

MAINE STATE LEGISLATURE

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(New Draft of H.P. 1530, L.D. 2014)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2385

H.P. 1806

House of Representatives, March 29, 1984

Reported by Representative Michaud from the Committee on Energy and Natural Resources and printed under Joint Rule 2.

Original bill presented by Representative Michael of Auburn.

Cosponsored by Representative Kiesman of Fryeburg, Senator Kany of Kennebec and Representative Hall of Sangerville.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Amend Certain Provisions of the
Department of Environmental Protection
Statutes.

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

Sec. 1. 5 MRSA §711, sub-§2, ¶A, sub-¶(4-A), as amended by PL 1983, c. 489, §4, is repealed.

Sec. 2. 38 MRSA §342, sub-§5, as repealed and replaced by PL 1983, c. 566, §2, is repealed and the following enacted in its place:

5. Designation of deputy commissioner. A deputy commissioner shall be appointed by and serve at the pleasure of the commissioner. The commissioner shall prescribe the duties of the deputy as he deems necessary to fulfill the responsibilities of the department.

1 Sec. 3. 38 MRSA §345-A, sub-§1, as enacted by PL
2 1983, c. 566, §6, is amended to read:

3 1. Hearings. Except as provided in the Maine
4 Administrative Procedure Act, Title 5, section 8052,
5 subsection 2, whenever the board or the Department of
6 Environmental Protection is required or empowered to
7 conduct a hearing pursuant to any provision of law,
8 the hearing may be held and conducted by any member
9 of the board or any employee or representative of the
10 Department of Environmental Protection so authorized
11 by the board and may be held if at least 2 members of
12 the board are present.

13 Sec. 4. 38 MRSA §347, sub-§1, as amended by PL
14 1983, c. 566, §7, is further amended to read:

15 1. General procedures. Whenever it appears to
16 the Board of Environmental Protection, after investi-
17 gation, that there is a violation of any provisions
18 of the laws or regulations which it administers, or
19 of the terms or conditions of any of its orders,
20 which does not create a substantial or immediate dan-
21 ger to public health or safety, the board may notify
22 the Attorney General or schedule a hearing thereon.
23 If a hearing is scheduled, the commissioner shall
24 give at least 30 days' written notice to the alleged
25 violator of the date, time and place of that hearing.
26 The notice shall specify the act done or omitted to
27 be done which is claimed to be in violation of law.

28 Any hearing conducted under the authority of this
29 ~~section~~ subsection shall be in accordance with the
30 provisions of the Maine Administrative Procedure Act,
31 Title 5, chapter 375.

32 At the hearing, the alleged violator may appear in
33 person or by attorney and answer the allegations of
34 violation and file a statement of the facts, includ-
35 ing the methods, practices and procedures, if any,
36 adopted or used by him to comply with this chapter
37 and present such evidence as may be pertinent and
38 relevant to the alleged violation.

39 After hearing, or in the event of a failure of the
40 alleged violator to appear on the date set for a
41 hearing, the board shall, as soon thereafter as prac-

1 ticable, make findings of fact based on the record
2 and, if it finds that a violation exists, it shall
3 issue an order aimed at ending the violation.

4 Sec. 5. 38 MRSA §352, sub-§4, as enacted by PL
5 1983, c. 574, §1, is amended to read:

6 4. Accounting system. In order to determine the
7 extent to which the aforementioned functions are nec-
8 essary for the licensing process, or are being per-
9 formed in an efficient and expeditious manner, the
10 board shall require that all employees of the depart-
11 ment involved in any aspect of these functions shall
12 keep accurate and regular daily time records describ-
13 ing the matters worked on, services performed and
14 amount of time devoted thereto, as well as amounts of
15 money expended in performing these functions.

