

MAINE STATE LEGISLATURE

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(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2604

H.P. 1907 House of Representatives, March 31, 1988
Referred to the Committee on Energy and Natural
Resources. Sent up for concurrence and ordered printed.
Ordered sent forthwith.

EDWIN H. PERT, Clerk

Presented by Representative HOLLOWAY of Edgecomb.

Cosponsored by Senators LUDWIG of Aroostook and USHER of
Cumberland.

STATE OF MAINE

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

1 AN ACT to Implement the
2 Recommendations of the Study of the
3 Department of Environmental Protection.
4

5 Emergency preamble. Whereas, Acts of the
6 Legislature do not become effective until 90 days
7 after adjournment unless enacted as emergencies; and

8 Whereas, the study of the Department of
9 Environmental Protection has identified numerous

1 issues that impede the department's ability to carry
2 out its statutory responsibilities; and

3 Whereas, the shortcomings identified by the study
4 have been compounded by the rapid growth in the
5 department's program and administrative
6 responsibilities; and

7 Whereas, the resolution of these shortcomings is
8 critical to the continued environmental and economic
9 well-being of the citizens of Maine; and

10 Whereas, the study has identified a number of
11 substantive measures that could be undertaken
12 immediately to resolve these issues; and

13 Whereas, in the judgment of the Legislature, these
14 facts create an emergency within the meaning of the
15 Constitution of Maine and require the following
16 legislation as immediately necessary for the
17 preservation of the public peace, health and safety;
18 now, therefore,

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

21 Sec. 1. 2 MRSA §6, sub-§4, as repealed and
22 replaced by PL 1987, c. 402, Pt. A, §3, is amended to
23 read:

24 4. Range 88. The salaries of the following state
25 officials and employees shall be within salary range
26 88:

27 State Purchasing Agent;

28 Director, Arts and Humanities Bureau;

29 Director, State Museum Bureau;

30 Director of the Bureau of Parks and Recreation;

31 State Director of Alcoholic Beverages;

32 Executive Director, Retirement System;

1 Director of Public Lands;
2 State Librarian;
3 Director of Employee Relations;
4 Director, Bureau of Air Quality Control;
5 Director, Bureau of Land Quality Control;
6 Director, Bureau of Water Quality Control; and
7 Director, Bureau of Oil and Hazardous Materials
8 Control-;
9 Director, Bureau of Solid Waste Management; and
10 Director, Bureau of Administration.

11 Sec. 2. 5 MRSA §938, sub-§1, §§F and G, as
12 enacted by PL 1985, c. 746, §3, are amended to read:

13 F. Director, Bureau of Water Quality Control;
14 and
15 G. Director, Bureau of Oil and Hazardous
16 Materials Control-;

17 Sec. 3. 5 MRSA §938, sub-§1, §§H and I are
18 enacted to read:

19 H. Director, Bureau of Solid Waste Management; and
20 I. Director, Policy and Planning.

21 Sec. 4. 38 MRSA §342, sub-§5-A, as amended by
22 PL 1987, c. 419, §3, is further amended to read:

23 5-A. Designation of deputy commissioner and
24 directors. The commissioner may employ, to serve at
25 his pleasure, the following:

26 A. A deputy commissioner;

1 C. Bureau ~~directors~~ Directors as defined in
2 Title 5, section 938, subsection 1.

3 Sec. 5. 38 MRSA §351, last ¶, as amended by PL
4 1987, c. 192, §8, is further amended to read:

5 Money in the fund may only be expended in
6 accordance with allocations approved by the
7 Legislature. These allocations shall be based on
8 estimates of the actual costs necessary for the
9 department to administer licensing and permitting
10 programs. Allowable expenditures include Personal
11 Services, All Other and Capital Expenditures
12 associated with prelicense or permit activities such
13 as application reviews, public hearings and appeals,
14 the actual license or permit processing activities and
15 associated post-license or permit compliance
16 activities required to assure continued licensee or
17 permittee compliance and enforcement activities as a
18 result of license or permit noncompliance.

19 Sec. 6. 38 MRSA §352, sub-§1, as enacted by PL
20 1983, c. 574, §1, is amended to read:

21 1. Fees established. The department shall
22 establish procedures to charge applicants for ~~actual~~
23 ~~direct~~ costs incurred in reviewing license and permit
24 applications. For the purposes of this subchapter,
25 direct costs may include, but not be limited to,
26 personnel costs, travel, supplies, legal and computer
27 services and all other costs specifically
28 accountable to a particular license or permit
29 application.

30 Sec. 7. 38 MRSA §352, sub-§2, ¶A, as amended by
31 PL 1987, c. 419, §4, is further amended to read:

32 A. Processing fees shall be assessed for
33 ~~direct~~ costs incurred in determining the
34 acceptability of an application for processing and
35 in processing an application to determine whether
36 it meets statutory and regulatory criteria.

