

MAINE STATE LEGISLATURE

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Date: 2/2/24

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

131ST LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 362, L.D. 865, "An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection by Adjusting the Requirements for Certain Hearings and for Certain Agencies by Adjusting the Requirements for Cost-Benefit Analysis"

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

'An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection'

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

'Sec. 1. 38 MRSA §341-D, sub-§2, as amended by PL 2011, c. 304, Pt. H, §6, is further amended to read:

2. Permit and license applications. Except as otherwise provided in this subsection, the board shall ~~decide~~ assume jurisdiction of each application for approval of the following categories of permits and licenses that in its judgment represents a project of statewide significance. ~~A project of statewide significance is a project that meets at least 3 of the following 4 criteria:~~

- ~~E. Will have an environmental or economic impact in more than one municipality, territory or county;~~
- ~~F. Involves an activity not previously permitted or licensed in the State;~~
- ~~G. Is likely to come under significant public scrutiny; and~~
- ~~H. Is located in more than one municipality, territory or county.~~
- I. A new mining permit required pursuant to section 490-OO;
- J. A license for a new solid waste disposal facility required pursuant to section 1310-N;
- K. A permit for a new high-impact electric transmission line, as defined in Title 35-A, section 3131, subsection 4-A, required pursuant to chapter 3, subchapter 1, article 6;

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1 L. A license for a new wastewater discharge required pursuant to section 413 that, as
2 determined by the department, is expected to use more than 20% of the assimilative
3 capacity of the receiving water;

4 M. A permit for a new offshore wind terminal required pursuant to chapter 3,
5 subchapter 1, article 6; and

6 N. A permit for a new nuclear power plant, as defined in Title 35-A, section 4352,
7 subsection 9, required pursuant to chapter 3, subchapter 1, article 6.

8 The board shall also ~~decide~~ assume jurisdiction of each application for approval of permits
9 and licenses that is referred to it jointly by the commissioner and the applicant.

10 ~~The board shall assume jurisdiction over applications referred to it under section 344,~~
11 ~~subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been~~
12 ~~met.~~

13 ~~The board may vote to assume jurisdiction of an application if it finds that at least 3 of the~~
14 ~~4 criteria of this subsection have been met.~~

15 The board may not assume jurisdiction over an application for an expedited wind energy
16 development as defined in Title 35-A, section 3451, subsection 4, for a certification
17 pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH or
18 section 636-A.

19 Prior to holding a hearing on an application over which the board has assumed jurisdiction,
20 the board shall ensure that the department and any outside agency review staff assisting the
21 department in its review of the application have submitted to the applicant and the board
22 their review comments on the application and any additional information requests
23 pertaining to the application and that the applicant has had an opportunity to respond to
24 those comments and requests. If additional information needs arise during the hearing, the
25 board shall afford the applicant a reasonable opportunity to respond to those information
26 requests prior to the close of the hearing record.

27 **Sec. 2. 38 MRSA §341-D, sub-§4, ¶A,** as amended by PL 2023, c. 139, §2, is
28 further amended to read:

29 A. Final license or permit decisions made by the commissioner when a person
30 aggrieved by a decision of the commissioner appeals that decision to the board within
31 30 days of the filing date of the decision ~~with the board staff~~. ~~The board staff shall~~
32 ~~give written notice to persons that have asked to be notified of the decision.~~ An
33 appellant shall identify in the appeal the licensing or permitting criterion or standard
34 the appellant believes was not satisfied in the commissioner's final license or permit
35 decision. Any proposed supplemental evidence offered by an appellant must be
36 included with the filing of the appeal. The board staff shall issue to the licensee or
37 permittee, if the licensee or permittee is not the appellant, and to any persons who have
38 requested to be notified of the license or permit decision written notice of the filing of
39 the appeal and identify any proposed supplemental evidence offered by the appellant.
40 Within 30 days of the issuance of the written notice of the filing of the appeal by the
41 board staff, the licensee or permittee, if the licensee or permittee is not the appellant,
42 and any interested parties identified by the commissioner pursuant to section 344,
43 subsection 4-A, paragraph B may submit supplemental evidence to the board and the
44 appellant addressing the issues raised in the appeal. The board may allow the record