16 TABLE I

17 MAXIMUM FEES IN DOLLARS

| 18 | Title 12 | FILING | PROCESSING | LICENSE |
|----|--------------------------|------------------|-------------------|---------------------|
| 19 | SECTION | FEE | FEE | FEE |
| 20 | 4807-C, Minimum lot size | \$ 3.00 | \$ 25.00 | \$ 25.00 |
| 21 | Title 38 | FILING | PROCESSING | LICENSE |
| 22 | SECTION | FEE | FEE | FEE |
| 23 | 362-A, Experiments | \$ 10.00 | \$ 30.00 | \$ 160.00 |
| 24 | 393, Great ponds | 2.50 | 65.00 | 50.00 |
| 25 | 413, Waste discharge | | | |
| 26 | license | | | |
| 27 | A. Residential | 5.00 | 15.00 | 10.00 |
| 28 | B. Commercial | 10.00 | 30.00 | 160.00 |
| 29 | C. Industrial, | 25.00 | 450.00 | 1,985.00 |
| 30 | minor | | | |
| 31 | (based upon | | | |
| 32 | EPA list of ma- | | | |
| 33 | ajor and minor | | | |
| 34 | source | | | |
| 35 | dischargers) | | | |

| | | | | |
|----|------------------|------------------|---------------------|---------------------|
| 1 | 1. Discharges | 25.00 | 450.00 | 160.00 |
| 2 | of cooling wa- | | | |
| 3 | ter, sanitary | | | |
| 4 | waste water or | | | |
| 5 | treated storm | | | |
| 6 | water only | | | |
| 7 | 2. All others | 25.00 | 450.00 | 1,985.00 |
| 8 | D. Industrial, | 35.00 | 1,130.00 | 2,170.00 |
| 9 | major | | | |
| 10 | (based upon | | | |
| 11 | EPA list of ma- | | | |
| 12 | ajor and minor | | | |
| 13 | source | | | |
| 14 | dischargers) | | | |
| 15 | 1. Discharges | 35.00 | 1,130.00 | 750.00 |
| 16 | of cooling water | | | |
| 17 | or sanitary | | | |
| 18 | waste water only | | | |
| 19 | 2. All others | 35.00 | 1,130.00 | 2,170.00 |
| 20 | E. Publicly | 17.00 | 80.00 | 1,785.00 |
| 21 | owned treatment | | | |
| 22 | works | | | |
| 23 | 1. Flow of | 15.00 | 40.00 | 10.00 |
| 24 | less than 0.5 | | | |
| 25 | million gal- | | | |
| 26 | lons/day and no | | | |
| 27 | significant in- | | | |
| 28 | dustrial | | | |
| 29 | component | | | |
| 30 | 2. Flow of at | 15.00 | 60.00 | 1,785.00 |
| 31 | least 0.5 mil- | | | |
| 32 | lion gallons/day | | | |
| 33 | but less than 5 | | | |
| 34 | million gal- | | | |
| 35 | lons/day and no | | | |
| 36 | significant in- | | | |
| 37 | dustrial | | | |
| 38 | component | | | |
| 39 | 3. Flow of at | 15.00 | 80.00 | 1,785.00 |
| 40 | least 5 million | | | |
| 41 | gallons/day or a | | | |
| 42 | significant in- | | | |
| 43 | dustrial | | | |
| 44 | component | | | |
| 45 | F. Special | | | |
| 46 | discharges | | | |

