

MAINE STATE LEGISLATURE

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1 (Governor's Bill)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 2066

8 S. P. 925 In Senate, March 12, 1981
9 Referred to the Committee on Energy and Natural Resources and
ordered printed. Sent down for concurrence.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

Cosponsors: Representative Hall of Sangerville and Senator
McBreairy of Aroostook.

10
11 **STATE OF MAINE**
12

13 IN THE YEAR OF OUR LORD
14 NINETEEN HUNDRED AND EIGHTY-TWO
15

16 **AN ACT Implementing Certain Recommendations**
17 **of the Citizens' Commission to Evaluate**
18 **the Department of Environmental Protection.**
19

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

21 **Sec. 1. 38 MRSA §341**, as last amended by PL 1977, c.
22 213, §4, is repealed and the following enacted in its place:

23 §341. Department

24 The Department of Environmental Protection, in this
25 chapter called the "department," shall protect and improve
26 the quality of our natural environment and the resources
27 which constitute it and shall enhance the public's oppor-
28 tunity to enjoy the environment by directing growth and
29 development which will preserve for all time an ecologically
30 sound and aesthetically pleasing environment. The depart-
31 ment shall consist of the Board of Environmental Protection
32 and of a Commissioner of Environmental Protection. It shall
33 be the duty of the department, exercising the police power

1 of the State, to control, abate and prevent the pollution of
2 air, waters and coastal flats and prevent diminution of the
3 highest and best use of the natural environment of the
4 State.

5 The department is designated the public agency of the
6 State for the purpose of accepting federal funds in relation
7 to water pollution control, water resources and air pollu-
8 tion studies and control. The department may, subject to
9 the approval of the Governor, accept federal funds available
10 for water pollution control, water resources and air pollu-
11 tion studies and controls.

12 Sec. 2. 38 MRSA §342, as last amended by PL 1981, c.
13 526, §1, is repealed.

14 Sec. 3. 38 MRSA §§342-A to 342-C are enacted to read:
15 §342-A. Commissioner

16 The Commissioner of Environmental Protection, in this
17 chapter called the "commissioner," shall be the chief admin-
18 istrator of the department and shall be responsible for ad-
19 ministering and enforcing the environmental laws of the
20 State.

21 1. Appointment. The commissioner shall be appointed
22 by the Governor, subject to review by the joint standing
23 committee of the Legislature having jurisdiction over energy
24 and natural resources and to confirmation by the Legislature
25 and shall serve at the pleasure of the Governor.

26 2. Duties. The commissioner shall have the following
27 duties and whatever other duties the Legislature or the Gov-
28 ernor may assign.

29 A. The commissioner may employ, subject to the Person-
30 nel Law, such personnel and prescribe the duties of
31 such employees as the commissioner deems necessary to
32 fulfill the duties of the department.

33 B. The commissioner may obtain the services of con-
34 sultants on a contractual basis or otherwise as may be
35 necessary to carry out this chapter.

36 C. The commissioner may employ a deputy commissioner.
37 The deputy commissioner shall act as the commissioner
38 in the event the commissioner is unable to act, assist
39 the commissioner in providing consistent and efficient
40 management of the bureaus, coordination among the

1 bureaus and perform such other duties as the commis-
2 sioner may prescribe. The commissioner may also employ
3 a director of policy analysis, director of public
4 assistance and such bureau directors as the commis-
5 sioner deems appropriate, provided that the number of
6 bureau directors shall at no one time exceed 4.

7 Appointments made pursuant to this paragraph shall not
8 be subject to the Personnel Law and persons so
9 appointed shall serve at the pleasure of the commis-
10 sioner, provided that if any position mentioned in this
11 paragraph is subject to the Personnel Law on the effec-
12 tive date of this section, then the incumbent of the
13 position or person on leave of absence from the posi-
14 tion on that date may:

15 (1) Retain his appointment subject to the Person-
16 nel Law until July 1, 1983; or

17 (2) If the incumbent is appointed for a term,
18 retain the position until the earlier of either
19 the expiration of the term or July 1, 1983.

