

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Agriculture, Conservation and Forestry
From: Karen S. Nadeau, Legislative Analyst
Date: February 24, 2022
Subj: **LD 1075** - An Act To Protect Public Lands

SUMMARY

- Requires the Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands to adopt rules that establish an objective evaluation process for determining if a proposed activity on designated land would cause the land to be reduced or substantially altered and designates those rules as major substantive rules.

4/1/21 – Public Hearing

5/13/21 – voted to carry over

TESTIMONY

Proponents: *Department of ACF- Bureau of Parks and Lands; Appalachian Mountain Club; Say NO to NECEC; Trout Unlimited; Natural Resources Council of Maine; Mainers for Local Power; Maine Youth Action; Resident of Phippsburg, Appleton, Brunswick, Gorham, Farmington, Pembroke, Newcastle, Stockton Springs, Whitefield, Eustis, New Sharon, Cushing, Waldoboro, Rockland, Winslow, Saco, Lubec, Waterville, Portland, Owls Head, LaGrange, Damariscotta, Hancock, Freeman Township, Parsonsfield, Kingfield, Pownal, Falmouth*

Opponents: *None*

NFNA: *Baxter State Park Authority*

SUGGESTED AMENDMENTS – considerations raised by BPL and BSP

- T. 12 §598-A includes certain lands managed by agencies other than DACF, including wildlife management areas managed by DIFW and certain lands managed by Baxter State Park.
- For BSP, designated lands include two parcels of land acquired by the BSPA for the purpose of forest management, one in Mount Chase and the other in Harpswell.
- Lands deeded by Governor Baxter to the State of Maine and those lands purchased after his death but contiguous to lands he deeded are not so-called designated lands under 12 MRSA §598-A and would not be affected by this bill.
- Committee should consider limiting the application of this legislation to only lands administered by the Bureau of Parks and Lands.
- BPL would prefer rulemaking to be routine technical rather than major substantive.
 - The sponsor of LD 1075 does not support this suggested amendment.
- Does the committee intend for the BPL to adopt rules that would apply to other agencies which hold designated lands? Is the committee interested in requiring other agencies that hold designated lands to develop and establish their own rules and process for assessing whether a proposed activity would cause the land to be reduced or substantially altered?

RELEVANT STATUTES

T. 12 – Chapter 202-D – Designated Lands

§598. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Lands or land. "Lands" or "land" means real estate held by the State.

2. Proceeds. "Proceeds" means money arising or obtained from the sale of designated lands, excluding the costs of the sale.

3. Real estate held by the State. "Real estate held by the State" means real estate wholly owned by the State by fee simple title. "Real estate held by the State" does not mean land partially owned by the State or land owned by someone other than the State in which the State holds an easement, right-of-way or covenant.

4. Reduced. "Reduced" means a reduction in the acreage of an individual parcel or lot of designated land under section 598-A. "Reduced" does not mean a reduction in the value of the property.

"Reduced" does not mean the conveyance of an access right by easement in accordance with section 1814-A.

5. Substantially altered. "Substantially altered," in the use of designated lands, means changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which that land is held by the State. The essential purposes of state parks, historic sites, public access sites, facilities for boats and the Allagash Wilderness Waterway are the protection, management and improvement of these properties for public recreation, conservation, scenic values, nature appreciation, historic preservation and interpretation, public access and related purposes. The essential purposes of public reserved and nonreserved lands are the protection, management and improvement of these properties for the multiple use objectives established in section 1847. The essential purposes of lands acquired through the Land for Maine's Future Board that are not held by the Department of Inland Fisheries and Wildlife or by the Department of Agriculture, Conservation and Forestry are the protection, management and improvement of those lands for recreation, conservation, farming, open space, plant and animal habitat, scenic values, public access and related purposes. The essential purposes of state-owned wildlife management areas and game farms are the protection, management and improvement of those properties for fish and wildlife habitat and propagation, hunting, trapping, fishing, recreation, propagation and harvesting of forest and other natural products and related purposes. "Substantially altered" does not mean the conveyance of an access right by easement in accordance with section 1814-A.

§598-A. Designated lands

The following lands are designated lands under the Constitution of Maine, Article IX, Section 23.

Designated lands under this section may not be reduced or substantially altered, except by a 2/3 vote of the Legislature. It is the intent of the Legislature that individual holdings of land or classes of land may be added to the list of designated lands under this section in the manner normally reserved for amending the public laws of the State. Once so designated, however, it is the intent of the Legislature that designated lands remain subject to the provisions of this section and the Constitution of Maine, Article IX, Section 23 until such time as the designation is repealed or limited by a 2/3 vote of the Legislature.

Designated lands are:

1. Certain Department of Inland Fisheries and Wildlife lands. The following lands held by the Department of Inland Fisheries and Wildlife:

A. State-owned wildlife management areas and public access sites described in section 10109, subsection 1 and section 12708; and

B. Lands held and managed as a state game farm under the provisions of section 10109, subsection 2;

2. Public lands and public reserve lots.

2-A. Certain lands of the Bureau of Parks and Lands. Lands under the care, custody, control and management of the Bureau of Parks and Lands, including:

- A. Lands that constitute a state park or historic site as those terms are defined in section 1801;
- B. Lands that constitute the Allagash Wilderness Waterway as defined in chapter 220, subchapter VI;
- C. Lands used for public boat facilities under the provisions of chapter 220, subchapter IX, including launching ramps, locks, parking sites and access roads;
- D. Public reserved lands as defined in section 1801, subsection 8; and
- E. Nonreserved public lands as defined in section 1801, subsection 6.

Designated lands do not include: submerged lands; and all parcels of public reserved land in the towns of Bradley, LaGrange and Bradford held by the Bureau of Public Lands on January 1, 1994.

3. Certain Bureau of Parks and Recreation Lands.

4. Baxter State Park Authority lands. Lands managed by the Baxter State Park Authority not acquired by deed of gift and not contiguous to Baxter State Park. Specifically, lands deeded by Governor Percival P. Baxter by deeds of gift and lands managed by the Baxter State Park Authority that are contiguous to Baxter State Park are not designated lands;

5. Lands gifted to the State. Except as provided in subsection 4, lands acquired by a deed of gift for conservation purposes; and

6. Lands acquired pursuant to referendum. Lands acquired by the State through the Land for Maine's Future Board under Title 5, Part 15-A.

Notwithstanding any other provision of this section, a state agency owning or holding designated land under this section may contract to operate or manage that land, provided that the contract does not violate any other provision of law.

§598-B. Proceeds from the sale of designated land; limitation

Proceeds from the sale of designated land under section 598-A must be used to purchase additional land in the same county for the same purpose.

Constitution of Maine - Article IX

Section 23. State park land. State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all the members elected to each House. The proceeds from the sale of such land must be used to purchase additional real estate in the same county for the same purposes.

PRELIMINARY FISCAL IMPACT STATEMENT: *Not yet received.*