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An Act To Establish Climate and Energy Planning in Maine

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

PART A

Sec. A-1. 38 MRSA c. 3-C is enacted to read:

CHAPTER 3-C

THE CLIMATE AND ENERGY PLANNING ACT OF 2009

§ 580-G. Short title; findings; purpose

This chapter may be known and cited as "the Climate and Energy Planning Act of 2009."

The Legislature finds and declares that the stabilization and the reduction of greenhouse gas emissions in accordance with the state goals established in section 576 are mandated by and consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds and declares that reduced reliance on the fossil fuels that contribute to greenhouse gas emissions is necessary to improve energy security and to reduce the economic impacts of the State's heavy reliance on imported fuels.

The Legislature further finds and declares that making progress towards the State's medium-term and long-term greenhouse gas emission reduction goals set forth in section 576 requires consideration and reduction of climate impacts and effects as an integral part of state planning and licensing, and consideration in the development of new public and private infrastructure. While not every plan or project can or should be required to meet the State's goals by itself, it is the intention of the Legislature that all future developments contribute as much as reasonably possible towards attainment of the State's greenhouse gas emission reduction goals.

§ 580-H. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Climate change effects. "Climate change effects" means the reasonably foreseeable impacts that long-term expected changes in the climate may have upon a proposed project or activity, including, where applicable, the effects of sea level rise; alterations in precipitation, temperature, snowpack, icing, flooding or other weather-related phenomena; and other changes resulting from climate change.

2. Climate change impacts. "Climate change impacts" means the net lifetime emissions of greenhouse gases, or other pollutants, from a project or activity that contribute to the phenomenon of climate change due to global warming. "Climate change impacts" also means potential impacts of a project or activity on the ability of natural systems to adapt to climate change.

3. Embodied greenhouse gas emissions. "Embodied greenhouse gas emissions" means all direct and indirect emissions of greenhouse gas resulting from construction and development activities, including, but not limited to, emissions associated with materials used, transportation of people, goods and materials to and from the project site, site disturbance and changes in land use, the operation of equipment during construction or development, energy use during construction and development and waste prevention, disposal and recycling during construction. Where applicable, "embodied greenhouse gas emissions" also includes net lifetime emissions due to site management and may include consideration of sustainable and verifiable carbon storage.

4. Energy-related greenhouse gas emissions. "Energy-related greenhouse gas emissions" means emissions that could reasonably result from energy use or production or from heating, cooling, lighting, equipment use and other activities associated with the postconstruction operation of a project or activity.

5. Greenhouse gas. "Greenhouse gas" has the same meaning as in section 574, subsection 1.

6. Long-term project decision. "Long-term project decision" means final approval by any state authority of any capital investment, loan or construction project of the State that will result in the purchase, development or significant improvement of public infrastructure with a useful life of 15 or more years, including, but not limited to, schools, roads, bridges and other transportation facilities, correctional facilities, water or sewage treatment plants, recreational facilities, communication and energy infrastructure, public buildings and other infrastructure.

7. Planning decision. "Planning decision" means final approval by any state authority of plans or management decisions that could significantly affect energy use or net lifetime emissions of greenhouse gases, including, but not limited to:

A. Transit planning or studies by the Department of Transportation or the Maine Turnpike Authority, including planning for locally administered projects funded by the State;

B. Resource or management plans by any agency overseeing public lands and natural resources, including state lands, parks, forests, waters, fish and wildlife;

C. Establishment or amendment of land use districts and standards by the Maine Land Use Regulation Commission or any revisions to its comprehensive land use plan;

D. Administrative or management plans involving use of public buildings, schools and other infrastructure; and

E. Construction standards, procurement criteria or other decisions that can affect energy use and the volume of greenhouse gas emissions by state facilities.

8. State authority. "State authority" means:

A. Any state agency;

B. Any other state authority, including the University of Maine System, the Maine Maritime Academy and the Maine Community College System; and

C. Any advisory organization, including an authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by executive order issued by the Governor, unless the law, resolve or executive order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this chapter.

9. Transportation-related greenhouse gas emissions. "Transportation-related greenhouse gas emissions" are emissions of greenhouse gas that could reasonably result from the transportation of people and goods associated with a project or activity or with the postconstruction operation of a project or activity.

§ 580-I. Review of climate effects in state planning and project decisions

Except in any case in which the department waives the requirements of this section pursuant to section 580-K, the department and state authority shall comply with the requirements of this section in accordance with the implementation schedule in subsection 3.

