permit by rule an increase in the height of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland when the pier, wharf or dock is reconstructed or replaced if:

- A. The height of the reconstructed or replaced pier, wharf or dock is increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck of the pier, wharf or dock to be 4 feet above the base flood elevation. The deck of the pier, wharf or dock may be extended into the upland only as necessary to accommodate any height increase under this paragraph and an additional row of pilings may be placed under the deck to facilitate that extension; and
- B. The reconstructed or replaced pier, wharf or dock otherwise meets all applicable permit by rule standards.

For the purposes of this subsection, "pier, wharf or dock" includes any permanent structures located on the pier, wharf or dock. "Pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.

Sec. 2. 38 MRSA §480-E, sub-§17 is enacted to read:

17. Reconstruction or replacement of pier, wharf or dock in, on or over coastal sand dune system. Notwithstanding any provision of this article to the contrary, the department may authorize through a permit or a permit by rule the reconstruction or replacement of a pier, wharf or dock located wholly or partially in, on or over a coastal sand dune system if:

- A. The pier, wharf or dock to be reconstructed or replaced was in existence on January 1, 2024;
- B. The reconstructed or replaced pier, wharf or dock is built on pilings, posts or similar supports that allow for the free movement of water, wind and sand under the deck of the pier, wharf or dock; and
- C. The reconstructed or replaced pier, wharf or dock otherwise meets all applicable requirements adopted by the department by rule.

The department may adopt rules establishing standards for the reconstruction or replacement of a pier, wharf or dock in accordance with this subsection.

For the purposes of this subsection, "pier, wharf or dock" includes any permanent structures located on the pier, wharf or dock. "Pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.

Sec. 3. 38 MRSA §480-Q, sub-§2-F is enacted to read:

2-F. Repair of pier, wharf or dock in, on or over coastal wetland. Repair of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland if:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- B. There is no additional intrusion into the coastal wetland;
- C. Fill is not placed in or adjacent to the coastal wetland; and

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D. The dimensions of the repaired pier, wharf or dock do not exceed the dimensions of the pier, wharf or dock as it existed 24 months prior to the repair, except that the height of the pier, wharf or dock may be increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck of the pier, wharf or dock to be 4 feet above the base flood elevation. The deck of the pier, wharf or dock may be extended into the upland only as necessary to accommodate any height increase under this paragraph.

This subsection does not apply to the repair of more than 50% of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland unless the municipality in which the repair activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality.

For the purposes of this subsection, "pier, wharf or dock" includes any permanent structures located on the pier, wharf or dock. "Pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.'

Amend the bill by striking out all of sections 3 to 5 and inserting the following:

'**Sec. 3. 38 MRSA §480-Q, sub-§33** is enacted to read:

**33. Emergency flood alleviation.** An emergency activity conducted or overseen by the State or a local government in, on, over or adjacent to a river, stream or brook when the emergency activity is necessary to alleviate an immediate threat to public health or safety caused by a flood event occurring at the time the emergency activity is conducted, as long as any alteration to the river, stream or brook necessary to conduct the emergency activity is restored following the flood event to the conditions that existed prior to the flood event to the greatest extent practicable, as determined by the department.

A local government conducting or overseeing an emergency activity pursuant to this subsection shall notify the department prior to its conducting or overseeing the emergency activity and shall maintain communication with the department for the duration of the emergency activity as directed by the department; and

**Sec. 4. 38 MRSA §480-Q, sub-§34** is enacted to read:

**34. Elevating building foundation.** Elevation of a building foundation if:

A. The building is located:

- (1) On a pier, wharf or dock wholly or partially in, on or over a coastal wetland;
- (2) Adjacent to a protected natural resource; or
- (3) Wholly or partially in a coastal sand dune system;

B. Erosion control measures are taken to prevent sedimentation of the water during and resulting from the elevation of the foundation;

C. The amount of fill used to support the elevated building is limited to the minimum amount necessary to maintain the integrity of the building and fill is not placed in a protected natural resource except as necessary in a coastal sand dune system to support the elevation of a building foundation in accordance with paragraph F;

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D. The building remains entirely within the building footprint existing immediately prior to the elevation;

E. The building height after being elevated conforms to the requirements of section 439-A, subsection 4 and the standards contained in the relevant municipal shoreland zoning ordinances adopted pursuant to article 2-B; and

F. When the building is in a coastal sand dune system, the foundation after being elevated consists of a post or piling foundation that allows for the free movement of water, wind and sand and the building does not exceed 35 feet in height after being elevated. The post or piling foundation may be enclosed with latticework or other similar material through which water, wind and sand can easily move.

