

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 2024

S. P. 752

In Senate, February 7, 1972

Committee on State Government suggested and 5,000 ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Sewall of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-TWO

AN ACT Implementing the Reorganization of the Department of  
Environmental Protection.

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

**Sec. 1. R. S., T. 10, § 2202, sub-§ 2, amended.** Subsection 2 of section 2202 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969, is amended to read as follows:

**2. Commission.** "Commission" means ~~the Maine Mining Commission~~ the Board of Environmental Protection.

**Sec. 2. R. S., T. 10, § 2203, repealed and replaced.** Section 2203 of Title 10 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1969 and as amended by section 25 of chapter 544 of the public laws of 1971, is repealed and the following enacted in place thereof:

§ 2203. Administration

The Board of Environmental Protection shall administer this chapter.

The Commissioner of Environmental Protection shall employ, pursuant to the Personnel Law, such personnel as may be necessary to properly administer this chapter, including naming engineers and personnel experienced in land management and reclamation.

**Sec. 3. R. S., T. 12, § 514, sub-§ 3, ¶ B, repealed.** Paragraph B of subsection 3 of section 514 of Title 12 of the Revised Statutes, as repealed and replaced by section 2 of chapter 545 of the public laws of 1971, is repealed.

**Sec. 4. R. S., T. 12, § 4705, repealed.** Section 4705 of Title 12 of the Revised Statutes, as amended, is repealed.

**Sec. 5. R. S., T. 12, § 4753, amended.** Section 4753 of Title 12 of the Revised Statutes, as enacted by chapter 541 of the public laws of 1971, is amended to read as follows:

**§ 4753. Administration**

This subchapter shall be administered by the ~~Wetlands Control Board, as constituted in section 4705~~ **Board of Environmental Protection.**

**Sec. 6. R. S., T. 12, § 4755, amended.** Section 4755 of Title 12 of the Revised Statutes, as enacted by chapter 541 of the public laws of 1971, is amended to read as follows:

**§ 4755. Hearing**

The board, before adopting, amending, modifying or repealing any such order, shall hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, and shall give notice by mail to the municipal officers of such municipalities and to each assessed owner of such wetlands, **to the Department of Natural Resources and to the Department of Transportation** at least 21 days prior thereto, and to the public by publication in a newspaper published in the county where the wetlands are located, of the time and place of such hearing.

**Sec. 7. R. S., T. 12, c. 425, repealed.** Chapter 425 of Title 12 of the Revised Statutes, as enacted by chapter 489 of the public laws of 1971, is repealed.

**Sec. 8. R. S., T. 32, § 3351, amended.** Section 3351 of Title 32 of the Revised Statutes is amended to read as follows:

**§ 3351. Local ordinance or bylaws**

Any city or town may, by ordinance or bylaw, prescribe regulations for the materials, construction, alteration and inspection of all pipes, tanks, faucets, valves and other fixtures by and through which waste or sewage is used and carried, and for the materials and sizes of pipe which carry water to all plumbing fixtures, which regulations shall provide not less than the minimum requirements of the rules and regulations of the Department of Health and Welfare in relation to plumbing work, for the carrying of such waste and sewage and for the materials and sizes of pipe which carry water to all plumbing fixtures, and shall provide that such pipes, tanks, faucets, valves or other fixtures shall not be placed in any building in such city or town, ~~nor shall any septic tank or other system of private sewage disposal be installed to receive the drainage from such plumbing, except to repair leaks or replace an old fixture to be used for the same purpose~~ except after the issuing of a permit for the installation of such work, issued by the inspector of plumbing in such city or town in accordance with a written description or information on such application blanks as shall be approved and furnished to such cities or towns by the department.

**Sec. 9. R. S., T. 38, c. 2, additional.** Title 38 of the Revised Statutes is amended by adding a new chapter 2 to read as follows:

## CHAPTER 2

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

## § 341. Department

There is created and established a Department of Environmental Protection, hereinafter called "the department", to protect and improve the quality of our natural environment and the resources which constitute it, and to enhance the public's opportunity to enjoy the environment by directing growth and development which will preserve for all time an ecologically sound and aesthetically pleasing environment to consist of a Commissioner of Environmental Protection, appointed by the Governor with the advice and consent of the Council to serve a term coterminous with the Governor and until his successor is appointed and qualified, and the Board of Environmental Protection, which is the successor of the Environmental Improvement Commission.