20 Any person permanently appointed to a position under
21 this paragraph shall have the right, for 12 months
22 subsequent to appointment, to be restored to the clas-
23 sified position from which he had been promoted or to a
24 position equivalent thereto in salary grade in an
25 agency, without impairment of his personnel status or
26 the loss of seniority, retirement or other rights to
27 which uninterrupted service in the classified service
28 would have entitled him. If the person's service in
29 that unclassified supervisory position shall have been
30 terminated for cause, that person's right to be so
31 restored shall be determined by the State Personnel
32 Board. During the 12-month period, the appointing
33 authority shall have the right to temporarily appoint a
34 person to the position under the Personnel Law, pro-
35 vided that funds are available for the appointment and
36 that it is consistent with the law. This paragraph is
37 repealed on June 30, 1983.

38 D. The commissioner may, in accordance with law,
39 approve, disapprove or approve with conditions all
40 applications within the commissioner's jurisdiction
41 which are submitted to the department, subject to the
42 right of appeal created by section 345-A. The commis-
43 sioner may initiate enforcement actions pursuant to law
44 and may negotiate and enter into agreements with fed-
45 eral, state and municipal agencies with the approval of
46 the Governor.

1 E. The commissioner shall prepare a budget for the
2 department and organize the department, except the
3 Board of Environmental Protection, into bureaus, divi-
4 sions, regional offices and other administrative units
5 that the commissioner deems necessary to fulfill the
6 duties of the department. The commissioner shall pre-
7 scribe the functions of the bureaus and other adminis-
8 trative units to ensure that the powers and duties of
9 the department are administered efficiently so that all
10 license applications and other business of the depart-
11 ment may be expeditiously completed in the public
12 interest.

13 F. The commissioner shall establish a division of
14 public assistance, under a director of public assis-
15 tance, which shall be responsible for relations with
16 the public, education and outreach efforts. The divi-
17 sion shall assist applicants and the public in their
18 relations with the department.

19 G. The commissioner may make recommendations to each
20 Legislature for improvements in the environmental pro-
21 tection laws of the State.

22 H. The commissioner is authorized to establish and
23 conduct a continuing planning process in cooperation
24 with appropriate federal, state, regional and municipal
25 officers and agencies, consistent with the requirements
26 of law, including the United States Water Pollution
27 Control Act, as amended.

28 I. The commissioner, after a public hearing, may
29 adopt, amend and repeal reasonable fees for licenses,
30 permits and approvals.

31 J. The commissioner may provide technical assistance,
32 advice and consultation at the request of any munici-
33 pality or quasi-municipal entity on matters relating to
34 solid waste management. Technical services may
35 include, but not be limited to, technical advice
36 regarding the operation of waste management facilities
37 or services and employment of consultants to assist in
38 the location or design of any type of solid waste
39 facility. The assignment of consultants shall be based
40 upon demonstrated need, including, but not limited to,
41 placement on the open-dump inventory list, noncompli-
42 ance with orders of the board or noncompliance with
43 state and federal rules.

1 §342-B. Board of Environmental Protection

2 1. Appointment. The Board of Environmental Protec-
3 tion, in this chapter called the "board," shall consist of 7
4 members appointed by the Governor, subject to review by the
5 joint standing committee of the Legislature having jurisdic-
6 tion over energy and natural resources and to confirmation
7 by the Legislature. Before appointing any person to the
8 board, the Governor shall consult with the Environmental
9 Advisory Committee established pursuant to section 342-C.
10 No legislative public hearing on the qualifications of a
11 nominee to the board may be held less than 30 days after the
12 posting of the nomination by the Governor.

13 Members shall be appointed for a term of 4 years and shall
14 serve until their successors are appointed and duly quali-
15 fied, except that those members currently serving shall conti-
16 inue in office until the end of the term for which they are
17 appointed.

18 2. Qualifications. Members of the board shall be cho-
19 sen to represent the broadest possible interest and experi-
20 ence which can be brought to bear in the implementation of
21 all pertinent laws and shall have the ability to make
22 informed and objective decisions on the basis of their
23 knowledge and experience and the facts before them.