The elevation of a building foundation authorized pursuant to this subsection may include the construction of reasonable access to the elevated building, such as steps or a ramp.

For the purposes of this subsection, "pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.

**Sec. 5. Department of Environmental Protection; rulemaking; authorizations.** Notwithstanding the Maine Revised Statutes, Title 38, section 480-AA or any other provision of law to the contrary, any rulemaking conducted prior to July 1, 2025 by the Department of Environmental Protection to amend its rule Chapter 305: Natural Resources Protection Act-Permit by Rule Standards and its rule Chapter 355: Coastal Sand Dune Rules to ensure the consistency of those rules with Title 38, section 480-E, subsections 16 and 17 is routine technical rulemaking, as defined in Title 5, chapter 375, subchapter 2-A.

Notwithstanding any provision of law or department rule to the contrary, prior to the final adoption by the department of amendments to its rule Chapter 305 or rule Chapter 355 pursuant to this section, the department may authorize activities through a permit by rule consistent with the requirements of Title 38, section 480-E, subsection 16 or through a permit or permit by rule consistent with the requirements of Title 38, section 480-E, subsection 17.'

Amend the bill by adding before the summary the following:

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

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

### SUMMARY

This amendment changes the title of the bill, adds an emergency preamble and emergency clause and amends the bill as follows.

1. It clarifies the provision in the bill exempting from permit requirements under the Natural Resources Protection Act emergency activities to alleviate flood events to require a local government conducting or overseeing such activity to notify and maintain communication with the Department of Environmental Protection.

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2. It clarifies the provision in the bill exempting from permit requirements under the Natural Resources Protection Act the elevation of building foundations by limiting the exemption to the elevation of buildings located in coastal sand dune systems; on a pier, wharf or dock located wholly or partially in, on or over a coastal wetland; or adjacent to a protected natural resource subject to additional specified limitations.

3. It removes from the bill the provision exempting from permit requirements under the Natural Resources Protection Act a one-time increase in the height of a pier over a coastal wetland. The amendment instead exempts from those permit requirements the repair of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland where the height of the pier, wharf or dock is increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck to be 4 feet above base flood elevation, subject to additional specified limitations.

4. It provides that the Department of Environmental Protection may authorize through a Natural Resources Protection Act permit by rule an increase in the height of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland when reconstructed or replaced where the height of the pier, wharf or dock is increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck to be 4 feet above base flood elevation, subject to additional specified limitations.

5. It provides that the Department of Environmental Protection may authorize through a Natural Resources Protection Act permit or a permit by rule the reconstruction or replacement of a pier, wharf or dock in, on or over a coastal sand dune system if the pier, wharf or dock that was in existence on January 1, 2024 and the reconstructed or replaced pier, wharf or dock is built on pilings, posts or similar supports that allow for the free movement of water, wind and sand under the deck, subject to additional specified limitations.

6. It provides that Department of Environmental Protection rulemaking conducted prior to July 1, 2025 to amend its rule Chapter 305: Natural Resources Protection Act-Permit by Rule Standards and its rule Chapter 355: Coastal Sand Dune Rules to ensure the consistency of those rules with the statutory changes provided for in the amendment is routine technical rulemaking. The amendment also provides that prior to the final adoption by the department of those amendments to its rule Chapter 305 and rule Chapter 355, the department may authorize through a permit or permit by rule, as applicable, certain pier, wharf or dock reconstruction, replacement or repair activities authorized by the statutory changes in the amendment.

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

**COMMITTEE AMENDMENT**



# 131st MAINE LEGISLATURE

LD 2030

LR 2664(02)

**An Act to Exempt Certain Emergency Activities and Structure Elevation Increases in Flood Zones from Permit Requirements Under the Natural Resources Protection Act**

**Fiscal Note for Bill as Amended by Committee Amendment "A"(S-547)**  
**Committee: Environment and Natural Resources**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor revenue decrease - Other Special Revenue Funds  
Minor savings - Other Special Revenue Funds

### Fiscal Detail and Notes

This bill will exempt certain activities from requiring a Department of Environmental Protection permit. Reducing number of permits issued will result in a minor loss of Other Special Revenue Funds revenue from these permits and minor savings in staff time from fewer permit reviews.