37 Sec. 8. 38 MRSA §352, sub-§3, as repealed and
38 replaced by PL 1987, c. 419, §6, is amended to read:

3. Maximum fee. Except as provided in this subsection, no fee may exceed the maximum established in Table 1. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table 1, he may designate that application as subject to special fees. A special fee shall not exceed \$40,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application will submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application. The processing fee for that application shall be the actual cost to the department. The application applicant shall be billed quarterly and all fees must be paid prior to receipt of the permit.

Sec. 9. 38 MRSA §352, sub-§4, as amended by PL 1987, c. 180, §1, and as repealed and replaced by PL 1987, c. 419, §7, is repealed and the following enacted in its place:

4. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions shall keep accurate and regular daily time records. These records shall describe the matters worked on, services performed and amount of time devoted to those matters and services, as well as amounts of money expended in performing these functions. Records shall be kept for a sufficient duration as determined by the commissioner to establish to his satisfaction that the fees are appropriate.

TABLE I
MAXIMUM FEES IN DOLLARS

<u>TITLE 36</u>	<u>PROCESSING</u>	<u>CERTIFICATION</u>
<u>SECTION</u>	<u>FEE</u>	<u>FEE</u>
656, sub-\$1, <u>E, Pollution</u>		
<u>Control Facilities</u>		
A. <u>Water pollution</u>	<u>\$250</u>	<u>\$20</u>
<u>control facilities</u>		
<u>with capacities at</u>		
<u>least 4,000 gallons</u>		
<u>of waste per day and</u>		
<u>\$1760, sub-\$29, water</u>		
<u>pollution control</u>		
<u>facilities</u>		
B. <u>Air pollution</u>	<u>250</u>	<u>20</u>
<u>control and \$1760,</u>		
<u>sub-\$30, air pollution</u>		
<u>control facilities</u>		
<u>TITLE 38</u>	<u>PROCESSING</u>	<u>LICENSE</u>
<u>SECTION</u>	<u>FEE</u>	<u>FEE</u>
362-A, <u>Experiments</u>	<u>\$40</u>	<u>\$160</u>
393, <u>Great Ponds</u>	<u>75</u>	<u>50</u>
410-E, <u>Freshwater wetlands</u>	<u>100</u>	<u>50</u>
413, <u>Waste discharge license</u>		
A. <u>Residential</u>	<u>225</u>	<u>75</u>
B. <u>Commercial</u>		
1. <u>Flow of less than</u>		
<u>2,000 gallons per day</u>	<u>2,400</u>	<u>640</u>
2. <u>Flow of 2,000 to</u>		
<u>20,000 gallons per</u>		
<u>day inclusive</u>	<u>2,400</u>	<u>2,000</u>
3. <u>Flow of greater</u>		
<u>than 20,000 gallons</u>		
<u>per day</u>	<u>2,400</u>	<u>4,800</u>
C. <u>Industrial minor</u>		
<u>(based upon EPA list</u>		
<u>of major and minor</u>		
<u>source discharges)</u>		
1. <u>Discharges of</u>	<u>1,500</u>	<u>480</u>
<u>cooling water,</u>		
<u>sanitary waste water</u>		
<u>or treated storm water</u>		
<u>only</u>		
2. <u>All others</u>	<u>1,500</u>	<u>6,000</u>
D. <u>Industrial major</u>		
<u>(based upon EPA list of</u>		

1	major source discharges)		
2	1. Discharge of	4,800	3,000
3	cooling water or		
4	sanitary waste water		
5	only		
6	2. All others	4,800	8,800
7	E. Publicly owned		
8	treatment works		
9	1. Flow of less	100	400
10	than or equal to		
11	50,000 gallons per		
12	day and no significant		
13	industrial component		
14	2. Flow of greater	100	1,400
15	than 50,000 gallons		
16	per day, but less		
17	than 0.5 million		
18	gallons per day and		
19	no significant		
20	industrial component		
21	3. Flow of at least	100	3,600
22	0.5 million gallons		
23	per day, but less		
24	than 5 million		
25	gallons per day and		
26	no significant		
27	industrial component		
28	4. Flow of at least	300	5,400
29	5 million gallons per		
30	day or a significant		
31	industrial component		
32	F. Special discharges		
33	1. Aquatic pesticides	130	75
34	2. Dredge spoils	130	75
35	418, Log storage	55	25
36	421, Solid waste disposal areas	1,400	100
37	427, Alteration of rivers,	150	50
38	streams and brooks		
39	451, Mixing zones	1,200	2,200
40	451-A, Time schedule	25	25
41	variances		
42	471, Coastal wetlands and	3,500	1,500
43	sand dunes		
44	483, Site location		
45	A. Subdivisions	500/lot	100

