

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 845

6
7 S.P. 280

In Senate, February 23, 1983

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

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Kany of Kennebec.

Cosponsors: Representative Rolde of York and Representative Mitchell of
11 Freeport.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Revise the Structure of the
18 Board of Environmental Protection.
19

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

22 Sec. 1. 2 MRSA §6, sub-§3, as repealed and
23 replaced by PL 1981, c. 705, Pt. L, §§1 to 3, is
24 amended to read:

25 3. Range 89. The salaries of the following
26 state officials and employees shall be within salary
27 range 89:

28 State Director of Public Improvements;

29 State Budget Officer;

30 State Controller;

1 Director of the Bureau of Forestry;
2 Chief of the State Police;
3 Director, State Planning Office;
4 Director, Energy Resources Office;
5 Public Advocate; and
6 Commissioner of Defense and Veterans' Services;
7 and
8 Members of the Board of Environmental Protection.

9 Sec. 2. 38 MRSA §342, sub-§1, as amended by PL
10 1977, c. 564, §134, is repealed.

11 Sec. 3. 38 MRSA §342, sub-§1-A is enacted to
12 read:

13 1-A. Administration of department. He shall be
14 the chief administrative officer of the Department of
15 Environmental Protection and responsible for all
16 administrative matters of the department.

17 Sec. 4. 38 MRSA §342, sub-§4, as repealed and
18 replaced by PL 1977, c. 596, §1, is amended to read:

19 4. Organization of department. The commissioner,
20 ~~subject to the approval of a majority of the Board of~~
21 ~~Environmental Protection,~~ shall organize the depart-
22 ment into the bureaus, divisions, regional offices
23 and other administrative units that he deems neces-
24 sary to fulfill the duties of the department and sup-
25 port the duties of the Board of Environmental Protec-
26 tion. ~~With the approval of a majority of the Board~~
27 ~~of Environmental Protection,~~ he He shall prescribe
28 the functions of the bureaus and other administrative
29 units to insure that the powers and duties of the
30 board are administered efficiently so that all li-
31 cense applications and other business of the depart-
32 ment may be expeditiously completed in the public
33 interest.

34 Sec. 5. 38 MRSA §361, as amended by PL 1977, c.
35 596, §2, is repealed and the following enacted in its
36 place:

1 §361. Organization; compensation; meetings; duties

2 The Board of Environmental Protection, as estab-
3 lished and in this subchapter called the "board,"
4 shall consist of 3 members appointed by the Governor,
5 subject to review by the joint standing committee of
6 the Legislature having jurisdiction over natural
7 resources and to confirmation by the Legislature. One
8 member of the board shall be designated by the Gover-
9 nor as chairman. All 3 members of the board shall
10 devote full time to their duties. Members of the
11 board shall be chosen to represent the broadest poss-
12 ible interest and experience which can be brought to
13 bear in the implementation of this Title and all
14 other laws which the board is charged with the duty
15 of administering. The members shall be appointed for
16 terms of 6 years and serve until their successors are
17 appointed and duly qualified. Any vacancy shall be
18 filled by an appointment for the remainder of the
19 unexpired term.

20 Board members shall receive actual expenses when
21 traveling on official business.

22 Meetings of the board shall be held at such time
23 and place as shall be determined by the board. The
24 board shall in October of each year appoint a secre-
25 tary who shall not be chosen from among the members
26 of the board, but who shall be a departmental
27 employee. Two members of the board shall constitute a
28 quorum.

29 The Commissioner of Environmental Protection and
30 the board may obtain the services of consultants on a
31 contractual basis or otherwise as may be necessary to
32 carry out this subchapter.

33 It is the duty of the board, exercising the
34 police power of the State, to control, abate and pre-
35 vent the pollution of the air, waters, coastal flats
36 and prevent diminution of the highest and best use of
37 the natural environment of the State. The board shall
38 make recommendations to each subsequent Legislature
39 with respect to the classification of the waters and
40 coastal flats and sections thereof within the State,
41 based upon reasonable standards of quality and use.

