

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2351

H.P. 1675

House of Representatives, February 18, 1992

Reported by Representative MELENDY for the Commission to Study State Permitting and Reporting Requirements pursuant to Public Law 1991, chapter 606.

Reference to the Joint Standing Committee on Energy and Natural Resources suggested and printing ordered under Joint Rule 18.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

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

An Act to Improve the Environmental Permitting Process.



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

2
4 Sec. 1. 12 MRSA §685-B, sub-§1, ¶C, as repealed and replaced
by PL 1989, c. 878, Pt. A, §31, is amended to read:

6 C. No A person may not commence any construction or
8 operation of any development without a permit issued by the
commission.

10 The commission may waive the requirement of a hearing for
12 any person having received approval by the Board of
Environmental Protection pursuant to the ~~Site-Location-of-~~
14 Development-Law site location of development laws, Title 38,
sections 481 to 488.

16 Approval by the commission that the proposed development
18 meets the requirements of subsection 4, and of the land use
standards and rules adopted by the commission ~~shall-be~~ is a
20 sufficient basis to support, but ~~shall~~ does not require, a
finding by the administering agency that the development
22 meets the requirements of the ~~Site-Location-of-Development~~
Law site location of development laws, Title 38, sections
24 481 to 488; the ~~Minimum-Lot-Size-Law~~ minimum lot size laws,
sections 4807 to 4807-G; or the natural resource protection
26 laws, Title 38, chapter 3, subchapter I, article 5-A; and
the rules adopted with respect to any of such ~~statutes~~ laws,
as any of such ~~statutes,~~ laws or rules or regulations may
28 apply. Disapproval by the commission ~~shall--be~~ is a
sufficient basis to support, but ~~shall~~ does not require, a
30 finding by the administering agency that the proposed
development does not meet the requirements of the ~~Site~~
32 ~~Location-of-Development--Law~~ site location of development
laws, Title 38, sections 481 to 488; the ~~Minimum-Lot-Size~~
34 Law minimum lot size laws, sections 4807 to 4807-G; or the
natural resource protection laws, Title 38, chapter 3,
36 subchapter I, article 5-A; and the rules adopted with
respect to any of such ~~statutes~~ laws, as any of such
38 ~~statutes,~~ laws or rules or regulations may apply.

40 The commission may establish standards within which
42 authority may be delegated to its staff, to approve with
reasonable conditions or deny applications submitted
44 hereunder. Any person aggrieved by a decision of the staff
~~shall-have~~ has the right to a review of that decision by the
commission members.

46 The commission shall establish coordination and assistance
48 procedures for all land use permits issued by agencies of
the State for proposed development within the unorganized
50 townships and plantations. Those procedures ~~shall~~ must, to
the extent practicable, ensure: the availability to the
52 public of necessary information concerning those land use

2 permits; the provision of assistance to applicants in
3 obtaining those permits from state agencies; the
4 coordination of application procedures, time schedules,
5 application forms and similar requirements so as to reduce
6 delay and duplication of effort by applicants and the
7 issuing agencies. State permit issuing agencies shall
8 cooperate with the commission in the development and
9 effectuation of coordination and assistance procedures.

10 When requesting review of an application by another state
11 agency, the commission or staff with delegated authority to
12 approve or deny applications shall indicate in writing the
13 information requested and the amount of time allowed for the
14 agency to respond. When an agency fails to respond to a
15 request in the allotted time, the commission or staff shall
16 decide upon the application without input from that agency
17 unless the input is required for compliance with federal law
18 or regulation.

20 Approval by the Board of Environmental Protection of a
21 proposed development under Title 38, chapter 13, article 3,
22 shall-be is a sufficient basis to support, but shall does
23 not require, a finding by the commission that the proposed
24 development meets the requirements of subsection 4, and of
25 the land use standards and rules adopted by the commission.
26 Disapproval by the Board of Environmental Protection of a
27 proposed development under Title 38, chapter 13, article 3,
28 shall-be is a sufficient basis to support, but shall does
29 not require, a finding by the commission that the proposed
30 development does not meet the requirements of subsection 4,
31 and of the land use standards and rules adopted by the
32 commission.