| | | | | | |
|----|-------------------|--------------------------|-------------------|---------------------|---------------------|
| 1 | | <u>1. Aquatic</u> | <u>10.00</u> | <u>30.00</u> | <u>10.00</u> |
| 2 | | <u>pesticides</u> | | | |
| 3 | | <u>2. Dredge</u> | <u>10.00</u> | <u>30.00</u> | <u>10.00</u> |
| 4 | | <u>spoils</u> | | | |
| 5 | 418, | Log storage | 10.00 | 45.00 | 5.00 |
| 6 | 421, | Solid waste dis- | 12.00 | 1,375.00 | 100.00 |
| 7 | | posal areas | | | |
| 8 | 451, | Mixing zones | 35.00 | 1,130.00 | 2,170.00 |
| 9 | 451-A, | Time schedule | 5.00 | 10.00 | 5.00 |
| 10 | | variances | | | |
| 11 | 451-B, | Industrial | 500.00 | 2,000.00 | 1,500.00 |
| 12 | | variances | | | |
| 13 | 471, | Coastal wetlands | 3.50 | 115.00 | 100.00 |
| 14 | | and sand dunes | | | |
| 15 | 482, | Site location | | | |
| 16 | 483, | Site location | | | |
| 17 | | A. Subdivisions | 25.00 | 25.00/lot | 25.00 |
| 18 | | B. Structures | 25.00 | 1,000.00 | 500.00 |
| 19 | | C. Mining | 25.00 | 750.00 | 500.00 |
| 20 | | D. Other | 25.00 | 750.00 | 500.00 |
| 21 | 543, | Oily waste dis- | 10.00 | 30.00 | 160.00 |
| 22 | | charge | | | |
| 23 | 560, | Vessels at an- | 10.00 | 115.00 | 100.00 |
| 24 | | chorage | | | |
| 25 | 587, | Ambient air | 50.00 | 5,000.00 | 50.00 |
| 26 | | quality or emis- | | | |
| 27 | | sions standards | | | |
| 28 | | variances | | | |
| 29 | 590, | Air emissions | | | |
| 30 | | licenses | | | |
| 31 | | A. greater | 50.00 | 10,000.00 | 1,200.00 |
| 32 | | than or equal to | | | |
| 33 | | 1,000 tons/year | | | |
| 34 | | of any criteria | | | |
| 35 | | air pollutant | | | |
| 36 | | B. greater | 50.00 | 5,000.00 | 400.00 |
| 37 | | than or equal to | | | |
| 38 | | 100 tons/year | | | |
| 39 | | but less than | | | |
| 40 | | 1,000 tons/year | | | |
| 41 | | of any criteria | | | |
| 42 | | air pollutant | | | |

| | | | | |
|----|------------------------|------------------|---------------------|---------------------|
| 1 | C. less | 50.00 | 1,000.00 | 100.00 |
| 2 | greater than or | | | |
| 3 | equal to 50 | | | |
| 4 | tons/year but | | | |
| 5 | less than 100 | | | |
| 6 | tons/year of any | | | |
| 7 | criteria air | | | |
| 8 | pollutant | | | |
| 9 | D. less than | <u>25.00</u> | <u>500.00</u> | <u>50.00</u> |
| 10 | 50 tons/year of | | | |
| 11 | any criteria air | | | |
| 12 | pollutant | | | |
| 13 | 603, low sulfur fuel | 50.00 | 250.00 | 250.00 |
| 14 | exemptions | | | |
| 15 | 633, Hydropower | <u>25.00</u> | <u>1,500.00</u> | <u>1,000.00</u> |
| 16 | projects | | | |
| 17 | 1101, Sanitary dis- | 50.00 | 100.00 | 50.00 |
| 18 | tricts | | | |
| 19 | 1304, Waste facilities | | | |
| 20 | A. Septage and | 12.00 | 500.00 | 500.00 |
| 21 | sludge | | | |
| 22 | A. Septage fa- | <u>12.00</u> | <u>250.00</u> | <u>250.00</u> |
| 23 | cilities, other | | | |
| 24 | than landfill or | | | |
| 25 | landspreading | | | |
| 26 | sites | | | |
| 27 | B. Transfer | 12.00 | 500.00 | 500.00 |
| 28 | stations | | | |
| 29 | B. Sludge fa- | <u>12.00</u> | <u>500.00</u> | <u>500.00</u> |
| 30 | cilities, other | | | |
| 31 | than landfill or | | | |
| 32 | landspreading | | | |
| 33 | sites | | | |
| 34 | E. Landfills | 75.00 | 1,500.00 | 1,500.00 |
| 35 | C. Landspreading | <u>12.00</u> | <u>35.00</u> | <u>35.00</u> |
| 36 | sites | | | |
| 37 | D. Other | 75.00 | 1,500.00 | 1,500.00 |
| 38 | D. Transfer | <u>12.00</u> | <u>500.00</u> | <u>500.00</u> |
| 39 | stations | | | |
| 40 | E. Landfills | <u>75.00</u> | <u>1,500.00</u> | <u>1,500.00</u> |
| 41 | F. Resource | <u>75.00</u> | <u>1,500.00</u> | <u>1,500.00</u> |
| 42 | recovery and | | | |
| 43 | volume reduction | | | |
| 44 | facilities | | | |

