

Criteria for Board Jurisdiction: Excerpts from Statute and Rule

§341-D. BOARD RESPONSIBILITIES AND DUTIES

The board is charged with the following duties and responsibilities.

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. [2011, c. 304, Pt. H, §6 (RP) .]
- B. [2011, c. 304, Pt. H, §6 (RP) .]
- C. [2011, c. 304, Pt. H, §6 (RP) .]
- D. [2011, c. 304, Pt. H, §6 (RP) .]
- E. Will have an environmental or economic impact in more than one municipality, territory or county; [2011, c. 304, Pt. H, §6 (NEW) .]
- F. Involves an activity not previously permitted or licensed in the State; [2011, c. 304, Pt. H, §6 (NEW) .]
- G. Is likely to come under significant public scrutiny; and [2011, c. 304, Pt. H, §6 (NEW) .]
- H. Is located in more than one municipality, territory or county. [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.

[2011, c. 304, Pt. H, §6 (AMD) .]

**Chapter 2: RULE CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER
ADMINISTRATIVE MATTERS**

TABLE OF CONTENTS

1.	Definitions.....	Pg. 1
2.	Scope of Rule	Pg. 2
3.	Filing of Submissions and Computation of Time	Pg. 3
4.	Advisory Ruling	Pg. 4
5.	Inspections	Pg. 5
6.	Public Access to Information	Pg. 5
7.	Hearings	Pg. 5
8.	Public Meetings on License Applications	Pg. 6
9.	Preliminary Vote	Pg. 6
10.	Pre-application and Pre-submission Meetings on Applications	Pg. 6
11.	Application Requirements	Pg. 8
12.	Application Fees and Processing Times	Pg. 10
13.	Public Information Meeting Requirement	Pg. 11
14.	Public Notice of Applications	Pg. 12
15.	Board Notice of Applications	Pg. 14
16.	Public Comment on Applications	Pg. 14
17.	Board Assumption of Jurisdiction over an Application	Pg. 14
18.	Availability of Draft License Decisions	Pg. 15
19.	Decisions	Pg. 15
20.	Notice of Appeal Rights	Pg. 17
21.	License Renewals, Amendments and Transfers	Pg. 17
22.	Petition for Corrected License	Pg. 18
23.	Petition for Surrender of License	Pg. 18

24.	Appeal to the Board of Commissioner License Decisions	Pg. 19
25.	Revocation or Suspension of a License	Pg. 22
26.	Modification of a License or Order Prescribing Corrective Action	Pg. 23
27.	Criteria for Revocation, Suspension, Modification or Corrective Action	Pg. 24
28.	Judicial Review of a Department Decision.....	Pg. 25

17. Board Assumption of Jurisdiction over an Application

- A. Any person may request that the Board assume jurisdiction over an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing.
- B. Within 45 days after an application has been accepted as complete for processing, the Commissioner shall make a preliminary determination as to whether the Board should assume jurisdiction of the application. At the next regularly scheduled Board meeting after such a determination is made, the Commissioner shall provide a recommendation to the Board for those applications where the Commissioner recommends that the Board consider jurisdiction. The Commissioner's recommendation must be provided to the applicant, all interested governmental agencies and interested persons prior to consideration of the recommendation by the Board. The Board shall provide an opportunity for the applicant, governmental agencies and interested persons to comment on the Commissioner's recommendation.

If a request for Board jurisdiction has been made and the Commissioner determines that the criteria for Board jurisdiction as identified in statute and section 17(C) of this rule are not met, the Commissioner shall notify the Board of the request and the Commissioner's determination. If upon such notification by the Commissioner the Board determines the criteria for Board jurisdiction have been met, the Board may assume jurisdiction over the application.

The Board may assume jurisdiction over any application on its own initiative if it finds that at least 3 of the 4 criteria in section 17(C) are met.

- A. The Board shall assume jurisdiction over and decide each license application 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:
 - (1) Will have an environmental or economic impact in more than one municipality, territory or county;
 - (2) Involves an activity not previously permitted or licensed in the State;
 - (3) Is likely to come under significant public scrutiny; and
 - (4) Is located in more than one municipality, territory or county.

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 for a small-scale wind energy development pursuant to Title 35-A, section 3456; for a general permit for an offshore wind energy demonstration project pursuant to Title 38, section 480-HH; or for a general permit for a tidal energy demonstration project pursuant to Title 38, section 636-A.

- D. The Board shall also decide each license application that is referred to it jointly by the Commissioner and the applicant.

