

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1160

H.P. 837

House of Representatives, February 9, 1999

**An Act to Amend Certain Laws Administered by the Department of
Environmental Protection, Bureau of Land and Water Quality.**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by Representative DUPLESSIE of Westbrook.

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

2
4 **Sec. 1. 38 MRSA §352, sub-§2-A**, as enacted by PL 1997, c. 374,
§1, is amended to read:

6 **2-A. Fee adjustment.** The commissioner may adjust the fees
8 established in this subchapter ~~chapter~~ on an annual basis
according to the United States Consumer Price Index established
10 by the federal Department of Labor, Bureau of Labor Statistics.
These adjustments may be compounded and assessed at an interval
12 greater than one year if the commissioner determines that such
periodic increases lower administrative costs for the department
14 and continue effective public service.

16 **Sec. 2. 38 MRSA §352, sub-§3**, as amended by PL 1997, c. 374,
§2, is further amended to read:

18 **3. Maximum fee.** The commissioner shall set the actual fees
20 and shall publish a schedule of all fees by August 1st of each
year. If the commissioner determines that a particular
22 application, by virtue of its size, uniqueness, complexity or
other relevant factors, is likely to require significantly more
24 costs than those listed on Table I, the commissioner may
designate that application as subject to special fees. A special
26 fee may not exceed \$40,000 ~~\$75,000~~. Such a designation must be
made at, or prior to, the time the application is accepted as
28 complete and may not be based solely on the likelihood of
extensive public controversy. All department staff who have
30 worked on the review of the application shall submit quarterly
reports to the commissioner detailing the time spent on the
32 application and all expenses attributable to the application.
The processing fee for that application must be the actual cost
34 to the department. The applicant must be billed quarterly and
all fees paid prior to receipt of the permit.

36 **Sec. 3. 38 MRSA §411, first ¶**, as repealed and replaced by PL
1995, c. 186, §1, is amended to read:

38 The commissioner may pay an amount not to exceed 80% of the
40 expense of a municipal or quasi-municipal pollution abatement
construction program or a pollution abatement construction
42 program in an unorganized township or plantation authorized by
the county commissioners. The commissioner may make payments to
44 the Maine Municipal Bond Bank to supply the State's share of the
revolving loan fund established by Title 30-A, section 6006-A.
46 The commissioner may pay up to 90% of the expense of a municipal
or quasi-municipal pollution abatement construction program or a
48 pollution abatement construction program in an unorganized
township or plantation authorized by the county commissioners in
50 which the construction cost of the project does not exceed

\$100,000 as long as total expenditures for the small projects do not exceed \$1,000,000 in any fiscal year and not more than one grant is made to any applicant each year, except that the commissioner may pay a percentage of the cost of individual projects serving single-family dwellings, seasonal dwellings or commercial establishments according to the following schedule:

ANNUAL INCOME	SINGLE-FAMILY DWELLING	SEASONAL DWELLING	COMMERCIAL ESTABLISHMENT
\$0 to \$5,000	100%	25% <u>50%</u>	50%
\$5,001 to \$20,000	90%	25% <u>50%</u>	50%
\$20,001 to \$30,000	50%	25% <u>50%</u>	50%
\$30,001 to \$40,000	25%	25%	25%
\$40,001 or more	0%	0%	0%

Sec. 4. 38 MRSA §411-A, sub-§2, ¶C, as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §25, is further amended to read:

C. The commissioner shall pay 25% 50% of the costs of a project that results in the removal of a seasonal residential overboard discharge.

Sec. 5. 38 MRSA §439-A, sub-§4-A, ¶E, as enacted by PL 1997, c. 748, §3, is amended by amending subparagraph (2) to read:

(2) An existing well-distributed stand of trees and other vegetation, as defined in the minimum guidelines adopted by the Board of Environmental Protection, extends at least 50 feet inland from the normal high-water line or upland edge of a wetland for the entire width of the property or, if such a stand is not present, a written plan by the property owner to reestablish a buffer of native trees, shrubs and other ground cover within 50 feet of the ~~shoreline~~ normal high-water line or upland edge of a wetland is approved by the municipal planning board. The plan must be implemented at the time of construction and must be designed to meet the minimum guidelines adopted by the Board of Environmental Protection as the vegetation matures. Rules adopted pursuant to this subparagraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; and

Sec. 6. 38 MRSA §480-B, sub-§7, as enacted by PL 1987, c. 809, §2, is amended to read:

2 7. **Permanent structure.** "Permanent structure" means any
3 structure constructed or erected with a fixed location, or
4 attached to a structure with a fixed location, ~~on or in the~~
5 ~~ground within a fragile mountain area, or having a fixed location~~
6 ~~in, on or over the water~~ for a period exceeding 7 months each
7 year, including, but not limited to, causeways, piers, docks,
8 concrete slabs, piles, marinas, retaining walls and buildings.

