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## **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, ¶A**, as amended by PL 2011, c. 304, Pt. H, §18, is further amended to read:

A. Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets 3 of the 4 criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If an interested person requests that the commissioner refer an application to the board and the commissioner determines that the criteria are not met, the commissioner shall notify the board of that request. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, a certification pursuant to Title 35-A, section 3456 or a general permit pursuant to section 480-HH or section 636-A. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development within one year of the date on which the department accepts the application as complete pursuant to this section, and the commissioner shall issue a decision for an offshore wind power project or a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or 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. 2. 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. 3. 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.

**Sec. 4. 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. 5. 38 MRSA §632, sub-§4** is enacted to read:

**4. Microhydropower project.** "Microhydropower project" means a hydropower project with the capacity to produce up to 100 kilowatts of electricity or the mechanical equivalent. In determining whether a hydropower project is a microhydropower project, generation capacity is calculated as the total of all hydropower generation at a site.

**Sec. 6. 38 MRSA §634, sub-§3**, as amended by PL 2011, c. 655, Pt. MM, §21 and affected by §26 and amended by c. 657, Pt. W, §5 and c. 682, §38, is further amended to read:

**3. Application review.** Within 10 working days of receiving a completed application, the commissioner shall notify the applicant of the official date on which the application was accepted.

TheExcept as provided in subsection 5, the commissioner shall circulate the application among the Department of Environmental Protection, Department of Agriculture, Conservation and Forestry, Department of Inland Fisheries and Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, Governor's Energy Office, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The Governor's Energy Office and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Planning Commission, the director may request and obtain technical assistance and recommendations from the

staff of the department. The Commissioner of Environmental Protection shall respond to the requests in a timely manner. The recommendations of the Commissioner of Environmental Protection must be considered by the commission in acting upon a project application.

**Sec. 7. 38 MRSA §634, sub-§5** is enacted to read:

**5. Microhydropower.** A microhydropower project may not have an undue adverse effect on the natural environment and may not violate applicable water quality standards. The commissioner shall adopt rules to establish standards for microhydropower projects to ensure that a project will not have an undue adverse effect on the natural environment and will not violate applicable water quality standards. Rules established for microhydropower project standards are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Notwithstanding subsection 3, the commissioner may review and approve or deny an application for a microhydropower project based on standards established under this subsection without review and comment from other state agencies.

**Sec. 8. 38 MRSA §635-A**, as amended by PL 1989, c. 890, Pt. A, §40 and Pt. B, §185 and PL 2011, c. 682, §38, is further amended to read:

### **§ 635-A. Time limits for processing applications**

Whenever the commissioner receives a properly completed application, the department shall make a decision as expeditiously as possible.

When the proposed project lies within the jurisdiction of the Maine Land Use Planning Commission, decisions ~~shall~~must be made within 105 working days except that decisions delegated to the director ~~shall~~must be made within 60 working days. Following one extension of up to 45 working days, the director may waive the time limit requirements of this section only at the request of the applicant.

The department shall make a decision on a proposed microhydropower project within 60 working days.

**Sec. 9. 38 MRSA §636, first ¶**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §187, is further amended to read:

The department shall approve a hydropower project that is not a microhydropower project when it finds that the applicant has demonstrated that the following criteria have been met.

**Sec. 10. 38 MRSA §840, sub-§1**, as amended by PL 2011, c. 653, §25 and affected by §33, is further amended to read:

**1. Power.** ~~The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, or, in cases where a public water supply is threatened, at the request of a water utility having the right to withdraw water from the body of water for~~

which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

- A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission;
- D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 489-E; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams;
- E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter ~~VI~~6; or
- F. Regulated by the International Joint Commission.

Notwithstanding the provisions of this subsection or subsection 1-A, after an order establishing a water level regime or minimum flow ~~requirement~~requirements has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow ~~requirement~~requirements for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

**Sec. 11. 38 MRSA §840, sub-§1-A** is enacted to read:

**1-A. Petition.** Upon receipt of a petition from 25% or 50 of the littoral or riparian proprietors, whichever is less, or from a water utility having the right to withdraw water from the body of water for which the water level regime and, if applicable, minimum flow requirements are sought, or at the request of the owner, lessee or person in control of a dam, the department shall review any submissions to determine the standing of any group or individual making such petition or request, and to determine the eligibility of the dam and body of water for regulation under the criteria in subsection 1.

A. Prior to the department's initiating a hearing for establishing a water level regime and, if applicable, minimum flow requirements in response to a petition or request under this subsection, the parties named in the petition or request must attempt to establish a water level management plan through mediation by an independent 3rd-party mediator. The department is not required to take part in the mediation. The department shall place the request or petition to establish a water level regime and, if applicable, minimum flow requirements on hold for a period of up to one year from the date of acceptance to allow mediation to occur. The on-hold period may be extended upon written agreement between all parties to a petition or request and the department. If mediation results in a water level management plan acceptable to all parties to a petition or request, that water level management plan must be recorded at the appropriate registry of deeds and is binding and civilly enforceable on the affected parties, unless and until the department issues a subsequent order

establishing a water level regime and, if applicable, minimum flow requirements for the body of water in question. Establishment of a water level management plan through mediation relieves the department of any obligation it has to hold an adjudicatory hearing and issue an order in response to a petition or request, and the department shall return the petition or request to the submitter.

B. A petition or request under this subsection for establishing a water level regime and, if applicable, minimum flow requirements must be accompanied by a processing fee established by the department. If the department holds an adjudicatory hearing as a result of a petition or request, the department may charge petitioners or requestors an appropriate licensing fee sufficient to cover costs incurred in conducting the hearing and reviewing evidence, including the time spent by state employees and necessary consultants and contractors in preparing, presenting and reviewing testimony, and in preparation of a department order establishing a water level regime and, if applicable, minimum flow requirements. All fees must be established in accordance with section 352.

## **SUMMARY**

This bill requires the Commissioner of Environmental Protection to issue a decision on an application for an expedited wind energy development within one year of the date the department accepts the application as complete. It repeals procedures related to the review of an application for a grid-scale wind energy development. It provides permitting requirements for small-scale wind energy developments. It requires parties to a water level dispute to attempt to resolve the matter through mediation before the department proceeds with an adjudicatory hearing. It establishes standards for microhydropower projects and requires the department to adopt rules ensuring that a microhydropower project will not have an undue adverse effect on the natural environment and will not violate water quality standards.