

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1540

S.P. 587

In Senate, April 16, 1991

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LUDWIG of Aroostook
Cosponsored by Representative GOULD of Greenville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Improve Coordination of Municipal and State Review of
Environmental Permits.

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

2
3 Sec. 1. 38 MRSA §480-F, as affected by PL 1989, c. 890, Pt.
4 A, §40 and amended by Pt. B, §74, is further amended to read:

6 **§480-F. Substitution of permit-granting authority to**
7 **municipality; home rule**

8
9 **1. Substitution.** A-municipality The commissioner may apply
10 ~~to the board for authority to issue~~ substitute permits under this
11 ~~article. The board shall grant such authority~~ issued by the
12 municipality if ~~it~~ the commissioner finds that the municipality
13 has:

14 A. Established a planning board;

15 B. Adopted a comprehensive plan and related land use
16 ordinances consistent with the criteria set forth in Title
17 30-A, chapter 187, subchapter II;

18 C. The financial, technical and legal resources to
19 adequately review and analyze permit applications and
20 oversee and enforce permit requirements;

21 D. Made provision by ordinance or rule for prompt notice to
22 the commissioner and the public upon receipt of application
23 and written notification to the applicant and the
24 commissioner of the issuance or denial of a permit stating
25 the reasons for issuance or denial; and

26 E. Provided an application form that is the same as that
27 provided by the ~~commissioner~~ department.

28
29 **2. Procedure.** No permit issued by a municipality may
30 become effective until 30 days subsequent to its receipt by the
31 commissioner, but, if approved by the department in less than 30
32 days, the effective date is the date of approval. A copy of the
33 application for the permit and the permit issued by the
34 municipality must be sent to the commissioner immediately upon
35 its issuance by registered mail. The department shall review
36 that permit and either approve, deny or modify it as necessary.
37 If the department does not act within 30 days of its receipt of
38 the permit by the municipality, this constitutes its approval and
39 the permit is effective as issued, except that within this 30-day
40 period the department may extend the time for its review an
41 additional 30 days.

42
43 **3. Home rule.** Nothing in this article may be understood or
44 interpreted to limit the home rule authority of a municipality to
45 protect the natural resources of the municipality through
46 enactment of standards that are more stringent than those found
47 in this article.

2 **4. Joint enforcement.** Any person who violates any permit
4 issued under this section is subject to the provisions of section
6 349 in addition to any penalties which the municipality may
impose. The provisions of this section may be enforced by the
commissioner and the municipality that issued the permit.

8 **Sec. 2. 38 MRSA §489-A, first ¶,** as affected by PL 1989, c.
10 890, Pt. A, §40 and amended by Pt. B, §97, is further amended to
read:

12 The board--may--register--municipalities--for--authority--to
14 commissioner may substitute permits issued pursuant to Title
30-A, chapter 187, subchapter IV, for permits required by ~~section~~
16 sections 482 and 485-A under the following conditions.

18 **Sec. 3. 38 MRSA §489-A, sub-§2,** as affected by PL 1989, c.
20 890, Pt. A, §40 and amended by Pt. B, §98, is further amended to
read:

22 **2. Substitution.** The board commissioner shall register
24 ~~municipalities to grant permits~~ substitute permits for projects
under subsection 1 if the board commissioner finds that the
municipality meets all of the following criteria:

26 A. A municipal planning board or reviewing authority is
28 established;

30 B. A comprehensive plan consistent with Title 30-A, chapter
32 187 has been adopted with standards and objectives
determined by the department to be at least as stringent as
this article;

34 C. Subdivision regulations have been adopted that are
36 consistent with Title 30-A, chapter 187, and determined by
the board to be at least as stringent as criteria set forth
38 in section 484;

40 D. Site plan review regulations have been adopted with
42 criteria which are determined by the board to be at least as
stringent as section 484;

44 E. A professional planning staff to provide professional
46 planning assistance and advice to the municipal reviewing
authority has been retained or the municipality has
48 otherwise arranged to provide professional planning
assistance to advise the municipal reviewing authority on
project review;

