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S.P. 555

In Senate, May 2, 2013

An Act To Amend the Mandatory Shoreland Zoning Laws

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SHERMAN of Aroostook.
Cosponsored by Representative: WELSH of Rockport.

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

2 **Sec. 1. 38 MRSA §436-A, sub-§1-B** is enacted to read:

3 **1-B. Agriculture.** "Agriculture" means the production, keeping or maintenance for
4 sale or lease of plants or animals, including, but not limited to, forages and sod crops,
5 grains and seed crops, dairy animals and dairy products, poultry and poultry products,
6 livestock, fruits and vegetables and ornamental and greenhouse products. "Agriculture"
7 does not include forest management and timber harvesting activities.

8 **Sec. 2. 38 MRSA §436-A, sub-§4-A** is enacted to read:

9 **4-A. Footprint.** "Footprint" means the entire area of ground covered by the
10 structures on a premises, including cantilevered or similar overhanging extensions, as
11 well as unenclosed structures, such as patios and decks.

12 **Sec. 3. 38 MRSA §436-A, sub-§6,** as amended by PL 1997, c. 726, §1, is further
13 amended to read:

14 **6. Functionally water-dependent uses.** "Functionally water-dependent uses"
15 means those uses that require, for their primary purpose, location on submerged lands or
16 that require direct access to, or location in, coastal or inland waters and that can not be
17 located away from these waters. These uses include, but are not limited to, commercial
18 and recreational fishing and boating facilities, ~~excluding recreational boat storage~~
19 ~~buildings,~~ finfish and shellfish processing, ~~fish~~ fish-related storage and retail and
20 wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat
21 building facilities, marinas, navigation aids, basins and channels, ~~retaining walls,~~
22 shoreline structures necessary for erosion control purposes, industrial uses dependent
23 upon water-borne transportation or requiring large volumes of cooling or processing
24 water that can not reasonably be located or operated at an inland site and uses that
25 primarily provide general public access to coastal or inland waters. Recreational boat
26 storage buildings are not considered to be a functionally water-dependent use.

27 **Sec. 4. 38 MRSA §436-A, sub-§7-A,** as enacted by PL 2011, c. 231, §1, is
28 amended to read:

29 **7-A. Height of a structure.** "Height of a structure" means the vertical distance
30 between the mean original grade at the ~~downhill~~ uphill side of the structure, prior to
31 construction, and the highest point of the structure, excluding chimneys, steeples,
32 antennas and similar appurtenances that have no floor area.

33 **Sec. 5. 38 MRSA §436-A, sub-§9-A,** as enacted by PL 1993, c. 196, §2, is
34 amended to read:

35 **9-A. Outlet stream.** "Outlet stream" means any perennial or intermittent stream, as
36 shown on the most recent ~~edition of a 7.5 minute series or, if not available, a 15 minute~~
37 ~~series topographic map produced by,~~ highest resolution version of the national
38 hydrography dataset available from the United States Geological Survey on the website

1 of the United States Geological Survey or the national map, that flows from a freshwater
2 wetland.

3 **Sec. 6. 38 MRSA §436-A, sub-§11-A**, as amended by PL 1995, c. 92, §1, is
4 further amended to read:

5 **11-A. Stream.** "Stream" means a free-flowing body of water from the outlet of a
6 great pond or the ~~point of~~ confluence of 2 perennial streams as depicted ~~by a solid blue~~
7 ~~line on the most recent edition of a~~, highest resolution version of the national
8 hydrography dataset available from the United States Geological Survey 7.5 minute
9 series topographic map or, if not available, a 15 minute series topographic map, on the
10 website of the United States Geological Survey or the national map to the point where the
11 ~~body of water~~ stream becomes a river or ~~flows to~~ where the stream meets the shoreland
12 zone of another water body or wetland within a shoreland area. When a stream meets the
13 shoreland zone of a water body or wetland and a channel forms downstream of the water
14 body or wetland as an outlet, that channel is also a stream.

15 **Sec. 7. 38 MRSA §436-A, sub-§§12 and 13**, as enacted by PL 1987, c. 815, §§3
16 and 11, are amended to read:

17 **12. Structure.** "Structure" means anything built, constructed or erected for the
18 support, shelter or enclosure of persons, animals, goods or property of any kind, ~~together~~
19 with and anything constructed or erected ~~with a fixed location~~ on or in the ground,
20 exclusive of fences. "Structure" includes a structure temporarily or permanently located.

21 **13. Timber harvesting.** "Timber harvesting" means the cutting and removal of ~~trees~~
22 ~~from their growing site and the attendant operation of cutting and skidding machinery,~~
23 ~~but not the construction or creation of roads~~ timber for the primary purpose of selling or
24 processing forest products. "Timber harvesting" does not include the clearing of land for
25 approved construction cutting or removal of vegetation within the shoreland zone when
26 associated with any other land use activities.