1. Analysis required. A state authority shall consider and include in any planning decision or long-term project decision an analysis of the reasonably foreseeable climate change impacts and climate change effects. The department shall also consider and include the same analysis in its review of any application for a license, permit or other approval governed by section 580-J.

A. The analysis of climate change impacts must include an estimate of reasonably foreseeable net lifetime emissions of greenhouse gases and any other factors that may contribute to climate change, including:

(1) Embodied greenhouse gas emissions;

(2) Energy-related greenhouse gas emissions;

(3) Transportation-related greenhouse gas emissions; and

(4) Other greenhouse gas emissions resulting from the project or activity.

B. The analysis must include an analysis of whether there are any practicable alternatives to the project or activity that would avoid, minimize or mitigate the reasonably foreseeable climate change impacts and climate change effects.

C. The state authority responsible for conducting the analysis shall consult with and obtain the comments of any other state authority that has any jurisdiction over or special expertise with respect to issues relevant to the project or activity. Copies of the analysis and the comments of state authorities consulted must be made available to the public and must be completed before any final decision on the project or activity is made. The analysis must be integrated into and accompany the proposal for the project or activity through any review process of the state authority. The final decision of the state authority on the project or activity must take the comments and concerns of other agencies and the public into account and must be responsive to those comments and concerns.

2. Decisions consistent with State's greenhouse gas reduction goals. A decision of the department or a state authority on a project or activity subject to the requirements of this section must be consistent with the achievement of the greenhouse gas emission reduction goals set forth in section 576 as follows:

A. A decision made after the effective date of this subsection and prior to January 1, 2020 must be consistent with the achievement of the greenhouse gas emission reduction goals set forth in section 576, subsections 1 and 2; and

B. A decision made on or after January 1, 2020 or a decision made after the effective date of this subsection that involves actions that occur after December 31, 2019 or that relates to a project that has a useful life that extends beyond December 31, 2019 must make substantial progress towards the achievement of the long-term greenhouse gas emission reduction goals set forth in section 576, subsection 3.

3. Implementation schedule. The requirements of this section apply to planning decisions and long-term project decisions that are initiated after the effective date of this section or that are finalized on or after January 1, 2010. A state authority may apply to the department for a waiver of the requirements of this section for a project or activity initiated prior to the effective date of this section that is substantially complete but will not be finalized prior to January 1, 2010, and the department may grant the waiver upon a determination that requirements of this section will cause undue delay and expense, or that meeting the requirements of this section is not likely to result in substantial long-term energy savings, greenhouse gas emission reductions or mitigation of potential climate change effects.

§ 580-J. Review of climate effects in state licensing decisions

Notwithstanding any other provision of law, unless the department waives the requirements of this section pursuant to section 580-K, after the final adoption of rules by the department under section 580-K the department may not issue a license, permit or other approval for the following projects or activities unless the department undertakes or reviews and approves the analysis of the project or activity as required by section 580-I, subsection 1 and certifies that its decision to approve the license or permit meets the requirements of section 580-I, subsection 2:

1. Approval under section 483-A. Projects or activities requiring approval under section 483-A;

2. License under section 413. Projects or activities requiring a license under section 413, if the project or activity involves new facilities or significant modifications to existing facilities, as defined by the department by rule;

3. License under section 590. Projects or activities requiring a license under section 590, if the project or activity involves new facilities or significant modifications to existing facilities, as defined by the department by rule; and

4. Certification by department. Projects or activities requiring certification by the department under the United States Clean Water Act, 33 United States Code, Section 1341.

§ 580-K. Waivers and qualified measures

1. Waiver. The department may, pursuant to rules adopted under this section, waive requirements of this chapter for projects or activities, including categories of projects or activities, that are not likely to suffer undue effects from climate change and:

A. Will achieve lifetime net emissions of greenhouse gases that are at least 25% lower as compared with other reasonable alternatives to the project or activity;

B. Will produce no or minimal greenhouse gas emissions; or

C. For projects or activities involving replacement or maintenance of existing infrastructure, will produce no or minimal additional greenhouse gas emissions and for which the department finds that there are no reasonable opportunities to significantly reduce emissions.