34 **Sec. 2. 12 MRSA §685-B, sub-§6-A is enacted to read:**

36 6-A. Reports on final actions. The Director of the Maine
37 Land Use Regulation Commission shall develop reports that
38 categorize final actions on all permit applications. The reports
39 must clearly present in tabular form the number of applications
40 receiving final action, by time period, by type of permit sought
41 and by final action. Final action information must distinguish
42 between decisions made by staff and made by the commission.

44 The first report generated must present information for all
45 applications receiving final action between January 1, 1990 and
46 December 31, 1991. The director may choose time intervals within
47 this period most appropriate for consistent data presentation.
48 The director shall submit this report to the joint standing
49 committee of the Legislature having jurisdiction over energy and
50 natural resources matters by January 1, 1993 and shall make
51 copies of this report available to the public upon request.

2 Subsequent reports must be developed for all final actions in a
3 calendar year beginning with 1992. The director shall submit a
4 report of the previous year's final action activity to the joint
5 standing committee of the Legislature having jurisdiction over
6 energy and natural resources matters by March 1st of each year
7 and shall make copies of this report available to the public upon
8 request.

9 **Sec. 3. 38 MRSA §341-A, sub-§5 is enacted to read:**

10 5. Permit applications. The department shall provide to an
11 applicant for a permit, at time of application, an opportunity to
12 state when a decision on the application is desired.

13 **Sec. 4. 38 MRSA §342, sub-§8-A is enacted to read:**

14 8-A. Reports on final actions. The commissioner shall
15 develop reports that categorize final actions on all license and
16 permit applications. The reports must clearly present in tabular
17 form the number of applications receiving final action, by time
18 period, by type of permit or license sought and by final action.
19 Final action information must distinguish between action by the
20 board and action by the commissioner.

21 The first report generated must present information for all
22 applications receiving final action between January 1, 1990 and
23 December 31, 1991. The department may choose time intervals
24 within this period most appropriate for consistent data
25 presentation. The commissioner shall submit this report to the
26 joint standing committee of the Legislature having jurisdiction
27 over energy and natural resources matters by January 1, 1993 and
28 shall make copies of this report available to the public upon
29 request.

30 Subsequent reports must be developed for all final actions in a
31 calendar year beginning with 1992. The commissioner shall submit
32 a report of the previous year's final action activity to the
33 joint standing committee of the Legislature having jurisdiction
34 over energy and natural resources matters by March 1st of each
35 year and shall make copies of this report available to the public
36 upon request.

37 **Sec. 5. 38 MRSA §344, sub-§2-A, ¶¶A to C, as enacted by PL**
38 **1989, c. 890, Pt. A, §22 and affected by §40, are repealed and**
39 **the following enacted in their place:**

40 A. For each permit for which a fee is charged the
41 department shall establish a time schedule for action by the
42 department on that permit. The schedules may be based on
43 the lengths of time appropriate for different categories of
44 permit applications. When the department determines, based
45 on size, novelty, complexity or technical difficulty, that
46 the department shall establish a time schedule for action by the
47 department on that permit. The schedules may be based on
48 the lengths of time appropriate for different categories of
49 permit applications. When the department determines, based
50 on size, novelty, complexity or technical difficulty, that
51 the department shall establish a time schedule for action by the
52 department on that permit. The schedules may be based on
53 the lengths of time appropriate for different categories of
54 permit applications. When the department determines, based
55 on size, novelty, complexity or technical difficulty, that

2 the amount of work required by the department in processing
4 a permit application will exceed by a factor of 2 or more
6 the amount of work assumed as the basis in establishing a
8 permit application fee and can not be completed within the
10 schedule for timely action applicable to that permit
12 application, the department may establish alternate fee and
14 time schedules. In setting up the time schedules, the
16 department shall consider as a desirable goal, but is not
18 required to adopt, the processing of 60% of applications
20 within 90 days, 75% within 120 days, 85% within 150 days and
22 97% within 220 days.