## § 342. Commissioner, duties

The Commissioner of Environmental Protection shall have the following duties:

1. He shall be ex officio a member of the Board of Environmental Protection and its chairman. He shall have the right to vote only in the case of a tie vote.

2. He may employ, subject to the Personnel Law, such personnel and prescribe the duties of such employees, including bureau directors, as he deems necessary, to fulfill the duties of the department and of the Board of Environmental Protection.

3. He may with the prior approval of the Board of Environmental Protection grant licenses, initiate enforcement actions pursuant to law, negotiate and enter into agreements with federal, state and municipal agencies and exercise whatever other duties the Board of Environmental Protection delegates to him.

4. He shall organize the duties of the department and the duties of the Board of Environmental Protection into 3 bureaus, which shall be named the Bureau of Water Quality Control, the Bureau of Air Quality Control and the Bureau of Land Quality Control, and such other administrative units as he deems necessary. With the approval of the Board of Environmental Protection, he shall prescribe the functions of the bureaus and other administrative units to insure that the powers and duties of the board are administered efficiently so that all license applications and other business of the department may be expeditiously completed in the public interest.

5. The commissioner shall designate a bureau director within the department to act as commissioner in case the commissioner is unable to act or a vacancy exists in the office of the commissioner.

Sec. 10. R. S., T. 38, § 361, amended. Section 361 of Title 38 of the Revised Statutes, as amended, is further amended to read as follows:

**§ 361. Organization ; compensation ; meetings ; duties**

The **Board of Environmental Improvement Commission Protection**, as heretofore established and hereinafter in this subchapter called the ~~commission~~ **"board,"** shall consist of 10 members appointed by the Governor with the advice and consent of the Council, 2 of whom shall represent manufacturing interests of the State; 2 of whom shall be representatives of municipalities, 2 of whom shall represent the public generally, 2 of whom shall represent the conservation interests in the State and 2 other members knowledgeable in matters relating to air pollution, and the **Commissioner of Environmental Protection ex officio**. The members shall be appointed for a term of 3 years and until their successors are appointed and duly qualified.

The members appointed by the Governor shall receive \$25 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meetings of the ~~commission board~~ or for any other travel in connection with the official business of the ~~commission board~~ and under the specific authority of the ~~commission board~~, which traveling expenses shall be paid out of the General Fund.

Meetings of the ~~commission board~~ shall be held at such time and place as shall be determined by the ~~commission board~~ but not less than 2 meetings per year shall be held. ~~The commission shall organize in October of each year by electing one of its members as chairman but in his absence any other member of the commission shall be elected to act as chairman.~~ The ~~commission board~~ shall at the same time in October of each year elect a secretary who need not be chosen from among the members of the ~~commission board~~. Six members of the ~~commission board~~ shall constitute a quorum, except for the purpose of conducting any hearing.

The ~~commission~~ may employ, subject to the Personnel Law, and prescribe the powers and duties of such employees and **Commissioner of Environmental Protection** with the prior approval of the board may obtain the services of consultants on a contractual basis or otherwise as may be necessary to carry out this subchapter.

The ~~commission~~ may employ a director and fix his salary with the approval of the Governor and Council. Such director shall serve at the pleasure of the ~~commission~~, and shall carry out such administrative duties as the ~~commission~~ may prescribe

It shall be the duty of the ~~commission board~~, exercising the police power of the State, to control, abate and prevent the pollution of the air, waters, coastal flats and prevent diminution of the highest and best use of the natural environment of the State. The ~~commission board~~ shall make recommendations to each subsequent Legislature with respect to the classification of the waters and coastal flats and section thereof within the State, based upon reasonable standards of quality and use.

The ~~commission board~~ shall make recommendations to each Legislature with respect to the control, abatement and prevention of pollution of the air,

waters, coastal flats and other aspects of the natural environment within the State for the benefit of the citizens of this State.

The ~~commission board~~ shall consult with and advise the authorities of municipalities, persons and businesses having, or about to have, systems of drainage, sewerage or industrial wastes except purely storm water systems located in or on or draining from public ways, as to the best methods of disposing of the drainage, sewage or industrial wastes with reference to the existing and future needs of the municipality, other municipalities, persons or businesses which may be affected thereby. It may consult with and advise with persons or corporations engaged or intending to engage in any manufacturing or other business whose drainage, sewage or industrial wastes may tend to pollute any waters under the jurisdiction of the ~~commission board~~, as to the best methods of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage, sewage and industrial wastes. Municipalities, sewer districts, quasi-municipal corporations, firms, persons, state agencies and other legal entities shall submit to said ~~commission board~~ for its advice and approval the plans and specifications for any proposed new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State, except purely storm water systems located in or on or draining from public ways and any alterations in existing facilities. The ~~commission board~~ shall establish and enforce reasonable standards for the operation and maintenance of municipal, industrial, commercial and private waste treatment facilities.

The ~~commission board~~ may, in accordance with the Administrative Code and after a public hearing, adopt, amend and repeal such reasonable regulations as it deems necessary to carry out this Title or any other laws which it is charged with the duty of administering.

Whenever the ~~commission board~~ is required or empowered to conduct a hearing pursuant to any provision of law, such hearings may be held and conducted by the ~~commission board~~, or by any member of the ~~commission board~~ or by any qualified employee or representative of the ~~commission board~~, as the ~~commission board~~ may determine. If the hearing is conducted by a single ~~commissioner board member~~ or qualified employee or representative, such ~~commissioner board member~~, employee or representative shall report his findings of fact and conclusions to the ~~commission board~~ together with a transcript of the hearing and all exhibits. Such findings of fact and conclusions shall become a part of the record. The ~~commission board~~ shall not be bound by such findings or conclusions when acting upon such record, but shall take such action, issue such orders and make such decisions as if it had held and conducted the hearing itself.

Sec. 11. R. S., T. 38, § 422, additional. Title 38 of the Revised Statutes is amended by adding a new section 422, to read as follows:

§ 422. Dredging permits

The Board of Environmental Protection may grant permits for construction and maintenance of causeways, bridges, marinas, wharves and perma-

ment structures, or deposit of fill, in, on, over or abutting on great ponds or for dredging in great ponds.

The board shall provide written notice to the Commissioner of Natural Resources prior to the granting of such a permit. The board may, pursuant to the Administrative Code, adopt, amend and repeal such regulations, establish such hearing procedures and charge such fees as it deems necessary to properly administer this section. Fees collected shall accrue to the board and shall be expended by it for expenses incurred in carrying out its duties, prescribed by this section.

If the applicant for the permit demonstrates that the proposed activity will not unreasonably interfere with existing recreational, navigational, scenic and aesthetic uses; nor otherwise unreasonably interfere with or harm the natural environs of the great pond or tributary, river or stream; nor cause unreasonable soil erosion; nor interfere with the natural flow of any waters; nor create or cause to be created unreasonable noise or traffic of any nature; nor harm any fish or wildlife habitat; nor lower the quality of any waters, to the satisfaction of the board, the board shall grant the permit upon such terms as it deems necessary to insure that the proposed activity will comply with the foregoing standards.

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or removes or causes to be dredged or removed any materials from, or who erects, maintains or causes to be erected or maintained any causeway, bridge, marina, wharf, dock or permanent structure, or deposits fill in, on, over or abutting on any great pond without a permit from the board as provided in this section shall be punished by a fine of not less than \$100 nor more than \$200 for each day of such violation.

In the event of the violation of this section, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

For the purposes of this section "great pond" shall include any inland body of water which in its natural state has a surface area in excess of 10 acres, and any body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned by 2 or more persons, firms, corporations or other legal entities.