1 The board shall make recommendations to each
2 Legislature with respect to the control, abatement
3 and prevention of pollution of the air, waters,
4 coastal flats and other aspects of the natural envi-
5 ronment within the State for the benefit of the citi-
6 zens of this State.

7 The department shall consult with and advise the
8 authorities of municipalities, persons and businesses
9 having, or about to have, systems of drainage, sewer-
10 age or industrial wastes, except purely storm water
11 systems located in or on or draining from public
12 ways, as to the best methods of disposing of the
13 drainage, sewage or industrial wastes with reference
14 to the existing and future needs of the municipality,
15 other municipalities, persons or businesses which may
16 be affected thereby. It may consult with and advise
17 with persons or corporations engaged or intending to
18 engage in any manufacturing or other business whose
19 drainage, sewage or industrial wastes, may tend to
20 pollute any waters under the jurisdiction of the
21 board, as to the best methods of preventing that pol-
22 lution, and it may conduct experiments to determine
23 the best methods of the purification or disposal of
24 drainage, sewage and industrial wastes. Municipaliti-
25 es, sewer districts, quasi-municipal corporations,
26 firms, persons, state agencies and other legal enti-
27 ties shall submit to the board for its advice and
28 approval the plans and specifications for any pro-
29 posed new system of drainage, sewage disposal, sewage
30 treatment or industrial waste disposal into any
31 waters of the State, except purely storm water sys-
32 tems located in or on or draining from public ways
33 and any alterations in existing facilities.

34 The board may establish and conduct a continuous
35 planning process in cooperation with appropriate fed-
36 eral, state, regional and municipal officers and
37 agencies, consistent with the requirements of the
38 Federal Water Pollution Control Act, as amended.

39 The commissioner after a public hearing may
40 adopt, amend and repeal reasonable fees not to exceed
41 \$500 for licenses, permits and approvals that require
42 continuing surveillance.

1 At such time as the State applies for and
2 receives authority to issue permits under the appro-
3 propriate provisions of the Federal Water Pollution Con-
4 trol Act, as amended, no person may serve as a board
5 member who receives, or during the 2 years prior to
6 his appointment has received, a significant portion
7 of his income directly or indirectly from license or
8 permit holders or applicants for a license or permit.

9 Sec. 6. 38 MRSA §362, as amended by PL 1975, c.
10 771, §420, is further amended to read:

11 §362. Authority to accept federal funds

12 The ~~board~~ department is designated the public
13 agency of the State of Maine for the purpose of ac-
14 cepting federal funds in relation to water pollution
15 control, water resources and air pollution studies
16 and control. The ~~board~~ commissioner is authorized,
17 subject to the approval of the Governor, to accept
18 federal funds available for water pollution control,
19 water resources and air pollution studies and control
20 and meet such requirements with respect to the admin-
21 istration of such funds, not inconsistent with this
22 subchapter, as are required as conditions precedent
23 to receiving federal funds. The Treasurer of State
24 shall be the appropriate fiscal officer of the State
25 to receive federal grants on account of water pollu-
26 tion control, water resources and air pollution
27 studies and control, and the State Controller shall
28 authorize expenditures therefrom as approved by the
29 ~~board~~ commissioner.

30 Sec. 7. 38 MRSA §390-A, sub-§1, as enacted by PL
31 1981, c. 509, §1, is amended to read:

32 1. Fund purposes and administration. There is
33 established a nonlapsing Lake Restoration and Protec-
34 tion Fund, from which the ~~Board of Environmental Pre-~~
35 ~~tection~~ commissioner is authorized to pay up to 25%
36 from state appropriations of the eligible costs
37 incurred in a lake restoration or protection project
38 which has received federal approval and at least 50%
39 federal funding. Eligible costs include all costs
40 except those related to land acquisition, legal fees
41 and debt service. All income received by the State
42 from the United States Environmental Protection

1 Agency for lake restoration or protection projects
2 under the United States Code, Title 33, Section 1324,
3 shall be deposited with the Treasurer of State to be
4 credited to the Lake Restoration and Protection Fund.
5 All moneys credited to that fund shall be used by the
6 Board of Environmental Protection department for
7 projects to improve or maintain the quality of lake
8 waters in the State, and for no other purpose.