24 At such time as the State applies for and receives authority
25 to issue permits under the appropriate provisions of the
26 United States Water Pollution Control Act, as amended, no
27 person may serve as a board member who receives, or during
28 the 2 years prior to his appointment has received, a sig-
29 nificant portion of his income directly or indirectly from
30 license or permit holders or applicants for a license or
31 permit.

32 No officer or employee of the State may be eligible to serve
33 on the board.

34 3. Compensation and expenses. Members of the board
35 shall receive \$50 a day for their services at meetings or
36 hearings and shall receive necessary travel expenses for
37 attending any meetings or hearings of the board or for any
38 other travel in connection with the official business of the
39 board and under the specific authority of the board. The
40 travel expenses shall be paid out of the General Fund. The
41 chairman of the board shall be entitled to additional com-
42 ensation of \$25 a day for service at meetings or hearings.

1 4. Officers. The Governor shall designate annually
2 one of the board members to serve as chairman. The chairman
3 shall be responsible for chairing meetings and hearings of
4 the board, communicating with the department regarding staff
5 assistance, budgets and facilities, coordinating the activi-
6 ties of the board with the commissioner, securing the assis-
7 tance of the Attorney General at appropriate times, schedul-
8 ing meetings and hearings, signing board documents and
9 establishing a continuing educational program for the board.
10 The board shall annually elect a secretary who need not be a
11 member of the board.

12 5. Meetings. Meetings of the board shall be held at
13 such times and places as is determined by the chairman or a
14 majority of the board, but not fewer than 6 meetings each
15 year shall be held. Five members of the board shall consti-
16 tute a quorum for meetings.

17 6. Hearings. The board shall hold hearings as re-
18 quired by statute or rule. Five members of the board shall
19 constitute a quorum for hearings.

20 7. Attendance. Any member of the board who is absent
21 from more than 4 consecutive board meetings or hearings, or
22 both, without medical excuse or similar good cause, may be
23 removed from membership by the Governor. Within 60 days of
24 removing a member for nonattendance, the Governor shall
25 nominate a replacement to serve the unexpired term of the
26 person so removed, subject to the confirmation procedures of
27 subsection 1.

28 8. Licensing and appeals. The board may, in accor-
29 dance with law, approve, disapprove or approve with condi-
30 tions all applications in which it has original jurisdiction
31 and which are referred to it by the commissioner pursuant to
32 section 344-A.

33 The board shall, in accordance with section 345-A, hear
34 appeals from decisions of the commissioner regarding appli-
35 cations.

36 The board may adopt rules necessary for the proper discharge
37 of its duties.

38 9. Employment of consultants. The board may obtain
39 the services of consultants on a contractual basis or other-
40 wise as may be necessary to carry out this chapter. Con-
41 sultants hired from outside the department shall be paid out
42 of the General Fund, provided that the board shall not obli-
43 gate funds in excess of those appropriated for this purpose
44 by the Legislature.

1 §342-C. Environmental Advisory Committee

2 There is established an Environmental Advisory Commit-
3 tee consisting of 12 members who shall be appointed by the
4 Governor and who shall serve at the pleasure of the Governor
5 and without compensation. In appointing members of the com-
6 mittee, the Governor shall seek to achieve a fair repre-
7 sentation of industry, environmental groups, municipalities
8 and the general public. The Governor shall appoint 3 mem-
9 bers of the general public and shall appoint 3 persons from
10 a list of not less than 6 individuals furnished by each of
11 the interest groups mentioned in this paragraph in accord-
12 ance with procedures to be established by the Governor.
13 The committee shall elect one of its members to be chairman.
14 The committee shall advise the Governor on board appoint-
15 ments and reappointments, provide advice on public parti-
16 cipation in department decision making, comment on proposed
17 legislation and serve as liaison between the department and
18 the public.

