

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1245

S. P. 421

In Senate, March 11, 1981

Referred to the Committee on Energy and Natural Resources. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

Cosponsors: Representative L. Higgins of Scarborough, Representative W. Diamond of Windham and Senator McBreairty of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Facilitate and Improve Decision Making by the Board of Environmental Protection.

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

Sec. 1. 38 MRSA § 344, as amended by PL 1977, c. 694, §§ 753 and 754, is repealed.

Sec. 2. 38 MRSA § 344-A is enacted to read:

§ 344-A. Processing of applications

1. **Statement of intent.** It is the intent of this section to assure that applicants for any license, permit, approval or certificate issued by the Board of Environmental Protection receive a prompt decision, for the applicant and other aggrieved persons to have a full and fair opportunity to be heard on all issues relevant to the application by the Board of Environmental Protection and to provide for delegation by the board to its staff of routine and noncontroversial matters.

2. **Time limit processing application.** Whenever the Board of Environmental Protection receives a properly completed application for any license, permit, approval or certificate under any of the statutes which it administers, it shall

make a final decision as expeditiously as possible, but in no case later than 180 days after acceptance of the application.

3. **Exceptions.** The Board of Environmental Protection may waive the 180-day requirement of subsection 2:

- A. At the request of the applicant; or
- B. After consultation with the applicant, if 2/3 of the members of the board eligible to vote do so vote.

4. **Notification to applicant.** The Commissioner of Environmental Protection shall, within 30 days of receipt of an application, unless otherwise extended by agreement of the applicant and staff, notify applicants of the official date on which the application was accepted or return the application to the applicant specifying in writing the reasons for returning the application. If the notification is not timely made, the appropriate subboard, upon request of the applicant, shall order the application to be promptly reviewed and any application fees to be returned to the applicant.

The commissioner shall give reasonable notice to the applicant of the date the board will act on the application and that a draft order relating to the application is available in the Augusta office of the department. Draft orders shall be available to any person at the Augusta office of the department prior to the date the board acts on the application.

All correspondence notifying the applicant of Board of Environmental Protection decisions shall be by certified mail, return receipt requested.

5. **Delegation.** The Board of Environmental Protection is authorized to delegate decisions on any permit applications, and, as a minimum, shall delegate to the Commissioner of Environmental Protection and the department staff, authority to approve, approve with conditions or disapprove the following categories of applications:

- A. Applications for development of a subdivision of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;
- B. Applications for a maximum daily discharge of less than 50,000 gallons per day;
- C. Applications for incinerators in Classes I through IV for a boiler at a facility with a total boiler capacity of less than 100,000,000 B.T.U.'s;
- D. Applications under the Wetlands Alteration Act for the construction or alteration of single family homes or related facilities and for commercial structures less than 1,000 square feet;
- E. Applications under the Great Ponds Act where the cost of the project does not exceed \$10,000;

F. Municipal solid waste disposal sites where the population served is less than 2,000; and

G. Applications for permit or license renewals where the permittee or licensee has operated in substantial compliance with the permit or license, where the pollution control equipment permitted or licensed is substantially unchanged from that originally licensed or permitted and where applicable laws or rules under which the license or permit would be considered have not changed since the last license or permit was issued.

Upon petition of any aggrieved person, or upon its own motion, the board shall revoke the delegation of a particular application which it determines could establish important precedents or significant policies. Regulations regarding the filing and content of the petitions shall be established by the board.

The delegation shall be in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated and with regulations and policies adopted by the board, which regulations and policies include assurance that any interested person aggrieved by a decision of the commissioner and the department staff made pursuant to this section have a right to appeal the decision to the appropriate subboard. The regulation also provides for procedures by which disagreements during the permitting process can be discussed and acted upon by the appropriate subboard.

6. Appeal of delegated applications. Within 30 days of the applicant's receipt of any staff decision on an application delegated under subsection 5, the applicant or any interested party aggrieved by the decision may request, in writing, that the appropriate subboard of the Board of Environmental Protection review the staff decision and for an opportunity to present new or additional evidence on the application to the subboard. The request shall set forth the findings, conclusions or conditions to which the applicant or aggrieved person objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered. The subboard shall, within 30 days of receipt of the request and after appropriate notice, schedule a public meeting to be held within 45 days. Notice of this public meeting shall be provided to the applicant and interested persons and the meeting shall be scheduled at a time and place reasonably convenient to all parties. This public meeting shall be to permit the applicant and aggrieved persons to work with the subboard to provide and discuss information on which the subboard shall act and to resolve disagreements, if possible. To the extent it is practical to do so, the subboard shall seek to conduct this public meeting as an informal examination of the facts by all parties. The subboard shall hear equally from the applicant and aggrieved persons as well as the department staff which shall be treated as an aggrieved person. A quorum of the subboard shall be required at public meetings.

7. Reconsideration. Within 30 days of the applicant's receipt of a board or subboard decision, the applicant or any person aggrieved by the decision may petition the full Board of Environmental Protection, in writing, to reconsider any

part of the decision. The petition shall set forth the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered.

The board shall, within 30 days of receipt of the petition and after appropriate notice, grant the petition, permit the petitioner and aggrieved persons an opportunity to be heard and to present their positions and any evidence relevant thereto at a board meeting and make a decision on the petition or order a public hearing. Any public hearing held under this section shall be held 45 days of the board's order to hold the hearing and the commissioner shall provide reasonable notice to interested persons. The time for appeal of a final decision of the board on any application shall be computed from the date of receipt by the petitioner of the board's decision pursuant to this subsection.

The running of the time for appeal is terminated by a timely petition for reconsideration filed pursuant to this subsection and the full time for appeal commences to run and is to be computed from the date upon which notice is received of any administrative or judicial prerequisite for the filing of an appeal.