27 **Sec. 8. 38 MRSA §438-A, sub-§1-B, ¶A**, as enacted by PL 1995, c. 542, §1, is
28 amended to read:

29 A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a
30 municipality shall provide written notification to landowners whose property is being
31 considered by the municipality for placement in a resource protection zone.
32 Notification to landowners must be made by first-class mail to the last known
33 addresses of the persons against whom property tax on each parcel is assessed. The
34 municipal officers shall prepare and file with the municipal clerk a sworn, notarized
35 certificate indicating those persons to whom notice was mailed and at what addresses,
36 and when, by whom and from what location notice was mailed. This certificate
37 constitutes prima facie evidence that notice was sent to those persons named in the
38 certificate. The municipality must send notice not later than 14 days before ~~its~~
39 ~~planning board votes to establish~~ it holds a public hearing on adoption or amendment
40 of a zoning ordinance or map that places the landowners' property in the resource
41 protection zone. Once a landowner's property has been placed in a resource
42 protection zone, individual notice is not required to be sent to the landowner when the

1 zoning ordinance or map is later amended in a way that does not affect the inclusion
2 of the landowner's property in the resource protection zone.

3 **Sec. 9. 38 MRSA §439-A, sub-§4**, as amended by PL 1997, c. 726, §3, is further
4 amended to read:

5 **4. Setback requirements.** Notwithstanding any provision in a local ordinance to the
6 contrary and except as provided in this subsection, all new principal and accessory
7 structures and ~~substantial~~ expansions of such structures within the shoreland zone as
8 established by section 435 must meet the water body or wetland setback requirements
9 approved by the board, except functionally water-dependent uses. ~~For purposes of this~~
10 ~~subsection, a substantial expansion of a building is an expansion that increases either the~~
11 ~~volume or floor area by 30% or more.~~ This subsection is not intended to prohibit a
12 municipal board of appeals from granting a variance, subject to the requirements of this
13 article and Title 30-A, section 4353, nor is it intended to prohibit ~~a less than substantial~~ an
14 otherwise permissible expansion of a legally existing nonconforming structure, as long as
15 the expansion does not create further nonconformity with the water body or wetland
16 setback requirement.

17 A. All new principal and accessory structures, excluding functionally water-
18 dependent uses, must meet the water body or wetland setback requirements approved
19 by the board. An expansion of a legally existing nonconforming structure pursuant to
20 this subsection may not create further nonconformity with the water body or wetland
21 setback requirement.

22 B. Expansion of any portion of a structure within 25 feet of the normal high-water
23 line of a water body or upland edge of a wetland is prohibited, even if the expansion
24 will not increase nonconformity with the water body or wetland setback requirement.
25 Expansion of an accessory structure that is located closer to the normal high-water
26 line of a water body or upland edge of a wetland than the principal structure is
27 prohibited, even if the expansion will not increase nonconformity with the water body
28 or wetland setback requirement.

29 (1) Notwithstanding this paragraph, if a legally existing nonconforming principal
30 structure is entirely located less than 25 feet from the normal high-water line of a
31 water body or upland edge of a wetland, that structure may be expanded as
32 follows, as long as all other applicable standards of land use adopted by the
33 municipality are met and the expansion is not prohibited by paragraph A.

34 (a) The maximum total footprint for the principal structure may not be
35 expanded to a size greater than 800 square feet or 30% larger than the
36 footprint that existed on January 1, 1989, whichever is greater. The
37 maximum height of the principal structure may not be made greater than 15
38 feet or the height of the existing structure, whichever is greater.

39 C. All other legally existing nonconforming principal and accessory structures that
40 do not meet the water body or wetland setback requirements may be expanded or
41 altered as follows, as long as other applicable standards of land use adopted by the
42 municipality are met and the expansion is not prohibited by paragraph A or B.

1 (1) For structures located less than 75 feet from the normal high-water line of a
2 water body or upland edge of a wetland, the maximum combined total footprint
3 for all structures may not be expanded to a size greater than 1,000 square feet or
4 30% larger than the footprint that existed on January 1, 1989, whichever is
5 greater. The maximum height of any structure may not be made greater than 20
6 feet or the height of the existing structure, whichever is greater.

7 (2) For structures located less than 100 feet from the normal high-water line of a
8 great pond classified as GPA or a river flowing to a great pond classified as GPA,
9 the maximum combined total footprint for all structures may not be expanded to
10 a size greater than 1,500 square feet or 30% larger than the footprint that existed
11 on January 1, 1989, whichever is greater. The maximum height of any structure
12 may not be made greater than 25 feet or the height of the existing structure,
13 whichever is greater. Any portion of those structures located less than 75 feet
14 from the normal high-water line of a water body or upland edge of a wetland
15 must meet the footprint and height limits in subparagraph (1).

