

MAINE STATE LEGISLATURE

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ENVIRONMENT AND NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT " " to H P 140, L D 219, "An Act to Promote Equity in the Permitting Appeals Process"

Amend the bill by striking out the title and substituting the following

'An Act Regarding Appeals of License or Permit Decisions of the Commissioner of Environmental Protection'

Amend the bill by striking out everything after the enacting clause and inserting the following

'Sec. 1. 38 MRS A §341-D, sub-§3, as repealed and replaced by PL 2011, c 304, Pt H, §7, is amended to read

3. Modification or corrective action. At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met The board may modify a license or order corrective action as authorized by this subsection at any time, including during the pendency of a judicial appeal of a final decision regarding the license

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department

Sec. 2. 38 MRS A §341-D, sub-§4, ¶A, as enacted by PL 1989, c 890, Pt A, §13 and affected by §40, is amended to read

A Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff The board staff shall give written notice to persons that have asked to be notified of the decision Any proposed supplemental evidence offered by an appellant must be included with the filing of the appeal The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that

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11/11/2017

1 (1) An interested party seeking to supplement the record has shown due diligence
2 in bringing the evidence to the licensing process at the earliest possible time, or

3 (2) The evidence is newly discovered and could not, by the exercise of diligence,
4 have been discovered in time to be presented earlier in the licensing process

5 The board may admit into the record supplemental evidence offered by a respondent in
6 response to proposed supplemental evidence offered by an appellant and the issues
7 raised on appeal. The board may admit into the record additional evidence and analysis
8 submitted by department staff in response to issues raised on appeal or supplemental
9 evidence offered by an appellant, respondent or interested party. The board is not bound
10 by the commissioner's findings of fact or conclusions of law but may adopt, modify or
11 reverse findings of fact or conclusions of law established by the commissioner. Any
12 changes made by the board under this paragraph must be based upon the board's review
13 of the record, any supplemental evidence admitted by the board and any hearing held
14 by the board,

15 **Sec. 3. 38 MRS §342, sub-§11-B**, as amended by PL 2017, c 137, Pt A, §4, is
16 further amended by amending the first blocked paragraph to read:

17 The commissioner may revoke or suspend a license as authorized by this subsection at any
18 time, including during the pendency of a judicial appeal of a final decision regarding the
19 license. For the purposes of this subsection, "license" includes any license, permit, order,
20 approval or certification issued by the department and "licensee" means the holder of the
21 license

22 **Sec. 4. 38 MRS §344, sub-§9**, as amended by PL 2011, c 538, §4, is further
23 amended to read

24 **9. License or permit renewals, amendments, revisions, condition compliance,**
25 **surrenders and transfers.** For purposes of this section, a request for a license or permit
26 renewal, amendment, revision, condition compliance, surrender or transfer is considered
27 an application that, unless specifically exempted by law, is subject to a decision by the
28 department

29 The commissioner may act on an application for a license or permit renewal, amendment,
30 revision, condition compliance, surrender or transfer at any time, including during the
31 pendency of a judicial appeal of a final decision regarding the license or permit.

32 **Sec. 5. 38 MRS §346, sub-§1**, as amended by PL 2009, c 642, Pt B, §3, is further
33 amended to read:

34 **1. Appeal to Superior Court.** Except as provided in subsection 4 and section 347-A,
35 subsection 3 or 4, any person aggrieved by any order or ~~decision~~ other final action of the
36 board or commissioner may appeal to the Superior Court. These appeals to the Superior
37 Court must be taken in accordance with Title 5, chapter 375, subchapter 7

38 **Sec. 6. 38 MRS §346, sub-§5** is enacted to read

39 **5. Tolling of deadlines.** When a license or permit decision or other final action of the
40 board or the commissioner is appealed to a court in accordance with this section, the board
41 or the commissioner may toll for the pendency of the judicial appeal the running of time
42 for any deadline established in the license, permit or action under appeal.'

COMMITTEE AMENDMENT

ROS

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
2 number to read consecutively

3 **SUMMARY**

4 This amendment replaces the bill, which is a concept draft. It provides for the
5 following changes to the laws governing orders and decisions of the Commissioner of
6 Environmental Protection and the Board of Environmental Protection and appeals of those
7 orders and decisions

8 1 Current law provides that the commissioner may revoke or suspend a license if the
9 commissioner finds that certain specified statutory criteria have been met. The board is
10 similarly authorized by law to modify a license or order necessary corrective action if the
11 board finds that the same statutory criteria have been met. The amendment provides that
12 such a revocation or suspension of a license by the commissioner or such a modification of
13 a license or ordering of corrective action by the board may occur at any time, including
14 during the pendency of a judicial appeal of a final decision regarding the license. The
15 amendment provides that the commissioner may act on an application for a license or
16 permit renewal, amendment, revision, condition compliance, surrender or transfer at any
17 time, including during the pendency of a judicial appeal of a final decision regarding the
18 license or permit

19 2 It provides that, on appeal to the board of a final license or permit decision of the
20 commissioner, an appellant must include any proposed supplemental evidence with the
21 filing of the appeal and the board may admit into the record supplemental evidence offered
22 by a respondent in response as well as additional evidence and analysis submitted by
23 Department of Environmental Protection staff in response

24 3 It provides that when a license or permit decision or other final action of the board
25 or the commissioner is appealed to a court, the board or the commissioner may toll for the
26 pendency of the judicial appeal the running of time for any deadline established in the
27 license, permit or action under appeal

28 **FISCAL NOTE REQUIRED**

29 (See attached)



131st MAINE LEGISLATURE

LD 219

LR 1542(02)

An Act to Promote Equity in the Permitting Appeals Process

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-204)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources