

# **125th MAINE LEGISLATURE**

### FIRST REGULAR SESSION-2011

**Legislative Document** 

No. 872

S.P. 276

In Senate, March 8, 2011

An Act To Clarify the Natural Resources Protection Act

(EMERGENCY)

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR. Secretary of the Senate

Presented by Senator COLLINS of York.

Cosponsored by Senator THIBODEAU of Waldo, Representative CHASE of Wells and Senators: SAVIELLO of Franklin, THOMAS of Somerset, Representatives: BURNS of Alfred, CEBRA of Naples, PARRY of Arundel, WATERHOUSE of Bridgton. 1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not 2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** excessive setbacks and buffer zones for significant vernal pool habitat, 4 high and moderate value inland waterfowl and wading bird habitat and shorebird nesting, 5 feeding and staging areas are preventing landowners from deriving economic benefit 6 from developing their land; 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,

- 11 Be it enacted by the People of the State of Maine as follows:
- 12 Sec. 1. 38 MRSA §480-BB, sub-§1, as enacted by PL 2005, c. 116, §5, is 13 amended to read:

## **1. Definition of buffer area.** Include a definition of the buffer area to be regulated; For purposes of this section:

- A. Significant vernal pool habitat consists of a significant vernal pool and that
   portion of the critical terrestrial habitat within 75 feet of the spring or fall high water
   mark of the vernal pool depression;
- 19B. High and moderate value inland waterfowl and wading bird habitat consists of an20inland wetland complex and a 75-foot-wide zone surrounding the wetland complex;21and
- 22 <u>C. A buffer zone surrounding a shorebird nesting, feeding or staging area may not exceed 75 feet;</u>
- 24 Sec. 2. 38 MRSA §480-CC, sub-§1, ¶A, as enacted by PL 2007, c. 290, §7 and 25 affected by §15, is amended to read:
- A. "Shorebird feeding area" means a shorebird feeding or staging area that is not a roosting area. "Shorebird feeding area" includes a 100 foot wide 75-foot-wide surrounding buffer referred to as "the feeding buffer."
- Sec. 3. 38 MRSA §480-CC, sub-§1, ¶B, as enacted by PL 2007, c. 290, §7 and affected by §15, is amended to read:
- 31B. "Shorebird roosting area" means a shorebird feeding or staging area that is also a32roosting area. "Shorebird roosting area" includes a 250 foot wide 75-foot-wide33surrounding buffer referred to as "the roosting buffer."
- 34
   Sec. 4. 38 MRSA §480-CC, sub-§2, ¶A, as enacted by PL 2007, c. 290, §7 and

   35
   affected by §15, is amended to read:
- A. Cutting or removal of vegetation within a roosting buffer is prohibited except as
   approved by the department for:

1 (1) Removal of a safety hazard;

2 (2) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet
3 in width as measured between tree trunks and shrub stems. The footpath may not
4 result in a cleared line of sight to the water; and

5 Cutting or removal of vegetation determined to be necessary by the department in order to conduct other activities approved by the department 6 pursuant to section 480-C and in accordance with the standards of this article and 7 8 rules adopted pursuant to this article, including but not limited to avoidance, minimization and no unreasonable impact. The department may not approve 9 cutting or removal of vegetation for purposes of creating a view unless the 10 department in consultation with the Department of Inland Fisheries and Wildlife 11 determines there will be no unreasonable impact on the protected resource-; and 12

13 (4) Cutting or removal of vegetation to allow for grazing areas and access to the
 14 water for livestock.

15 Any cutting or removal of vegetation under this paragraph must be done in 16 consultation with and as approved by the Department of Inland Fisheries and 17 Wildlife.

- 18 Sec. 5. 38 MRSA §480-CC, sub-§2, ¶B, as enacted by PL 2007, c. 290, §7 and
   19 affected by §15, is amended to read:
- B. Cutting or removal of vegetation within a feeding buffer is prohibited except as
  approved by the department for:
- (1) Cutting or removal of vegetation that meets the vegetative screening
  standards set forth in Title 38, section 439-A, subsection 6. In interpreting and
  enforcing these standards, the department shall rely upon the department's
  shoreland zoning rules regarding cutting or removal of vegetation for activities
  other than timber harvesting and apply the cutting standards applicable within 75
  feet of a coastal wetland to the entire 100 foot feeding buffer; and
- 28 (2) Cutting or removal of vegetation determined to be necessary by the 29 department in order to conduct other activities approved by the department 30 pursuant to section 480-C and in accordance with the standards of this article and 31 rules adopted pursuant to this article, including but not limited to avoidance, 32 minimization and no unreasonable impact<del>-; and</del>
- 33 (3) Cutting or removal of vegetation to allow for grazing areas and access to the
   34 water for livestock.
- This paragraph may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this paragraph.
- 38 Sec. 6. 38 MRSA §480-EE, as enacted by PL 2007, c. 290, §9 and affected by
   39 §15, is amended to read:

#### 1 §480-EE. Significant wildlife habitat criteria; inland open water

Regardless of its identification on maps as a high or moderate value waterfowl and wading bird habitat, an upland area adjacent to a great pond is not considered high or moderate value waterfowl and wading bird habitat for purposes of this article unless the upland area is within 250 75 feet of one or more freshwater wetlands that are high or moderate value waterfowl and wading bird habitat.

7 Sec. 7. 38 MRSA §480-II is enacted to read:

#### 8 §480-II. Compensation for lost property value

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9 Upon application by a landowner, the commissioner shall award financial compensation equivalent to the loss in property value attributable to setback or buffer 10 zone restrictions imposed under section 480-C if the restrictions are more stringent than 11 the restrictions in effect on January 1, 2012. The amount of compensation may not 12 13 exceed the difference between the value of the property in the absence of the more stringent regulation under this article, as determined by the commissioner, and the current 14 assessed value of the property. The determination of the commissioner constitutes final 15 agency action under the Maine Administrative Procedure Act. 16

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

#### SUMMARY

This bill changes to 75 feet the setback for significant vernal pool habitat, high and moderate value inland waterfowl and wading bird habitat and shorebird nesting, feeding and staging areas. It also provides a mechanism to compensate landowners for the property value losses incurred as a result of more stringent setback regulations.