

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1366

H.P. 988

House of Representatives, April 26, 1989

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads 'Ed Pert'.

EDWIN H. PERT, Clerk

Presented by Representative MICHAUD of East Millinocket.
Cosponsored by Senator LUDWIG of Aroostook.

STATE OF MAINE

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

An Act to Amend Certain Laws Affecting the Department of
Environmental Protection.



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

3 **Sec. 1. 5 MRSA §938, sub-§1, ¶¶H and I,** as enacted by PL 1987, c. 787, §3, are repealed.

5 **Sec. 2. 5 MRSA §938, sub-§1, ¶K,** as enacted by PL 1987, c. 816, Pt. KK, §9, is repealed.

7 **Sec. 3. 5 MRSA §938, sub-§1, ¶¶L and M,** as enacted by PL 1987, c. 816, Pt. KK, §9, are amended to read:

11 L. Director, Division of Licensing and Enforcement, Bureau
13 of Water Quality Control; and

15 M. Director, Division of Licensing and Enforcement, Bureau
17 of Oil and Hazardous Materials Control;

19 **Sec. 4. 5 MRSA §938, sub-§1, ¶¶N to Q** are enacted to read:

21 N. Director, Bureau of Solid Waste Management;

23 O. Director, Policy and Planning;

25 P. Directors, Regional Office Operations; and

27 Q. Director for the Board of Environmental Protection.

29 **Sec. 5. 29 MRSA §246-B, sub-§5,** as enacted by PL 1987, c. 750, §1, is amended to read:

31 **5. Apportionment of fees.** Fees shall be paid to the
33 Secretary of State and, upon receipt, credited to ~~the Maine
Hazardous Waste Fund.~~ Fees collected shall be and apportioned in
the following manner:

35 A. Sixty-five percent to the Maine Hazardous Waste Fund
37 administered by the Department of Environmental Protection;

39 B. Fifteen percent to the Secretary of State for the costs
of administering the licensing program;

41 C. Ten percent to the Department of Public Safety for costs
43 related to motor vehicle inspections and enforcement of this
section; and

45 D. Ten percent to the State Emergency Response Commission
47 established under the Maine Emergency Management Agency for
hazardous materials training of local and state officials.

49

1 **Sec. 6. 38 MRSA §342-A, sub-§2,** as enacted by PL 1987, c. 816,
Pt. Z, §5, is amended to read:

3
4 **2. Fee schedule.** The Division of Laboratory Services shall
5 recover its costs of providing services to ~~ether-bureaus~~ federal,
6 state, municipal and quasi-municipal agencies according to an
7 established fee schedule. A fee schedule for all laboratory
8 services shall be developed by the Director of the Division of
9 Laboratory Services and approved by the commissioner, after
appropriate consultation and modification.

11 **Sec. 7. 38 MRSA §344, sub-§2,** as amended by PL 1987, c. 274,
12 §§1 and 2, is repealed and the following enacted in its place:

13 **2. Delegation.** Authority is delegated to the Commissioner
14 of Environmental Protection and the department staff to approve,
15 approve with conditions or disapprove the following categories of
16 applications:

17 A. Applications under section 413 for a waste discharge
18 license and for a cooling water waste discharge license;

19 B. All applications under section 418, pertaining to log
20 storage permits;

21 C. Applications under section 480-A pertaining to natural
22 resources protection permits;

23 D. Applications under section 483 for site location
24 development permits;

25 E. All applications under section 543, pertaining to oil
26 discharge licenses;

27 F. All applications under section 545, pertaining to oil
28 terminal facility licenses;

29 G. Applications under section 590 pertaining to air
30 emissions licenses for all petroleum storage facilities, for
31 incinerators or boilers with capacities of less than
32 250,000,000 British Thermal Units per hour, or which do not
33 result in a net increase in emissions at any industrial or
34 commercial facility, and for all general process sources;

35 H. All applications under section 1304, subsection 8,
36 paragraph A, pertaining to solid waste, sludge or septage
37 waste facility permits;

38 I. All applications for licenses under section 1319-O,
39 pertaining to hazardous waste transporting;

1 J. All applications for licenses under section 1319-O,
3 pertaining to waste oil dealers and transporters; and

5 K. Applications for permit or license renewals when the
7 permittee or licensee has operated in substantial compliance
9 with the most recent permit or license and when the proposed
11 pollution control equipment is substantially unchanged from
that previously permitted or licensed and when applicable
laws or rules on which the permit or license would be
considered have not changed since the last permit or license
was issued.