8. Fees. The board may establish reasonable fees for the production of materials in its custody, including all or part of any application submitted to the department. All fees may be retained by the department to reimburse expenses incurred in reproducing these materials.

Sec. 3. 38 MRSA § 345, sub-§ 1, as enacted by PL 1977, c. 300, § 9, is repealed and the following enacted in its place:

1. Hearings. Except as provided in section 347, whenever the board or Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provision of law, the hearings shall, upon the request of an applicant or aggrieved person, unless the board determines the request to be frivolous or without merit, be held and conducted by the board or the appropriate subboard. Nothing in this section requires the board to order a public hearing when a request for a public hearing is made as part of a request for reconsideration if the board elects to grant the petitioner or affords the petitioner and aggrieved persons an opportunity to be heard and present written and oral testimony at a board. A quorum of the full board, for purposes of public hearings consists of 1/3 of the members and a quorum of the subboard is 2 members. If a subboard is unable to attain a quorum during any time required for a decision, the chairman shall appoint additional members from the full board.

Sec. 4. 38 MRSA § 345, sub-§ 6, first sentence, as enacted by PL 1977, c. 300, § 9, is amended to read:

Every decision of the board or subboard, other than those concerning the adoption, repeal or modification of regulations, shall be in writing and shall include findings of fact and conclusions of law.

Sec. 5. 38 MRSA § 345, sub-§ 6, as amended by PL 1977, c. 694, § 757, is further amended by adding after the first sentence 2 new sentences to read:

Any decision denying an application shall set forth, in writing, its findings of fact, as well as a sufficient detailed explanation to inform persons of the specific basis for disapproval. Recitation of statutory criteria and a statement that the same have not been met shall not constitute a sufficient explanation.

Sec. 6. 38 MRSA § 361, 3rd sentence, as enacted by PL 1975, c. 614, § 1, is repealed.

Sec. 7. 38 MRSA § 361, as last amended by PL 1977, c. 596, § 2, is further amended by adding after the first paragraph, 2 new paragraphs to read:

There is established within the board 4 subboards to be known as the Land Use Subboard, the Water Subboard, the Air Subboard and the Oil and Hazardous Waste Subboard, each consisting of at least 3 board members appointed by the chairman. Board members shall not serve on more than 2 subboards. The purpose of the subboards shall be to assure that decisions are rendered efficiently, expeditiously and on an informed basis by qualified persons and with reasonable opportunity for interested persons to present their views and relevant information in writing and in oral testimony before the subboard. Prior to nomination the Governor shall consider the recommendations of the Environmental Advisory Committee on the qualifications of any nominee. All members of the board shall be chosen to represent the broadest possible interest and experience which can be brought to bear in the implementation of this Title and all other laws which the board is charged with the duty of administering, and, by education or experience shall be competent in at least some of the issues normally addressed by the board. It is the intent of this section that members of the board be chosen on the basis of their ability to make informed decisions on the basis of their knowledge and experience and the facts before them.

The board is authorized to and shall establish by regulation the jurisdiction of the respective subboards and those matters upon which the full board shall act, which regulation shall provide procedures for full board or joint subboard action on applications for projects involving more than one license, permit or approval. The individual subboards shall be responsible for the review and approval or disapproval of applications for licenses, permits, approvals or certificates within its jurisdiction. All actions of the subboard shall be in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications and with regulations and policies adopted by the board.

Sec. 8. 38 MRSA § 361, 3rd ¶, last sentence, as amended by PL 1971, c. 618, § 9, is repealed and the following enacted in its place:

Six members of the board and a majority of a subboard, respectively, shall constitute a quorum.

Sec. 9, 38 MRSA § 361, 3rd ¶, as amended by PL 1971, c. 618, § 9, is further amended by adding at the end a new sentence to read:

If a subboard is unable to attain a quorum during any time required for a decision, the chairman shall appoint additional members from the full board.

Sec. 10. 38 MRS § 361, next to the last ¶, as enacted by PL 1973, c. 712, § 5, is amended to read:

The board after a public hearing may adopt, amend and repeal such reasonable fees ~~not to exceed \$500~~ for licenses, permits and approvals ~~that require continuing surveillance.~~

Sec. 11. 38 MRS § 361, as last amended by PL 1977, c. 596, § 2, is further amended by adding at the end a new paragraph to read:

There is created an Environmental Advisory Committee consisting of 7 members who shall be appointed by the Governor. In appointing members of the committee, the Governor shall seek to achieve a fair representation of the business community and environmental interests. Members of the committee shall serve at the pleasure of the Governor, without compensation and shall select one among their members to act as chairperson and call meetings. The committee shall make recommendations to the Governor on persons qualified to serve on the board. Since it is an objective of this committee to obtain competent representatives to serve on the committee and perform its functions, service on the committee shall not, in itself, constitute a conflict of interest regardless of the occupations or associations of the members.

Sec. 12. Initial board. Of the board members first appointed, 3 shall be appointed for a term of one year, 3 for a term of 2 years, 2 for a term of 3 years and 2 for a term of 4 years. The enactment of this Act shall not have the effect of terminating or in any way modifying any liability which is in existence as of the effective date of this Act or any rule, regulation, policy or procedure until such time as duly changed or modified by the board.

Sec. 13. Effective date. This Act becomes effective on January 1, 1982.

STATEMENT OF FACT

This bill is intended to address 3 principal concerns which have arisen in all sections with respect to the Board of Environmental Protection. These 3 areas are:

1. Lack of board technical expertise;
2. Lack of access to the board; and
3. Excessive board agendas.

The approach of this bill is to establish 4 subboards with 3 members each, 2 of whom will have experience or knowledge in technical matters. The subboards will also act as informal mediators to resolve disputes between the staff and interested parties.