

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

See title page for effective date.

CHAPTER 403

S.P. 585 - L.D. 1647

An Act to Amend the Mandatory Shoreland Zoning Law

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

Sec. 1. 12 MRSA §4812-D, as enacted by PL 1985, c. 488, §3, is reallocated to 38 MRSA §449.

Sec. 2. 12 MRSA §4818, as enacted by PL 1985, c. 236, is repealed.

Sec. 3. 38 MRSA §435, as repealed and replaced by PL 1987, c. 815, §§1 and 11, is amended to read:

§435. Shoreland areas

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, or within 75 feet of the high-water line of a stream. 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 30-A, section 4962 4503, 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.

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. 4. 38 MRSA §436-A, sub-§§1, 5, 7 and 11, as enacted by PL 1987, c. 815, §§3 and 11, are amended to read:

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 the maximum storm activity spring tide level as identified in tide tables published by the National Ocean Service.~~ Coastal wetlands may include portions of coastal sand dunes.

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

A. Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that, in a natural state, the combined surface area is in excess of 10 acres; and

B. Characterized predominantly by Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

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

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.~~

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

Sec. 5. 38 MRSA §436-A, sub-§11-A is enacted to read:

11-A. Stream. "Stream" means a free-flowing body of water from the outlet of a great pond or the point of confluence of 2 perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river.

Sec. 6. 38 MRSA §437, sub-§4, as reallocated by PL 1985, c. 481, Pt. A, §25, is amended to read:

4. Fish River. The Fish River from the bridge in Fort Kent Mills to the ~~Fort Kent~~ and outlet of Eagle Lake in Wallagrass ~~Plantation townline~~, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding ~~Portage~~ Portage Lake;

Sec. 7. 38 MRSA §438-A, sub-§§2 to 4, as enacted by PL 1987, c. 815, §§5 and 11, are amended to read:

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, which address 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 from~~ 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 and any repeals of ordinances~~ 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 an ordinance or an amendment adopted by a municipality contains standards which are inconsistent with or less stringent than the minimum guidelines, the board may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions shall be effective and binding within the municipality and shall be administered and enforced by the municipality. If the board fails to act on any proposed municipal ordinance or amendment within ~~30~~ 45 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~~ 45-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, and that the board is unable to make the ordinance consistent with the minimum guidelines by the imposition of conditions, as set forth in subsection 3, 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. Notwithstanding subsections 2 and 3, if the board determines that special water quality considerations on a great pond warrant more restrictive standards than those contained in the minimum guidelines, the board may adopt the additional standards for all municipalities outside the jurisdiction of the Maine Land Use Regulation Commission which about those waters. 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.

Sec. 8. 38 MRSA §439-A, sub-§§4, 5 and 6, as enacted by PL 1987, c. 815, §§7 and 11, is amended to read:

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~~ shall 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 ~~30-A~~, section 4963 ~~4353~~, 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~~ Notwithstanding any provision in a provision in a local ordinance to the contrary, timber harvesting activities 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.

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter, which shall then be incorporated into local ordinances.

6. Clearing of vegetation. Within the shoreland ~~zone area~~, municipal ordinances shall provide for effective vegetative screening between buildings and shorelines. ~~These ordinances must be consistent with the board's guidelines which~~ Notwithstanding any provision in a local ordinance to the contrary vegetative screening requirements shall not be no 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.

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter, which shall then be incorporated into local ordinances.

Sec. 9. 38 MRSA §440, 4th ¶, as enacted by PL 1985, c. 794, Pt. A, §8, is amended to read:

Zoning ordinances adopted or amended pursuant to this section shall designate as a resource protection zone or its equivalent, as defined in the guidelines adopted pursuant to section 442 ~~438-A~~, subsection 1, all areas within the floodway of the 100-year flood plain along rivers and in the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps. This provision does not apply to areas zoned for general development or its equivalent, as defined in the guidelines adopted pursuant to section 442 ~~438-A~~, subsection 1, as of the effective date of this paragraph, or within areas designated by ordinances as densely developed. The determination of which areas are densely developed shall be based on a finding that, as of the effective date of this paragraph, existing development meets the definition in section 436, subsection ~~1-B~~ 3.