9 The Commissioner of Environmental Protection may, ~~at~~
10 ~~the direction of the board,~~ authorize the State Con-
11 troller to draw his warrant for such funds as may be
12 necessary to pay the lawful expenses of the lake res-
13 toration or protection project, up to the limits of
14 the state and federal portions duly authorized. Any
15 balance remaining in the fund shall continue without
16 lapse from year to year and remain available for the
17 purposes for which the fund is established and no
18 other purpose.

19 Sec. 8. 38 MRSA §541, 4th ¶, as amended by PL
20 1971, c. 618, §12, is further amended to read:

21 The Legislature intends by the enactment of this
22 legislation to exercise the police power of the State
23 through the Board of Environmental Protection and the
24 Department of Environmental Protection by conferring
25 upon ~~said~~ the board the exclusive power to deal with
26 the hazards and threats of danger and damage posed by
27 ~~such~~ those transfers and related activities; to re-
28 quire the prompt containment and removal of pollution
29 occasioned thereby; to provide procedures whereby
30 persons suffering damage from ~~such~~ those occurrences
31 may be promptly made whole; and to establish a fund
32 to provide for the inspection and supervision of ~~such~~
33 those activities and guarantee the prompt payment of
34 reasonable damage claims resulting therefrom.

35 Sec. 9. 38 MRSA §548, as amended by PL 1979, c.
36 541, Pt. A, §266, is further amended to read:

37 §548. Removal of prohibited discharges

38 Any person discharging oil, petroleum products or
39 their by-products in the manner prohibited by section
40 543 shall immediately undertake to remove ~~such~~ that
41 discharge to the board's satisfaction. Notwithstand-

1 ing the above requirement, the board department may
2 undertake the removal of such that discharge and may
3 retain agents and contracts for such that purposes
4 who shall operate under the direction of the board.

5 Any unexplained discharge of oil, petroleum prod-
6 ucts or their by-products within state jurisdiction
7 or discharge of oil, petroleum products or their by-
8 products occurring in waters beyond state jurisdic-
9 tion that for any reason penetrates within state
10 jurisdiction shall be removed by or under the direc-
11 tion of the board department. Any expenses involved
12 in the removal of discharges, whether by the person
13 causing the same, the person reporting the same or
14 the board by itself or through its agents or contrac-
15 tors, shall be paid in the first instance from the
16 Maine Coastal Protection Fund and any reimbursements
17 due that fund shall be collected in accordance with
18 section 551.

19 Sec. 10. 38 MRSA §549, as amended by PL 1979, c.
20 541, Pt. A, §267, is further amended to read:

21 §549. Personnel and equipment

22 The board department shall establish and maintain
23 at such ports within the State, and other places as
24 it shall determine, such employees and equipment as
25 in its judgment may be necessary to carry out this
26 subchapter. The board commissioner, subject to the
27 Personnel Law, may employ such personnel as may be
28 necessary to carry out the purposes of this subchap-
29 ter, and shall prescribe the duties of such those
30 employees. The salaries of such those employees and
31 the cost of such that equipment shall be paid from
32 the Maine Coastal Protection Fund established by this
33 subchapter. The board department and the Maine Mining
34 Bureau shall periodically consult with each other
35 relative to procedures for the prevention of oil dis-
36 charges into the coastal waters of the State from
37 offshore drilling production facilities. Inspection
38 and enforcement employees of the board department in
39 their line of duty under this subchapter shall have
40 the powers of a constable.

41 Sec. 11. 38 MRSA §551, first ¶, as repealed and
42 replaced by PL 1977, c. 375, §10, is amended to read:

1 The Maine Coastal Protection Fund is established
2 to be used by the board department as a nonlapsing,
3 revolving fund for carrying out the purposes of this
4 subchapter. The fund shall be limited to \$4,000,000
5 until July 1, 1978. Thereafter the fund shall be
6 limited to \$6,000,000 and the Board Department of
7 Environmental Protection shall collect fees in accor-
8 dance with subsection 4. To this fund shall be cred-
9 ited all license fees, penalties and other fees and
10 charges related to this subchapter, and to this fund
11 shall be charged any and all expenses of the board
12 department related to this subchapter, including
13 administrative expenses, costs of removal of dis-
14 charges of pollutants, and 3rd party damages covered
15 by this subchapter.

