

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 925, L.D. 2066)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 2130
7

8
9 S. P. 968 In Senate, March 31, 1982
Reported by Senator McBreairty of Aroostook from the Committee
on Energy and Natural Resources and printed under Joint Rules No. 2.
MAY M. ROSS, Secretary of the Senate

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. 5 MRSA §711, sub-§2, ¶A, sub-¶(18) is enacted
22 to read:

23 (18) Department of Environmental Protection:

24 (a) Deputy Commissioner.

25 Sec. 2. 38 MRSA §341, as last amended by PL 1977, c.
26 213, §4, is repealed and the following enacted in its place:

27 §341. Department

28 The Department of Environmental Protection, in this
29 chapter called the "department," shall protect and improve
30 the quality of our natural environment and the resources

1 which constitute it and shall enhance the public's oppor-
2 tunity to enjoy the environment by directing growth and
3 development which will preserve for all time an ecologically
4 sound and aesthetically pleasing environment. The depart-
5 ment shall consist of the Board of Environmental Protection
6 and of a Commissioner of Environmental Protection. It shall
7 be the duty of the department, exercising the police power
8 of the State, to control, abate and prevent the pollution of
9 the natural environment of the State.

10 The department shall establish coordination and assis-
11 tance procedures for all environmental permits issued by
12 agencies of the State for activities within the organized
13 municipalities. These procedures shall, to the extent
14 practicable, ensure: The availability to the public of
15 necessary information concerning those environmental per-
16 mits; the provision of assistance to applicants in obtaining
17 those permits from all such agencies; and the coordination
18 of application procedures, time schedules, application forms
19 and similar requirements so as to reduce delay and dupli-
20 cation of effort by the applicant and the issuing agencies.
21 Permit issuing agencies shall cooperate with the department
22 in the development and implementation of coordination and
23 assistance procedures.

24 Sec. 3. 38 MRSA §§341-A, 341-B and 341-C are enacted
25 to read:

26 §341-A. Board of Environmental Protection

27 1. Appointment. The Board of Environmental Protection
28 shall consist of 10 members appointed by the Governor, sub-
29 ject to review by the joint standing committee of the Legis-
30 lature having jurisdiction over natural resources and to
31 confirmation by the Legislature. Before appointing any
32 person to the board, the Governor shall consult with the
33 Environmental Advisory Committee established under section
34 341-C. No legislative public hearing on the qualifications
35 of a nominee to the board may be held less than 30 days
36 after the posting of the nomination by the Governor.

37 2. Terms. Members shall be appointed for a term of 4
38 years and shall serve until their successors are appointed
39 and duly qualified.

40 3. Qualifications. Members of the board shall be cho-
41 sen to represent the broadest possible interest and experi-
42 ence which can be brought to bear in the implementation of
43 all laws which the board is charged with the duty of admin-
44 istering, and shall have the ability, knowledge and experi-

1 ence to make informed and objective decisions on the basis
2 of the facts before them.

3 At such time as the State applies for and receives authority
4 to issue permits under the appropriate provisions of the
5 United States Water Pollution Control Act, as amended, no
6 person may serve as a board member who receives, or during
7 the 2 years prior to his appointment has received, a sig-
8 nificant portion of his income directly or indirectly from
9 license or permit holders or applicants for a license or
10 permit.

11 The commissioner may not serve on the board.

12 4. Officers. The board shall annually elect a member
13 to serve as chairman. The chairman or his designee shall
14 chair meetings and hearings of the board, communicate with
15 the department regarding staff assistance, budgets and
16 facilities, coordinate the activities of the board with the
17 commissioner, schedule meetings and hearings and establish a
18 continuing educational program for the board. The board
19 shall annually elect a secretary who need not be a member of
20 the board.

21 5. Compensation. Members of the board shall receive
22 \$50 a day, plus necessary expenses for attending meetings,
23 hearings or conducting other official business approved by
24 the board. The chairman shall receive \$75 a day, plus
25 necessary expenses for conducting any official business
26 which is approved by the board.

27 6. Meetings. Meetings of the board shall be held at
28 such times and places as is determined by the chairman or a
29 majority of the board, but not fewer than 6 meetings each
30 year shall be held.

31 7. Quorum. Six members shall constitute a quorum at
32 board meetings and, notwithstanding Title 5, section 8052, 3
33 members shall constitute a quorum at public hearings.