Sec. 10. 38 MRSA §441, sub-§1, as amended by PL 1987, c. 737, Pt. C, §§87 and 106, is further amended to read:

1. Appointment. In every municipality, the municipal officers shall annually by July 1st appoint or reappoint a code enforcement officer, whose job may include being a local plumbing inspector or a building inspector and who may or may not be a resident of the municipality for which he is appointed. The municipal officers may appoint the planning board to act as the code enforcement officer. The municipal officers may remove a code enforcement officer for cause, after notice and hearing. This removal provision shall only apply to code enforcement officers who have completed a reasonable period of probation as established by the municipality pursuant to Title 30-A, section ~~2701~~ 2601. If not reappointed by a municipality, a code enforcement officer may continue to serve until a successor has been appointed and sworn.

Sec. 11. 38 MRSA §441, sub-§3, ¶C, as amended by PL 1985, c. 737, Pt. A, §111, is further amended to read:

C. Keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. On an annual basis, a summary of this record shall be submitted to the

Director of the Bureau of Land Quality Control ~~and within~~ the Department of Environmental Protection; and

Sec. 12. 38 MRSA §444, first ¶, as reallocated by PL 1985, c. 481, Pt. A, §32, is amended to read:

Any person who orders or conducts any activity in violation of a municipal ordinance adopted under this chapter shall be penalized in accordance with Title 30 30-A, section 4966 4506.

Sec. 13. 38 MRSA §445, as enacted by PL 1985, c. 481, Pt. A, §94, is amended to read:

§445. Guidelines for shoreland zoning along significant river segments

In addition to the guidelines adopted under section 438 438-A, the following guidelines for the protection of the shorelands shall apply along significant river segments identified in section 437. These guidelines are intended to maintain the special values of these particular river segments by protecting their scenic beauty and undeveloped character.

1. New principal structures. New principal structures, except for structures related to hydropower facilities, shall be set back a minimum of 125 feet from the normal high-water ~~mark line~~ of the river. These structures shall be screened from the river by existing vegetation.

2. New roads. Developers of new permanent roads, except for those providing access to a structure or facility allowed in the 250-foot zone, shall demonstrate that no reasonable alternative route outside of the zone exists. When roads must be located within the zone, they shall be set back as far as practicable from the normal high-water ~~mark line~~ and screened from the river by existing vegetation.

3. New gravel pits. Developers of new gravel pits shall demonstrate that no reasonable mining site outside of the zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water ~~mark line~~ and no less than 75 feet and screened from the river by existing vegetation.

Sec. 14. 38 MRSA §446, as enacted by PL 1985, c. 481, Pt. A, §95, is amended to read:

§446. Municipal ordinance review and certification

Each municipality with shorelands along significant river segments, as identified in section 438 437, shall review the adequacy of the zoning on these shorelands to protect the special values cited for these river segments by the Department of Conservation's 1982 Maine Rivers Study and for consistency with the guidelines established under section 445. Prior to December 15, 1984, each such municipality shall certify to the Board of Environmental Protection either that its existing zoning for these areas is at least as restrictive as the guidelines established under section 445, or that it has amended its zoning for this purpose. This certification shall be accompanied by the ordinances and zoning maps covering

these areas. Failure to accomplish the purposes of this subsection shall result in adoption of suitable ordinances for these municipalities, as provided for in section 442 438-A.

Sec. 15. 38 MRSA §448 is enacted to read:

§448. Municipalities establish commerical fishing and maritime activity zones

A municipality may, within coastal shoreland areas of that municipality, adopt zoning ordinances establishing a commercial fishing and maritime activity zone. In creating that zone, the municipality shall consider at least the following:

1. Utilization. The number of commercial fishermen and the utilization of the shoreland area;

2. Availability. The availability of shoreland area for commercial fishing;

3. Demand for property. The demands for shoreland property for commercial and residential purposes not related to commercial fishing or maritime activity; and

4. Access. Access to the shore and availability of space appropriate for commercial fishing and maritime activities.

See title page for effective date.

CHAPTER 404

H.P. 129 - L.D. 173

An Act to Further Protect Freshwater Wetlands

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

Sec. 1. 30-A MRSA §4401, sub-§2-A is enacted to read:

2-A. Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

Sec. 2. 30-A MRSA §4404, sub-§14 is enacted to read: