

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **Resolve, Regarding Legislative Review of Portions of Chapter 355: Coastal Sand Dune Rules, a Major Substantive Rule of the Department of Environmental Protection, Extending the Deadline for the Repeal of the Current Coastal Sand Dune Rules and Convening the Beaches Advisory Group**

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

**Whereas,** the above-named major substantive rule has been submitted to the Legislature for review; and

**Whereas,** immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

**Whereas,** in the judgement 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, be it

**Sec. 1 Adoption. Resolved:** That final adoption of portions of Chapter 355: Coastal Sand Dune Rules, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the rule is amended as follows:

1. Section 5, subsection E is amended by striking subsection E and replacing it with:

A. A provision that no new seawall or similar structure may be constructed and that no existing seawall or similar structure may be altered or replaced except as provided in subsection E and as allowed under Chapter 305, Permit By Rule and the Maine Revised Statutes, Title 38, section 480-W;

B. A provision that, with a permit from the department, a seawall or similar structure may be replaced with a structure of different dimensions or in a different location that is farther landward if the department determines that the replacement structure would be less damaging to the coastal sand dune system, existing wildlife habitat and adjacent properties than replacing the existing structure with a structure of the same dimensions and in the same location; and

C. A notation that the department encourages landowners to consider removing a seawall or similar structure and covering the area with sand and dune vegetation, or replacing the structure in a more landward position to reduce its influence on the beach and sand dune system;

2. Section 8, subsection E is amended to:

Resolve, Regarding Legislative Review of Portions of Chapter 355: Coastal Sand Dune Rules, a Major Substantive Rule of the Department of Environmental Protection, Extending the Deadline for the Repeal of the Current Coastal Sand Dune Rules and Convening the Beaches Advisory Group

A. Clarify that, if beach nourishment is funded in whole or in part with state funds, the portions of the beach nourished with state funds must be placed either into permanent public ownership or under legally binding agreements, such as but not limited to easements that preclude any development and that allow public access for recreational activities; and

B. Clarify that the subsection does not apply to use of dredged material from projects conducted by the Army Corps of Engineers; and

3. Section 8, subsection F is amended to provide that owners of property on a beach that will be nourished must agree to enter a legally binding agreement, such as but not limited to an easement, concerning the property that allows for the management of significant wildlife habitat on the beach portion of their property; and be it further

**Sec. 2 Beaches Advisory Group. Resolved:** That the Executive Department, State Planning Office, Maine Coastal Program, with the Department of Environmental Protection and the Department of Conservation, Maine Geological Survey, shall convene an interagency advisory group, referred to as "the Beaches Advisory Group" in this section, to oversee Maine's integrated beach management program as detailed in a report dated February 2006 and titled "Protecting Maine's Beaches for the Future: A Proposal to Create an Integrated Beach Management Program."

**1. Membership.** The Beaches Advisory Group must include representatives of agencies and groups as determined by the Executive Department, State Planning Office, Maine Coastal Program in consultation with the Department of Environmental Protection and the Department of Conservation, Maine Geological Survey and also must include:

A. The Commissioner of Environmental Protection or the commissioner's designee;

B. The Commissioner of Conservation or the commissioner's designee;

C. The Director of the Maine Geological Survey or the director's designee;

D. The Director of the Maine Coastal Program or the director's designee;

E. The Executive Director of the Southern Maine Regional Planning Commission or the executive director's designee;

F. A representative of a large wildlife conservation organization in the State; and

G. A representative of a coastal property owners association in the State.

**2. Report; legislation authorized.** Beginning January 1, 2007, the Beaches Advisory Group shall annually submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters. In the report, the Beaches Advisory Group shall summarize the discussions of the group and present any recommendations. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation to any session of the Legislature regarding Maine's beaches.

**3. Repeal.** This section is repealed June 30, 2011; and be it further

**Sec. 3 Resolve 2003, c. 130, §6 amended. Resolved:** That Resolve 2003, c. 130, §6 is amended to read:

**Sec. 6 Repeal. Resolved:** That the rules authorized pursuant to section 1 of this resolve are repealed ~~April 1, 2006~~ July 15, 2006.

RESOLVE Chapter 175122nd Maine State Legislature

Resolve, Regarding Legislative Review of Portions of Chapter 355: Coastal Sand Dune Rules, a Major Substantive Rule of the Department of Environmental Protection, Extending the Deadline for the Repeal of the Current Coastal Sand Dune Rules and Convening the Beaches Advisory Group

**Emergency clause.** In view of the emergency cited in the preamble, this resolve takes effect when approved.