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H.P. 1465

House of Representatives, February 10, 2022

**An Act To Implement Agency Recommendations Relating to Sea
Level Rise and Climate Resilience Provided Pursuant to Resolve
2021, Chapter 67**

Reported by Representative TUCKER of Brunswick for the Joint Standing Committee on Environment and Natural Resources pursuant to Resolve 2021, chapter 67.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

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

2 **PART A**

3 **Sec. A-1. 12 MRSA §685-B, sub-§1-A, ¶A**, as amended by PL 2001, c. 402, §4,
4 is repealed and the following enacted in its place:

5 A. A permit is not required for the repair and maintenance of an existing road culvert
6 or for the replacement of an existing road culvert, including ancillary culverting
7 activities such as excavation and filling, as long as:

8 (1) Erosion control measures are taken to prevent sedimentation of the water;

9 (2) The road culvert does not block passage for fish in flowing water; and

10 (3) For replacements of existing road culverts crossing flowing water:

11 (a) The replacement culvert is designed, installed and maintained to match the
12 natural grade of the channel bed of the water to avoid drops or perching; and

13 (b) As site conditions allow, culverts that are not open bottomed are embedded
14 in the channel bed of the water a minimum of one foot or at least 25% of the
15 culvert or other structure's diameter, whichever is greater, except that a culvert
16 does not have to be embedded more than 2 feet.

17 For purposes of this paragraph, "repair and maintenance" includes, but is not limited
18 to, the riprapping of side slopes or culvert ends; removing debris and blockages within
19 the culvert structure and at its inlet and outlet; and installing or replacing culvert ends
20 if less than 50% of the culvert structure is being replaced;

21 **Sec. A-2. 30-A MRSA §4301, sub-§4-A**, as enacted by PL 2001, c. 578, §2, is
22 amended to read:

23 **4-A. Critical rural area.** "Critical rural area" means a rural area that is specifically
24 identified and designated by a municipality's or multimunicipal region's comprehensive
25 plan as deserving maximum protection from development to preserve natural resources and
26 related economic activities that may include, but are not limited to, significant farmland,
27 forest land or mineral resources; high-value wildlife or fisheries habitat; scenic areas;
28 public water supplies; scarce or especially vulnerable natural resources; flood buffer areas
29 and flood-prone areas; and open lands functionally necessary to support a vibrant rural
30 economy.

31 **Sec. A-3. 30-A MRSA §4301, sub-§8-A** is enacted to read:

32 **8-A. Local climate action plan.** "Local climate action plan" means a planning and
33 decision-making document adopted by a municipality or multimunicipal region that:

34 A. Includes compiled information regarding climate and health risks;

35 B. Includes an evaluation of options for addressing climate and health risks by
36 individuals, committees or offices in local or regional government that are responsible
37 for planning, implementing and monitoring activities that reduce climate risk and
38 improve health and community capacity to manage crises; and

1 C. Is produced using community dialogue and participation in a manner that ensures
2 the input and needs of the community's most vulnerable citizens are elevated and
3 prioritized.

4 **Sec. A-4. 30-A MRSA §4301, sub-§14-B**, as enacted by PL 2001, c. 578, §6, is
5 amended to read:

6 **14-B. Rural area.** "Rural area" means a geographic area that is identified and
7 designated in a municipality's or multimunicipal region's comprehensive plan as an area
8 that is deserving of some level of regulatory protection from unrestricted development for
9 purposes that may include, but are not limited to, supporting agriculture, forestry, mining,
10 open space, erosion mitigation, water retention, wildlife habitat, fisheries habitat and scenic
11 lands, and away from which most development projected over 10 years is diverted.

12 **Sec. A-5. 30-A MRSA §4326, sub-§1, ¶J**, as enacted by PL 1989, c. 104, Pt. A,
13 §45 and Pt. C, §10, is amended to read:

14 J. Land use information describing current and projected development patterns; ~~and~~

15 **Sec. A-6. 30-A MRSA §4326, sub-§1, ¶K**, as enacted by PL 1989, c. 104, Pt. A,
16 §45 and Pt. C, §10, is amended to read:

17 K. An assessment of capital facilities and public services necessary to support growth
18 and development and to protect the environment and health, safety and welfare of the
19 public and the costs of those facilities and services; and

20 **Sec. A-7. 30-A MRSA §4326, sub-§1, ¶L** is enacted to read:

21 L. For a municipality or multimunicipal region that has adopted a local climate action
22 plan, a climate vulnerability assessment specific to the municipality or multimunicipal
23 region prepared by the municipality or multimunicipal region.

24 **Sec. A-8. 30-A MRSA §4326, sub-§4-B** is enacted to read:

25 **4-B. Addressing climate risks.** A municipality or multimunicipal region may include
26 in its comprehensive plan projections regarding risks posed by climate change as identified
27 in its climate vulnerability assessment prepared pursuant to subsection 1, paragraph L and
28 the potential effects of those risks on buildings, transportation infrastructure, sewage
29 treatment facilities and other relevant municipal, multimunicipal or privately held
30 infrastructure or property and may develop a coordinated plan for addressing those risks.

