

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND THIRTEENTH LEGISLATURE
4

5 Legislative Document

NO. 151
6

7 H.P. 125 House of Representatives, January 30, 1987
8 Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

9 EDWIN H. PERT, Clerk
Presented by Representative RIDLEY of Shapleigh.
10 Cosponsored by Representatives MICHAUD of East
Millinocket and JACQUES of Waterville.

11
12 STATE OF MAINE
13

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

17 AN ACT to Amend Certain Laws Relating to the
18 Department of Environmental
19 Protection.
20

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

23 Sec. 1. 38 MRS A §342, sub-§8 is enacted to read:

24 8. Member of the Board of Environmental Protec-
25 tion. He shall be an ex officio member of the Board
26 of Environmental Protection and its chairman. Commu-
27 nication between the commissioner and an applicant or
28 other interested person is not considered an ex parte
29 contact.

30 Sec. 2. 38 MRS A §343-A, sub-§1, as enacted by PL
31 1983, c. 566, §4, is amended to read:

1 1. Rules. The Board of Environmental Protection
2 may adopt, amend and repeal reasonable rules and
3 emergency rules necessary for the proper administration,
4 enforcement, implementation and interpretation
5 of any provision of law that the department is
6 charged with the duty of administering. Rules duly
7 promulgated shall have the full force and effect of
8 law; provided that they shall remain in effect only
9 until 90 days after adjournment of the next session
10 of the Legislature unless adopted by Legislative
11 enactment.

12 Sec. 3. 38 MRSA 343-A, sub-§2, as enacted by PL
13 1983, c. 566, §4, is amended to read:

14 2. Maine Administrative Procedure Act. The
15 provisions of the Maine Administrative Procedure Act,
16 Title 5, chapter 375, shall apply to the adoption,
17 amendment or repeal of rules and emergency rules by
18 the Board of Environmental Protection. Any written
19 policy of the department or board which is intended
20 to implement or interpret any law which the board or
21 department is charged with administering is subject
22 to the provisions of the Maine Administrative Procedure
23 Act, Title 5, chapter 375, prior to adoption.

24 Sec. 4. 38 MRSA §344, sub-§1, ¶B, as amended by
25 PL 1985, c. 746, §7, is further amended to read:

26 B. For those applications not delegated to the
27 commissioner under subsection 2, the commissioner
28 shall provide a an objective summary of the ap-
29 plication to the board and all interested govern-
30 mental agencies and other interested parties in
31 a manner prescribed by the board in the regula-
32 tions. Any such summary shall not contain a rec-
33 ommendation of the commissioner but shall advise
34 the board of issues involving the application.
35 The applicant shall be given the opportunity to
36 provide comments on any such summary, which com-
37 ments shall be provided with the summary when it
38 is made available to the board. At least 10 work-
39 ing days shall be provided for the receipt of
40 comments on the application prior to the prepara-
41 tion of a draft permit or license. The commis-
42 sioner shall, if requested by the applicant or
43 any interested party, prepare a draft permit or

1 license and shall give reasonable notice to the
2 applicant and to any other person who has noti-
3 fied the commissioner of his interest in the ap-
4 plication of the date the board will act on the
5 application. No draft permit or license may con-
6 tain conditions not agreed to by the applicant,
7 unless it also contains a statement as to the
8 cost and impact of the proposed conditions on the
9 applicant and a statement, which the applicant
10 has had a reasonable opportunity to provide, in-
11 dicating the reasons why the applicant opposes
12 those conditions. The draft permit or license
13 shall be made available to the applicant and to
14 all interested persons at the Augusta office of
15 the department at least 15 working days before
16 the board acts on the application.

17

STATEMENT OF FACT

18 Section 1 reinstates the commissioner as a member
19 and chairman of the Board of Environmental Protec-
20 tion, a position held by the commissioner until 1983.
21 A full-time, knowledgeable commissioner is needed to
22 assure the proper handling, attention and preparation
23 for the complex issues coming before the board. The
24 commissioner is a member of the Governor's cabinet
25 and in regular contact with the Legislature, the in-
26 tent of the Legislature is more likely to be upheld
27 and recognized by a full-time chairman who can take
28 the Legislature's intentions into consideration when
29 chairing meetings and making rulings. Because the
30 commissioner is also the head of the staff, this sec-
31 tion makes it clear that applicants and interested
32 persons may talk with the commissioner about applica-
33 tions without violating any ex parte rules.

34 Section 2 of the bill addresses the fact that the
35 Department of Environmental Protection and the Board
36 of Environmental Protection have adopted hundreds of
37 pages of rules, policies and procedures. Because the
38 implications and imposition of these rules have seri-
39 ous consequences for the people of this State, no
40 regulation should remain in effect unless approved by
41 the Legislature.

1 Section 3 makes it clear that the many "policies"
2 which the Department of Environmental Protection and
3 the Board of Environmental Protection have adopted
4 must be subject to the Maine Administrative Procedure
5 Act, the Maine Revised Statutes, Title 5, chapter
6 375, review.

7 Section 4 of the bill is intended to provide ap-
8 plicants an opportunity for a complete and unbiased
9 review of an application by the Board of Environmen-
10 tal Protection.

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