

# 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**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 15, 2015**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2015**

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on a request or petitions submitted prior to October 1, 2015, remain in effect and enforceable until they expire or are rescinded or amended under this subarticle.

This subsection is repealed September 30, 2016.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.

**Sec. 4. 35-A MRSA §3451, sub-§8, ¶B**, as amended by PL 2011, c. 682, §26, is further amended to read:

B. The Maine Land Use Planning Commission, in the case of a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19 and a wind energy development in the unorganized and deorganized areas ~~as defined in Title 12, section 682, subsection 4~~ that is not grid-scale wind energy development.

**Sec. 5. 35-A MRSA §3451, sub-§9-A** is enacted to read:

**9-A. Specified place.** "Specified place" means the entirety or a portion of a township, plantation or municipality in the unorganized and deorganized areas, or a combination thereof.

**Sec. 6. 35-A MRSA §3451, sub-§10-A** is enacted to read:

**10-A. Unorganized and deorganized areas.** "Unorganized and deorganized areas" has the same meaning as in Title 12, section 682, subsection 1.

**Sec. 7. 35-A MRSA §3453**, as enacted by PL 2007, c. 661, Pt. A, §7 and amended by PL 2011, c. 682, §38, is further amended to read:

**§3453. Additions to the expedited permitting area**

The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5, chapter 375, ~~establish standards for the addition of and~~ add a specified place in the ~~State's~~ unorganized ~~or~~ and deorganized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Planning Commission must determine that the proposed addition to the expedited permitting area:

**1. Geographic extension.** Involves a logical geographic extension of the currently designated expedited permitting area, except that the addition of a specified place that was previously removed from the expedited permitting area in accordance with section 3453-A, subsection 1 need not satisfy this requirement;

**2. Meets state goals.** Is important to meeting the state goals for wind energy development established in section 3404; and

**3. Consistent with comprehensive land use plan.** ~~Would not compromise~~ Is consistent with the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

Rules adopted by the Maine Land Use Planning Commission pursuant to this section are routine tech-

nical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 8. 35-A MRSA §3453-A** is enacted to read:

**§3453-A. Removal from the expedited permitting area**

The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5, chapter 375, remove a specified place in the unorganized and deorganized areas from the expedited permitting area as described in this section.

**1. Removal by petition.** The Maine Land Use Planning Commission shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area if:

A. The specified place is a township, plantation, municipality or portion thereof that has been identified pursuant to section 3451, subsection 3, paragraph B;

B. The Maine Land Use Planning Commission receives a petition on or before June 30, 2016 requesting the removal of the specified place from the expedited permitting area that:

(1) Clearly states that the persons signing the petition are requesting the removal of the specified place from the expedited permitting area;

(2) Is signed by at least 10% of the number of registered voters residing in the township, plantation, municipality or portion thereof that voted in the most recent gubernatorial election; and

(3) Is on a form consistent with Title 5, section 8055, a form provided by the Maine Land Use Planning Commission or a form otherwise determined to be sufficient for the purposes of this subsection by the Maine Land Use Planning Commission; and

C. A person does not request substantive review of the petition for removal pursuant to subsection 3 within 45 days of the Maine Land Use Planning Commission posting notice of receipt of the petition on its publicly accessible website.

The removal of a specified place from the expedited permitting area under this subsection may not prejudice any subsequent petition presented to the Maine Land Use Planning Commission to add the specified place back into the expedited permitting area under section 3453.

**2. Notice of receipt of petition.** Within 5 business days of receipt of a petition for removal under subsection 1, the Maine Land Use Planning Commission shall post notice of receipt of the petition, along

with a copy of the petition, on its publicly accessible website. The notice must specify that a person may request substantive review of the petition pursuant to subsection 3. A petition for removal of a specified place from the expedited permitting area is considered pending upon notice of receipt of a petition being posted on the commission's publicly accessible website. The Maine Land Use Planning Commission shall maintain a distribution list of persons who have requested to receive notice of commission receipt of petitions for removal and promptly notify persons on the list when a petition is received. Notwithstanding any other law to the contrary, additional notice of receipt of a petition for removal and additional notice associated with rulemaking to remove a specified place pursuant to subsection 1 is not required.

**3. Removal by petition with review.** A person may, in writing, request substantive review of a petition for removal under subsection 1 by the Maine Land Use Planning Commission. Upon receipt of a timely filed request for substantive review, if the commission finds the requirements of subsection 1, paragraphs A and B are satisfied, the commission shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area if it finds the proposed removal:

A. Will not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development in section 3404, subsection 2, paragraph C; and

B. Is consistent with the principal values and the goals in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

**4. Notice of petition review and opportunity for public hearing.** Upon receipt of a request for substantive review of a petition for removal pursuant to subsection 3, the Maine Land Use Planning Commission shall, based on available tax records, notify property owners in the specified place of the petition and the request for review, provide an opportunity for public comment on the petition and conduct a public hearing if 5 or more persons request a hearing.

**5. Exceptions.** The following specified places may not be removed from the expedited permitting area under this section:

A. Any specified place within the project boundary of an existing or proposed, legally permitted expedited wind energy development, unless the development permit is revoked or withdrawn;

B. Any specified place within the project boundary of a proposed expedited wind energy development, as described in the development permit application, that has been accepted for processing by the Department of Environmental Protection,

unless the development permit application is denied; and

C. Any specified place added by rule to the expedited permitting area in accordance with section 3453 prior to January 1, 2016.

As used in this subsection, "project boundary" means the geographic limits of an existing or proposed expedited wind energy development, as defined by the deeded geographic boundaries of the parcel or parcels of land on which the development or portions thereof are located or proposed to be located.

**6. Fee.** If a person requests substantive review of a petition for removal under subsection 3, notwithstanding Title 12, section 685-F, subsection 1 or any other provision of law to the contrary, the director of the Maine Land Use Planning Commission may assess a processing fee associated with the rulemaking, consistent with the fee that may be collected under Title 12, section 685-F, subsection 2, to cover actual costs, including costs associated with any notice or public hearing and the processing of the rule-making petition for removal. The director also may assess a similar fee to cover actual costs associated with petitions to add a specified place to the expedited permitting area under section 3453.

**7. Rulemaking.** The Maine Land Use Planning Commission may adopt rules implementing this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted pursuant to subsection 3 need not meet the requirements of Title 5, section 8053-A or 8060 but must meet all other applicable requirements in Title 5, chapter 375.

**Sec. 9.** PL 2007, c. 661, Pt. C, §6, first ¶ is amended to read:

**Sec. C-6. Expedited permitting area designation; permitted use.** No later than September 1, 2008, the Maine Land Use ~~Regulation~~ Planning Commission shall adopt a rule listing the following specific places within the State's unorganized and deorganized areas, which comprise the expedited permitting area for purposes of this Act, except that the commission may subsequently add additional areas to this list or remove areas from this list by rule ~~in the manner provided by this Act~~ in accordance with the Maine Revised Statutes, Title 35-A, chapter 34-A:

**Sec. 10. Effective date.** This Act takes effect January 1, 2016.

Effective January 1, 2016.