Sec. 12. R. S., T. 38, § 423, additional. Title 38 of the Revised Statutes is amended by adding a new section 423 to read as follows:

Any city or town may, by ordinance or by law, prescribe regulations for the materials, construction, alteration and inspection of any septic tank or other system of private sewage disposal, which regulations shall provide not less than the minimum requirements of the rules and regulations of the Board of Environmental Protection. No septic tank or other system of private sewage disposal shall be installed to receive drainage from plumbing, except to repair leaks or replace an old fixture to be used for the same purpose, except after the issuing of a permit for the installation of such work, issued by the

inspector of plumbing in such city or town in accordance with a written description or information on such application blanks as shall be approved and furnished to such cities or towns by the board.

The Board of Environmental Protection, by rule and regulation, after public hearing, shall set a permit fee; however, in no event shall said permit fee be in excess of the fee set forth in Title 32, section 3352.

**Sec. 13. Amendatory provision.** Wherever in the Revised Statutes the words "Wetland Control Board" appear, they shall mean the Board of Environmental Protection.

**Sec. 14. Amendatory provision.** Wherever in the Revised Statutes the words "Environmental Improvement Commission" or "commission" appear, they shall mean the Board of Environmental Protection.

**Sec. 15. Amendatory provision.** Wherever in the Revised Statutes the words "The Maine Mining Commission" appear, they shall mean the Board of Environmental Protection.

**Sec. 16. Amendatory provision.** Wherever in Chapter 423 of Title 12 of the Revised Statutes, as enacted by section 1 of chapter 365 of the public laws of 1969, the words "Department of Health and Welfare" appear, they shall mean the Board of Environmental Protection.

**Sec. 17. Transitional provision.**

1. **Legislative intent.** It is the intent of the Legislature that the Environmental Improvement Commission only be re-named the Board of Environmental Protection and that the re-naming of the commission have no effect whatsoever upon the persons who are serving on the commission on the effective date of this Act or upon their terms of office.

2. **Rules, regulations and procedures.** All regulations currently in effect and operation in any board, commission or department referred to in this Act shall continue in effect unless in conflict with this Act, until rescinded, amended or changed according to law.

"Regulation" shall include, but is not limited to, any regulation, rule, order, administrative procedure, authorization, permit, license or agreement.

3. **Solid Waste Disposal Act.** The Department of Environmental Protection is designated as the agency for the State of Maine to perform all duties the State may have pursuant to 42 U.S.C.A. §§ 3251 to 3259, or any other solid waste programs, including the administration of any funds received by the State pursuant to said Act.

**Sec. 18. Funds and equipment transferred.** Notwithstanding the Revised Statutes, Title 5, section 1585, all accrued expenditures, assets, liabilities, balances of appropriations, transfers, revenues or other available funds in any account, or subdivision of an account, of any agency to be reallocated to another department strictly as a result of the reorganization effort, shall be



transferred to the proper place in the new structure by the State Controller, upon the recommendation of the department head, the State Budget Officer and upon approval by the Governor and Executive Council.

### STATEMENT OF FACT

This bill implements the Department of Environmental Protection and the department is composed of a Commissioner of Environmental Protection appointed by the Governor with the advice and consent of the Council to serve a coterminous term with the Governor and the Board of Environmental Protection, which is the Environmental Improvement Commission renamed. The Board of Environmental Protection has the same composition as the Environmental Improvement Commission, with the addition of a Commissioner of Environmental Protection as an additional member, *ex officio*, and Chairman of the Board. The duties of the commissioner are outlined in Section 9 of this bill.

The Wetlands Control Board and the Maine Mining Commission are abolished and their duties delegated to the Board of Environmental Protection or the commissioner. The authority which the Department of Health and Welfare presently has to regulate septic tanks and other systems of private sewage disposal is transferred from the Department of Health and Welfare to the Department of Environmental Protection. This bill also transfers from the Forest Commissioner to the Board of Environmental Protection the authority to grant permits for the construction of causeways, bridges, marinas, wharfs in or on great ponds. It also designates the Department of Environmental Protection as the State agency to administer the solid waste program for the Federal Government found in 42 U.S.C.A. § 3251 and any other solid waste program. These duties had previously been under the Department of Health and Welfare by the designation of Governor John H. Reed in an interdepartmental memorandum to the Commissioner of Health and Welfare dated March 3, 1966.

This bill does not make any change whatsoever in the administration of the Site Location Law or make any change in the substantive environmental laws which presently exist.