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DEPARTMENT OF ENVIRONMENTAL PROTECTION



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**TESTIMONY OF
ROB WOOD, DIRECTOR, BUREAU OF LAND RESOURCES
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

SPEAKING IN OPPOSITION TO L.D. 228

**AN ACT TO ALLOW COASTAL SEAWALLS TO BE RAISED BY UP TO 2 FEET IN
ORDER TO ACCOMMODATE PREDICTED SEA LEVEL RISE**

SPONSORED BY REP. FOLEY

**BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING:

FEBRUARY 24, 2025

Senator Tepler, Representative Doudera, and members of the Committee, my name is Rob Wood and I am the Director of the Bureau of Land Resources at the Department of Environmental Protection. I am speaking in opposition to L.D. 228 as printed. However, the Department has been meeting with the bill sponsor to discuss potential changes that could partly address the concerns of the Department and other state natural resource agencies. We appreciate Rep. Foley's outreach to the Department and look forward to continuing to discuss the bill.

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Increasing the height of existing seawalls in coastal sand dune systems can be expected to increase the scouring of Maine's beaches. Scouring occurs when wave energy reflects off a wall and into the coastal sand dune system during storm events. Scouring lowers the beach profile, which reduces the natural protection afforded against future storm events and which results in the loss of beach area above the high tide elevation. In some coastal sand dune systems affected by seawalls, the entire beach is covered by water as the tide comes in, eliminating the intertidal zone and other beach recreation areas for hours during a given day.

L.D. 228 would allow the Department to permit a one-time increase in the height of an existing seawall in a coastal sand dune system by up to two feet. Currently, the Department's Chapter 355 Coastal Sand Dune Rules allow changing the dimensions of an existing seawall only 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." Ch. 355 §5(E)(1). To meet this standard, the Department generally requires that a seawall may only be increased in height if it is also being reconstructed farther landward, thereby increasing the beach area seaward of the seawall to offset the impact of the height increase.

The Department appreciates that there may be instances when it is not practicable to move a seawall farther landward. In those cases, an applicant will not be able to increase the height of their seawall under the Department's existing rules. If the Legislature determines that a height increase should be permissible under such circumstances, the Department offers the following recommendations, some of which Department staff have discussed with the bill sponsor.

- First, the Department recommends that the applicant should be required to demonstrate why moving the wall landward is not practicable. If the reason is that there is a house or building near the seawall, the applicant should be

required to demonstrate why it is not practicable to move the house or building landward to accommodate a landward movement of the seawall.

- Second, the Department recommends that the applicant should be required to demonstrate why increasing the height of the seawall would afford more protection to the house or building compared to elevating the house or building on a post or piling foundation. If elevating the house or building would provide an equivalent level of protection compared to increasing the height of the seawall, then the applicant should be required to demonstrate why elevating the house or building is not practicable before dismissing this alternative.
- Third, if a seawall height increase is permitted without moving the seawall landward, the Department recommends that the applicant should be required to mitigate the impact of increased scouring through mitigation measures approved by the Department, for example by periodic beach nourishment in front of the seawall and/or periodic dune restoration behind the seawall.
- Finally, the Department is concerned about the increased flooding of adjacent properties that is likely to occur when a seawall is increased in height on one property but not on abutting properties along the beach. In such a scenario, water will be deflected during a storm event from the increased height seawall both down into the beach and onto neighboring properties. To address this concern, the Department recommends that if a seawall is increased in height, it should either tie into another seawall of the same or greater height, or the applicant should be required to obtain permission from abutting property owners.

The Department notes that L.D. 228 provides rulemaking authority to the Department, through which some or all of these recommendations could be adopted. The Department prefers, however, that the Legislature establish clear requirements in statute. Rules affecting development in coastal sand dune systems are by default major substantive rules, and the earliest that such rules could come back to the Legislature for review is next legislative session. To avoid this lengthy process and to reach a conclusion more expeditiously, the Department recommends that the aforementioned

L.D. 228: An Act to Allow Coastal Seawalls to Be Raised by up to 2 Feet in Order to Accommodate Predicted Sea Level Rise

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issues should be considered and addressed in statute by the Legislature, if L.D. 228 moves forward.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions from the Committee, both now and at the work session.