19 The commissioner shall provide such support and infor-
20 mation as the committee requires to perform its duties.

21 Sec. 4. 38 MRSA §344, as last amended by PL 1977, c.
22 694, §§753 and 754, is repealed.

23 Sec. 5. 38 MRSA §344-A is enacted to read:

24 §344-A. Processing of applications

25 1. Notification to applicant and others. The commis-
26 sioner shall, within 10 working days of receipt of an appli-
27 cation, notify the applicant of the official date on which
28 the application was accepted by the department as
29 procedurally complete or return the application to the
30 applicant, specifying in writing the reasons for returning
31 the application or retain the application and specify the
32 additional information required.

33 The commissioner shall give reasonable notice to the appli-
34 cant and to any person who has filed a written request for
35 notice of the date on which the application will be acted
36 upon and that a draft order relating to the application is
37 available to any person at the Augusta office of the depart-
38 ment prior to the date on which the application will be
39 acted upon.

40 All correspondence notifying the applicant of decisions by
41 the commissioner or the board shall be by certified mail,
42 return receipt requested.

1 2. Jurisdiction. All applications submitted to the
2 department shall be decided, subject to the right of appeal
3 created by section 345-A, by the commissioner, except that
4 original jurisdiction over the following applications shall
5 be in the board and the commissioner shall, after review for
6 procedural completeness, refer the following applications to
7 the board for decision:

8 A. Applications containing a written request by the
9 applicant that the board exercise original jurisdiction
10 over the application and that the commissioner refer
11 the application to the board for decision; and

12 B. Applications which in the judgment of the commis-
13 sioner are of substantial statewide or regional sig-
14 nificance or which may be a significant precedent.

15 3. Procedures to establish timetables. The department
16 shall establish categories of applications which are subject
17 to timetables for action and permitting by general stan-
18 dards.

19 A. The commissioner shall establish 2 categories for
20 the processing of applications. Category I shall be
21 completed in 90 days and category II shall be completed
22 in 120 days. All applications shall be placed in cate-
23 gory I unless the commissioner determines that he needs
24 the additional processing time allowed by category II.

25 The processing time for each category does not include
26 time beyond the control of the State, such as time pro-
27 vided to applicants to gather information and time
28 associated with applicable notice and hearing require-
29 ments.

30 B. The department may establish specific standards for
31 those activities subject to any act under its jurisdic-
32 tion, the proper execution of which are deemed to have
33 no significant impact upon the environment and which
34 are not inconsistent with the purposes of this Title,
35 provided that such standards shall be approved by the
36 board.

37 4. Application tracking. The department shall estab-
38 lish procedures for tracking applications at all phases of
39 the application process. In addition, the commissioner
40 shall review the status of all applications on a periodic
41 basis.

1 5. Fees. The commissioner may establish reasonable
2 fees for the reproduction of materials in the custody of the
3 department, including all or part of any application submit-
4 ted to the department. All such fees may be retained by the
5 department to reimburse expenses incurred in reproducing
6 those materials.

7 Sec. 6. 38 MRSA §345, as last amended by PL 1981, c.
8 524, §16, is repealed and the following enacted in its
9 place:

10 §345. Hearings; decisions

11 1. Hearings by commissioner and board. The commis-
12 sioner or the board, as the case may be, shall conduct hear-
13 ings in those cases in which a hearing is required by law
14 and in those cases in which, in the opinion of the commis-
15 sioner or the board, the subject matter of the application
16 is of significant public interest, provided that the board
17 shall conduct hearings in cases referred to it pursuant to
18 section 344-A, subsection 2, paragraph B.

19 Except as provided in section 347 and the Maine Administra-
20 tive Procedure Act, Title 5, chapter 375, whenever the com-
21 missioner is required or empowered to conduct a hearing pur-
22 suant to any provision of law and the commissioner is, for
23 good cause, unable to preside, the hearing may be held and
24 presided over by the deputy commissioner or a director of
25 the department, as authorized by the commissioner.

26 2. Notification. Prior to any hearing conducted by
27 the commissioner or board, the department shall:

28 A. Publish notice of the hearing twice in a newspaper
29 of general circulation in the area affected. The date
30 of the first publication shall be at least 20 days
31 prior to the date of the hearing and the 2nd publi-
32 cation shall be in the same newspaper no more than 10
33 days prior to the date of the hearing. In addition,
34 the notice may be published in any other trade, indus-
35 try, professional or interest group publication which
36 the board deems necessary to reach persons affected;

37 B. Provide notice of the hearing to any applicant by
38 registered mail at least 10 days before the date of the
39 hearing; and

40 C. Provide notice of the hearing at least 10 days
41 before the date of the hearing by regular mail to per-
42 sons who have filed with the commissioner within the

1 past year a written request to receive notification of
2 hearings.