| | | | | |
|---|-------------------|-------|--------|--------|
| 1 | G. Other, in- | 12.00 | 500.00 | 250.00 |
| 2 | cluding land-ap- | | | |
| 3 | plied waste uti- | | | |
| 4 | lization programs | | | |

5 Sec. 6. 38 MRSA §353, sub-§§2, 3 and 5, as en-
6 acted by PL 1983, c. 574, §1, are amended to read:

7 2. Processing fee. A processing fee shall be
8 paid within 10 days of the time the applicant is no-
9 tified that the application has been accepted for
10 processing by the commissioner and is not refundable,
11 even if the applicant withdraws the application once
12 processing has begun. Failure to pay the processing
13 fee within the 10-day period will result in the ces-
14 sation of processing until the fee has been paid.
15 The department shall refund the processing fee if the
16 application is denied by the board or the
17 commissioner.

18 3. License fee. A license fee shall be paid
19 prior to the issuance of any license or permit. If a
20 license fee is paid prior to board or commissioner
21 action on the application, the department shall re-
22 fund the license fee if the board or commissioner de-
23 nies the application.

24 5. Renewals or amendments. The filing fee for
25 renewals or amendments shall be the same as the fil-
26 ing fee for an initial application. The processing
27 fee for renewals or amendments shall be equal to di-
28 rect costs up to 1/2 the processing fee for initial
29 applications. The license fee for renewals or
30 amendments shall be identical to the initial license
31 fee. The license fee for amendments shall not exceed
32 the initial license fee.

33 Sec. 7. 38 MRSA §353, sub-§§6 and 7, as enacted
34 by PL 1983, c. 574, §1, are repealed and the follow-
35 ing enacted in their place:

36 6. Application deemed unacceptable for process-
37 ing. An application deemed unacceptable for process-
38 ing which has been returned to the applicant shall be
39 resubmitted to the department within 60 days of the
40 date the application was returned. If the applica-
41 tion is resubmitted after the 60-day period has

1 transpired, the resubmitted application shall be con-
2 sidered a new application and the appropriate fees
3 shall be assessed.

4 7. Time of payment. All fees assessed for the
5 costs of processing permits issued in accordance with
6 section 344, subsection 7, shall be paid in full when
7 the notification is submitted to the department. All
8 fees for any minor license or permit revision shall
9 be paid in full when the request for the revision is
10 submitted to the department. The applicant may also
11 choose to prepay the filing, processing and license
12 fees for applications pertaining to any other license
13 or permit category.

14 Sec. 8. 38 MRSA §361, 3rd ¶, as amended by PL
15 1983, c. 483, §5 and PL 1983, c. 566, §10, is re-
16 pealed and the following enacted in its place

17 Meetings of the board shall be held at such time
18 and place as shall be determined by the board, but
19 not less than 2 meetings per year shall be held. The
20 board may elect a secretary who shall serve until a
21 successor is elected, and who need not be chosen from
22 among the members of the board. Six members of the
23 board shall constitute a quorum for these meetings.

24 Sec. 9. 38 MRSA §371-A, sub-§3, as amended by PL
25 1979, c. 281, §2, is repealed and the following en-
26 acted in its place:

27 3. Exemptions. Exemption from the "no dis-
28 charge" provision is provided for the following ac-
29 tivities:

30 A. Aquatic chemical applications approved by the
31 Board of Environmental Protection; and

32 B. Commercial extraction operations or waste
33 treatment facilities with discharges that have
34 been approved by the Board of Environmental Pro-
35 tection, provided that any great pond receiving a
36 discharge was created by the approved operation
37 or facility.