2. Qualified measures. The department shall by rule establish and periodically update a list of qualified measures that demonstrably reduce the greenhouse gas emissions resulting from projects and activities expected to be subject to the requirements of this chapter. The department may assign general emission reduction values for each qualified measure. The department shall by rule provide that a project or activity that incorporates qualified measures sufficient to reduce the lifetime net greenhouse gas emissions of the project or activity by at least 25% as compared with reasonable alternatives qualifies for a waiver under subsection 1, paragraph A. The department shall by rule define "reasonable alternatives" in a manner that ensures such alternatives comply with standard business practices and all applicable minimum federal, state and local requirements. In developing the list of qualified measures, the department may consider, but is not limited to considering, the following measures:

A. Use of energy-efficient designs, such as designs that comply with or are equivalent to the United States Environmental Protection Agency's Energy Star standards or nationally recognized energy and environmental design rating systems;

B. Incorporation of active and passive renewable energy systems;

- C. Use of construction materials and practices that result in lower greenhouse gas emissions;
- D. Choice of siting locations or other measures that will reduce transportation-related greenhouse gas emissions;
- E. Use of measures related to site clearing or land management, including permanent protection of open space, agricultural or forest lands, transferable development rights and strategies to promote biological sequestration of carbon; and
- F. Other measures that would reduce lifetime net greenhouse gas emissions from the project or activity.

3. Rules. The department shall adopt rules to implement this chapter, including the requirements of this section. The department may cooperate with other entities, including entities in other jurisdictions, as appropriate, to develop and standardize greenhouse gas emission accounting measures. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-2. Rules and report on fees. The Department of Environmental Protection shall by January 1, 2010 submit to the Legislature provisionally adopted rules under the Maine Revised Statutes, Title 38, section 580-K. The department shall also submit at the same time to the Joint Standing Committee on Natural Resources a report recommending a schedule of reasonable fees to be paid by those entities subject to the new licensing requirements imposed by Title 38, section 580-J. The proposed fees must be sufficient to cover the department's costs in administering the requirements of the law. The Joint Standing Committee on Natural Resources may submit a bill relating to the subject matter of the department's report to the Second Regular Session of the 124th Legislature.

PART B

Sec. B-1. 12 MRSA §682, sub-§2-A, as enacted by PL 2001, c. 431, §2, is amended to read:

2-A. Subdivision. Except as provided in section 682-B, "subdivision" means a division of an existing parcel of land located in a protection district or management district established pursuant to section 685-A into 3 or more parcels or lots, or the division of an existing parcel of land located in a development district established pursuant to section 685-A into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of the land or by leasing.

The term "subdivision" also includes the division, placement or construction of a structure or structures on a tract or parcel of land located in a protection district or management district resulting in 3 or more dwelling units, or the division, placement or construction of a structure or structures on a tract or parcel of land located in a development district resulting in 3 or more dwelling units within a 5-year period.

Sec. B-2. 12 MRSA §685-A, sub-§3, as amended by PL 1995, c. 65, Pt. A, §26 and affected by §153 and Pt. C, §15, is further amended to read:

3. Land use standards. The commission, acting on principles of sound land use planning and development, shall prepare land use standards prescribing standards for the use of air, lands and waters. Except as provided in this chapter, these standards ~~shall~~must be adopted by the commission in accordance with the procedures set forth in Title 5, chapter 375, subchapter ~~H~~2.

In addition to the purposes set forth in section 681, the land use standards ~~shall~~must:

- A. Encourage the most desirable and appropriate use of air, land and water resources consistent with the comprehensive land use plan;
- B. Protect public health by reduction of noise, air pollution, water pollution and other environmental intrusions;
- C. Protect and preserve significant natural, scenic and historic features where appropriate, beneficial and consistent with the comprehensive land use plan;
- D. Advise and assist the Department of Transportation and other concerned agencies in transportation planning and operation;
- D-1. Provide for safe and appropriate loading, parking and circulation of land, air and water traffic;
- E. Encourage minimal adverse impact of one use upon the use of surrounding areas by setting standards of performance describing desirable and acceptable levels of operation in connection with any use and its relation to surrounding areas, including provisions for the eventual amelioration of existing adverse impact;
- F. Reflect a consideration of the availability and capability of the natural resources base, including soils, topography or sufficient healthful water supplies; and
- G. Regulate, as necessary, motor vehicles as defined in Title 29-A, section 101, subsection 42; on icebound inland lakes that are completely encompassed by unorganized territories during the hours from sunset to sunrise of the following day; and
- H. Protect state resources from the harmful effects of climate change by providing for attainment of the State's greenhouse gas emission reduction goals as set forth in Title 38, section 576.

Sec. B-3. 12 MRSA §685-A, sub-§8-A, as enacted by PL 1999, c. 333, §10, is amended to read:

8-A. Criteria for adoption or amendment of land use district boundaries. A land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and

B. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

The adoption or amendment of a land use district boundary must be consistent with the requirements of Title 38, section 580-I.