16 Sec. 12. 38 MRSA §551, 2nd ¶, as amended by PL
17 1971, c. 618, §12, is further amended to read:

18 Moneys in the fund, not needed currently to meet
19 the obligations of the board department in the exer-
20 cise of its responsibilities under this subchapter
21 shall be deposited with the Treasurer of State to the
22 credit of the fund, and may be invested in such man-
23 ner as is provided for by statute. Interest received
24 on such that investment shall be credited to the
25 Maine Coastal Protection Fund.

26 Sec. 13. 38 MRSA §551, sub-§4, ¶A, as amended by
27 PL 1979, c. 708, is further amended to read:

28 A. License fees shall be determined on the basis
29 of 1¢ per barrel of oil transferred by the licen-
30 see during the licensing period and shall be paid
31 monthly by the licensee on the basis of records
32 certified to the board department, provided that
33 during such time as any bonds issued pursuant to
34 the private and special laws of 1969, chapter
35 239, shall remain outstanding and funds made
36 available for interest and debt retirement shall
37 be inadequate for such that purpose, the license
38 fee shall be determined on the basis of 2¢ per
39 barrel. License fees shall be paid to the board
40 department and upon receipt by it credited to the
41 Maine Coastal Protection Fund.

42 Sec. 14. 38 MRSA §551, sub-§4, ¶C, as enacted by
43 PL 1977, c. 375, §13, is amended to read:

1 C. All sums received by the board department
2 when the balance in the fund has reached
3 \$4,000,000 shall, after deduction of administra-
4 tive expenses and sums allocated to research and
5 development, promptly be remitted to the Treasur-
6 er of State to be held distinct from all other
7 moneys of the State for the payment of interest
8 and debt retirement pursuant to the private and
9 special laws of 1969, chapter 239, section 5.
10 When there has been no interest or debt incurred
11 pursuant to the private and special laws of 1969,
12 chapter 239, section 5, or upon payment of all
13 interest and debt so incurred, the Treasurer of
14 State shall credit to the fund all sums received
15 according to this subchapter.

16 Sec. 15. 38 MRSA §551, sub-§6, as amended by PL
17 1981, c. 356, §2, is further amended to read:

18 6. Reimbursements to Maine Coastal Protection
19 Fund. The board department shall seek recovery to the
20 use of the fund all sums expended therefrom, includ-
21 ing overdrafts, for the following purposes, unless
22 the board department finds the amount involved too
23 small or the likelihood of success too uncertain;
24 provided that recoveries resulting from damage due to
25 an oil pollution disaster declared by the Governor
26 pursuant to section 547 shall be apportioned between
27 the Maine Coastal Protection Fund and the General
28 Fund so as to repay the full costs to the General
29 Fund of any bonds issued as a result of the disaster:

30 A. All disbursements made by the fund pursuant
31 to subsection 5, paragraphs B, D, E and H in con-
32 nection with a prohibited discharge;

33 B. In the case of a licensee promptly reporting
34 a discharge as required by this subchapter, dis-
35 bursement made by the fund pursuant to subsection
36 5, paragraphs B, D and E in connection with any
37 single prohibited discharge including 3rd party
38 claims in excess of \$15,000, except to the extent
39 that the costs are covered by payments received
40 under any federal program;

41 C. Requests for reimbursement to the fund if not
42 paid within 30 days of demand shall be turned

1 over to the Attorney General for collection; and

2 D. The beard department may file claims with
3 appropriate federal agencies to recover for the
4 use of the fund all disbursement from the fund in
5 connection with a prohibited discharge.

6 Sec. 16. 38 MRSA §555, as amended by PL 1981, c.
7 356, §3, is further amended to read:

8 §555. Budget approval

9 The beard department shall submit its budget
10 recommendations for disbursements from the fund in
11 accordance with section 551, subsection 5, paragraphs
12 A, C, F and H for each biennium. The budget shall be
13 submitted in accordance with Title 5, sections 1663
14 to 1666. The State Controller shall authorize
15 expenditures therefrom as approved by the beard com-
16 missioner. Expenditures pursuant to section 551,
17 subsection 5, paragraphs B, D, E and G may be made as
18 authorized by the State Controller following approval
19 by the beard commissioner.

