

§341-D. Board responsibilities and duties

The board is charged with the following duties and responsibilities. [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

1. Rulemaking.

[PL 1995, c. 347, §1 (AMD); MRSA T. 38 §341-D, sub-§1 (RP).]

1-A. Rulemaking.

[PL 1997, c. 364, §17 (AMD); MRSA T. 38 §341-D, sub-§1-A (RP).]

1-B. Rulemaking.

[PL 2011, c. 304, Pt. H, §4 (RP).]

1-C. Rulemaking. The board shall adopt, amend or repeal rules in accordance with section 341-H. [PL 2011, c. 304, Pt. H, §5 (NEW).]

1-D. Rulemaking. The board shall adopt rules as necessary for hearing appeals from insurance claims-related decisions of the commissioner and the State Fire Marshal under section 568-A. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 61, §1 (NEW).]

2. Permit and license applications. Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

A. [PL 2011, c. 304, Pt. H, §6 (RP).]

B. [PL 2011, c. 304, Pt. H, §6 (RP).]

C. [PL 2011, c. 304, Pt. H, §6 (RP).]

D. [PL 2011, c. 304, Pt. H, §6 (RP).]

E. Will have an environmental or economic impact in more than one municipality, territory or county; [PL 2011, c. 304, Pt. H, §6 (NEW).]

F. Involves an activity not previously permitted or licensed in the State; [PL 2011, c. 304, Pt. H, §6 (NEW).]

G. Is likely to come under significant public scrutiny; and [PL 2011, c. 304, Pt. H, §6 (NEW).]

H. Is located in more than one municipality, territory or county. [PL 2011, c. 304, Pt. H, §6 (NEW).]

The board shall also decide each application for approval of permits and licenses that is referred to it jointly by the commissioner and the applicant.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4, for a certification pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH or section 636-A.

Prior to holding a hearing on an application over which the board has assumed jurisdiction, the board shall ensure that the department and any outside agency review staff assisting the department in its

review of the application have submitted to the applicant and the board their review comments on the application and any additional information requests pertaining to the application and that the applicant has had an opportunity to respond to those comments and requests. If additional information needs arise during the hearing, the board shall afford the applicant a reasonable opportunity to respond to those information requests prior to the close of the hearing record.

[PL 2011, c. 304, Pt. H, §6 (AMD).]

3. Modification or corrective action. At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met. The board may modify a license or order corrective action as authorized by this subsection at any time, including during the pendency of a judicial appeal of a final decision regarding the license.

- A. [PL 2011, c. 304, Pt. H, §7 (RP).]
- B. [PL 2011, c. 304, Pt. H, §7 (RP).]
- C. [PL 2011, c. 304, Pt. H, §7 (RP).]
- D. [PL 2011, c. 304, Pt. H, §7 (RP).]
- E. [PL 2011, c. 304, Pt. H, §7 (RP).]
- F. [PL 2011, c. 304, Pt. H, §7 (RP).]
- G. [PL 2011, c. 304, Pt. H, §7 (RP).]

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department.

[PL 2023, c. 139, §1 (AMD).]

4. Appeal or review. The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. Any proposed supplemental evidence offered by an appellant must be included with the filing of the appeal. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

- (1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or
- (2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board may admit into the record supplemental evidence offered by a respondent in response to proposed supplemental evidence offered by an appellant and the issues raised on appeal. The board may admit into the record additional evidence and analysis submitted by department staff in response to issues raised on appeal or supplemental evidence offered by an appellant, respondent or interested party. 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; [PL 2023, c. 139, §2 (AMD).]

- B. [PL 2011, c. 304, Pt. H, §8 (RP).]

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; [PL 2023, c. 61, §2 (AMD).]

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee may serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend meetings and hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department; and [PL 2023, c. 61, §3 (AMD).]

E. Decisions on insurance claims-related matters heard under section 568-A, including but not limited to decisions on eligibility for coverage, eligibility of costs and waiver and amount of deductible. Except as provided in board rules, an applicant must file the appeal not later than the 30th day after the applicant receives the decision made under section 568-A. If the board overturns the decision made under section 568-A, the department must pay reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to the board from the Maine Ground and Surface Waters Clean-up and Response Fund established under section 551. Reasonable attorney's fees include only those fees incurred from the time of an insurance claims-related decision forward. Decisions of the board are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7. [PL 2023, c. 61, §4 (NEW).]

[PL 2023, c. 61, §§2-4 (AMD); PL 2023, c. 139, §2 (AMD).]

5. Requests for reconsideration.

[PL 2011, c. 304, Pt. H, §10 (RP).]

6. Enforcement. The board shall:

A. [PL 2011, c. 304, Pt. H, §11 (RP).]

B. [PL 2011, c. 304, Pt. H, §11 (RP).]

C. [PL 2011, c. 304, Pt. H, §11 (RP).]

D. [PL 2011, c. 304, Pt. H, §11 (RP).]

E. Advise the commissioner on enforcement priorities and activities; [PL 2019, c. 315, §4 (NEW).]

F. Advise the commissioner on the adequacy of penalties and enforcement activities; [PL 2019, c. 315, §4 (NEW).]

G. Approve administrative consent agreements pursuant to section 347-A, subsection 1; and [PL 2019, c. 315, §4 (NEW).]

H. Hear appeals of emergency orders pursuant to section 347-A, subsection 3. [PL 2019, c. 315, §4 (NEW).]

[PL 2019, c. 315, §4 (AMD).]

7. Reports to the Legislature. The board shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 15th of the first regular session

of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.

[PL 2011, c. 304, Pt. H, §12 (AMD).]

8. Other duties. The board shall carry out other duties as required by law.
[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

PL 1989, c. 890, §§A13,40 (NEW). PL 1991, c. 804, §A1 (AMD). PL 1993, c. 328, §1 (AMD). PL 1993, c. 356, §1 (AMD). PL 1995, c. 347, §§1,2 (AMD). PL 1995, c. 642, §§1,2 (AMD). PL 1997, c. 364, §17 (AMD). PL 1999, c. 784, §6 (AMD). PL 2007, c. 661, Pt. B, §§1-4 (AMD). PL 2009, c. 121, §1 (AMD). PL 2009, c. 615, Pt. E, §§1, 2 (AMD). PL 2011, c. 304, Pt. H, §§4-12 (AMD). PL 2017, c. 334, §3 (AMD). PL 2019, c. 315, §4 (AMD). PL 2023, c. 61, §§1-4 (AMD). PL 2023, c. 139, §§1, 2 (AMD).

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