

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FOUR

—
S.P. 858 - L.D. 2030

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

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The dimensions of the repaired pier, wharf or dock do not exceed the dimensions of the pier, wharf or dock as it existed 24 months prior to the repair, except that the height of the pier, wharf or dock may be increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck of the pier, wharf or dock to be 4 feet above the base flood elevation. The deck of the

pier, wharf or dock may be extended into the upland only as necessary to accommodate any height increase under this paragraph.

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

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

Sec. 4. 38 MRSA §480-Q, sub-§30, as corrected by RR 2011, c. 1, §60, is amended to read:

30. Lobster trap storage. The storage of lobster traps and related trap lines, buoys and bait bags on docks in, on, over or adjacent to a coastal wetland. For purposes of this subsection, "dock" means a dock, wharf, pier, quay or similar structure built in part on the shore and projected into a harbor and used as a landing, docking, loading or unloading area for watercraft; ~~and~~

Sec. 5. 38 MRSA §480-Q, sub-§32, as enacted by PL 2011, c. 599, §14, is amended to read:

32. Placement of wood in streams. The placement of wood in stream channels to enhance cold water fisheries habitat in accordance with Title 12, section 8867-C and rules adopted to implement that section;

Sec. 6. 38 MRSA §480-Q, sub-§33 is enacted to read:

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

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

Sec. 7. 38 MRSA §480-Q, sub-§34 is enacted to read:

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

A. The building is located:

- (1) On a pier, wharf or dock wholly or partially in, on or over a coastal wetland;
- (2) Adjacent to a protected natural resource; or
- (3) Wholly or partially in a coastal sand dune system;

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

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

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

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

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

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

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

Sec. 8. Department of Environmental Protection; rulemaking; authorizations. Notwithstanding the Maine Revised Statutes, Title 38, section 480-AA or any other provision of law to the contrary, any rulemaking conducted prior to July 1, 2025 by the Department of Environmental Protection to amend its rule Chapter 305: Natural Resources Protection Act-Permit by Rule Standards and its rule Chapter 355: Coastal Sand Dune Rules to ensure the consistency of those rules with Title 38, section 480-E, subsections 16 and 17 is routine technical rulemaking, as defined in Title 5, chapter 375, subchapter 2-A.

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

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