24 B. Within 14 working days from receipt of an application,
26 the commissioner shall inform the applicant whether the
28 permit meets the permit by rule provisions under subsection
30 7 and within 30 days from receipt of the application shall
32 inform the applicant whether the application qualifies for
34 the department's established fee and time schedule. If the
36 application does not qualify for either program, within an
38 additional 30 days the department shall inform the applicant
40 of the application fees and scheduled decision date for the
42 applicant's project.

44 C. If the applicant has provided a desired decision date,
46 the department shall inform the applicant of the additional
48 fees that would be required to meet the desired date or, if
50 the date is less than 90 days from acceptance of the
application and can not be met, the fees required to meet
the earliest possible decision date. Notwithstanding
section 352, if the applicant wishes a date earlier than the
schedule for timely action, the commissioner and the
applicant shall agree on a fee and a time schedule. The
commissioner may not achieve such accelerated processing by
delaying the processing of applications for which
accelerated processing was not requested but shall utilize
additional resources, if necessary, to meet the accelerated
dates. Persons who feel that their petitions have been
delayed may appeal under the provisions of section 346.

If the commissioner does not respond within the time periods
specified in paragraphs B and C, the applicant may appeal to
the Fee and Time Schedule Advisory Committee, which shall
investigate and mediate the appeal.

Sec. 6. 38 MRS §344, sub-§2-A, ¶¶D to F are enacted to read:

46 D. If the commissioner fails to meet a time schedule in
48 rule or agreed to with the applicant, the commissioner shall
50 return the applicant's fee and continue to work on the
application. The commissioner shall pay the applicant \$100
a day for each day that the decision on the application

2 fails to meet the agreed upon date. The commissioner may
3 not disapprove an application solely to avoid the provisions
4 of this paragraph. A person who feels that the commissioner
5 has violated this provision may appeal under the provisions
6 of section 346.

7 E. The commissioner shall appoint a Fee and Time Schedule
8 Advisory Committee and shall consult with the committee on
9 proposed fees and time schedules. The committee must
10 consist of representatives of industrial, commercial and
11 small business organizations, municipalities and
12 environmental organizations. The members serve without
13 compensation.

14 F. When requesting review of an application by another
15 state agency, the board or the commissioner shall indicate
16 in writing the information requested and the amount of time
17 allowed for the agency to respond. When an agency fails to
18 respond to a request in the allotted time, the commissioner
19 or board shall decide upon the application without input
20 from that agency unless the input is required for compliance
21 with federal law or regulation.

22
23 **Sec. 7. 38 MRSA §352, sub-§1, as affected by PL 1989, c. 890,**
24 **Pt. A, §40 and amended by Pt. B, §10, is further amended to read:**

25
26 **1. Fees established.** The commissioner shall establish
27 procedures to charge applicants for costs incurred in reviewing
28 license and permit applications. For the purposes of this
29 subchapter, costs are those necessary to carry out the purposes
30 of this chapter and may include, but are not limited to,
31 personnel costs, travel, supplies, legal and computer services.
32

33 **Sec. 8. 38 MRSA §352, sub-§2, ¶A, as amended by PL 1991, c.**
34 **384, §1 and affected by §16, is further amended to read:**

35
36 **A.** Except for those fees assessed under section 353-A,
37 processing fees must be assessed for costs incurred in
38 determining the acceptability of an application for
39 processing and in processing an application to determine
40 whether it meets statutory and regulatory criteria. These
41 costs include the costs of performing and analyzing any
42 environmental monitoring necessary to act on the application.
43

44 **Sec. 9. 38 MRSA §480-Q, sub-§11, as amended by PL 1991, c.**
45 **240, §2, is further amended to read:**

46
47 **11. Soil evaluation.** Borings taken to evaluate soil
48 conditions in or adjacent to a great pond, river, stream or
49 brook, coastal wetland, freshwater wetland or sand dune are
50

