

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
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of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

tor of the Bureau of Parks and Recreation; a representative of the United States Life Saving Association; and a representative of the United States Coast Guard. The representatives from the United States Life Saving Association and the United States Coast Guard shall be appointed by the Governor and be nonvoting members.

2. **Duties.** The commission shall study the need for additional personnel within the Bureau of Marine Patrol to cover its responsibilities adequately along the Maine coast and, specifically, whether increased personnel should be provided to enable the Bureau of Marine Patrol to take a more active role in search and rescue activities. Specifically, the commission shall address the following issues:

- A. The feasibility of creating positions within the Bureau of Marine Patrol that assist in search and rescue along the Maine coast;
- B. The need for expanded search and rescue efforts along the coast between Memorial Day and Labor Day;
- C. The need for additional training for marine patrol officers in search and rescue techniques and prevention activities;
- D. The need for establishing a catalog of identifiable onshore landmarks to serve as points of reference for search and rescue operations;
- E. The need for additional equipment and watercraft within the Bureau of Marine Patrol to assist in search and rescue activities; and
- F. The appropriateness of current levels of fuel tax revenue attributable to watercraft and the apportioning of those revenues between the Boating Facilities Fund and the Department of Marine Resources.

3. **Report.** The commission shall report its findings and recommendations, including recommended legislation, to the 113th Legislature by December 1, 1988.

4. **Expenses.** Legislative members shall be entitled to expenses and per diem compensation for attendance at meetings of the commission. The member representing the United States Life Saving Association shall receive expenses.

5. **Staffing.** The commission may request staffing from the Legislative Council.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

Personal Services	\$1,320
All Other	4,250
Total	<u>\$5,570</u>

Effective August 4, 1988.

CHAPTER 815

H.P. 1731 — L.D. 2374

AN ACT to Extend and Strengthen the State's Mandatory Shoreland Zoning Laws.

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

Sec. 1. 38 MRSA §435, as amended by PL 1987, c. 94, §§1 and 2, is repealed and the following enacted in its place:

§435. Shoreland areas; legislative purposes

To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls. Shoreland areas include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, or within 250 feet of the upland edge of a coastal or freshwater wetland. The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

It is further declared that, in accordance with Title 12, section 402, certain river and stream segments, as identified in the Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in section 437, are significant river segments and deserve special shoreland zoning controls designed to protect their natural and recreational features.

Zoning ordinances adopted pursuant to this article need not depend upon the existence of a zoning ordinance for all of the land and water areas within a municipality, notwithstanding Title 30, section 4962, as it is the intention of the Legislature to recognize that it is reasonable for municipalities to treat shoreland areas specially and immediately to zone around water bodies rather than to wait until such time as zoning ordinances may be enacted for all of the land within municipal boundaries.

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Study Commission on Coastal Search and Rescue

All existing municipal ordinances dealing with subjects of this section currently in effect and operational on April 18, 1986, are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law.

Sec. 2. 38 MRSa §436, as amended by PL 1987, c. 402, Pt. A, §198, and c. 419, §9, is repealed.

Sec. 3. 38 MRSa §436-A is enacted to read:

§436-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action or normal storm flowage at any time except during periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes.

2. Commercial fishing activities. "Commercial fishing activities" means activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait and nets, and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

3. Densely developed area. "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with a density of at least one principal structure per 2 acres.

4. Floodway. "Floodway" means the channel of a river or other water course and the adjacent land areas that must be reserved to allow for the discharge of a 100-year flood without cumulatively increasing the water surface elevation of the 100-year flood by more than one foot.

5. Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas which are:

A. Of 10 or more contiguous acres; and

B. Characterized predominantly by wetland vegetation.

Freshwater wetlands may contain small inclusions of land that do not conform to the criteria of this subsection.

6. Functionally water-dependent uses. "Functionally water-dependent uses" means those uses that re-

quire, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal waters and which cannot be located away from these waters. These uses include commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site and uses which primarily provide general public access to marine or tidal waters.