3 3. Contents of notice. The public notice and notice
4 of hearing to the applicant and others shall contain:

5 A. A reference to the statutory authority for conduct
6 of the hearing;

7 B. A statement of the purpose of the hearing, includ-
8 ing, for hearings involving the adoption, repeal or
9 modification of a regulation, a concise description of
10 the regulation proposed;

11 C. A statement of the time, date and place of the
12 hearing and the manner in which views may be submitted
13 for consideration by the board; and

14 D. A statement of the place and time where relevant
15 material may be examined, and the name, address and
16 telephone number of the person from whom further infor-
17 mation may be obtained.

18 4. Fees. The commissioner may establish fees which
19 recover the expenses entailed in providing notice to inter-
20 ested persons required by this section or reproducing all or
21 any part of the record of any hearings for the applicant or
22 interested persons.

23 5. Record. A full and complete record shall be kept
24 of all hearings by the commissioner or the board, which may
25 be provided by an electronic record in the discretion of the
26 presiding officer. If an electronic record is kept, it must
27 be kept in a form which members of the public can either
28 listen to or read, provided that no such record need be
29 retained longer than one year after the license which is the
30 subject of the record has expired, or would have expired had
31 it been granted. In the event any person requests a tran-
32 script of such an electronic record, he shall bear the costs
33 of the transcription, unless, in the judgment of the commis-
34 sioner or the board, the interests of justice require that
35 the State should bear the costs.

36 6. Written decisions. Every decision of the commis-
37 sioner and the board, other than those concerning the adop-
38 tion, repeal or modification of regulations, which shall be
39 governed by the Maine Administrative Procedure Act, Title 5,
40 chapter 375, shall be in writing and shall include findings
41 of fact and conclusions of law. A copy of the decision
42 shall be delivered in accordance with Title 5, section 9061,

1 to each party of record and to each person who has filed a
2 written request to receive a copy of the decision. Written
3 notice of the party's or person's rights to review an appeal
4 of the decision, within the agency or by the courts, as the
5 case may be, and of the action required and the time within
6 which the action must be taken in order to exercise the
7 right of review or appeal, shall be given to each such party
8 or person with the decision.

9 Sec. 7. 38 MRSA §345-A is enacted to read:

10 §345-A. Administrative appeals

11 1. Standing. The applicant and any person who par-
12 ticipated in the application process at the commissioner
13 level, either through submission of written comments or
14 through oral or written testimony at a hearing, or any
15 aggrieved person granted leave to appeal by the board, may
16 appeal a decision by the commissioner to the board.

17 2. Petition for appeal. Within 30 days of receipt of
18 a notice of a decision by the commissioner, a person wishing
19 to appeal the decision shall file with the chairman of the
20 board, with a copy to the commissioner, a written petition
21 for appeal which outlines the issues on appeal and the
22 relief requested, provided that the filing of such a peti-
23 tion for appeal shall either operate as a stay of the com-
24 missioner's decision, or not, as he shall in his order spe-
25 cifically so provide, taking equitable considerations into
26 account, provided that, upon a showing by the appellant
27 that, notwithstanding a decision of the commissioner to the
28 contrary, such a stay is necessary to prevent immediate and
29 serious injury, loss or damage to the environment or for
30 other good cause shown, it shall be granted. The grant of a
31 stay may be made upon the affirmative vote of at least 3
32 members of the board, together with such terms and condi-
33 tions as they may prescribe.

34 3. Preappeal conference. Upon receipt of a copy of a
35 petition for appeal, the chairman of the board or his desig-
36 nee shall schedule a preappeal conference to be held within
37 30 days and shall notify the petitioner and persons who have
38 standing under subsection 1 of the time and place for the
39 conference.

