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Public Law
123rd Legislature
Second Regular Session

Chapter 593
H.P. 1610 - L.D. 2249

An Act To Protect Lake Water Quality

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

Sec. 1. 38 MRSA §420-D, sub-§11, ¶A, as enacted by PL 1997, c. 502, §4, is amended to read:

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than ~~\$10,000~~\$25,000 per pound of available phosphorus, ~~except that the commissioner may set a rate up to \$20,000 per pound for a project located in the direct watershed of a severely blooming lake.~~

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

(6) As an alternative to paying a compensation fee, the department may allow an applicant to meet a municipally required mitigation option if the department determines that the local mitigation option will provide at least as much long-term reduction in phosphorus loading to the lake as likely would have occurred under payment of the compensation fee.

Sec. 2. 38 MRSA §439-B is enacted to read:

§ 439-B. Contractors certified in erosion control

1. Definition. For purposes of this section, "excavation contractor" means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

2. Certification required. An excavation contractor conducting excavation activity in a shoreland area shall ensure that a person certified in erosion control practices by the department:

A. Is responsible for management of erosion and sediment control practices at the site; and

B. Is present at the site each day earth-moving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed.

The requirements of this subsection apply until erosion control measures that will permanently stay in place have been installed at the site or, if the site is to be revegetated, erosion control measures that will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion have been installed.

3. Application. This section does not apply to activities resulting in less than one cubic yard of earth material being added or displaced.

4. Effective date. This section takes effect January 1, 2013.

Sec. 3. Report. By January 15, 2009, the Department of Environmental Protection shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report evaluating strategies to diminish the impact of private roads, driveways and boat ramps on lake water quality. The report must include guidance to municipalities on appropriate road standards for the protection of lake water quality, a sample model ordinance and, in consultation with the Office of the Attorney General, an analysis of the constitutional issues regarding the public purpose doctrine raised by permitting a municipality to adopt an ordinance that includes an assessment of an annual fee on property owners for construction or maintenance of a private road to prevent degradation of water quality.