

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

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Legislative Document

No. 2071

H.P. 1465

House of Representatives, March 16, 2006

An Act To Increase Wetland Protection

Reported by Representative KOFFMAN of Bar Harbor for the Joint Standing Committee on Natural Resources pursuant to Resolve 2005, chapter 37.

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 38 MRSA §480-X, sub-§2**, as amended by PL 2003, c. 554, §1, is further
3 amended to read:

4 **2. Three-tiered review process; tiers defined.** Except as provided in subsection
5 1, an application for a permit to undertake activities altering freshwater wetlands must be
6 reviewed in accordance with the following.

7 A. A Tier 1 review process applies to any activity that involves a freshwater
8 wetland alteration up to 15,000 square feet and does not involve the alteration of
9 freshwater wetlands listed in subsection 4.

10 B. A Tier 2 review process applies to any activity that involves a freshwater
11 wetland alteration of 15,000 square feet up to one acre and does not involve the
12 alteration of freshwater wetlands listed in subsection 4 or 5.

13 C. A Tier 3 review process applies to any activity that involves a freshwater
14 wetland alteration of one acre or more or an alteration of a freshwater wetland listed
15 in subsection 4 or 5.

16 If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of
17 the overall project and involves a regulated freshwater wetland alteration also requires the
18 same higher level of review, unless otherwise authorized by the department.

19 In determining the amount of freshwater wetland to be altered, all components of a
20 project, including all phases of a multiphased project, are treated together as constituting
21 one single and complete project. Activity authorized or legally conducted prior to the
22 effective date of this section is not included.

23 The standards of section 480-D do not apply to projects that qualify for Tier 1 review,
24 except that habitat standards under section 480-D, subsection 3 and water quality
25 standards under section 480-D, subsection 5 apply to those projects. Projects that meet
26 the eligibility requirements for Tier 1 review and that satisfy the permitting requirements
27 set forth in subsection 3 and 6, as applicable, are presumed not to have significant
28 environmental impact.

29 **Sec. 2. 38 MRSA §480-X, sub-§6, ¶B**, as amended by PL 1999, c. 243, §13, is
30 further amended to read:

31 B. Work may not occur until ~~30~~ 45 days after the department receives a complete
32 application, unless written approval is issued sooner by the department. The
33 department shall notify the applicant in writing no later than ~~30~~ 45 days after the
34 department receives a complete application if the applicable requirements of this
35 section have not been met or if the review period may be extended pursuant to section
36 344-B, subsection 4. If the department has not notified the applicant within the ~~30-~~
37 ~~day~~ 45-day review period, a permit is deemed to be granted.

38 **Sec. 3. 38 MRSA §480-Z, 4th ¶**, as enacted by PL 1997, c. 101, §1 and affected
39 by §2, is amended to read:

40 A project undertaken pursuant to this section must be approved by the department.
41 The department shall base its approval of a compensation project on the wetland

1 management priorities identified by the department for the watershed or biophysical
2 region in which the project is located. The department may not approve a compensation
3 project until the applicant has complied with all other applicable provisions of this article
4 and all applicable rules adopted by the department pursuant to this article. For purposes
5 of this section, "biophysical region" means a region with shared characteristics of climate,
6 geology, soils and natural vegetation.

7 **Sec. 4. 38 MRSA §480-Z, sub-§3, ¶A,** as amended by PL 2003, c. 245, §8, is
8 further amended to read:

9 A. The program may include the following:

10 (1) Identification of wetland management priorities on a watershed or
11 biophysical region basis;

12 (2) Identification of the types of wetland losses eligible for compensation under
13 this subsection;

14 (3) Standards for compensation fee projects;

15 (4) Calculation of compensation fees based on the functions and values of the
16 affected wetlands and the cost of compensation, taking into account the potential
17 higher cost of compensation when a project is implemented at a later date; and

18 (5) Methods to evaluate the long-term effectiveness of compensation fee projects
19 implemented under this subsection in meeting the wetland management priorities
20 identified pursuant to subparagraph (1).

21 **SUMMARY**

22 The bill adds a requirement providing that projects qualifying for Tier 1 review must
23 meet the habitat standards under the Maine Revised Statutes, Title 38, section 480-D,
24 subsection 3. The bill also changes the permit processing period for an application for
25 Tier 1 activities from 30 days to 45 days.

26 The bill also allows the Department of Environmental Protection to base its approval
27 of a compensation project on the wetland management priorities identified by the
28 department for the biophysical region or the watershed in which the project is located.