

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

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Chapters 384-End

AND AT THE

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J.S. McCarthy Co., Inc.
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

CHAPTER 485

H.P. 567 - L.D. 838

AN ACT to Protect Freshwater Wet Lands.

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

Sec. 1. 38 MRSA §349, sub-§4, ¶¶G and H, as amended by PL 1983, c. 796, §18, are further amended to read:

G. Title 12, section 4757; (Regulations for state-held wetlands); and

H. Title 12, chapter 421 and orders thereunder; (Wetlands zoning)-; and

Sec. 2. 38 MRSA §349, sub-§4, ¶K is enacted to read:

K. Section 408; (alteration of freshwater wetlands).

Sec. 3. 38 MRSA c. 3, Art. 1-C, §405 is enacted to read:

§405. Statement of findings and purpose

The Legislature finds and declares that the freshwater wetlands of Maine are invaluable, irreplaceable and fragile resources for flood prevention, water supply, water pollution control and habitat. These marshes, swamps and bogs provide numerous benefits to the people of Maine, including, but not limited to, the following:

1. Sedimentation and filtrations basins. Protection of water quality by serving as sedimentation and filtration basins which absorb silt, organic matter and heavy metals;

2. Flood water control. Control of flood and storm water by storage and absorption of heavy rainfall and reduction of flood flows;

3. Erosion control. Control of erosion by retaining and slowly releasing water;

4. Habitat. Important habitat for waterfowl and wildlife, and critical habitat for unique plant life;

5. Uniform stream flow. Maintenance of uniform stream flow by augmentation of low-flow during dry periods;

6. Recreation. Recreation in the form of hunting, fishing, boating, hiking, birdwatching, photography, camping and other nonintensive uses;

7. Nutrients, fish sanctuaries. Source of nutrients in freshwater food cycles, nursery grounds and sanctuaries for fish; and

8. Scientific areas. Unique and scientific areas.

The Legislature further finds that freshwater wetlands have been destroyed or are in danger of destruction by unregulated use, including filling, dredging and the diversion or obstruction of water flow, all of which have despoiled, polluted and eliminated freshwater wetlands. The activities unregulated will continue to have significant adverse economic and environmental impact.

The Legislature intends to conserve and regulate the use of freshwater wetlands for the health, welfare and safety of the citizens of this State.

Sec. 4. 38 MRSA §407, as enacted by PL 1981, c. 705, Pt. W, §1, is repealed.

Sec. 5. 38 MRSA §407-A is enacted to read:

§407-A. Identification of freshwater wetlands

1. Criteria. For the purposes of this Article, areas identified by the department as freshwater wetlands shall be limited to areas:

A. Which are of 10 or more contiguous acres;

B. Which are characterized predominately by wetland soils and vegetation; and

C. Which are not subject to the jurisdiction of sections 391 to 396, sections 471 to 478 or Title 12, sections 7776 to 7780.

These areas may contain small inclusions of land that does not conform to the criteria of this subsection.

2. Identification of freshwater wetlands. The

department may periodically review and revise the maps identifying freshwater wetlands adopted by the commissioner, as required by Public Law 1981, chapter 705, Part W. The adoption or amendment of maps identifying freshwater wetlands shall be subject to the rule-making requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, except as provided in this section. At least 90 days prior to the adoption or amendment of a map, the commissioner shall:

A. Send the map of the affected area to the municipal officers or their designees;

B. Send a notice to each person recorded as owning the affected land; and

C. Publish notice in newspapers of general circulation throughout the State and in the area affected.

During the 90-day period after the notice has been given, alteration of the affected wetland shall be prohibited without a permit.

3. Maps available. The map delineating the boundaries of wetlands that meet the criteria of this section shall be available at the office of the municipality in which the wetlands are located.

Sec. 6. 38 MRSA §§408, 409, 410, 410-A, 410-B, 410-C, and 410-D, are enacted to read:

§408. Prohibitions

No person may dredge or cause to be dredged, drain or cause to be drained, fill or cause to be filled or erect or cause to be erected any permanent structure in, on or over a freshwater wetland as defined by sections 406 and 407 without first obtaining a permit from the Board of Environmental Protection; nor may any action be taken in violation of the conditions of the permit, once obtained.