38 Sec. 10. 38 MRSA §394, as amended by PL 1983, c.
39 566, §14, is further amended to read:

1 §394. Exemptions

2 The Board of Environmental Protection shall
3 promulgate rules designed to reduce procedural re-
4 quirements and establish specific standards for these
5 alterations, the proper execution of which are deemed
6 to have no significant impact upon the great ponds
7 and which are not inconsistent with the purposes of
8 this chapter. The alterations shall include, but not
9 be limited to: The placement of water lines to serve
10 a single family house; the movement of rocks or vege-
11 tation by hand over a shorefront length not to exceed
12 10 feet; the placement of sand above the high water
13 line, when properly stabilized; the construction of
14 rock riprap erosion control devices above the high
15 water line; the installation of anchoring devices for
16 mooring small boats or holding floating structures;
17 and the installation of cables for utilities such as
18 telephone and power.

19 Maintenance and minor repair above the high water
20 line causing no additional intrusion of an existing
21 structure into the great pond is exempt from this
22 subchapter.

23 Sec. 11. 38 MRSA §418, sub-§2, as amended by PL
24 1983, c. 375, §2 and PL 1983, c. 566, §21, is re-
25 pealed and the following enacted in its place

26 2. Storage; permit. Whoever proposes to use the
27 inland waters of this State for the storage or curing
28 of logs or pulpwood, or for other purposes incidental
29 to the processing of forest products, or to transport
30 logs or pulpwood from islands to the mainland, shall
31 apply to the board for a permit for that use. Appli-
32 cations for these permits shall be in such form and
33 require such information as the board may determine.

34 Within 45 days of receipt of an application, the
35 board shall either grant the application or hold a
36 public hearing thereon as provided.

37 If the board is able to find, on the basis of the ap-
38 plication, that the proposed use will not lower the
39 existing quality or the classification, whichever is
40 higher, of any waters, nor adversely affect the pub-
41 lic rights of fishing and navigation therein, and

1 that inability to conduct that use will impose undue
2 economic hardship on the applicant, it shall grant
3 the permit for a period not to exceed 10 years, with
4 such terms and conditions as, in its judgment, may be
5 necessary to protect the quality, standards and
6 rights.

7 In the event the board deems it necessary to solicit
8 further evidence regarding the proposed use, it shall
9 schedule a public hearing on the application.

10 At that hearing the board shall solicit and receive
11 testimony concerning the nature and extent of the
12 proposed use and its impact on existing water quali-
13 ty, water classification standards and the public
14 rights of fishing and navigation and the economic im-
15 plications upon the applicant of the use. If, after
16 hearing, the board determines that the proposed use
17 will not lower the existing quality or the classifi-
18 cation standards, whichever is higher, of any waters,
19 nor adversely affect the public rights of fishing and
20 navigation therein and that inability to conduct the
21 use will impose undue economic hardship on the appli-
22 cant, it shall grant the permit for a period not to
23 exceed 10 years, with such terms and conditions, as
24 in its judgment, may be necessary to protect the
25 quality, standards and rights.

26 Sec. 12. 38 MRSA §451-B, as enacted by PL 1975,
27 c. 683, is repealed.

28 Sec. 13. 38 MRSA §482, first ¶, as amended by PL
29 1979, c. 541, Pt. A, §263, is further amended to
30 read:

31 As used in this ~~subchapter~~ Article, unless the
32 context otherwise indicates, the following terms
33 shall have the following meanings.

34 Sec. 14. 38 MRSA §599, sub-§2, ¶G, as enacted by
35 PL 1983, c. 504, §7, is amended to read:

36 G. No person, firm, corporation, association,
37 municipal or state agency may engage in any open
38 burning except in conformity with ~~subsection~~
39 subsections 3 and 4.

