

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 988

S.P. 319

In Senate, March 10, 2021

**An Act To Increase Economic Development by Expanding the
Special Fee Application Review Process of the Department of
Environmental Protection**

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KEIM of Oxford.

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

2 **Sec. 1. 38 MRSA §343-B, sub-§1** is enacted to read:

3 **1. Complex projects.** Notwithstanding any provision to the contrary in sections
4 344-B and 352, during the preapplication meeting the project may be assigned a category
5 based on the identified complexity of the project and the department may establish an
6 appropriate fee and timeline for the project based on the complexity. For projects that
7 require more than one permit from the department, at a presubmission meeting, the
8 commissioner and the applicant shall determine the fees applicable to all permit or license
9 applications required for that project and, in accordance with section 344-B, subsection 4,
10 determine the timetable or timetables applicable to all permit or license applications
11 required for that project.

12 **Sec. 2. 38 MRSA §352, sub-§3,** as amended by PL 2011, c. 653, §10 and affected
13 by §33 and amended by c. 657, Pt. W, §5, is further amended to read:

14 **3. Maximum Special fee.** The commissioner shall set the actual fees and shall publish
15 a schedule of all fees by November 1st of each year. If the commissioner determines that
16 a particular application, by virtue of its size, uniqueness, complexity or other relevant
17 factors as determined by the department in accordance with paragraph A, is likely to require
18 significantly more costs than those listed on Table I, the commissioner may designate that
19 application as subject to special fees. Such a designation must be made at, or prior to, the
20 time the application is accepted as complete and may not be based solely on the likelihood
21 of extensive public controversy. The maximum fee for processing an application may not
22 exceed \$250,000, except that the maximum fee for processing an application under chapter
23 3, subchapter 1, article 9 is as provided for in subsection 4-A. All staff of the department,
24 the Department of Inland Fisheries and Wildlife, the Department of Agriculture,
25 Conservation and Forestry and the Department of Marine Resources who have worked on
26 the review of the application, including, but not limited to, preapplication consultations,
27 shall submit quarterly reports to the commissioner detailing the time spent on the
28 application and all expenses attributable to the application, including the costs of any
29 appeals filed by the applicant and, after taking into consideration the interest of fairness
30 and equity, any other appeals if the commissioner finds it in the public interest to do so.
31 Any appeal filed by the applicant of an application fee must be to the agency of jurisdiction
32 of the application. The costs associated with assistance to the board on an appeal before
33 the board may be separately charged. The processing fee for that application must be the
34 actual cost to the department, the Department of Inland Fisheries and Wildlife, the
35 Department of Agriculture, Conservation and Forestry and the Department of Marine
36 Resources. The processing fee must be distributed to each department that incurs a cost to
37 be deposited in the account in which the expenses were incurred in that department to
38 reimburse the actual cost to that department. The applicant must be billed quarterly and all
39 fees paid prior to receipt of the permit. At the time of the quarterly billing by the
40 department, the commissioner shall review the ongoing work of the department to identify,
41 prevent and mitigate undue delays or vague requirements of the application processing.
42 Nothing in this section limits the commissioner's authority to enter into an agreement with
43 an applicant for payment of costs in excess of the maximum fee established in this
44 subsection.

1 A. The department shall adopt rules identifying the relevant factors the commissioner
2 shall consider in determining if a particular application is subject to special fees. The
3 factors must include, but are not limited to, the job creation potential of the project,
4 whether the project is being proposed in response to rapidly changing market
5 conditions brought on by an emergency situation, such as the pandemic related to
6 coronavirus disease 2019, or COVID-19, whether the application involves the
7 redevelopment of a site that is part of a state or federal brownfields program and the
8 project's overall benefit to the community. Rules adopted pursuant to this paragraph
9 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10

SUMMARY

11 To increase the number of applications submitted to the Department of Environmental
12 Protection that may be subject to special fees, this bill requires the department to adopt
13 rules identifying the relevant factors the Commissioner of Environmental Protection must
14 consider in determining if a particular application is subject to special fees. The bill also
15 authorizes the department to assign a project a category and establish an appropriate fee
16 and timeline for the project based on the complexity of the project.