§409. Standards

If the applicant for a permit demonstrates, to the satisfaction of the board or municipality, as applicable, that the proposed activity will not unreasonably result in any of the following, the board or municipality, as applicable, shall grant the permit upon such terms as are necessary to ensure that the proposed activity will comply with the standards:

1. Interference with recreation or navigation. Interfere with existing recreation or navigational uses;

2. Erosion. Cause soil erosion;

3. Habitat. Harm aquatic, plant or wildlife habitat;

4. Lower water quality. Lower the quality of any waters;

5. Obstruct natural flow of waters. Obstruct the natural flow of surface or subsurface waters across or from the alteration area;

6. Reduce the absorptive capacity. Reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of the alteration area or adjacent properties; or

7. Increase the flow of surface waters. Increase the flow of surface waters across or the discharge of surface waters from the alteration area so as to threaten injury to the alteration area or to downstream properties by erosion, sedimentation, flooding or otherwise.

The department shall adopt procedural rules to coordinate administration of this Article with other environmental permit requirements.

§410. Delegation of permit granting authority to municipality

All permits shall be issued by the Board of Environmental Protection, except that a municipality may apply, on forms provided by the board, to the board for authority to issue the permits. The board shall grant the authority if it finds that the municipality has met the criteria established under section 473.

If at any time the board determines that a municipality may be failing to exercise its permit-granting authority in accordance with its approved procedures or the purposes of this Article as embodied in the standards set forth in sections 405 to 410-A, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment. Following the hearing, if it finds deficiencies, it may revoke the

municipality's permit-granting authority. The municipality may reapply for authority at any time.

§410-A. Permits; grants; denials; suspensions

The department shall process all permits under this Article in accordance with chapter 2.

The board shall not issue a permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by the municipality.

When a municipality which has been delegated the authority to issue a permit under section 410 issues a permit, a copy of the application for the permit and the permit issued by that municipality shall be sent by registered mail to the board immediately upon its issuance.

When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral alter the freshwater wetland.

This Article shall not be construed to limit the authority of any municipality to enact ordinances for the protection of freshwater wetlands, provided that these ordinances are not less stringent than the provisions of this Article.

§410-B. Violations

A violation is any activity which takes place in freshwater wetlands contrary to the provisions of a valid permit or without a permit having been issued. Any activity shall be prima facie evidence that it was done or caused to be done by the owner of the wetlands.

§410-C. Enforcement

Inland fisheries and wildlife wardens and all other law enforcement officers enumerated in Title 12, section 7055, shall enforce this chapter.

§410-D. Exemptions

The following shall be exempt from the provisions of this Article.

1. Agricultural activities. Draining a freshwater wetland for the purpose of growing agricultural products is exempt from the provisions of this Article. This exemption applies only so long as the land is being used for growing agricultural products.

2. Forestry activities. Alteration of a freshwater wetland associated with normal forestry management and harvesting activities is exempt from the provisions of this Article.

3. Peat mining. Alteration of a freshwater wetland for the purposes of exploring for or mining peat are exempt from the provisions of this Article, but are subject to Article 6, where applicable.

4. Hydropower projects. Alteration of a freshwater wetland associated with the operation of a hydropower project as defined in section 632 is exempt from the provisions of this Article, but is subject to chapter 5, Article 1, subarticle 1-B, where applicable.

5. Interstate pipelines. Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline is exempt from the provisions of this Article, but is subject to Article 6, where applicable.

6. Other. The Board of Environmental Protection may by rule exempt from this Article activities having insignificant impact on wetland values, including, but not limited to, repairs and maintenance of existing structures or waive such procedural requirements as it deems consistent with the purposes of this Article. Nothing in this Article may prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any freshwater wetland; normal maintenance or repair of presently existing ways, roads or railroad beds; or maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing the freshwater wetlands, provided that no watercourse is substantially altered.