34 §341-B. Powers and duties of the board

35 1. Permits and licenses. The board may, in accordance
36 with law, approve, disapprove or approve with conditions all
37 applications for licenses or permits over which it has
38 jurisdiction.

39 2. Prevention of pollution. The board shall make
40 recommendations to each Legislature with respect to the con-
41 trol, abatement and prevention of pollution of the air,

1 waters, coastal flats and other aspects of the natural envi-
2 ronment within the State for the benefit of the citizens of
3 this State.

4 3. Classification. The board shall make recommenda-
5 tions to each Legislature with respect to the classification
6 of the waters and coastal flats and sections thereof within
7 the State, based upon reasonable standards of quality and
8 use.

9 4. Rules. The board, in accordance with the Maine
10 Administrative Procedure Act, Title 5, chapter 375, may
11 adopt, amend and repeal reasonable rules necessary for the
12 proper administration, enforcement, implementation and
13 interpretation of any provision of law that the department
14 is charged with the duty of administering. Rules duly
15 promulgated shall have the full force and effect of law.

16 5. Standards. Provided that they are not inconsistent
17 with the purposes of this Title, the board may adopt rules
18 designed to reduce procedural requirements and establish
19 specific standards for activities subject to any law under
20 its jurisdiction, the proper execution of which are deemed
21 to have no significant impact upon the environment.

22 6. Fees. The board, after public hearing, may adopt,
23 amend and repeal reasonable fees for licenses, permits and
24 approvals. Except as provided by statute, no fee for any
25 single license, permit or approval may exceed \$1000.

26 §341-C. Environmental Advisory Committee

27 There is established an Environmental Advisory Commit-
28 tee consisting of 12 members, who shall be appointed by the
29 Governor and who shall serve at the pleasure of the Governor
30 and without compensation. In appointing members of the com-
31 mittee, the Governor shall seek to achieve a fair repre-
32 sentation of industry, environmental groups, municipalities
33 and the general public. The committee shall elect one of
34 its members to be chairman. The committee shall advise the
35 Governor on board appointments and reappointments, provide
36 advice on public participation in department decision
37 making, comment on proposed legislation and serve as liaison
38 between the department and the public.

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

41 Sec. 4. 38 MRSA §342, as last amended by PL 1981, c.
42 526, §1, is repealed.

1 Sec. 5. 38 MRS §342-A is enacted to read:

2 §342-A. Commissioner

3 1. Appointment. The commissioner shall be appointed
4 by the Governor, subject to review by the joint standing
5 committee of the Legislature having jurisdiction over natu-
6 ral resources and to confirmation by the Legislature and
7 shall serve at the pleasure of the Governor.

8 2. Classified personnel. The commissioner may employ,
9 subject to the Personnel Law, such personnel and prescribe
10 the duties of these employees, including bureau directors,
11 as he deems necessary to fulfill the duties of the depart-
12 ment and of the board.

13 3. Deputy commissioner. The commissioner may appoint
14 a deputy commissioner, who shall serve at the commissioner's
15 pleasure, and who shall act as the commissioner, in the
16 event that he is unable to act, assist the commissioner in
17 providing consistent and efficient management of the
18 bureaus, assist in coordinating among the bureaus and per-
19 form other duties as the commissioner may prescribe.

20 4. Granting of licenses; initiate enforcement actions
21 and negotiate agreements. The commissioner may, with the
22 prior approval of the board, grant licenses, initiate
23 enforcement actions pursuant to law, negotiate and enter
24 into agreements with federal, state and municipal agencies
25 and exercise whatever other duties the board delegates to
26 him.

27 5. Organization of department. The commissioner, sub-
28 ject to the approval of a majority of the board, may organ-
29 ize the department into the bureaus, divisions, regional
30 offices and other administrative units that he deems neces-
31 sary to fulfill the duties of the department and support the
32 duties of the board. With the approval of a majority of the
33 board he shall prescribe the functions of the bureaus and
34 other administrative units to insure that the powers and
35 duties of the board are administered efficiently so that all
36 license applications and other business of the department
37 may be expeditiously completed in the public interest.

38 6. Technical services. The commissioner may provide
39 technical assistance, advice and consultation at the request
40 of any municipality or quasi-municipal entity on matters
41 relating to solid waste management. Technical services may
42 include, but not be limited to, technical advice regarding
43 the operation of waste management facilities or services and

1 employment of consultants to assist in the location or
2 design of any type of solid waste facility. The assignment
3 of consultants shall be based upon demonstrated need,
4 including, but not limited to, placement on the open-dump
5 inventory list, noncompliance with orders of the board or
6 noncompliance with state or federal rules.

