

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 280, L.D. 845)
2 (New Title)

3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 1434

8
9 S.P. 470

In Senate, April 7, 1983

10 Reported by Senator Kany of Kennebec from the Committee on Energy
11 and Natural Resources and printed under Joint Rule 2. Original bill spon-
12 sored by Senator Kany of Kennebec. Cosponsored by Representative Rolde
of York and Representative Mitchell of Freeport.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-THREE
18

19 AN ACT to Reassign Responsibilities
20 Within the Department of Environmental
21 Protection.
22

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

25 Sec. 1. 38 MRSA §342, sub-§1, as amended by PL
26 1977, c. 564, §134, is repealed.

27 Sec. 2. 38 MRSA §342, sub-§1-A is enacted to
28 read:

29 1-A. Administration of department. He shall be
30 the chief administrative officer of the Department of
31 Environmental Protection and responsible for all
32 administrative matters of the department.

1 Sec. 3. 38 MRSA §342, sub-§4, as repealed and
2 replaced by PL 1977, c. 596, §1, is amended to read:

3 4. Organization of department. The commissioner,
4 ~~subject to the approval of a majority of the Board of~~
5 ~~Environmental Protection,~~ shall organize the depart-
6 ment into the bureaus, divisions, regional offices
7 and other administrative units that he deems neces-
8 sary to fulfill the duties of the department and sup-
9 port the duties of the Board of Environmental Protec-
10 tion. ~~With the approval of a majority of the Board of~~
11 ~~Environmental Protection,~~ he ~~He~~ shall prescribe the
12 functions of the bureaus and other administrative
13 units to insure that the powers and duties of the
14 board are administered efficiently so that all li-
15 cense applications and other business of the depart-
16 ment may be expeditiously completed in the public
17 interest.

18 Sec. 4. 38 MRSA §361, first ¶, as amended by PL
19 1977, c. 596, §2, is further amended to read:

20 The Board of Environmental Protection, as hereto-
21 fore established and hereinafter in this subchapter
22 called the "board," shall consist of 10 members
23 appointed by the Governor, subject to review by the
24 joint standing committee ~~on~~ of the Legislature having
25 jurisdiction over energy and natural resources and to
26 confirmation by the Legislature and the Commissioner
27 of Environmental Protection ~~ex officio~~. The Commis-
28 sioner of Environmental Protection shall be a non-
29 voting member of the board. Members of the board
30 shall be chosen to represent the broadest possible
31 interest and experience which can be brought to bear
32 in the implementation of this Title and all other
33 laws which the board is charged with the duty of ad-
34 ministering. The members shall be appointed for a
35 term of 4 years and until their successors are
36 appointed and duly qualified. The board shall annu-
37 ally elect one of its members as chairman.

38 Sec. 5. 38 MRSA §361, 3rd ¶, as amended by PL
39 1971, c. 618, §9, is further amended to read:

40 Meetings of the board shall be held at such time
41 and place as shall be determined by the board but not
42 less than 2 meetings per year shall be held. The

1 board shall in October of each year elect a secretary
2 who need not be chosen from among the members of the
3 board. Six members of the board shall constitute a
4 quorum, except for the purpose of conducting any
5 rule-making hearing.

6 Sec. 6. 38 MRSA §362, as amended by PL 1975, c.
7 771, §420, is further amended to read:

8 §362. Authority to accept federal funds

9 The ~~board~~ department is designated the public
10 agency of the State of Maine for the purpose of ac-
11 cepting federal funds in relation to water pollution
12 control, water resources and air pollution studies
13 and control. The ~~board~~ commissioner is ~~authorized~~
14 may, subject to the approval of the Governor, ~~to~~ ac-
15 cept federal funds available for water pollution con-
16 trol, water resources and air pollution studies and
17 control and meet such requirements with respect to
18 the administration of ~~such~~ the funds, not incon-
19 sistent with this subchapter, as are required as con-
20 ditions precedent to receiving federal funds. The
21 Treasurer of State shall be the appropriate fiscal
22 officer of the State to receive federal grants on ac-
23 count of water pollution control, water resources and
24 air pollution studies and control, and the State Con-
25 troller shall authorize expenditures therefrom as
26 approved by the ~~board~~ commissioner.

27 Sec. 7. 38 MRSA §390-A, sub-§1, as enacted by PL
28 1981, c. 509, §1, is amended to read:

29 1. Fund purposes and administration. There is
30 established a nonlapsing Lake Restoration and Protec-
31 tion Fund, from which the ~~Board of Environmental Pro-~~
32 ~~tection is authorized to~~ commissioner may pay up to
33 25% from state appropriations of the eligible costs
34 incurred in a lake restoration or protection project
35 which has received federal approval and at least 50%
36 federal funding. Eligible costs include all costs
37 except those related to land acquisition, legal fees
38 and debt service. All income received by the State
39 from the United States Environmental Protection
40 Agency for lake restoration or protection projects
41 under the United States Code, Title 33, Section 1324,
42 shall be deposited with the Treasurer of State to be

1 credited to the Lake Restoration and Protection Fund.
2 All moneys credited to that fund shall be used by the
3 Board of Environmental Protection department for
4 projects to improve or maintain the quality of lake
5 waters in the State, and for no other purpose.

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

16 **Sec. 8. 38 MRSA §541, 4th ¶,** as amended by PL
17 1971, c. 618, §12, is further amended to read:

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

32 **Sec. 9. 38 MRSA §548,** as amended by PL 1979, c.
33 541, Pt. A, §266, is further amended to read:

34 §548. Removal of prohibited discharges

35 Any person discharging oil, petroleum products or
36 their by-products in the manner prohibited by section
37 543 shall immediately undertake to remove such that
38 discharge to the board's satisfaction. Notwithstand-
39 ing the above requirement, the ~~board~~ department may
40 undertake the removal of such that discharge and may
41 retain agents and contracts for such those purposes

1 who shall operate under the direction of the board.

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

16 Sec. 10. 38 MRSA §549, as amended by PL 1979, c.
17 541, Pt. A, §267, is further amended to read:

18 §549. Personnel and equipment

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

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

40 The Maine Coastal Protection Fund is established
41 to be used by the board department as a nonlapsing,

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

14 Sec. 12. 38 MRSA §551, 2nd ¶, as amended by PL
15 1971, c. 618, §12, is further amended to read:

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

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

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

40 Sec. 14. 38 MRSA §551, sub-§4, ¶C, as enacted by
41 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~~ Law 1969, chapter 239, section 5.
10 When there has been no interest or debt incurred
11 pursuant to ~~the~~ Private and Special ~~laws of~~ Law
12 1969, chapter 239, section 5, or upon payment of
13 all interest and debt so incurred, the Treasurer
14 of State shall credit to the fund all sums
15 received 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 board 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 board 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 board 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 board commissioner.

20 STATEMENT OF FACT

21 This new draft removes the commissioner from the
22 Board of Environmental Protection and provides for
23 the election of a chairman by the board. The bill
24 does not affect the other members of the board. As
25 in the original bill, administrative functions have
26 been shifted from the board to the commissioner.

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