9 **Sec. 7. 38 MRSA §480-U, sub-§4,** as enacted by PL 1991, c. 214,
10 §2, is amended to read:

11 **4. Review period.** Work may not occur until 45 days after
12 the department has accepted an application for processing. This
13 period may be extended pursuant to section 344-B.

14 **Sec. 8. 38 MRSA §480-X, sub-§6, ¶B,** as enacted by PL 1995, c.
15 460, §7 and affected by §12, is amended to read:

16 B. Work may not occur until 30 days after the department
17 receives a complete application, unless written approval is
18 issued sooner by the department. The department shall
19 notify the applicant in writing no later than 30 days after
20 the department receives a complete application if the
21 applicable requirements of this section have not been met or
22 if the review period may be extended pursuant to section
23 344-B. If the department has not notified the applicant
24 within the 30-day review period, a permit is deemed to be
25 granted.

26 **Sec. 9. 38 MRSA §480-X, sub-§7, ¶B,** as enacted by PL 1995, c.
27 460, §7 and affected by §12, is amended to read:

28 B. Work may not occur until 60 days after the department
29 has received a complete application for processing, unless
30 written approval is issued sooner by the department. The
31 department shall notify the applicant in writing within 60
32 days of the department's receipt of a complete application
33 whether the applicable requirements of this section have
34 been met or if the review period may be extended pursuant to
35 section 344-B. If the department has not notified the
36 applicant within the 60-day review period, a permit is
37 deemed to be granted.

38 **Sec. 10. 38 MRSA §480-Y, sub-§2, ¶E** is enacted to read:

39 E. The pond may not be located in a river, stream or brook
40 if the department determines at the site assessment that
41 there is a practicable alternative water supply that would
42 be less damaging to the environment. For purposes of this
43 paragraph, the term "practicable" means feasible

2 considering cost, existing technology and logistics based on
3 the overall purpose of the project.

4 **Sec. 11. 38 MRSA §480-Y, sub-§5,** as enacted by PL 1995, c.
5 659, §1, is amended to read:

6 **5. Review period.** Work may not commence until 30 days
7 after the department has accepted an application for processing.
8 This period may be extended pursuant to section 344-B.

9 **Sec. 12. 38 MRSA §489-A, sub-§1,** as amended by PL 1997, c.
10 393, Pt. A, §46, is repealed.

11 **Sec. 13. 38 MRSA §489-A, sub-§1-A,** as enacted by PL 1993, c.
12 383, §27 and affected by §42, is amended to read:

13 **1-A. Modification.** An application for a modification to a
14 development reviewed by a municipality pursuant to subsection 1
15 1-B may be reviewed by the municipality as long as:

16 **A.** The modification will not cause the total area of the
17 development to exceed an upper area threshold specified in
18 subsection 1 1-B; or

19 **B.** Based upon information submitted by the municipality
20 concerning the development and modification, the department
21 determines that the modification may be adequately reviewed
22 by the municipality.

23 In addition, a municipality may modify a permit for a subdivision
24 or structure issued by the department prior to registration of
25 the municipality pursuant to ~~section 489-A~~ this section if the
26 total area of the upper--area modification and any prior
27 modifications reviewed pursuant to this section does not exceed
28 the upper area threshold provided in subsection 1 1-B except as
29 allowed in paragraph B.

30 **Sec. 14. 38 MRSA §489-A, sub-§1-B** is enacted to read:

31 **1-B. Kinds of projects.** The following kinds of projects
32 may be reviewed by registered municipalities pursuant to this
33 section:

34 **A.** Subdivisions as described in section 482, subsection 5
35 of more than 20 acres but fewer than 100 acres;

36 **B.** Structures as described in section 482, subsection 6 in
37 excess of 3 acres but fewer than 7 acres; or

2 C. A project generating 100 to 200 passenger car
3 equivalents at peak hour.

4 **Sec. 15. 38 MRSA §489-A, sub-§2, as amended by PL 1993, c.**
5 **383, §27 and affected by §42, is further amended to read:**

6 **2. Registration.** The commissioner shall register
7 municipalities to grant permits for projects under subsection 1
8 1-B if the commissioner finds that the municipality meets all of
9 the following criteria:

10 A. A municipal planning board or reviewing authority is
11 established;

12 B. A comprehensive plan consistent with Title 30-A, chapter
13 187 has been adopted with standards and objectives
14 determined by the department to be at least as stringent as
15 this article;

16 C. Subdivision regulations have been adopted that are
17 consistent with Title 30-A, chapter 187, and determined by
18 the commissioner to be at least as stringent as criteria set
19 forth in section 484;

20 D. Site plan review regulations have been adopted with
21 criteria determined by the commissioner to be at least as
22 stringent as section 484;

23 ~~D-1. Land use regulations have been adopted that regulate~~
24 ~~all excavation operations for borrow, topsoil, clay or silt,~~
25 ~~alone or in combination, as described in section 482,~~
26 ~~subsection 2-B. The regulations must be determined by the~~
27 ~~commissioner to be at least as stringent as the criteria set~~
28 ~~forth in section 484. An excavation of 5 or fewer acres of~~
29 ~~land for topsoil, clay or silt must be conducted and~~
30 ~~reclaimed in accordance with the erosion and sedimentation~~
31 ~~control standards contained in board rules;~~

