

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



132nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2026

Legislative Document

No. 2210

H.P. 1489

House of Representatives, February 10, 2026

An Act to Clarify Board of Environmental Protection Procedures Regarding Appeals of Licensing or Permitting Decisions of the Commissioner of Environmental Protection

Reported by Representative DOUDERA of Camden for the Joint Standing Committee on Environment and Natural Resources pursuant to the Maine Revised Statutes, Title 3, section 955, subsection 4.

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

A handwritten signature in black ink, reading "Rlt B. Hunt".

ROBERT B. HUNT

Clerk

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

2 **Sec. 1. 38 MRSA §341-D, sub-§4,** as amended by PL 2023, c. 512, §2, is further
3 amended to read:

4 **4. Appeal or review.** The record for appeals decided by the board is the administrative
5 record relied upon by the commissioner in the commissioner's review of a license or permit
6 application, any supplemental evidence admitted by the board on appeal and, if the board
7 holds a hearing on the appeal, any additional evidence obtained by the board from that
8 hearing. The board shall review, may hold a hearing at its discretion on and may affirm,
9 amend, reverse or remand to the commissioner for further proceedings any of the following:

10 A. Final license or permit decisions made by the commissioner when a person
11 aggrieved by a decision of the commissioner appeals that decision to the board within
12 30 days of the date of the decision. An appellant shall identify in the appeal the
13 licensing or permitting criterion or standard the appellant believes was not satisfied in
14 the commissioner's final license or permit decision and shall include in the appeal all
15 information required to be submitted by rules adopted pursuant to this section. Any
16 proposed supplemental evidence offered by an appellant must be included with the
17 filing of the appeal. The board staff shall issue to the appellant; the licensee or
18 permittee, if the licensee or permittee is not the appellant; interested persons; and to
19 any other persons who have requested to be notified of the license or permit decision
20 written notice of the filing of the appeal and, which must identify any proposed
21 supplemental evidence offered by the appellant. For the purposes of this paragraph,
22 "interested person" means any person that submitted written comments on the
23 application that is the subject of the appeal. Within 30 days of the issuance of the
24 written notice by the board staff of the filing of the appeal ~~by the board staff,~~ the
25 licensee or permittee, if the licensee or permittee is not the appellant, ~~and any interested~~
26 ~~parties identified by the commissioner pursuant to section 344, subsection 4-A,~~
27 ~~paragraph B~~ may submit proposed supplemental evidence to the board ~~and the~~
28 ~~appellant~~ addressing the issues raised in the appeal. The chair of the board may allow
29 admit proposed supplemental evidence into the record to be supplemented when it the
30 chair finds that the evidence offered is relevant and material to the appeal and that:

31 (1) ~~An interested party seeking to supplement the record~~ The person that submitted
32 the proposed supplemental evidence has shown due diligence in bringing the
33 evidence to the licensing or permitting process at the earliest possible time; or

34 (2) The evidence is newly discovered and could not, by the exercise of diligence,
35 have been discovered in time to be presented earlier in the licensing or permitting
36 process.

37 The board shall admit into the record additional evidence and analysis submitted by
38 department staff in response to issues raised in the appeal and any supplemental
39 evidence allowed by the board in accordance with this paragraph. The licensee or
40 permittee, if the licensee or permittee is not the appellant, may submit to the board a
41 written response to the merits of the appeal. The board is not bound by the
42 commissioner's findings of fact or conclusions of law but may adopt, modify or reverse
43 findings of fact or conclusions of law established by the commissioner. Any changes
44 to a final license or permit decision of the commissioner made by the board under this
45 paragraph must be based upon the board's review of the administrative record relied

1 upon by the commissioner in the commissioner's review of the application, any
2 supplemental evidence admitted by the board on appeal and, if the board holds a
3 hearing on the appeal, any ~~other~~ additional evidence obtained by the board ~~through any~~
4 ~~from that hearing on the appeal held by the board.~~