50 F. Procedures for public hearing and notification have been
52 established including:

- 2 (1) Notice to the commissioner upon receipt of an application, including a description of the project;
- 4 (2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;
- 6 (3) Public notification of the application and any hearings; and
- 8 (4) Satisfactory hearing procedures; and

10 G. Procedures for appeal by aggrieved parties of local decisions are defined; ~~and.~~

12 H. ~~A registration form, provided by the commissioner, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection.~~

14 Sec. 4. 38 MRSA §489-A, sub-§3, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §98, is repealed.

16 Sec. 5. 38 MRSA §489-A, sub-§4, as enacted by PL 1989, c. 207, §2, is amended to read:

18 4. **Suspension.** If the commissioner finds that a municipality no longer meets the criteria set forth under subsection 2, the commissioner may suspend the registration substitution of permits and shall notify the municipality accordingly. If registration substitution is suspended, the commissioner shall recommend actions for the municipality to come into compliance with this section.

20 Sec. 6. 38 MRSA §489-A, sub-§5, as enacted by PL 1989, c. 207, §2, is repealed.

22 Sec. 7. 38 MRSA §489-A, sub-§7, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §98, is further amended to read:

24 7. **Technical assistance.** The commissioner and other state review agencies shall may provide technical assistance to municipalities upon request for projects reviewed under this section.

26 Sec. 8. 38 MRSA §489-A, sub-§8, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §99, is repealed and the following enacted in its place:

28 8. Review process. Requests for projects must be reviewed in accordance with the following.

52

- 2 A. Upon receipt of a complete application, the municipality
 shall submit one copy of the application to the commissioner.
- 4 B. The commissioner shall exert state jurisdiction within
 20 working days of receipt.
- 6
- 8 C. The municipality shall submit to the commissioner within
 14 days of final action by the municipal reviewing authority
 on an application under this section, one copy of the record
10 of review and action and one copy of the notification form
 provided by the commissioner.
- 12
- 14 D. The commissioner shall review the application and,
 within 15 working days of final action by the municipal
 reviewing authority, notify the municipality if the
16 department affirms that all standards under section 484 have
 been met.
- 18
- 20 E. If the department does not act within the 15-day period,
 this inaction constitutes affirmation by the department and
 the municipal permits are effective as issued as both the
22 municipal permit and department permit.

24 **Sec. 9. 38 MRSA §489-A, sub-§9,** as affected by PL 1989, c.
26 890, Pt. A, §40 and amended by Pt. B, §§100 and 101, is amended
 to read:

28 **9. State jurisdiction.** The department shall may review
30 projects for registered municipalities if:

- 32 A. The commissioner finds that the project:
- 34 (1) Meets one or more of the criteria set forth in
 section 341-D, subsection 2;
- 36 (2) Will have a potentially significant environmental
 effect; or
- 38 (3) Could affect more than one municipality.

40

42 In making these findings, the commissioner shall consider
 all public comments submitted to the department;

44 B. The local reviewing authority in the municipality in
 which the project is located petitions the commissioner in
46 writing;

48 C. The local reviewing authority, in a municipality
 adjoining the municipality in which a project is located,
50 petitions the commissioner in writing; or

2 D. The proposed project is located in more than one
municipality.

4 ~~State jurisdiction must be exerted within 45 days of final action~~
6 ~~by the municipal reviewing authority.~~

8 STATEMENT OF FACT

10 The purpose of this bill is to reduce duplicative review by
12 state and municipal reviewing authorities for projects regulated
14 under the natural resource protection laws and the site location
of development laws. This bill allows the Commissioner of
16 Environmental Protection to review municipal comprehensive plans
and land use regulations to determine if they offer protection
18 consistent with the standards of the natural resource protection
laws and the site location of development laws. If so, the
commissioner may substitute the municipal review and permit for
20 Department of Environmental Protection review.