

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2004

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Legislative Document

No. 1837

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H.P. 1361

House of Representatives, January 30, 2004

### **An Act Relating to the Consideration of the Cumulative Effects on Protected Natural Resources**

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Reported by Representative KOFFMAN of Bar Harbor for the Joint Standing Committee on Natural Resources pursuant to Resolve 2003, chapter 14.

Reference to the Committee on Natural Resources suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

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**Sec. 1. 38 MRSA §480-X, sub-§§2 and 3**, as enacted by PL 1995, c. 460, §7 and affected by §12, are amended to read:

**2. Three-tiered review process; tiers defined.** Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4.

B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5.

C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5.

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

The standards of section 480-D do not apply to projects that qualify for Tier 1 ~~or Tier-2~~ review, except that water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 ~~or--Tier--2~~ review and that satisfy the permitting requirements set forth in subsection 3, and 6 ~~or--7~~, as applicable, are presumed not to have significant environmental impact.

**3. General requirements.** A person undertaking an activity for which a permit is processed pursuant to this section ~~must~~ shall satisfy the requirements of this subsection.

2 A. An applicant for Tier 1 ~~or~~, Tier 2 or Tier 3 review must  
3 shall meet the following requirements.

4 (1) Alteration of freshwater wetland areas on the  
5 property must be avoided to the extent feasible  
6 considering cost, existing technology and logistics  
7 based on the overall purpose of the project.

8 (2) The area of the freshwater wetland to be altered  
9 must be limited to the minimum amount necessary to  
10 complete the project.

11 ~~(3) Erosion control measures must be used to prevent  
12 sedimentation of protected natural resources. A  
13 25-foot buffer strip must be maintained between the  
14 activity and any river, stream or brook.~~

15 ~~(4) The activity must comply with applicable water  
16 quality standards pursuant to section 480-D, subsection  
17 5.~~

18 ~~B. An applicant for Tier 1, Tier 2 or Tier 3 review for  
19 projects that would alter wetland hydrology and could also  
20 alter stream flows or other adjacent surface waters, must  
21 comply with the water quality classification standards  
22 contained in section 465.~~

23 C. An applicant for Tier 1 review shall meet the following  
24 requirements.

25 (1) Erosion control measures must be used to prevent  
26 sedimentation of protected natural resources. A  
27 25-foot buffer strip must be maintained between the  
28 activity and any river, stream or brook.

29 (2) The activity must comply with applicable water  
30 quality standards pursuant to section 480-D, subsection  
31 5.

32 D. An applicant for Tier 2 or Tier 3 review shall comply  
33 with the standards contained in section 480-D.

34 **Sec. 2. 38 MRSA §480-X, sub-§7, ¶A**, as enacted by PL 1995, c.  
35 460, §7 and affected by §12, is amended to read:

36 A. An application form must be submitted, with the  
37 application fee, to the department and include the following  
38 information:

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- 2 (1) Documentation that public notice has been provided  
3 of the proposed project in accordance with department  
4 rules;
- 6 (2) A United States Geological Survey map showing the  
7 project location;
- 8 (3) Written certification by a knowledgeable  
9 professional experienced in wetland science that the  
10 project will not alter, or cause to be altered, a  
11 wetland described in subsection 4 or 5;
- 12 (4) A top view drawing of the entire project,  
13 including existing and proposed fill, excavation, roads  
14 and structures; cross-sectional drawings of any fill or  
15 excavated areas; delineation of the wetland boundaries  
16 and calculated area of freshwater wetlands affected;  
17 description of existing vegetation on the project site;  
18 identification of any surface water bodies within 100  
19 feet of the proposed alteration; and a drawing of the  
20 25-foot buffer strip between the project and any river,  
21 stream or brook;
- 24 (5) A soil erosion and sedimentation control plan;
- 26 (6) For work in previously mined peatlands,  
27 information on the past mining activity, including the  
28 approximate dates of the mining activity, the area and  
29 depth to which peat has been excavated from the site,  
30 any restoration work on the site and the current  
31 condition of the site;
- 32 (7) A statement describing why the project can not be  
33 located completely in upland areas and any alternatives  
34 that exist for the project that would either avoid or  
35 minimize the amount of proposed freshwater wetland  
36 alteration; and
- 38 (8) A plan for compensating for lost functions and  
39 values of the freshwater wetland when required by, and  
40 in accordance with, rules adopted by the department;  
41 and
- 42 (9) Any other information determined by the department  
43 to be necessary to meet the requirements of section  
44 480-D and rules adopted by the department.
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## SUMMARY

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4       This bill requires Tier 2 freshwater wetland projects to  
6       meet all of the standards under the Maine Revised Statutes, Title  
      38, chapter 3, Article 5-A according to the recommendations of  
      the Department of Environmental Protection submitted pursuant to  
      Resolve 2003, chapter 14.