5 If the board modifies or reverses a final license or permit decision of the commissioner
6 pursuant to this paragraph, the licensee or permittee shall implement any changes to
7 the project necessary to comply with the decision of the board, which may include, but
8 are not limited to, deconstruction and site restoration, and the department may initiate
9 enforcement actions pursuant to section 347-A and impose penalties pursuant to
10 section 349 if the licensee or permittee fails to satisfactorily implement those changes;

11 C. License or permit decisions appealed to the board under another law. Unless the
12 law provides otherwise, the standard of review is the same as provided under paragraph
13 A;

14 D. License or permit decisions regarding an expedited wind energy development as
15 defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section
16 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by
17 the commissioner under this paragraph, the board shall base its decision on the
18 administrative record ~~of the department~~ relied upon by the commissioner in the
19 commissioner's review of the application, including the record of any adjudicatory
20 hearing held by the department, ~~and any supplemental information allowed evidence~~
21 admitted by the board for supplementation of the record on appeal and, if the board
22 holds a hearing on the appeal, any additional evidence obtained by the board from that
23 hearing. The board may remand the decision to the department for further proceedings
24 if appropriate. The chair of the Public Utilities Commission or the chair's designee
25 may serve as a nonvoting member of the board and is entitled to fully participate but is
26 not required to attend meetings and hearings when the board considers an appeal
27 pursuant to this paragraph. The chair's participation on the board pursuant to this
28 paragraph does not affect the ability of the Public Utilities Commission to submit
29 information to the department for inclusion in the record of any proceeding before the
30 department; and

31 E. Decisions on insurance claims-related matters heard under section 568-A, including
32 but not limited to decisions on eligibility for coverage, eligibility of costs and waiver
33 and amount of deductible. Except as provided in board rules, an applicant must file the
34 appeal not later than the 30th day after the applicant receives the decision made under
35 section 568-A. If the board overturns the decision made under section 568-A, the
36 department must pay reasonable costs, including reasonable attorney's fees, incurred
37 by the aggrieved applicant in pursuing the appeal to the board from the Maine Ground
38 and Surface Waters Clean-up and Response Fund established under section 551.
39 Reasonable attorney's fees include only those fees incurred from the time of an
40 insurance claims-related decision forward. Decisions of the board are subject to judicial
41 review pursuant to Title 5, chapter 375, subchapter 7.

42 SUMMARY

43 This bill, which is reported out by the Joint Standing Committee on Environment and
44 Natural Resources pursuant to the Maine Revised Statutes, Title 3, section 955, subsection
45 4, implements recommendations resulting from the committee's review of the Board of

1 Environmental Protection under the State Government Evaluation Act. The bill amends
2 procedures of the Board of Environmental Protection regarding appeals of licensing or
3 permitting decisions of the Commissioner of Environmental Protection as follows.

4 1. It specifies the composition of the record to be considered by the board in deciding
5 an appeal of a final license or permit decision of the commissioner.

6 2. It clarifies that an appellant to a final license or permit decision must include in the
7 appeal all information required by rule of the board.

8 3. It clarifies the persons that may offer proposed supplemental evidence in an appeal
9 proceeding before the board and the circumstances under which that evidence may be
10 submitted to the board and provides that it is the chair of the board that determines the
11 admissibility of that evidence.

12 4. It codifies a longstanding practice of the Department of Environmental Protection
13 to allow a licensee or permittee, if the licensee or permittee is not an appellant to a final
14 license or permit decision, to submit to the board a written response to the merits of the
15 appeal.

16 The committee has not taken a position on the substance of the bill and, by reporting
17 this bill out, the committee is not suggesting and does not intend to suggest that it agrees
18 or disagrees with any aspect of this bill. The committee is reporting the bill out for the sole
19 purpose of obtaining a printed bill that can be referred to the committee for a public hearing
20 and subsequent committee action in the normal course.