7 7. Application tracking. The commissioner shall
8 establish procedures for tracking applications at all phases
9 of the application process. The commissioner shall review
10 the status of all applications on a periodic basis.

11 8. Budget. The commissioner shall annually prepare a
12 budget for the department.

13 9. Federal funds. The commissioner is designated the
14 state official for the purpose of accepting federal funds in
15 relation to water pollution control, water resources and air
16 pollution studies and control. The commissioner, subject to
17 the approval of the Governor, may accept federal funds
18 available for water pollution control, water resources and
19 air pollution studies and controls.

20 10. Planning. The commissioner may establish a con-
21 tinuing planning process in cooperation with appropriate
22 federal, state, regional and municipal officers and agen-
23 cies, consistent with the requirements of law, including the
24 United States Water Pollution Control Act, as amended.

25 Sec. 6. 38 MRSA §343, as amended by PL 1977, c. 694,
26 §§751 and 752, is repealed.

27 Sec. 7. 38 MRSA §344, sub-§3, first sentence, as
28 enacted by PL 1977, c. 300, §9, is amended to read:

29 The Commissioner of Environmental Protection commissioner
30 shall, within 10 working days of receipt of an application,
31 notify applicants of the official date on which the applica-
32 tion was accepted as procedurally complete or return the
33 application to the applicant specifying in writing the
34 reasons for returning the application.

35 Sec. 8. 38 MRSA §344, sub-§4, first ¶, last sentence,
36 as enacted by PL 1977, c. 300, §9, is repealed.

37 Sec. 9. 38 MRSA §344, sub-§4, ¶¶A, B and C, as enacted
38 by PL 1977, c. 300, §9, are repealed.

39 Sec. 10. 38 MRSA §344, sub-§4, last ¶, as enacted by
40 PL 1977, c. 300, §9, is amended to read:

1 Such delegation shall be in accordance with the standards
2 found in the applicable statute, with all procedural steps
3 applicable to applications not delegated, and with regula-
4 tions adopted by the board, which regulations shall include
5 assurance that any interested person aggrieved by a decision
6 of the commissioner or the department staff made pursuant to
7 this section shall have a right to appeal such decision to
8 the board.

9 **Sec. 11. 38 MRSA §344, sub-§4,** as enacted by PL 1977,
10 c. 300, §9, is amended by adding at the end a new paragraph
11 to read:

12 It is the intent of the Legislature to encourage delegation
13 to the commissioner and that the board shall liberally con-
14 strue this subsection.

15 **Sec. 12. 38 MRSA §345, sub-§2, ¶B,** as enacted by PL
16 1977, c. 300, §9, is amended to read:

17 B. Provide notice of the hearing to any applicant by
18 registered certified mail at least 10 days before the
19 date of the hearing; and

20 **Sec. 13. 38 MRSA §361,** as last amended by PL 1977, c.
21 596, §2, is repealed.

22 **Sec. 14. 38 MRSA §362,** as last amended by PL 1975, c.
23 771, §420, is repealed.

24 **Sec. 15. Appropriation.** The following funds are
25 appropriated from the General Fund to carry out the purposes
26 of this Act.

27 1982-83

28 ENVIRONMENTAL PROTECTION,
29 DEPARTMENT OF

30	Positions	(1)
31	Personal Services	\$30,000
32	All Other	10,000
33	Capital Expenditures	<u>10,000</u>
34	Total	\$60,000

1 Includes funds and position for deputy
2 commissioner, staff training and cap-
3 ital funds for computer services.

4 STATEMENT OF FACT

5 This new draft deletes some of the provisions of the
6 original bill. The major changes the bill makes to the
7 Department of Environmental Protection include the follow-
8 ing.

9 1. The commissioner is removed from the Board of Envi-
10 ronmental Protection. The board may annually elect one of
11 its members to serve as chairman.

12 2. The unclassified position of deputy commissioner is
13 created and funded.

14 3. The Environmental Advisory Committee is created,
15 which will advise the Governor on board appointments and
16 provide liaison between the department and various constitu-
17 encies.

18 4. There are modifications to the duties, confirmation
19 methods and qualifications of board members.

20 5. The commissioner is directed to establish a
21 permit-tracking system.

22 The new draft also makes a number of minor procedural
23 changes to the Department of Environmental Protection stat-
24 utes.

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