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Public Law
123rd Legislature
First Regular Session

Chapter 353
S.P. 687 - L.D. 1888

**An Act To Implement Recommendations of the Drinking
Water Program Regarding Public Water Supply Protection**

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

Sec. 1. 5 MRSA §6207, sub-§2, ¶B, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

B. Is habitat for plant or animal species or natural communities considered rare, threatened or endangered in the State; or

Sec. 2. 5 MRSA §6207, sub-§2, ¶C, as amended by PL 1995, c. 462, Pt. D, §1, is further amended to read:

C. Provides nonmotorized or motorized public access to recreation opportunities or those natural resources identified in this section; or

Sec. 3. 5 MRSA §6207, sub-§2, ¶D is enacted to read:

D. Provides public water supply protection when that purpose is consistent and does not conflict with the natural resource conservation and recreation purposes of this chapter.

Sec. 4. 22 MRSA §2649-A is enacted to read:

§ 2649-A. State's impact on public water supply protection

When undertaking actions that have a negative impact on a public water supply, a state agency shall consider the impact and evaluate alternatives to avoid and minimize the impact.

Sec. 5. 30-A MRSA §5953-B, sub-§1, as amended by PL 1997, c. 555, §3, is further amended to read:

1. Loan application. In addition to the other forms of financial assistance available under section 6006-B, a public water system that is a community water system or a nonprofit water system that is not a community water system may apply for a loan from the safe drinking water revolving loan fund, in this section called the "fund," the proceeds of which must be used to acquire, design, plan, construct, enlarge, repair, protect or improve drinking water supplies or treatment systems owned by the applicant; to acquire

development rights, conservation easements and other protective interests in land by the applicant or in cooperation with a land trust or similar entity; or for any actions authorized or required under the federal Safe Drinking Water Act of 1996, 42 United States Code, Sections 300f to 300j-9, as amended.

The bank may prescribe an application form or procedure for a public water system to apply for a loan under this section. The application must include any information that the bank determines necessary for the purpose of implementing this section and section 6006-B.

For purposes of this section, the term "public water system" has the same meaning as defined in Title 22, section 2601, subsection 8.

Sec. 6. 38 MRSA §480-B, sub-§1-A is enacted to read:

1-A. Community public water system. "Community public water system" has the same meaning as "community water system" has in Title 22, section 2660-B, subsection 2.

Sec. 7. 38 MRSA §480-B, sub-§1-B is enacted to read:

1-B. Community public water system primary protection area. "Community public water system primary protection area" means:

A. The area within 250 feet, measured horizontally, of a great pond that is a source for a community public water system;

B. The area within 250 feet, measured horizontally, of a river, stream or brook that is a source for a community public water system for a distance of 1/2 mile upstream from the intake of the public water supply; or

C. A source water protection area identified and mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A.

Sec. 8. 38 MRSA §480-B, sub-§8, as enacted by PL 1987, c. 809, §2, is amended to read:

8. Protected natural resource. "Protected natural resource" means coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas great ponds or rivers, streams or brooks, as these terms are defined in this article.

Sec. 9. 38 MRSA §480-D, first ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §71, is further amended to read:

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the ~~following~~ standards set forth in subsections 1 to 9, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.

Sec. 10. 38 MRSA §480-E, sub-§2, as enacted by PL 1989, c. 656, §4 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §73, is further amended to read:

2. Water supply notification and review. If the resource subject to alteration or the underlying ground water is utilized by a ~~water company, municipality or water district~~community public water system as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the ~~water company, municipality or water district~~community public water system and the drinking water program of the Department of Health and Human Services by certified mail and the department shall consider any comments concerning the application filed with the commissioner within a reasonable period, as established by the commissioner.

Sec. 11. 38 MRSA §480-E-2 is enacted to read:

§ 480-E-2. Delegation of review authority to the Department of Health and Human Services or to a community public water system

The commissioner may delegate review authority to determine whether an activity that requires a permit because it is located within a community public water system primary protection area meets the standards in section 480-D, subsections 2 and 5 if the activity does not in whole or in part otherwise require a permit pursuant to section 480-C. The commissioner may delegate this review authority to the drinking water program of the Department of Health and Human Services or to a community public water system that demonstrates adequate technical capacity to perform the review. If review authority is delegated, the department shall issue or deny the permit and retains enforcement authority.

Sec. 12. 38 MRSA §480-Q, sub-§2-C is enacted to read:

2-C. Transportation reconstruction or replacement project within a community public water system primary protection area. A transportation reconstruction or replacement project located within a community public water system primary protection area as long as a permit is not required due to the presence of any other type of protected natural resource;

Sec. 13. 38 MRSA §480-Q, sub-§9-A is enacted to read:

9-A. Community public water systems. Community public water systems are exempt from the provisions of this article for activities within their community public water system primary protection areas as long as the activities are conducted in a manner that protects the quality and quantity of water available for the system;

Sec. 14. Rulemaking and implementation date. The Department of Environmental Protection shall adopt rules to specify requirements for an activity located in a community public water system primary protection area. The rules may include provisions addressing mitigation. For purposes of the rulemaking, mitigation may include avoiding, minimizing, rectifying, reducing or eliminating an adverse impact, but may not include compensating for an impact. A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for in this section, unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The Department of Environmental Protection shall provide notice of the rulemaking under this section to municipalities in which community public water system primary protection areas are located.

Sec. 15. Report. The Department of Environmental Protection shall report to the Joint Standing Committee on Natural Resources by January 15, 2008 concerning the status of rulemaking on activities in, on or over community public water system primary protection areas and shall recommend any additional needed legislation. The Joint Standing Committee on Natural Resources may submit legislation related to this subject to the Second Regular Session of the 123rd Legislature.

Effective September 20, 2007