7. Great pond. "Great pond" means any inland body of water which in a natural state has a surface area in excess of 10 acres and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this article, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner and except those privately owned inland bodies of water which are held primarily as waterfowl and fishbreeding areas or for hunting and fishing.

8. Maritime activities. "Maritime activities" means the construction, repair, storage, loading and unloading of boats, chandlery and other commercial activities designed and intended to facilitate maritime trade.

9. Normal high-water line. "Normal high-water line" means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

10. Principal structure. "Principal structure" means a building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

11. River. "River" means a free-flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

12. Structure. "Structure" means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences.

13. Timber harvesting. "Timber harvesting" means the cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

Sec. 4. 38 MRSa §438, as enacted by PL 1985, c. 481, Pt. A, §91, is repealed.

Sec. 5. 38 MRSA §438-A is enacted to read:

§438-A. Municipal authority; state oversight

With respect to all shoreland areas described in section 435, municipalities shall adopt zoning and land use control ordinances pursuant to existing enabling legislation, under home rule authority and in accordance with the following requirements.

1. Land use guidelines. In accordance with Title 5, chapter 375, subchapter II, the Board of Environmental Protection shall adopt, and from time to time shall update and amend, minimum guidelines for municipal zoning and land use controls which are designed to carry out the legislative purposes described in section 435 and the provisions of this article. These minimum guidelines shall include provisions governing building and structure size, setback and location, establishment of resource protection, general development, limited residential, commercial fisheries and maritime activities' zones and other zones. Within each zone, the board shall prescribe uses which may be allowed with or without conditions and shall establish criteria for the issuance of permits and nonconforming uses, land use standards and administrative and enforcement procedures. The board shall comprehensively review and update its guidelines and shall reevaluate and update the guidelines at least once every 4 years.

2. Municipal ordinances. In accordance with a schedule adopted by the board and acting in accordance with a local comprehensive plan, municipalities shall prepare and submit to the board zoning and land use ordinances which are consistent with, or are no less stringent than, the minimum guidelines adopted by the board and which address state land use management policies cited in Title 30, chapter 239, subchapter VI and, for coastal communities, the coastal management policies cited in section 1801. When a municipality determines that special local conditions of urbanization within portions of the shoreland zone require a different set of standards than those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the board for review and approval.

3. Board approval. Municipal ordinances and any amendments shall not be effective unless approved by the board. In determining whether to approve municipal ordinances or amendments, the board shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the board, justify a departure from the requirements of the minimum guidelines in a manner which is not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the board shall approve a municipal ordinance which imposes more restrictive standards than those in the guidelines. If the board fails to act on any proposed municipal ordinance or amendment within 30 days of the board's receipt of

the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 30-day period shall be governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection.

4. Failure to adopt ordinances. If a municipality fails to adopt ordinances as required under this article or if the board determines that an ordinance which a municipality has adopted does not satisfy the requirements and purposes under this article, the board, acting in accordance with Title 5, chapter 375, subchapter II, shall adopt suitable ordinances, or suitable provisions of ordinances, on behalf of the municipality. Following adoption by the board, these ordinances or provisions shall be effective and binding within the municipality and shall be administered and enforced by that municipality.

5. Exemptions. Any areas within a municipality which are subject to nonmunicipal zoning and land use controls may be exempted from the operation of this section upon a finding by the board that the purposes of this chapter have been accomplished by nonmunicipal measures.

6. Variances. A copy of each request for a variance under an ordinance approved by the Board of Environmental Protection under this article shall be forwarded by the municipality to the commissioner at least 20 days prior to action by the municipality. The material submitted shall include the application plus all supporting information provided by the applicant. The commissioner may comment when the commissioner determines that the municipal issuance of the variance would be in non-compliance with the requirements of state law for a zoning variance or the variance would undermine the legislative purposes declared in section 435. Such comments, if submitted by the commissioner prior to the action by the municipality, shall be made part of the record, and shall be considered by the municipality prior to taking action on the variance request.

