

**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS**

**§489-A. MUNICIPAL REVIEW OF DEVELOPMENT**

The commissioner may register municipalities for authority to substitute permits issued pursuant to Title 30-A, chapter 141 or 187, for permits required by section 485-A under the following conditions. [1995, c. 493, §8 (AMD).]

**1. Kinds of projects.** The following kinds of projects may be reviewed by registered municipalities pursuant to this section:

- A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres; or [1999, c. 790, Pt. A, §51 (RPR).]
- B. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]
- C. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]
- D. [1997, c. 393, Pt. A, §46 (RP).]
- E. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]
- F. [1997, c. 393, Pt. A, §46 (RP).]
- G. [1999, c. 790, Pt. A, §52 (RP).]
- H. Structures as described in section 482, subsection 6 in excess of 3 acres but less than 7 acres. [1999, c. 243, §17 (NEW).]

[1999, c. 790, Pt. A, §§51, 52 (AMD) .]

**1-A. Modification.** An application for a modification to a development reviewed by a municipality pursuant to subsection 1 may be reviewed by the municipality as long as:

- A. The modification will not cause the total area of the development to exceed an upper area threshold specified in subsection 1; or [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]
- B. Based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

In addition, a municipality may modify a permit for a subdivision or structure issued by the department prior to registration of the municipality pursuant to this section if the total area of the modification and any prior modifications reviewed pursuant to this section does not exceed the upper area threshold provided in subsection 1 except as allowed in paragraph B.

[1999, c. 243, §18 (AMD) .]

**2. Registration.** The commissioner shall register municipalities to grant permits for projects under subsection 1 if the commissioner finds that the municipality meets all of the following criteria:

- A. A municipal planning board or reviewing authority is established; [1989, c. 207, §2 (NEW).]
- B. A comprehensive plan consistent with Title 30-A, chapter 187 has been adopted with standards and objectives determined by the department to be at least as stringent as this article; [1989, c. 207, §2 (NEW).]

C. Subdivision regulations have been adopted that are consistent with Title 30-A, chapter 187, and determined by the commissioner to be at least as stringent as criteria set forth in section 484; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

D. Site plan review regulations have been adopted with criteria determined by the commissioner to be at least as stringent as section 484; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

D-1. [1999, c. 243, §19 (RP).]

E. The municipality has adequate resources to administer and enforce the provisions of its ordinances; [1991, c. 761, §4 (AMD).]

F. Procedures for public hearing and notification have been established including:

- (1) Notice to the commissioner upon receipt of an application, including a description of the project;
- (2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;
- (3) Public notification of the application and any hearings; and
- (4) Satisfactory hearing procedures; [1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §98 (AMD).]

G. Procedures for appeal by aggrieved parties of local decisions are defined; and [1989, c. 207, §2 (NEW).]

H. A registration form, provided by the commissioner, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection. [1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §98 (AMD).]

[ 2009, c. 293, §4 (AMD) .]

**2-A. Current requirements.** Municipalities registered under this section shall ensure that municipal regulations continue to meet the criteria listed in section 489-A, subsection 2.

A. The commissioner shall immediately notify registered municipalities of new or amended regulations adopted by the department pursuant to this article. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

B. Amendments to municipal regulations must be adopted by the municipality within one calendar year of the effective date of new or amended department regulations and submitted to the commissioner for approval within 45 calendar days of adoption by the municipality. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

[ 1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF) .]

**3. Certification.** A municipality certified by the Department of Economic and Community Development under Title 30-A, chapter 191 may be registered if the commissioner finds the municipality has fulfilled the requirements of subsection 2 and applies to be registered.

[ 1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

**3-A. Record of review and basis for decision.** The municipality shall submit one copy of the record of review and basis of decision for each development or modification of a development approved pursuant to this section within 40 working days of final action by the reviewing authority, unless otherwise approved by the commissioner.

[ 1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF) .]

**4. Suspension of registration.** If the commissioner finds that a municipality no longer meets the criteria set forth under subsection 2 or 2-A, or is not adequately implementing those requirements, the commissioner may suspend the registration and shall notify the municipality accordingly. The notice must contain findings of fact and conclusions of law. If registration is suspended, the commissioner shall recommend actions for the municipality to come into compliance with this section. The commissioner may waive the suspension for new projects that have received at least one substantive municipal review prior to the suspension of registration. If the department determines that a municipality meets the criteria specified in section 488, subsection 19, the department shall suspend the registration for the type of development exempt from review in that municipality pursuant to section 488, subsection 19.