40 The chairman or his designee shall review, with the peti-
41 tioner and persons so notified and in attendance, the
42 petitioner's outline of the issues on appeal. The chairman
43 or his designee may modify the outline of the issues on
44 appeal to produce greater clarity and to ensure that the

1 outline is a fair representation of the evidence and pro-
2 ceedings at the commissioner level. He shall notify the
3 board of any actions taken by the chairman or his designee
4 at the preappeal conference.

5 Upon motion of the petitioner or any person who participated
6 in the preappeal conference, the board may modify any action
7 taken by the chair or his designee regarding the outline of
8 issues on appeal to prevent manifest injustice.

9 4. Hearing. Upon receipt of a petition for appeal,
10 the chairman shall schedule a hearing on the petition except
11 upon the stipulation of the parties to the contrary.

12 Upon receipt of notice of the filing of a petition for
13 appeal, the commissioner shall deliver to the board the
14 record in the case.

15 The board may hear such relevant evidence as it deems neces-
16 sary to arrive at a fair decision on the appeal.

17 The board may upon motion dismiss an appeal without a full
18 hearing when, after a review of the petition for appeal, it
19 determines that the appeal is clearly frivolous or that the
20 appellant lacks standing under subsection 1 to bring the
21 appeal.

22 Except as otherwise provided in this section and section
23 346, the provisions of the Maine Administrative Procedure
24 Act, Title 5, chapter 375, shall apply to hearings before
25 the board on petitions for appeal.

26 5. Decision. The board may substitute its judgment
27 for that of the commissioner on questions of fact and law
28 and may affirm the commissioner's decision, remand the case
29 to the commissioner or reverse or modify the commissioner's
30 decision. The board shall issue its decision on appeal not
31 more than 90 days after the receipt of a petition for
32 appeal. The board shall adopt regulations governing the
33 processing of appeals.

34 6. Prerequisite for judicial appeal. With respect to
35 decisions made initially by the commissioner, final disposi-
36 tion of a petition for appeal shall be a prerequisite for
37 filing of a judicial appeal.

38 Sec. 8. 38 MRSA §361, first ¶, as last amended by PL
39 1977, c. 596, §2, is repealed.

40 Sec. 9. 38 MRSA §361, 2nd ¶, as last amended by PL
41 1975, c. 614, §1, is repealed.

1 **Sec. 10.** 38 MRSA §361, 3rd to 6th ¶¶, as last amended
2 by PL 1971, c. 618, §9, are repealed.

3 **Sec. 11. Termination of terms.** Upon the termination
4 of the terms of the first 3 members of the Board of Environ-
5 mental Protection to leave office because of resignation,
6 removal or the expiration of the term next following the
7 effective date of this Act, those terms and positions shall
8 cease to exist.

9 **Sec. 12. Transition clause.**

10 1. Legislative intent. The person serving as Commis-
11 sioner of Environmental Protection on the effective date of
12 this Act shall continue in that office, subject to the right
13 of the Governor to remove and replace that person. The com-
14 missioner shall continue to serve ex officio as a member of
15 the board until a successor is appointed, provided that the
16 term of the commissioner shall not continue beyond April 30,
17 1983.

18 All applications filed before the effective date of
19 this Act shall be governed by the laws effective at the time
20 of filing, to the extent reasonably practicable, except upon
21 the unanimous written assent of all parties of record and
22 with the approval of the commissioner.

23 2. Rules, regulations and procedures. All existing
24 regulations currently in effect and operation in the Depart-
25 ment of Environmental Protection shall continue in effect,
26 unless in conflict with this Act, until rescinded, amended
27 or changed. "Regulation" includes any regulation, rule,
28 order, administrative procedure, policy, determination,
29 directive, authorization, permit, license, privilege, re-
30 quirement, designation or agreement.

31 **Sec. 13. Revision clause.** Wherever the term "Board of
32 Environmental Protection" appears in this Title, it shall be
33 construed to mean the Commissioner of Environmental Protec-
34 tion.

35 **Sec. 14. Appropriation.** The following funds are
36 appropriated from the General Fund to carry out the purposes
37 of this Act.

