

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-TWO

—  
H.P. 1465 - L.D. 1970

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

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

**PART A**

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 A-1. 12 MRSA §685-B, sub-§1-A, ¶A**, as amended by PL 2001, c. 402, §4, is repealed and the following enacted in its place:

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

- (1) Erosion control measures are taken to prevent sedimentation of the water;
- (2) The road culvert does not block passage for fish in flowing water; and
- (3) For replacements of existing road culverts crossing flowing water:

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

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

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

**Sec. A-2. 12 MRSA §685-B, sub-§4, ¶C**, as amended by PL 2011, c. 682, §19, is repealed and the following enacted in its place:

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect

on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.

(1) In making a determination under this paragraph regarding whether an applicant has made adequate provision for fitting the proposal harmoniously into the existing natural environment, the commission may consider the effect of at least 1.5 feet of sea level rise by 2050 and 4 feet of relative sea level rise by 2100 as specified by the commission by rule adopted pursuant to section 685-A, subsection 3.

(2) In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this subparagraph, the commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

(3) In making a determination under this paragraph regarding a community-based offshore wind energy project, the commission shall consider the project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

(4) In making a determination under this paragraph regarding a wind energy development, as defined in Title 35-A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for location within the expedited permitting area, the commission shall consider the development's or project's effects on scenic character and existing uses relating to scenic character in the manner provided for in Title 35-A, section 3452;

**Sec. A-3. 30-A MRSA §4301, sub-§4-A**, as enacted by PL 2001, c. 578, §2, is amended to read:

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

**Sec. A-4. 30-A MRSA §4301, sub-§8-A** is enacted to read:

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

A. Includes compiled information regarding climate and health risks;

B. Includes an evaluation of options for addressing climate and health risks by individuals, committees or offices in local or regional government that are responsible for planning, implementing and monitoring activities that reduce climate risk, build

resilience to natural hazards and improve health and community capacity to manage crises; and

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

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

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

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

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

**Sec. A-7. 30-A MRSA §4326, sub-§1, ¶K**, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

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

**Sec. A-8. 30-A MRSA §4326, sub-§1, ¶L** is enacted to read:

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

**Sec. A-9. 30-A MRSA §4326, sub-§4-B** is enacted to read:

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

As used in this subsection, "protected natural resource" has the same meaning as in Title 38, section 480-B, subsection 8.

**Sec. A-10. 30-A MRSA §4346, 2nd ¶**, as amended by PL 2011, c. 655, Pt. JJ, §20 and affected by §41, is further amended to read:

The department may enter into financial assistance grants only to the extent that funds are available. In making grants, the department shall consider the need for planning in a municipality or multimunicipal region, the proximity of the municipality or multimunicipal

region to other areas that are conducting or have completed the planning process and the economic and geographic role of the municipality or multimunicipal region within a regional context. The department shall give priority in making grants to any municipality or multimunicipal region that has adopted a local climate action plan and, if the municipality or multimunicipal region has adopted a comprehensive plan or growth management program, prepared a climate vulnerability assessment pursuant to section 4326, subsection 1, paragraph L. The department may consider other criteria in making grants, as long as the criteria support the goal of encouraging and facilitating the adoption and implementation of local and multimunicipal growth management programs consistent with the procedures, goals and guidelines established in this subchapter. In order to maximize the availability of the technical and financial assistance program to all municipalities, multimunicipal regions and regional councils, financial assistance programs administered competitively under this article are exempt from rules adopted by the Department of Administrative and Financial Services pursuant to Title 5, section 1825-C for use in the purchase of services and the awarding of grants and contracts. The department shall publish a program statement describing its grant program and advertising its availability to eligible applicants.

## **PART B**

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

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

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

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