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Public Law
124th Legislature
Second Regular Session

Chapter 602
S.P. 698 - L.D. 1787

An Act To Provide for Legislative Review of Recently Proposed Revisions to Certain Rules Adopted Pursuant to the Site Location of Development Laws and the Storm Water Management Laws

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, rulemaking relating to the site location of development laws and the storm water management laws is currently in progress and could be complete before this legislation goes into effect unless this legislation is enacted as an emergency; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA §420-D, sub-§9, as amended by PL 2005, c. 602, §4, is further amended to read:

9. Rules. Rules adopted pursuant to this section after January 1, 2010 and before January 1, 2012 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Any rules adopted by the department pursuant to this section on or after January 1, 2012 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that those rules that qualify as state mandates pursuant to the Constitution of Maine, Article IX, Section 21 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 38 MRSA §485-A, as amended by PL 2009, c. 293, §2, is further amended to read:

§ 485-A. Notification required; board action; administrative appeals

1. Application. Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commissioner in writing of the intent, nature and location of the development, together with such other information as the board may by rule require.

The department shall approve the proposed development, setting forth such terms and conditions as are appropriate and reasonable, disapprove the proposed development, setting forth the reasons for the disapproval, or schedule a hearing in the manner described in section 486-A.

1-A. Wood supply. For a new or expanded development requiring an annual supply of wood or wood-derived materials in excess of 150,000 tons green weight, the applicant shall submit a wood supply plan for informational purposes to the Maine Forest Service concurrent with the application required in subsection 1. The wood supply plan must include, but is not limited to, the following information:

- A. The expected operational life of the development;
- B. The projected annual wood consumption of wood mill residue, wood fiber and recycled materials from forest products during the entire operational life of the development;
- C. The expected market area for wood supply necessary to supply the development; and
- D. Other relevant wood supply information.

1-C. Long-term construction projects. The department shall adopt rules identifying requirements for a long-term construction project that allow approval of development within a specified area and within specified parameters such as maximum area and groundwater usage, although the specific nature and extent of the development or timing of construction may not be known at the time a permit for the long-term construction project is issued. The location and parameters of the development must meet the standards of this article. This subsection does not apply to metallic mineral mining or advanced exploration activities. ~~Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.~~

2. Hearing request. If the department has issued an order without a hearing regarding any person's development, that person may request, in writing, a hearing before the board within 30 days after notice of the department's decision. This request must set forth, in detail, the findings and conclusions of the department to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings must be scheduled in accordance with section 486-A.

3. Failure to notify commissioner. The commissioner may, at any time with respect to any person who has commenced construction or operation of any development without having first notified the commissioner pursuant to this section, schedule and conduct a public hearing with respect to that development.

4. Permit display. A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted.

Sec. 3. 38 MRSA §489-E is enacted to read:

§ 489-E. Rulemaking

Except for rules adopted pursuant to section 488, subsections 14 and 18, rules adopted pursuant to this article by the department after January 1, 2010 and before January 1, 2012 are major substantive rules as defined in Title 5, chapter 375, subchapter 2A. Any rules adopted by the department pursuant to this article on or after January 1, 2012 are routine technical rules as defined in Title 5, chapter 375, subchapter 2A.

Sec. 4. Rules. The Department of Environmental Protection shall submit any major substantive rules provisionally adopted in 2010 pursuant to this Act to the joint standing committee of the 125th Legislature having jurisdiction over natural resources matters for review.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 2, 2010.