38 1982-83

39 ATTORNEY GENERAL,
40 DEPARTMENT OF

1	Positions	(1)
2	Personal Services	\$16,800
3	Total	\$16,800

4 Provides funds for an
5 Assistant Attorney Gen-
6 eral assigned to the
7 Department of Environ-
8 mental Protection pres-
9 ently funded by federal
10 funds.

11 ENVIRONMENTAL PROTECTION,
12 DEPARTMENT OF

13	Positions	(1)
14	Personal Services	\$30,000
15	All Other	20,000
16	Capital Expenditures	10,000
17	Total	\$60,000

18 Includes funds and posi-
19 tion for deputy commis-
20 sioner, funds for con-
21 tractual services and
22 staff training and capi-
23 tal funds for computer
24 services.

25 STATEMENT OF FACT

26 This bill is designed to implement certain recommenda-
27 tions of the Governor's Citizens' Commission to Evaluate the
28 Department of Environmental Protection to reform and improve
29 the performance of that department in carrying out its work
30 of protecting the environment. The changes proposed affect
31 the organization and procedures of the department to
32 increase efficiency, accountability and responsiveness, but
33 do not affect any of the substantive laws administered and
34 enforced by the department to assure protection of the envi-
35 ronment.

36 The specific changes are as follows.

37 Section 1 restates the mandate of the department while
38 deleting obsolete language relating to its origins.

39 Sections 2 and 3 restate the duties of the commis-
40 sioner, authorize and define the responsibilities of a dep-

1 uty commissioner and, effective July 1, 1983, unclassify the
2 bureau directors and create the positions of directors of
3 public assistance and of policy analysis, and authorize the
4 commissioner to issue certain licenses, in addition to his
5 present duties. Appropriate adjustments for salaries of
6 declassified personnel will be included in the budget
7 request for next year.

8 Section 3 also eliminates the commissioner from the
9 Board of Environmental Protection; reduces the number of
10 members from 10 to 7, by attrition; increases the per diem
11 compensation from \$40 to \$50, with an additional \$25 for the
12 chairman; designates additional duties for the chairman;
13 requires attendance at most meetings and authorizes the
14 board to hear certain matters originally and all appeals
15 from decision of the commissioner.

16 Section 3 also creates a new 12-member Environmental
17 Advisory Committee, appointed by the Governor, consisting of
18 representatives of the general public, industry, environ-
19 mental groups and municipalities, to advise on appointments,
20 legislation and public participation in departmental deci-
21 sion making.

22 Section 5 tightens up the time limits within which the
23 department must act on applications and eliminates provi-
24 sions for delegation of responsibility for licensing by the
25 board to the commissioner, replacing them with a provision
26 that authorizes the commissioner to rule on all license
27 applications, except when the applicant requests the board
28 take original jurisdiction, or when, because of the signifi-
29 cance of the application, that commissioner refers it to the
30 board.

31 It also authorizes the commissioner to set timetables
32 for action on applications and to allow permitting by gen-
33 eral standards, with the approval of the board.

34 Section 6 requires public hearings on applications by
35 the commissioner or board when required by law, or appropri-
36 ate because of public interest, and retains existing notice
37 requirements.

38 Section 7 provides that any decision of the commis-
39 sioner may be appealed to the board by the applicant or
40 other citizens with standing, and establishes new prehearing
41 requirements to clarify the issues for the board. Hearings
42 on disputed issues submitted to the board will be de novo.

1 Sections 8, 9 and 10 repeal the existing provisions
2 concerning the organization of the board, which are now pro-
3 vided for by section 3 of this bill, but retain provisions
4 relating to environmental protection.

5 Section 11 is a termination provision that terminates
6 certain positions on the board on the effective date of the
7 termination of current terms.

8 Section 12 is a transitional provision providing for
9 processing applications pending at the time this bill goes
10 into effect. It keeps in effect all regulations promulgated
11 by the present Bureau of Environmental Protection unless or
12 until modified by the new board.

13 Section 13 provides a revision clause.

14 Section 14 provides for the appropriation necessary to
15 carry out the purposes of this bill.

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