1	<u>B. Structures</u>	<u>4,000</u>	<u>2,000</u>
2	<u>C. Mining</u>	<u>1,500</u>	<u>1,000</u>
3	<u>D. Other</u>	<u>1,000</u>	<u>1,000</u>
4	<u>543, Oily waste discharge</u>	<u>40</u>	<u>160</u>
5	<u>560, Vessels at anchorage</u>	<u>125</u>	<u>100</u>
6	<u>587, Ambient air quality</u>	<u>5,050</u>	<u>50</u>
7	<u>or emissions standards</u>		
8	<u>variances</u>	<u>5,050</u>	<u>50</u>
9	<u>590, Air emissions licenses</u>		
10	<u>A. Greater than or</u>	<u>10,050</u>	<u>1,200</u>
11	<u>equal to 1,000 tons</u>		
12	<u>per year of any</u>		
13	<u>criteria air</u>		
14	<u>pollutant</u>		
15	<u>B. Greater than or</u>	<u>5,050</u>	<u>400</u>
16	<u>equal to 100 tons</u>		
17	<u>per year, but less</u>		
18	<u>than 1,000 tons per</u>		
19	<u>year of any criteria</u>		
20	<u>air pollutant</u>		
21	<u>C. Greater than or</u>	<u>1,050</u>	<u>100</u>
22	<u>equal to 50 tons per</u>		
23	<u>year, but less than</u>		
24	<u>100 tons per year of</u>		
25	<u>any criteria air</u>		
26	<u>pollutant</u>		
27	<u>D. Less than 50</u>	<u>525</u>	<u>50</u>
28	<u>tons per year of</u>		
29	<u>any criteria air</u>		
30	<u>pollutant</u>		
31	<u>633, Hydropower projects</u>		
32	<u>A. New or expanded</u>	<u>450/MW</u>	<u>50/MW</u>
33	<u>generating capacity</u>		
34	<u>B. Maintenance and</u>	<u>50</u>	<u>25</u>
35	<u>repair or other</u>		
36	<u>structural alterations</u>		
37	<u>not involving an</u>		
38	<u>increase in generating</u>		
39	<u>capacity</u>		
40	<u>1101, Sanitary districts</u>	<u>150</u>	<u>50</u>
41	<u>1304, Nonhazardous waste</u>		
42	<u>facilities</u>		
43	<u>A. Septage facilities,</u>	<u>300</u>	<u>250</u>
44	<u>other than landfill or</u>		
45	<u>landspreading sites</u>		

1 6. Computer capabilities and needs.

2 Implementation of the 46 recommendations found in
3 the report will require only a minimal number of
4 statute changes as found in this bill and a
5 significant increase in resources as found in the
6 supplemental budget bill. The 46 recommendations
7 cover enhancements to the department's computer
8 information system, improvements to work spaces,
9 training for managers, drafting of comprehensive
10 policies and procedures, including increased use of
11 permit-by-rule, improvements to the enforcement system
12 and the addition of staff.

13 Section 1 establishes the pay range for the
14 Director of the Bureau of Administration and the
15 Director of the Bureau of Solid Waste Management, as
16 recommended by the study.

17 Sections 2 and 3 establish the new senior
18 management positions, the Director of Policy and
19 Planning and Director of the Bureau of Solid Waste
20 Management, as "major policy-influencing positions."

21 The Director of Policy and Planning will oversee
22 the office of the commissioner and will be responsible
23 for:

24 1. Coordinating the development of written
25 comprehensive and consistent policies and procedures;

26 2. Planning;

27 3. Media and legislative communication; and

28 4. Interbureau and interagency issues.

29 The Director of the Bureau of Solid Waste
30 Management will be responsible for managing all of the
31 solid waste programs in the department, including
32 sludge, septage, asbestos and solid waste programs
33 from the Bureau of Land Quality Control. The
34 establishment of the Bureau of Solid Waste Management
35 will assure proper coordination of programs, will
36 foster the implementation of the new solid waste law
37 and will reflect the importance placed

1 on solid waste, which will continue to be a major
2 environmental issue through this century.

3 Section 4 expands the category of "directors" that
4 are employees at the pleasure of the commissioner in
5 order to accommodate the "Director of Policy and
6 Planning" position recommended by the study.

7 Section 5 makes changes in the Maine Environmental
8 Protection Fund to add "enforcement activities" to the
9 list of allowable expenditures for the fund.

10 Sections 6 to 8 make additional changes in the
11 Maine Environmental Protection Fund by broadening the
12 types of costs that may be charged to the fund. Both
13 direct and indirect costs contribute to the total cost
14 of issuing a permit.

15 Section 9 raises the maximum fees that the
16 department may charge applicants under the Maine
17 Environmental Protection Fund. Most of these fee
18 increases are in response to one of the study's
19 recommendations which stated that more of a "market"
20 based approach be used rather than the present
21 administrative cost-accounting approach which is
22 difficult and time consuming.

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