

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
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COMMITTEE AMENDMENT "A " to S.P. 481, L.D. 1283, Bill, "An Act to Facilitate Review of Applications Submitted to The Department of Environmental Protection"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'38 MRSA §344-A is enacted to read:

§344-A. Outside review of applications

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as the University of Maine System or the Soil and Water Conservation Service. The commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review.

1. Standards for outside review. Prior to entering into an agreement with an outside reviewer, the commissioner must determine that:

A. The agreement protects the public interest and the interest of the applicant;

B. The agreement ensures a fair, consistent and adequate review of the application;

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C. The agreement provides the public with the same opportunity to comment on the application as would be provided if the application were reviewed by the department;

D. The outside reviewer meets the minimum qualification standards established by the commissioner; and

E. The application can not be reviewed by existing departmental personnel in a reasonable period of time.

2. Qualifications. The commissioner shall establish qualification standards for outside reviewers and shall develop a list of qualified outside reviewers. Standards established by the commissioner must include initial qualification standards and standards ensuring that outside reviewers continue to maintain a high level of scientific and regulatory expertise in one or more relevant areas of knowledge.

3. Conflict of interest. An outside reviewer may not review any portion of an application submitted by an applicant who directly or indirectly employed the reviewer in any capacity at any time during the 12-month period immediately preceding the submission of the application. An outside reviewer must sign a written agreement with the commissioner not to be employed, directly or indirectly, by any applicant whose application was reviewed by that reviewer for at least 12 months from the date the review of the application is complete.

4. Penalty. Notwithstanding section 349, any person who knowingly violates subsection 3 is guilty of a Class D crime. Notwithstanding Title 17-A, sections 4-A and 1301, the fine for each violation may not be less than \$5,000 nor more than \$25,000.

5. Repeal. This section is repealed on July 1, 1993.

**FISCAL NOTE**

Costs associated with implementing a system to allow the Department of Environmental Protection to contract with outside professionals for the review of an application if the applicant agrees to pay the costs for the review will be absorbed by the department utilizing existing budgeted resources.

The bill establishes a Class D crime. The additional work load and administrative costs associated with a minimal number of new cases filed in District Court as a result of the violation will be absorbed within the budgeted resources of the Judicial Department. There will be an increase in General Fund revenue from the collection of additional fines. This amount can not be estimated at this time.

2 Sentences imposed for a Class D offense must be served in a  
3 county jail facility. The projected cost to a county for each  
4 person sentenced under the new Class D crime is approximately  
5 \$6,780 and is based upon an average length of stay of 119 days.'

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8 **STATEMENT OF FACT**

10 This amendment replaces the bill. The amendment allows the  
11 Commissioner of Environmental Protection to contract with private  
12 firms for full or partial review of applications submitted to the  
13 department if the applicant agrees to such arrangements, if the  
14 applicant agrees to pay all costs for the outside review and if  
15 departmental personnel are unable to complete the review within a  
16 reasonable period of time. The amendment establishes standards  
17 for the outside review of applications that ensure the fair,  
18 adequate and consistent review of applications, protect the  
19 public interest and protect against conflicts of interest. Any  
20 person acting as an outside reviewer who knowingly violates  
21 standards established in this amendment is guilty of a Class D  
22 crime, punishable by not more than 1 year in prison and by a fine  
23 not less than \$5,000 and not more than \$25,000. This Act is  
24 repealed on July 1, 1993.

Reported by Senator Baldacci for the Committee on Energy and  
Natural Resources. Reproduced and Distributed Pursuant to  
Senate Rule 12.

(6/4/91)

(Filing No. S-297)