2 exempt from the provisions of this article provided that no area
of wetland vegetation is destroyed or permanently removed; and

4 **Sec. 10. 38 MRSA §480-Q, sub-§12, ¶E,** as enacted by PL 1991,
c. 240, §3, is amended to read:

6
8 E. A notice of intent to maintain, repair or reconstruct
the access way and the description of the work to be
10 completed are submitted to the commissioner and to the
municipal reviewing authority at least 20 days before the
work is performed.; and

12 **Sec. 11. 38 MRSA §480-Q, sub-§13** is enacted to read:

14 **13. Maine Land Use Regulation Commission jurisdiction.** Any
16 activity subject to review by the Maine Land Use Regulation
Commission.

18 **Sec. 12. 38 MRSA §489-A,** as affected by PL 1989, c. 890, Pt.
20 A, §40 and amended by Pt. B, §§97 to 102, is repealed and the
following enacted in its place:

22 **§489-A. Exempt developments**

24 **1. Conditions for exemption.** A development is exempt from
26 the permitting requirements of section 485-A if the development
is reviewed and issued a permit by a municipal reviewing
28 authority pursuant to Title 30-A, chapter 185, subchapter I or
Title 30-A, chapter 187, subchapter IV and the following
30 conditions are met:

32 **A. The municipality issuing the permit possesses a**
certificate of consistency in accordance with Title 30-A,
34 **chapter 187, subchapter II at the time the permit is issued;**

36 **B. The proposed development is not a mining activity or**
hazardous activity as defined in section 482; and

38 **C. The department does not exert state jurisdiction**
40 **pursuant to subsection 3.**

42 **2. Review by department.** When the municipal reviewing
authority accepts as complete an application under this section:

44 **A. The municipality shall submit to the commissioner within**
46 **14 days of acceptance by the municipal reviewing authority**
one copy of the project application and one copy of the
48 **notification form provided by the commissioner; and**

50 **B. The commissioner shall review the application and,**
within 45 days of application acceptance by the municipal

2 reviewing authority, notify the municipality if the
3 department intends to exercise jurisdiction under subsection
4 3.

6 If the department does not act within the 45-day period,
7 this inaction constitutes approval by the department and the
8 municipal permits are effective upon issuance.

10 3. State jurisdiction. The department shall review
11 projects for municipalities certified under Title 30-A, chapter
12 187 and may exert state jurisdiction if:

14 A. The local reviewing authority in which the project is
15 located petitions the commissioner in writing;

16 B. The local reviewing authority, in a municipality
17 adjoining the municipality in which a project is located,
18 petitions the commissioner in writing; or

20 C. The proposed project is located in more than one
21 municipality.

22 State jurisdiction must be exerted within 45 days of the
23 acceptance of the application as complete by the municipal
24 reviewing authority. The commissioner exerts jurisdiction by
25 notifying the municipal reviewing authority in writing of the
26 department's decision to review the application under this
27 subsection.

30 4. Appeal of decision by commissioner to review. An
31 aggrieved party may appeal to the board the decision by the
32 commissioner to exert or not exert state jurisdiction over the
33 proposed project. Review and actions taken by the department are
34 subject to appeal procedures governing the department under
35 section 341-D, subsections 4 and 5.

36 5. Joint enforcement. Any person who violates any permit
37 issued under this section is subject to the provisions of section
38 349 in addition to any penalties that the municipality may
39 impose. Any permits issued or conditions imposed by a local
40 authority must be enforced by the commissioner and the
41 municipality that issued the permit.

44 Sec. 13. Maine Land and Water Resources Council study. In
45 keeping with its responsibility of evaluating Maine's
46 environmental regulatory system, the Maine Land and Water
47 Resources Council, as established by Executive Order 9FY 80/81,
48 shall report to the joint standing committee of the Legislature
49 having jurisdiction over energy and natural resources matters and
50 the joint standing committee of the Legislature having
51 jurisdiction over housing and economic development matters by
52 January 1, 1993 concerning

2 methods of simplifying the environmental permitting process in
order to make it less time consuming for the applicant.