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1 to be supplemented when it finds that the evidence offered is relevant and material and
2 that:

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

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

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

19 If the board modifies or reverses a final license or permit decision of the commissioner
20 pursuant to this paragraph, the licensee or permittee shall implement any changes to
21 the project necessary to comply with the decision of the board, which may include, but
22 are not limited to, deconstruction and site restoration, and the department may initiate
23 enforcement actions pursuant to section 347-A and impose penalties pursuant to
24 section 349 if the licensee or permittee fails to satisfactorily implement those changes;

25 **Sec. 3. 38 MRSA §344, sub-§2-A, ¶A,** as amended by PL 2011, c. 304, Pt. H, §18,
26 is further amended to read:

27 A. Except as otherwise provided in this paragraph, the commissioner shall decide as
28 expeditiously as possible if an application meets ~~3 of the 4 criteria~~ the requirements set
29 forth in section 341-D, subsection 2 for the assumption of jurisdiction by the board and
30 shall request that notify the board ~~assume jurisdiction of that~~ if the application meets
31 the requirements. ~~If an interested person requests that the commissioner refer an~~
32 ~~application to the board and the commissioner determines that the criteria are not met,~~
33 ~~the commissioner shall notify the board of that request.~~ If at any subsequent time
34 during the review of an application the commissioner decides that the application ~~falls~~
35 under meets the requirements set forth in section 341-D, subsection 2 for the
36 assumption of jurisdiction by the board, the commissioner shall ~~request that notify~~ the
37 board ~~assume jurisdiction of that~~ the application meets the requirements.

38 (1) The commissioner may not request the board to assume jurisdiction of an
39 application for any permit or other approval required for an expedited wind energy
40 development, as defined in Title 35-A, section 3451, subsection 4, a certification
41 pursuant to Title 35-A, section 3456 or a general permit pursuant to section
42 480-HH or section 636-A. Except as provided in subparagraph (2), the
43 commissioner shall issue a decision on an application for an expedited wind energy
44 development, an offshore wind power project or a hydropower project, as defined
45 in section 632, subsection 3, that uses tidal action as a source of electrical or

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mechanical power within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant.

Sec. 4. 38 MRSA §489-A, sub-§9, ¶A, as amended by PL 1993, c. 383, §27 and affected by §42, is further amended by amending subparagraph (1) to read:

(1) Meets ~~one or more of the criteria~~ requirements set forth in section 341-D, subsection 2, ~~paragraph A, B or C~~ for the assumption of jurisdiction by the board;

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

SUMMARY

This amendment replaces the bill and changes the title. It amends laws relating to the roles and responsibilities of the Department of Environmental Protection, the Commissioner of Environmental Protection and the Board of Environmental Protection as follows.

1. It amends the criteria by which the board assumes jurisdiction over a license or permit application, stipulating the specific categories of license and permit applications over which the board must assume jurisdiction. The amendment also includes technical revisions to other statutes relating to these jurisdictional changes.

2. It amends provisions regarding the board's acceptance and consideration of additional or supplemental evidence submitted by an appellant, respondent or interested party during the appeal of a final license or permit decision of the commissioner.

3. It provides that, if the board modifies or reverses a final license or permit decision of the commissioner, the licensee or permittee is required to implement any changes to the project that is the subject of the license or permit necessary to comply with the decision of the board, which may include, but are not limited to, deconstruction and site restoration, and the department may initiate enforcement actions and impose penalties if the licensee or permittee fails to satisfactorily implement those changes.

FISCAL NOTE REQUIRED

(See attached)

COMMITTEE AMENDMENT



Approved: 01/11/24 *MAC*

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LD 865

LR 915(02)

An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection by Adjusting the Requirements for Certain Hearings and for Certain Agencies by Adjusting the Requirements for Cost-Benefit Analysis

Fiscal Note for Bill as Amended by Committee Amendment "A" (5-518)

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 Board of Environmental Protection or 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.