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Date: (Filing No. S-)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” 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

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

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

7 A. The height of the reconstructed or replaced pier, wharf or dock is increased by no
8 more than the amount necessary for the bottom of the lowest horizontal structural
9 component of the deck of the pier, wharf or dock to be 4 feet above the base flood
10 elevation. The deck of the pier, wharf or dock may be extended into the upland only
11 as necessary to accommodate any height increase under this paragraph and an
12 additional row of pilings may be placed under the deck to facilitate that extension; and

13 B. The reconstructed or replaced pier, wharf or dock otherwise meets all applicable
14 permit by rule standards.

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

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

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

24 A. The pier, wharf or dock to be reconstructed or replaced was in existence on January
25 1, 2024;

26 B. The reconstructed or replaced pier, wharf or dock is built on pilings, posts or similar
27 supports that allow for the free movement of water, wind and sand under the deck of
28 the pier, wharf or dock; and

29 C. The reconstructed or replaced pier, wharf or dock otherwise meets all applicable
30 requirements adopted by the department by rule.

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

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

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

37 **2-F. Repair of pier, wharf or dock in, on or over coastal wetland.** Repair of a pier,
38 wharf or dock located wholly or partially in, on or over a coastal wetland if:

39 A. Erosion control measures are taken to prevent sedimentation of the water;

40 B. There is no additional intrusion into the coastal wetland;

41 C. Fill is not placed in or adjacent to the coastal wetland; and

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

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

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

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

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

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

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

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

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

31 A. The building is located:

32 (1) On a pier, wharf or dock wholly or partially in, on or over a coastal wetland;

33 (2) Adjacent to a protected natural resource; or

34 (3) Wholly or partially in a coastal sand dune system;

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

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

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

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

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

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

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

15 **Sec. 5. Department of Environmental Protection; rulemaking;**
16 **authorizations.** Notwithstanding the Maine Revised Statutes, Title 38, section 480-AA
17 or any other provision of law to the contrary, any rulemaking conducted prior to July 1,
18 2025 by the Department of Environmental Protection to amend its rule Chapter 305:
19 Natural Resources Protection Act-Permit by Rule Standards and its rule Chapter 355:
20 Coastal Sand Dune Rules to ensure the consistency of those rules with Title 38, section
21 480-E, subsections 16 and 17 is routine technical rulemaking, as defined in Title 5, chapter
22 375, subchapter 2-A.

23 Notwithstanding any provision of law or department rule to the contrary, prior to the
24 final adoption by the department of amendments to its rule Chapter 305 or rule Chapter
25 355 pursuant to this section, the department may authorize activities through a permit by
26 rule consistent with the requirements of Title 38, section 480-E, subsection 16 or through
27 a permit or permit by rule consistent with the requirements of Title 38, section 480-E,
28 subsection 17.'

29 Amend the bill by adding before the summary the following:

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

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

34 SUMMARY

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

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