Sec. B-4. 12 MRSA §685-B, sub-§4, ¶C, as amended by PL 2007, c. 661, Pt. C, §3, is further amended to read:

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the commission shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452;.

In making a determination under this paragraph regarding development of a residential subdivision, the commission shall consider the effects of increased traffic on any and all private roads used to access the proposed subdivision or any lot in the subdivision regardless of whether the applicant has any legal interest in the access roads;

Sec. B-5. 23 MRSA §612, as enacted by PL 1975, c. 615, is amended to read:

§ 612. Authority of Department of Transportation

The Department of Transportation is authorized to construct ~~bikeways~~bicycle and pedestrian ways within the existing rights-of-way of any state or state-aid highway. The department may also acquire additional rights-of-way adjacent to ~~existing highway rights-of-way~~ for the construction of ~~bikeways~~bicycle and pedestrian ways. Such construction and acquisition of rights-of-way ~~shall~~must be accomplished in the same manner provided in this Title for highways.

~~The Department of Transportation shall consider development of bikeways when developing capital improvement programs.~~

Sec. B-6. 23 MRSA §613 is enacted to read:

§ 613. Transportation planning

The Department of Transportation, the Maine Turnpike Authority and any other state agency or political subdivision of the State responsible for developing transportation plans, programs, projects or facilities that are funded with state or federal funds shall:

1. Consideration of options. In developing such plans, programs, projects or facilities, give full consideration to including appropriate bicycle and pedestrian ways and intermodal connections linking nonmotorized transit amenities with public transit facilities; and

2. Required inclusion. Provide bicycle and pedestrian ways and intermodal connections, as appropriate to the rural, suburban or urban context except:

- A. In those locations where the bicyclists or pedestrians are prohibited by law from using the roadway;
- B. When doing so is contrary to public safety or would conflict with public rights-of-way;
- C. When factors indicate an absence of need, including future need for bicycle and pedestrian ways and intermodal connections; or
- D. When the documented costs are excessively disproportionate to the need or probable use.

The design and construction of bicycle and pedestrian ways must be consistent with best available practices as established by the department by rule. Rules adopted by the department under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-7. 30-A MRSA §4312, sub-§2, ¶G, as amended by PL 2001, c. 578, §7, is further amended to read:

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities have had the benefit of citizen input; and

Sec. B-8. 30-A MRSA §4312, sub-§2, ¶I, as enacted by PL 2001, c. 578, §8, is amended to read:

I. Encourage the development and implementation of multimunicipal growth management programs; and

Sec. B-9. 30-A MRSA §4312, sub-§2, ¶J is enacted to read:

J. Provide for the attainment of the State's greenhouse gas emission reduction goals established in Title 38, section 576.

Sec. B-10. 30-A MRSA §4312, sub-§3, ¶I, as enacted by PL 1989, c. 104, Pt. A, §45 and enacted by Pt. C, §10, is amended to read:

I. To preserve the State's historic and archeological resources; and

Sec. B-11. 30-A MRSA §4312, sub-§3, ¶J, as enacted by PL 1989, c. 104, Pt. A, §45 and enacted by Pt. C, §10, is amended to read:

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters; and

Sec. B-12. 30-A MRSA §4312, sub-§3, ¶K is enacted to read:

K. To protect state resources from climate change by reducing emissions of greenhouse gases from the transportation and development sectors.

Sec. B-13. 38 MRSA §480-Q, sub-§2, ¶B, as repealed and replaced by PL 1995, c. 27, §1, is amended to read:

B. Crossings do not block passage for fish passages or other aquatic organisms in water courses. Culverts and installation techniques utilized must achieve natural stream flow;

Sec. B-14. 38 MRSA §480-Q, sub-§2-A, as amended by PL 1993, c. 315, §2, is further amended to read:

2-A. Existing road culverts. In any protected natural resource area, a permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing culvert, as long as the replacement culvert is:

B. Not more than 25% longer than the culvert being replaced; and

C. Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this subsection shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block passage for fish passage or other aquatic organisms in the water course. Replacement culverts and techniques used in installing the culverts must achieve natural stream flow.

Sec. B-15. Road construction practices. The Maine Land Use Regulation Commission and the Department of Conservation, Maine Forest Service shall review and update their rules, standards, practices and guidelines governing road construction and location to reflect current best practices to facilitate fish, aquatic organism and wildlife passage. The Maine Land Use Regulation Commission and the Maine Forest Service shall complete the required updates by January 1, 2010, except that, in any case involving changes to major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, the Maine Land Use Regulation Commission or the Maine Forest Service, as appropriate, shall submit provisionally adopted rules with the required updates to the Legislature by January 1, 2010.