16 (3) In addition to the limitations in subparagraphs (1) and (2), for structures that
17 are legally nonconforming due to their location within the Resource Protection
18 District when located at less than 250 feet from the normal high-water line of a
19 water body or the upland edge of a wetland, the maximum combined total
20 footprint for all structures may not be expanded to a size greater than 1,500
21 square feet or 30% larger than the footprint that existed at the time the Resource
22 Protection District was established on the lot, whichever is greater. The
23 maximum height of any structure may not be made greater than 25 feet or the
24 height of the existing structure, whichever is greater, except that any portion of
25 those structures located less than 75 feet from the normal high-water line of a
26 water body or upland edge of a wetland must meet the footprint and height limits
27 in subparagraph (1).

28 D. As used in this subsection, unless the context otherwise indicates, the following
29 terms have the following meanings.

30 (1) "Water body" means a great pond, river or stream.

31 (2) "Wetland" means a coastal wetland or freshwater wetland.

32 Plans approved by the municipality for expansions under this subsection must be filed in
33 the registry of deeds of the county in which the property is located within 90 days of
34 approval.

35 **Sec. 10. 38 MRSA §439-A, sub-§4-A,** as amended by PL 1999, c. 243, §§6 and
36 7, is repealed.

37 **Sec. 11. 38 MRSA §439-A, sub-§6,** as amended by PL 2007, c. 292, §22, is
38 further amended to read:

39 **6. Clearing of vegetation.** Within the shoreland area, municipal ordinances ~~shall~~
40 must provide for effective vegetative screening between buildings and shorelines.
41 Notwithstanding any provision in a local ordinance to the contrary vegetative screening
42 requirements ~~shall~~ must be no less restrictive than the following:

1 A. Within a strip extending 75 feet inland from the normal high-water line, a well
2 distributed stand of trees and other natural vegetation must be retained and there shall
3 may be no cleared opening or openings greater than 250 square feet, except for
4 approved construction, and a well distributed stand of vegetation shall be retained
5 specifically allowed by municipal ordinance within 75 feet of the normal high-water
6 line;

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

10 C. Selective cutting of no more than 40% of the total volume of trees 4.5 4 inches or
11 more in diameter, measured at 4 1/2 feet above ground level, is allowed in any
12 10-year period, ~~as long as a well distributed stand of trees and other natural~~
13 ~~vegetation remains~~ except in general development and commercial fisheries and
14 maritime activity zones where rules adopted by the board allow for 70% of a lot to be
15 covered with nonvegetated surfaces. Volume may be considered equivalent to basal
16 area.

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

19 **Sec. 12. 38 MRSA §439-A, sub-§6-A** is enacted to read:

20 **6-A. Clearing of vegetation; exception.** The standards specified in subsection 6,
21 paragraphs A and C do not apply to:

22 A. General development or commercial fisheries and maritime activity zones along
23 coastal wetlands that are part of a state or federal brownfields program or a voluntary
24 response action program under section 343-E for cleanup of contamination for the
25 purpose of redevelopment of the property;

26 B. General development or commercial fisheries and maritime activity zones along
27 rivers that do not flow to a great pond classified as GPA under section 465-A that are
28 part of a state or federal brownfields program or a voluntary response action program
29 under section 343-E for cleanup of contamination for the purpose of redevelopment
30 of the property; or

31 C. Land along coastal wetlands or rivers that do not flow to a great pond classified as
32 GPA under section 465-A that was historically intensively developed with industrial
33 or commercial uses and that is part of a state or federal brownfields program or a
34 voluntary response action program under section 343-E for cleanup of contamination
35 for the purpose of redevelopment of the property.

36 **Sec. 13. 38 MRSA §439-A, sub-§7, ¶D,** as enacted by PL 1993, c. 318, §1, is
37 amended to read:

38 D. The total ~~ground floor area~~ footprint of all principal and accessory structures is
39 limited to a maximum of 1,500 square feet.

40 **Sec. 14. 38 MRSA §439-B, sub-§3,** as enacted by PL 2007, c. 593, §2, is
41 repealed and the following enacted in its place:

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3. Application. This section does not apply to:

A. Activities resulting in less than one cubic yard of earth material being added or displaced;

B. A person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and

C. Municipal, state and federal employees engaged in projects associated with that employment.

Sec. 15. 38 MRSA §441, sub-§3, ¶C, as amended by PL 1991, c. 346, §10, 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 a biennial basis, beginning in 1992, a summary of this record must be submitted by March 1 to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection;~~ and

SUMMARY

This bill makes the following changes to the laws governing mandatory shoreland zoning.

1. It adds definitions of "agriculture" and "footprint" and changes other definitions.

2. It changes the laws regulating the circumstances under which nonconforming structures in the shoreland zone may be expanded.

3. It amends the standards governing clearing of vegetation to create consistency between the statutory provisions and rules and provides an exemption from certain standards for remediation activities in specific shoreland zoning districts.

4. It exempts a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used and government employees engaged in projects associated with their employment from certain provisions of law governing excavation activity in a shoreland zone.

5. It eliminates the requirement that a code enforcement officer report essential transactions to the Department of Environmental Protection.