20 Sec. 17. 38 MRSA §1305-A, sub-§2, as amended by
21 PL 1981, c. 653, §§1 to 3, is further amended to
22 read:

23 2. Site review. All persons who make application
24 for a license to construct, operate or substantially
25 expand a commercial hazardous waste facility shall,
26 at the same time, give written notice to the municipi-
27 pal officers of the municipality in which the pro-
28 posed facility will be located. The municipality
29 through its municipal officers shall be granted
30 intervenor status in any proceeding for site review
31 of a commercial hazardous waste facility. The depart-
32 ment shall reimburse the municipalities' direct
33 costs, not to exceed \$5,000, for participation in the
34 proceedings.

35 The Governor may appoint a person to facilitate com-
36 munications between the applicant and the municipali-
37 ty and between the department and the municipality.

38 The State may accept public and private funds from
39 any source for the purpose of carrying out responsi-
40 bilities under this section.

1 The board shall hold at least one public hearing
2 within the municipality in which the facility will be
3 located.

4 During any proceeding for site review of a commercial
5 hazardous waste facility, the municipal legislative
6 body in which the facility is to be located may
7 appoint 4 2 representatives to the board. If the
8 facility is proposed to be located within an unorgan-
9 ized township, the county commissioners of that
10 county may appoint 4 2 representatives. These repre-
11 sentatives may vote on board decisions related to the
12 proposed commercial hazardous waste facility. All
13 representatives appointed under this subsection shall
14 participate on the board only for that site review,
15 until final disposition of the application, including
16 any administrative or judicial appeals. The municipal
17 members shall receive the same pay for each day and
18 expenses as regular board members during the period
19 of their service, to be paid by the department.

20 **Sec. 18. Transitional provisions.** All actions
21 of the board taken before the effective date of
22 section 5 of this bill and all rules currently in
23 effect and operative on the effective date of this
24 bill shall be valid and shall continue in effect
25 until rescinded, amended or changed according to law.

26 **Sec. 19. Appointment provisions.** The Governor
27 shall appoint 3 members of the board in accordance
28 with section 5 of this bill. Of the initial appoint-
29 ees, one shall serve a 2-year term, one shall serve a
30 4-year term and one shall serve a 6-year term.

31 **Sec. 20. Effective date.** This bill shall take
32 effect upon appointment and qualification of the 3
33 members of the board specified in section 19 of this
34 bill, except that section 19 shall take effect 90
35 days after the adjournment of the Legislature.

36 **STATEMENT OF FACT**

37 The work load of the Board of Environmental Pro-
38 tection has increased dramatically in the last
39 decade. The board is required to make important
40 decisions on applications for projects worth hundreds

1 of millions of dollars annually. The range and com-
2 plexity of environmental standards, many of them
3 mandated by federal law, require that Maine's envi-
4 ronmental decision-making board be better equipped to
5 perform their important function.

6 This bill replaces the part-time citizens board
7 with a small board of 3 full-time persons, not unlike
8 the Public Utilities Commission. Board members would
9 be appointed by the Governor and confirmed by the
10 Legislature for staggered 6-year terms, like the
11 Public Utilities Commission. The Governor would
12 select the chairman. Their salaries would be the
13 same as the Public Utilities Commissioners.

14 The commissioner of the department would not
15 serve on this board, but would continue to be the
16 chief administrator of the department and serve at
17 the pleasure of the Governor. The commissioner would
18 make recommendations for board action on all matters
19 coming before the board.

20 As the board would continue to be responsible for
21 all rule-making decisions and all permits, but may
22 delegate certain of these functions to the commis-
23 sioner. The board's present authority over depart-
24 ment administrative affairs should be eliminated.
25 The department can provide administrative support for
26 the board from available personnel. The board will
27 not have extensive technically trained staff working
28 for them, but will rely on department technical
29 expertise.

30 0350020583