Sec. B-16. Fish passage rules. The Department of Environmental Protection shall amend its rules, Chapter 305, Permit By Rule to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings. The amendments must establish standards that ensure:

1. Adequate flow during high water conditions;
2. Upstream and downstream movement for aquatic organisms and downstream and lateral movement of materials;
3. Vertical gradient that matches up and down stream; and
4. Horizontal alignment that matches up and down stream.

The department shall complete the required amendments by January 1, 2010.

Sec. B-17. Local and regional planning. The Executive Department, State Planning Office shall review and update its rules, standards and guidelines governing local and regional planning activities to incorporate best practices to reduce the climate change effects on and resulting from those activities. The State Planning Office shall complete the required updates by January 1, 2011, except that, in any case involving changes to major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, the State Planning Office shall submit provisionally adopted rules with the required updates to the Legislature by January 1, 2011.

SUMMARY

Part A of this bill creates the Climate and Energy Planning Act of 2009, which:

1. Requires analysis of the climate effects on and resulting from state planning decisions;
2. Requires the analysis to be made available for public review and comment;
3. Requires state planning decisions to be consistent with the State's greenhouse gas emission reduction goals as established in the Maine Revised Statutes, Title 38, section 576;
4. Requires that after adoption of relevant major substantive rules by the Department of Environmental Protection the department undertake the same analysis and ensure the same consistency with the State's greenhouse gas emission goals when evaluating applications for and issuing licenses, permits or other approvals for developments or subdivisions subject to Title 38, section 483-A, waste discharges subject to Title 38, section 413, air emissions subject to Title 38, section 590 and discharges subject to state certification under the federal Clean Water Act, 33 United States Code, Section 1341. The department is directed to propose to the Legislature a fee schedule to cover its costs in administering this requirement; and
5. Allows the department to establish waivers from the otherwise applicable requirements of the Climate and Energy Planning Act of 2009 and requires the department to establish a list of qualified greenhouse gas emission reduction measures that demonstrably reduce the greenhouse gas emissions resulting from projects and activities expected to be subject to the requirements of the Act.

Part B of this bill:

1. Adds attainment of the state greenhouse gas emission reduction goals set out in the Maine Revised Statutes, Title 38, section 576 to the purposes and goals of the growth management program;
2. Adds attainment of the state greenhouse gas emission reduction goals set out in Title 38, section 576 to the purposes of the laws governing the Maine Land Use Regulation Commission and requires

that development and amendment of land use districts and standards be consistent with the Climate and Energy Planning Act of 2009. It also requires the commission to review the effects of increased traffic on private roads when reviewing permit applications for developments of residential subdivisions. It also amends the definition of "subdivision" in management districts and protection districts in the unorganized townships;

3. Amends the Natural Resources Protection Act permit exception for the maintenance and repair of stream crossings to ensure the activities eligible for the exception achieve natural stream flows and provide for the passage of aquatic organisms. It also limits the Natural Resources Protection Act permit exception for the maintenance and repair of existing road culverts in protected natural resource areas to ensure that natural stream flows are achieved and the passage of aquatic organisms is not blocked;

4. Authorizes the Department of Transportation to acquire rights-of-way for construction of bicycle and pedestrian ways that are not adjacent to existing highway rights-of-way. In addition, it requires state, regional and local decisions regarding transportation planning, projects and facilities to include full consideration of bicycle and pedestrian ways and intermodal connections to public transit systems and requires that the final plans, projects and facilities include bicycle and pedestrian ways and intermodal connections as appropriate, unless there is no need for such ways or connections or they would conflict with public safety or involve excessive costs;

5. Requires the Maine Land Use Regulation Commission and the Department of Conservation, Maine Forest Service to review and update their rules, standards, practices and guidelines for road construction to reflect current best practices to facilitate passage of aquatic and terrestrial organisms;

6. Requires the Department of Environmental Protection to amend its rules, Chapter 305, Permit by Rule, to require municipalities to achieve natural stream flow and facilitate passage of aquatic organisms when repairing or maintaining roads and stream crossings; and

7. Requires the Executive Department, State Planning Office to review and update its rules, standards and guidelines governing local and regional planning activities to incorporate best practices to reduce the climate change effects on and resulting from those activities.