1 Sec. 15. 38 MRSA §1303, sub-§14, as repealed and
2 replaced by PL 1981, c. 430, §3, is amended to read:

3 14. Waste facility. "Waste facility" means any
4 land area, structure, location, equipment or combina-
5 tion of them, including dumps, used for handling haz-
6 ardous or solid waste, sludge or septage. A land area
7 or structure does not become a waste facility solely
8 because:

9 A. It is used by its owner for disposing of
10 septage from his residence; ~~or~~

11 B. It is used to store for 90 days or less haz-
12 ardous wastes generated on the same premises;

13 C. It is used by individual homeowners or les-
14 sees to open burn leaves, brush, deadwood and
15 tree cuttings accrued from normal maintenance of
16 their residential property, when such burning is
17 permitted under section 599, subsection 3; or

18 D. It is used by its residential owner to burn
19 highly combustible domestic, household trash such
20 as paper, cardboard cartons or wood boxes, when
21 such burning is permitted under section 599, sub-
22 section 3.

23 Sec. 16. 38 MRSA §1304-B, sub-§ 3, as enacted by
24 PL 1983, c. 380, §1, is amended to read:

25 3. Ordinances. This chapter shall not be con-
26 strued as limiting the authority of any municipality
27 to enact ordinances for the regulation of solid waste
28 or septage disposal, provided that these ordinances
29 are not less stringent than or inconsistent with this
30 chapter or the regulations adopted under this chap-
31 ter.

1 STATEMENT OF FACT

2 Section 1 of the new draft repeals a provision
3 enacted last year that placed the assistant to the
4 Commissioner of the Department of Environmental Pro-
5 tection into a category in the personnel statutes
6 that permitted the assistant to serve only at the
7 pleasure of the commissioner. To be consistent with
8 the policy established in section 2, this provision
9 must be repealed. Public Law 1983, chapter 566, en-
10 acted the same provision, but with reference only to
11 the deputy commissioner. The provision as enacted by
12 chapter 566 remains unchanged.

13 Section 2 of the new draft deletes reference to
14 the assistant to the commissioner as an employee who
15 serves at the pleasure of the commissioner. The com-
16 mittee debated this point last session and settled on
17 the position maintained by this new draft in section
18 1.

19 The addition of a new section 3 provides that at
20 least 2 members of the Board of Environmental Protec-
21 tion must be present at nonrule-making hearings.

22 Section 5 corrects an inadvertent omission in the
23 drafting of the original bill. Fees for minor indus-
24 trial licenses should be set for the categories es-
25 tablished in this new draft, categories similar to
26 those established in the original bill for major in-
27 dustrial licenses.

28 Section 6 addresses an inadvertent error in the
29 drafting of the original bill. The newly added last
30 sentence in the Revised Statutes, Title 38, section
31 353, subsection 5 in section 5 of the new draft deals
32 with license amendments. The reference to amendments
33 in that subsection of the original bill was deleted.

34 Section 7 of the new draft removes references to
35 incomplete applications. The more precise language,
36 added by this new draft, refers to applications
37 deemed unacceptable for processing.

38 Section 8 of the new draft coincides with the ad-
39 dition to the bill of a new section 2 in the new
40 draft. The new draft retains the requirements for 6

1 board members to be present at board meetings, as
2 distinguished from hearings held by the board.

3 Section 11 of the new draft replaces a paragraph
4 requiring the Board of Environmental Protection to
5 act within 45 days on an application for storing or
6 transporting logs or pulpwood. This paragraph was the
7 only language the bill proposed to delete from the
8 current Revised Statutes, Title 38, section 418, sub-
9 section 2. With this new draft, all of the Revised
10 Statutes, Title 38, section 418, subsection 2 appear-
11 ing in section 10 of the new draft is current law.
12 The Revised Statutes, Title 38, section 418, subsec-
13 tion 2 must be repealed and replaced to correct the
14 technical problem created when 2 public laws from the
15 last session amended the Revised Statutes, Title 38,
16 section 418, subsection 2 without reference to each
17 other.

18

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