

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2014 to July 16, 2015

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Augusta, Maine
2015

entity when the agreement provides for reasonable reimbursement for such services.

9. Legislative approval. If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work. If legislative approval is granted, the department shall report to the joint standing committee of the Legislature having jurisdiction over transportation matters by February 1st of each year as to the status of the project and any substantive changes to the public-private partnership proposal.

See title page for effective date.

**CHAPTER 264
S.P. 449 - L.D. 1244**

**An Act To Amend
Environmental Permitting
Standards**

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

Sec. 1. 38 MRSA §344, sub-§2-A, ¶D, as enacted by PL 2013, c. 325, §4, is repealed and the following enacted in its place:

D. For an application for a permit for a grid-scale wind energy development, as defined in Title 35-A, section 3451, subsection 6, the following procedures apply.

(1) The commissioner shall accept public comment on an application during the course of processing the application. The commissioner shall set a deadline for receiving public comments.

(2) The commissioner may not issue the final decision until 10 business days after the close of the public comment period. The commissioner's final decision must include responses to the public comments.

Sec. 2. 38 MRSA §480-C, sub-§5 is enacted to read:

5. Small-scale wind energy development. A person may not construct or cause to be constructed a wind energy development requiring certification under Title 35-A, section 3456 without first obtaining a permit from the department under section 480-II.

Sec. 3. 38 MRSA §480-II is enacted to read:

§480-II. Small-scale wind energy development; permit requirements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Decommissioning" means the physical removal of all components of a small-scale wind energy development, including, but not limited to, wind turbines and associated foundations to a depth of at least 24 inches; structures, roads, cabling, electrical components and any other associated facilities and foundations to a depth of at least 24 inches to the extent they are not otherwise in or proposed to be placed into productive use; the grading and reseeded of all earth disturbed during construction and decommissioning; and restoration of any disturbed wetlands or critical wildlife habitat.

B. "Small-scale wind energy development" means any wind energy development that is not a grid-scale wind energy development as defined in Title 35-A, section 3451, subsection 6, and that has a total generating capacity of at least 100 kilowatts.

2. Permit requirements. An applicant for a permit to construct a small-scale wind energy development shall demonstrate that the proposed project:

A. Will be constructed with setbacks and other considerations adequate to protect public safety, including, but not limited to, a fire protection plan. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional licensed civil engineer as well as any applicable setback recommended by a manufacturer of any equipment to be installed on or in support of the small-scale wind energy development;

B. Will be constructed using the best practical mitigation techniques for mitigating impacts to endangered and threatened species, essential wildlife habitat and other protected resources from all aspects of construction and operation, in accordance with rules adopted under Title 35-A, section 3459; and

C. Will not significantly compromise views from a scenic resource of state or national significance, as considered under the criteria and methodologies set forth in Title 35-A, section 3452.

A person proposing to construct a small-scale wind energy development must demonstrate adequate financial capacity to decommission the development at any time during construction or operation of the development, or upon termination of development operations for any reason. The obligation to decommission the development must be transferred to any future owner

of the development in the event of a transfer of title. Decommissioning is required if the development's purpose or use is abandoned for a period of one year at any time after construction begins. Demonstration of financial capacity to decommission must include documentation of financial assurance that the decommissioning costs will be fully funded prior to the start of construction. Financial assurance may be demonstrated in the form of a performance bond, surety bond, letter of credit or other form of financial assurance acceptable to the department.

A public informational meeting must be held in accordance with department rules for permit application for a small-scale wind energy development.

Sec. 4. 38 MRSA §840, sub-§7 is enacted to read:

7. Applicability beginning October 1, 2015. Beginning October 1, 2015, the board or the commissioner may not conduct an adjudicatory hearing for the purpose of establishing a water level regime or minimum flow requirements and may not issue an order establishing a water level regime or minimum flow requirements, except that the commissioner may conduct an adjudicatory hearing and issue an order in accordance with this section on a request or petitions submitted prior to October 1, 2015 or may amend or rescind an order issued prior to October 1, 2015. All orders establishing a water level regime or minimum flow requirements issued by the board or the commissioner prior to October 1, 2015, or after October 1, 2015 on a request or petitions submitted prior to October 1, 2015, remain in effect and enforceable until they expire or are rescinded or amended under this subarticle.

This subsection is repealed September 30, 2016.

Sec. 5. Authorization to report out a bill. The Joint Standing Committee on Environment and Natural Resources may report out a bill related to the establishment of water level regimes under the Maine Revised Statutes, Title 38, chapter 5, subchapter 1, article 3-A, subarticle 4 to the Second Regular Session of the 127th Legislature.

See title page for effective date.

CHAPTER 265

H.P. 562 - L.D. 828

An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission

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

Sec. 1. 12 MRSA §685-A, sub-§13, as enacted by PL 2007, c. 661, Pt. C, §1, is amended to read:

13. Additions to and removals from the expedited permitting area for wind energy development. The commission may add or remove areas in the State's unorganized and deorganized areas to or from the expedited permitting area for wind energy development in accordance with Title 35-A, ~~section 3453~~ chapter 34-A.

Sec. 2. 12 MRSA §685-B, sub-§1-A, ¶B-1, as corrected by RR 2011, c. 2, §9, is amended to read:

B-1. Except for projects that are located in a planned subdistrict that was approved or accepted by the commission for processing prior to September 1, 2012, a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the commission that is not considered in the department's review under Title 38, section 489-A-1, subsection 1 before issuing a permit. The commission may not certify that a proposed expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, within the expedited permitting area, as defined in Title 35-A, section 3451, subsection 3, is an allowed use if a relevant petition is pending under Title 35-A, section 3453-A. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph;

Sec. 3. 35-A MRSA §3451, sub-§3, ¶B, as enacted by PL 2007, c. 661, Pt. A, §7 and amended by PL 2011, c. 682, §38, is further amended to read:

B. ~~Specific Specified~~ places within the State's unorganized and deorganized areas, ~~as defined by Title 12, section 682, subsection 1,~~ that are identified by rule by the Maine Land Use Planning Commission in accordance with this chapter.