31 **Sec. A-9. 30-A MRSA §4346, 2nd ¶**, as amended by PL 2011, c. 655, Pt. JJ, §20
32 and affected by §41, is further amended to read:

33 The department may enter into financial assistance grants only to the extent that funds
34 are available. In making grants, the department shall consider the need for planning in a
35 municipality or multimunicipal region, the proximity of the municipality or multimunicipal
36 region to other areas that are conducting or have completed the planning process and the
37 economic and geographic role of the municipality or multimunicipal region within a
38 regional context. The department shall give priority in making grants to any municipality
39 or multimunicipal region that has adopted a local climate action plan and, if the
40 municipality or multimunicipal region has adopted a comprehensive plan or growth
41 management program, prepared a climate vulnerability assessment pursuant to section
42 4326, subsection 1, paragraph L. The department may consider other criteria in making

1 grants, as long as the criteria support the goal of encouraging and facilitating the adoption
2 and implementation of local and multimunicipal growth management programs consistent
3 with the procedures, goals and guidelines established in this subchapter. In order to
4 maximize the availability of the technical and financial assistance program to all
5 municipalities, multimunicipal regions and regional councils, financial assistance programs
6 administered competitively under this article are exempt from rules adopted by the
7 Department of Administrative and Financial Services pursuant to Title 5, section 1825-C
8 for use in the purchase of services and the awarding of grants and contracts. The
9 department shall publish a program statement describing its grant program and advertising
10 its availability to eligible applicants.

11 PART B

12 **Sec. B-1. 38 MRSA §484, sub-§3, ¶I** is enacted to read:

13 I. In determining whether a developer has made adequate provision for fitting the
14 development harmoniously into the existing natural environment, the department may
15 consider the effect of at least 1.5 feet of relative sea level rise by 2050 and 4 feet of
16 relative sea level rise by 2100 as specified by the department by rule adopted pursuant
17 to section 489-E.

18 **Sec. B-2. 38 MRSA §1310-N, sub-§2-F, ¶C**, as repealed and replaced by PL
19 1993, c. 680, Pt. A, §37, is amended to read:

20 C. The applicant has made adequate provision for fitting the proposed solid waste
21 facility harmoniously into the existing natural environment and the proposed solid
22 waste facility will not unreasonably adversely affect existing uses, scenic character, air
23 quality, water quality or other natural resources in the municipality or in neighboring
24 municipalities. In determining whether an applicant has made adequate provision for
25 fitting the proposed solid waste facility harmoniously into the existing natural
26 environment, the department may consider the effect of at least 1.5 feet of relative sea
27 level rise by 2050 and 4 feet of relative sea level rise by 2100 as specified by the
28 department by rule. Rules adopted by the department pursuant to this paragraph are
29 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

30 SUMMARY

31 This bill, which is reported out by the Joint Standing Committee on Environment and
32 Natural Resources pursuant to Resolve 2021, chapter 67, section 1, implements agency
33 recommendations resulting from a review by multiple agencies of their respective laws and
34 rules to determine changes necessary to incorporate into those laws and rules sea level rise
35 projections and measures designed to enhance community resilience to flooding and other
36 climate impacts.

37 Part A of the bill implements the recommendations of the Department of Agriculture,
38 Conservation and Forestry. It amends the requirements of the Maine Land Use Planning
39 Commission permit exception for the repair and maintenance or replacement of existing
40 road culverts to incorporate similar requirements for such activities imposed under the
41 Natural Resources Protection Act. It amends the laws governing municipal planning and
42 land use regulation to define "local climate action plan"; to incorporate such plans into a
43 municipality's or multimunicipal region's growth management program through the

1 preparation of a climate vulnerability assessment and by addressing in its program the
2 climate risks identified in such assessments; and to require that the department's technical
3 and financial assistance program for the implementation of growth management programs
4 provide priority in the making of grants under the technical and financial assistance
5 program to municipalities and multimunicipal regions that have adopted local climate
6 action plans and prepared climate vulnerability assessments.

7 Part B of the bill implements the recommendations of the Department of
8 Environmental Protection. It amends the site location of development laws to authorize
9 the department to consider the effects of sea level rise in determining whether a developer
10 has made adequate provision for fitting a proposed development harmoniously into the
11 existing natural environment. It amends solid waste facility siting laws to authorize the
12 department to consider the effects of sea level rise in determining whether an applicant for
13 a solid waste facility license has made adequate provision for fitting a proposed facility
14 harmoniously into the existing natural environment.

15 The committee has not taken a position on the substance of the bill and by reporting
16 this bill out, the committee is not suggesting and does not intend to suggest that it agrees
17 or disagrees with any aspect of this bill. The committee is reporting the bill out for the sole
18 purpose of obtaining a printed bill that can be referred to the committee for a public hearing
19 and subsequent committee action in the normal course.