4 1. In preparation of this report the council shall review
pertinent portions of the following documents:

6 A. The Report of the Special Commission on Governmental
8 Restructuring, 1991;

10 B. Report of the Governor's Business Task Force, October
1990;

12 C. Maine Department of Environmental Protection Management
14 Study, Peat, Marwick, Main, February 1988;

16 D. Report on the Environmental Regulation Process by the
Maine Development Foundation, January 1983; and

18 E. Report to the Governor by the Citizens Commission to
20 Evaluate the Department of Environmental Protection, January
1982.

22 2. The council shall consult with the following agencies or
24 organizations:

26 A. The Maine Business Advisory Council;

28 B. The Maine Chamber of Commerce;

30 C. The Maine Audubon Society;

32 D. The Natural Resources Council of Maine;

34 E. The Maine Development Foundation;

36 F. The Ecology and Economics Forum (Eco-Eco); and

38 G. The Environmental and Economic Council of Maine.

40 3. The council shall include, but is not limited to, the
following in its study:

42 A. Extending permit by rule;

44 B. Extending the use of performance standards rather than
46 design standards;

48 C. Whether specificity and clarity in environmental laws
and rules should be increased and the issue of permit
50 flexibility in this regard;

2 D. Requiring agencies to adhere to specific deadlines for
permit processing, including the following issues:

4 (1) Whether deadlines should be set by the
Legislature, the commissioner or an advisory committee;

6 (2) Whether these deadlines should vary by type of
8 permit;

10 (3) Whether these deadlines should be for all permits
or a certain percent of permits; for example, 85% in 90
12 days;

14 (4) How to prevent the rejection of permits in order
to meet deadline requirements; and

16 (5) What should be the penalties for failure to meet
18 deadlines; for example, fines, refunded fees, approval
without permit or approval under permit by rule;

20 E. Increasing cross-media regulation and enforcement; and

22 F. Utilizing economic incentives.

24
26
28 **STATEMENT OF FACT**

30 This bill represents a majority recommendation of the
Commission to Study State Permitting and Reporting Requirements.
It is one of 4 bills and one resolution being submitted by this
32 commission.

34 The bill requires the Department of Environmental Protection
and the Maine Land Use Regulation Commission to develop annual
36 reports categorizing final permit actions. The bill directs the
Department of Environmental Protection and the Land and Water
38 Resources Council to act upon a permit application without input
from other agencies if those agencies have failed to respond to a
40 written request for review within the designated time.

42 The bill requires that the Department of Environmental
Protection develop a time schedule for the various steps required
44 in processing a permit. The bill requires the department to
appoint a Fee and Time Schedule Advisory Committee to advise in
46 the setting of these schedules. It provides guidelines on the
percentage of permits that should be processed within various
48 time periods. The bill requires that the department provide to
applicants that wish an earlier completion date an indication of
50 the additional fee that this would require. It requires that any
application be processed within 90 days if a special fee is paid.
52

2 If the department fails to meet a scheduled or agreed-upon
time for completion, the department is required to refund the
4 application fee, continue to process the permit and pay the
applicant a \$100-a-day fine for each day that processing exceeds
the agreed completion date.

6
8 The bill exempts activities reviewed by the Maine Land Use
Regulation Commission from permitting under the Natural Resources
Protection Act.

10
12 The bill abolishes duplicate review of projects under site
law when the municipality reviewing the project has a
14 comprehensive plan certified by the Office of Comprehensive Land
Use Planning and the Department of Environmental Protection does
not act to exert state jurisdiction.

16
18 The bill reasserts the authority of the Commissioner of
Environmental Protection to charge application fees sufficient to
cover all cost of processing permit applications.

20
22 The bill requires the Maine Land and Water Resources Council
to develop recommendations for the Joint Standing Committee on
24 Energy and Natural Resources concerning methods of simplifying
the environmental permitting process in order to make it less
26 time-consuming for the applicant. This council was established
by Executive Order 9FY 80/81, March 24, 1981.