[ 1997, c. 603, §5 (AMD) .]

**5. Transition.** Municipalities registered under former section 489 as it existed on October 1, 1975, must be certified under this section for one year from the effective date of this section. Thereafter, the municipality must comply with the requirements under subsection 2.

[ 1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

**6. Central list of pending projects.** The commissioner shall maintain and make available a list of projects pending municipal review under this section.

[ 1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §98 (AMD) .]

**7. Technical assistance.** The commissioner and other state review agencies may provide technical assistance to municipalities upon request for projects reviewed under this section.

[ 1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

**8. Application review process.** Upon the determination by the municipal reviewing authority that an application for a permit or permit amendment under this section is complete for processing:

- A. The municipality shall submit to the commissioner within 14 days of that determination by the municipal reviewing authority, one copy of the project application and one copy of the notification form provided by the commissioner; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]
- B. The commissioner shall review the application and, within 30 days of its receipt, or within 30 days of receipt of any subsequent amendment to the application, notify the municipality if the department intends to exercise jurisdiction as provided in subsection 9; and [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]
- C. If the department does not act within the 30-day period following receipt of the application or within 30 days of receipt of any amendment to the application, this inaction constitutes a decision not to exercise jurisdiction as provided in subsection 9. [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

[ 1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

**9. State jurisdiction.** The department shall review projects for registered municipalities if:

- A. The commissioner finds that the project:
  - (1) Meets one or more of the criteria set forth in section 341-D, subsection 2, paragraph A, B or C;
  - (2) Will have a potentially significant environmental effect; or
  - (3) Could affect more than one municipality.

In making these findings, the commissioner shall consider all public comments submitted to the department; [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

B. The local reviewing authority for the municipality in which the project is located petitions the commissioner in writing; or [1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF).]

C. [1993, c. 383, §42 (AFF); 1993, c. 383, §27 (RP).]

D. The proposed project is located in more than one municipality. [1989, c. 207, §2 (NEW).]

State jurisdiction must be exerted if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality.

[ 1993, c. 383, §27 (AMD); 1993, c. 383, §42 (AFF) .]

**10. Appeal of decision by commissioner to review.** An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department are subject to appeal procedures governing the department under section 341-D, subsection 4.

[ 2011, c. 304, Pt. H, §23 (AMD) .]

**10-A. Appeal of decision by commissioner to grant, withhold or suspend registration.** An appeal of the decision by the commissioner to grant, withhold or suspend registration is as follows.

A. The decision of the commissioner to grant, withhold or suspend the registration may be appealed to the board by a person aggrieved by the decision. The board shall review, may hold a hearing on and may affirm, amend or reverse the decision of the commissioner when the decision is appealed within 30 days of issuance of notification of the decision. The board shall give written notice to persons that have asked to be notified of the commissioner's decision. The board may allow the record to be supplemented if it finds that the evidence offered is relevant and material in determining whether the municipality no longer meets the criteria set forth in subsections 2 and 2-A. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

B. The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board. [1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF).]

[ 1993, c. 383, §27 (NEW); 1993, c. 383, §42 (AFF) .]

**11. Joint enforcement.** Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may impose. Any permits issued or conditions imposed by a local authority must be enforced by the commissioner and the municipality that issued the permit.

[ 1989, c. 207, §2 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §102 (AMD) .]

#### SECTION HISTORY

1989, c. 207, §2 (NEW). 1989, c. 497, §§13-15 (AMD). 1989, c. 890, §§A40,B97- 102 (AMD). 1991, c. 761, §§1-4 (AMD). 1993, c. 383, §27 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 493, §8 (AMD). 1995, c. 700, §10 (AMD). 1995, c. 704, §A21 (AMD). 1995, c. 704, §C2 (AFF). 1997, c.

393, §A46 (AMD). 1997, c. 603, §5 (AMD). 1999, c. 243, §§17-19 (AMD). 1999, c. 468, §§14,15 (AMD). 1999, c. 790, §§A51,52 (AMD). 2009, c. 293, §4 (AMD). 2011, c. 304, Pt. H, §23 (AMD).

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