32 E. The municipality has adequate resources to administer
33 and enforce the provisions of its ordinances;

34 F. Procedures for public hearing and notification have been
35 established including:

36 (1) Notice to the commissioner upon receipt of an
37 application, including a description of the project;

38 (2) Notice of issuance and denial to the applicant and
39 commissioner, including the reason for denial;

40

2 (3) Public notification of the application and any
hearings; and

4 (4) Satisfactory hearing procedures;

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

8
10 H. A registration form, provided by the commissioner, has
12 been completed and submitted by the municipality,
demonstrating compliance with the criteria under this
subsection.

14 **Sec. 16. 38 MRSA §840, sub-§1**, as amended by PL 1995, c. 630,
16 §2, is further amended to read:

18 1. **Power.** The commissioner may on the commissioner's own
20 motion and shall, at the request of the owner, lessee or person
22 in control of a dam, the Commissioner of Inland Fisheries and
24 Wildlife or the Commissioner of Marine Resources, or upon receipt
26 of petitions from the lesser of at least 25% or 50 of the
littoral or riparian proprietors or from a water utility having
the right to withdraw water from the body of water for which the
water level regime is sought, conduct an adjudicatory hearing for
the purpose of establishing a water level regime and, if
applicable, minimum flow requirements for the body of water
impounded by any dam that is not:

28
30 A. Operating with a license or exemption issued by the
32 Federal Energy Regulatory Commission or determined by the
Federal Energy Regulatory Commission to be subject to the
jurisdiction of that commission;

34 D. Operating with a permit setting water levels issued
36 under the protection of natural resources laws, sections
38 480-A to 480-S; the site location of development laws,
40 sections 481 to 490; the small hydroelectric generating
facilities laws, sections 631 to 636; the land use
regulation laws, Title 12, sections 681 to 689; or any other
statute regulating the construction or operation of dams;

42 E. A dam regulated by one or more municipalities by
44 ordinance or interlocal agreement pursuant to Title 30-A,
chapter 187, subchapter VI; or

46 F. Regulated by the International Joint Commission.

48 Notwithstanding the provisions of this subsection, after an order
50 establishing a water level regime or minimum flow requirement has
been issued pursuant to this section or former Title 12, section

2 304. the commissioner is not required to hold a hearing to
4 establish a new water level regime or minimum flow requirement
6 for the same body of water in response to a petition from
8 littoral or riparian proprietors unless the commissioner
10 determines that there has been a substantial change in conditions
12 or other circumstances materially affecting the impact of water
14 levels and minimum flows on the public and private resources
16 identified in subsection 4 since the order was issued.

10 SUMMARY

12 This bill makes the following changes to the laws
14 administered by the Department of Environmental Protection,
16 Bureau of Land and Water Quality.

18 1. It corrects discrepancies in the Department of
20 Environmental Protection's authority to apply the United States
22 Consumer Price Index to licensing and certification fees and
explicitly allows the department to compound annually authorized
adjustments into periodic increases.

24 2. It increases the cap on special license and permit
application fees from \$40,000 to \$75,000.

26 3. It increases the seasonal dwelling grant percentage for
28 pollution abatement construction projects and for overboard
discharge replacement projects.

30 4. It replaces the word "shoreline" with the phrase "the
32 normal high-water line or upland edge of a wetland" in the
34 alternative expansion requirement found in the mandatory
36 shoreland zoning laws. The phrase "the normal high-water line or
upland edge of a wetland" is currently used in several places in
this provision to indicate the point from which setbacks and
buffers are measured. The proposed change replaces the
inconsistent term.

38 5. It clarifies the natural resources protection law's
40 definition of "permanent structure" by removing references to a
particular location.

42 6. It adds language to certain provisions that currently
44 establish specific processing times for reviewing permits to
46 provide that these processing times are subject to the general
provisions concerning processing times found in the Maine Revised
Statutes, Title 38, section 344-B.

48 7. It adds an additional eligibility criterion to the
50 agricultural irrigation pond general permit provisions in the

2 natural resource protection laws to provide that an agricultural
3 irrigation pond may not be located in a river, stream or brook if
4 it is determined by the Department of Environmental Protection at
5 the site assessment that there is a practicable alternative water
6 supply that would be less damaging to the environment.

8 8. It clarifies provisions governing the municipal review
9 of development set forth in the site location of development laws.

10 9. It amends provisions concerning the establishment of
11 water levels to provide that once a water level has been set on a
12 lake or pond by the Commissioner of Environmental Protection, the
13 commissioner does not have to hold another hearing to establish a
14 new water level in response to a public petition unless there has
15 been a substantial change in conditions since the original water
16 level decision was made.