Sec. 6. 38 MRSA §439, as reallocated by PL 1988, c. 481, Pt. A, §27, is repealed.

Sec. 7. 38 MRSA §439-A is enacted to read:

§439-A. Additional municipal powers, limitations

1. Additional controls. In addition to the ordinances required by this chapter, municipalities may adopt zoning and land use controls applicable to other bodies of water as may be required to protect the public health, safety and general welfare and further the purposes of this article.

2. Jurisdiction. Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier

or other structure extending below the normal high-water line of a water body or within any wetland. Accordingly, municipalities may enact ordinances affecting structures which extend over the water or are placed on lands lying between high and low watermarks or within wetlands.

3. Soil evaluation reports. Any other law notwithstanding, when a zoning ordinance adopted in conformity with this article requires a written report of soil suitability for subsurface waste disposal or commercial or industrial development, that report shall be prepared and signed by a duly qualified person who has made an on-the-ground evaluation of the soil properties involved. Persons qualified to prepare these reports shall be certified by the Department of Human Services and shall include Maine State Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties and can provide proof of this training and experience in a manner specified by the Department of Human Services. That department may promulgate rules for the purpose of establishing training and experience standards required by this subsection.

4. Setback requirements. Notwithstanding any provision in a local ordinance to the contrary, all new principal and accessory structures and substantial expansions of such structures within the shoreland zone as established by section 435 must meet the water setback requirements approved by the board, except structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls. For purposes of this subsection, a substantial expansion of a building shall be an expansion which increases either the volume or floor area by 30% or more. This subsection is not intended to prohibit a municipal board of appeals from granting a variance, subject to the requirements of this article and Title 30, section 4963, nor is it intended to prohibit a less than substantial expansion of an accessory structure attached to a legally existing nonconforming structure, provided that the expansion does not create further nonconformity with the water setback requirement.

5. Timber harvesting. Municipal ordinances shall regulate timber harvesting within the shoreland area. These regulations shall be consistent with the board's guidelines which shall be no less restrictive than the following:

A. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains; and

B. Within a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards.

6. Clearing of vegetation. Within the shoreland zone, municipal ordinances shall provide for effective vegetative screening between buildings and shorelines. These ordinances must be consistent with the board's guidelines which shall not be less restrictive than the following:

A. Within a strip extending 75 feet inland from the normal high-water mark, there shall be no cleared opening or openings, except for approved construction, and a well distributed stand of vegetation shall be retained;

B. Within a shoreland area zoned for resource protection abutting a great pond there shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark except to remove safety hazards; and

C. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains.

Sec. 8. 38 MRSA §442, as enacted by PL 1985, c. 481, Pt. A, §92, is repealed.

Sec. 9. 38 MRSA §443, as enacted by PL 1985, c. 481, Pt. A, §93, is repealed.

Sec. 10. 38 MRSA §443-A is enacted to read:

§443-A. Cooperation; enforcement

1. Consultation with state agencies. All agencies of State Government shall cooperate to accomplish the objectives of this article. To that end, the department shall consult with the governing bodies of municipalities and with other state agencies to achieve the purposes of this article, and shall extend to municipalities all possible technical and other assistance for that purpose.

2. Legal actions. In any legal action in which the pleadings challenge the validity or legality of any ordinance adopted pursuant to this article, the Attorney General shall be made a party until removed by the Attorney General's consent.

3. Remedies. Any municipality which fails to adopt, administer or enforce zoning and land use ordinances as required under this article shall be subject to the enforcement procedures, equitable remedies and civil penalties set forth in sections 347 to 349.

Sec. 11. Transition; effective date. This Act shall take effect on January 1, 1989. Municipal shoreland zoning ordinances in effect on or before January 1, 1989, shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law.

Effective January 1, 1989.