13 The board may delegate by regulation to the commissioner the
15 authority to approve, approve with conditions or disapprove any
other applications for approvals by the board made pursuant to
any of the laws which the board is required to administer.

17 The board, after a majority of the members present and voting
19 vote to do so, may delegate to the commissioner the authority to
21 approve, approve with conditions or disapprove individual
applications not otherwise delegated under this subsection.

23 Decisions made by the commissioner pursuant to any such
25 delegation shall be made in accordance with the standards found
27 in the applicable law, with all procedural steps applicable to
29 applications not delegated, and with regulations adopted by the
board, which shall include assurance that any interested person
aggrieved by a decision of the commissioner made pursuant to this
section shall have a right to appeal that decision to the board.

31 **Sec. 8. 38 MRSA §480-R, sub-§2, as enacted by PL 1987, c. 809,**
33 **§2, is amended to read:**

35 **2. Enforcement. Inland In addition to the Department of**
37 **Environmental Protection, inland fisheries and wildlife game**
39 **wardens, Department of Marine Resources marine patrol officers**
and all other law enforcement officers enumerated in Title 12,
section 7055, shall enforce the terms of this article.

41 **Sec. 9. 38 MRSA §482, sub-§2, ¶A, as repealed and replaced by**
PL 1987, c. 812, §§2 and 18, is amended to read:

43 **A. Occupies a land or water area in excess of 20 acres,**
45 **including industrial and commercial parks;**

47 **Sec. 10. 38 MRSA §482, sub-§5, as amended by PL 1987, c. 737,**
Pt. C, §§90 and 106; c. 810, §§9 to 11; c. 812, §§7 and 18; c.
49 **864, §§1 and 2, and as amended by PL 1989, cc. 6 and 9, is**
repealed and the following enacted in its place:

1 5. Subdivision. A "subdivision" is the division of a
3 parcel of land of 20 or more acres into 5 or more lots to be
5 offered for sale or lease to the general public, for residential
7 use only, during any 5-year period except for the following:

9 A. All the lots are at least 10 acres in size and the
11 aggregate land area of all the lots make up a total of 100
13 acres or less, unless the subdivision is located wholly or
15 in part in the shoreland zone, in which case the exemption
17 does not apply;

19 B. When:

21 (1) All lots are at least 5 acres in size;

23 (2) All lots less than 10 acres in size are of such
25 dimensions as to accommodate within the boundaries of
27 each a rectangle measuring 200 feet by 300 feet which
29 abuts at one point the principal access way or the lots
31 have at least 75 feet of frontage of a cul-de-sac which
33 provides access;

35 (3) The aggregate land area of all the lots makes up a
37 total of 100 acres or less;

39 (4) The subdivision is not located wholly or in part
41 in the shoreland zone; and

43 (5) The municipality in which the subdivision is
45 located has adopted a subdivision ordinance, or its
47 municipal reviewing authority has adopted subdivision
49 regulations, pursuant to Title 30-A, section 4551;

51 C. Lots of 40 or more acres but not more than 500 acres
53 shall not be counted as lots except where:

55 (1) The proposed subdivision is located wholly or
57 partly within the shoreland area as defined in section
59 435;

61 C-1. Lots of more than 500 acres in size shall not be
63 counted as lots;

65 D. Five years after a subdivider establishes a
67 single-family residence for that subdivider's own use on a
69 lot and actually uses the lot for that purpose during that
71 period, that lot shall not be counted as a lot;

73 E. Unless intended to circumvent this article, the
75 following transactions shall not be considered lots offered
77 for sale or lease to the general public;

1 (1) Sale or lease of lots to an abutting owner or to a
3 spouse, child, parent, grandparent or sibling of the
 developer; or

5 (2) Personal, nonprofit transactions, such as the
7 transfer of lots by gift or devise; and

9 F. In those subdivisions which would otherwise not require
11 site location approval, unless intended to circumvent this
 article, the following transactions shall not, except as
 provided, be considered lots offered for sale or lease to
13 the general public:

15 (1) Sale or lease of common lots created with a
17 conservation easement as defined in Title 33, section
 476, provided that the Department of Environmental
 Protection is made a party.

19 The exception described in paragraph F does not apply, and the
21 subdivision requires site location approval whenever the use of a
 lot described in paragraph F changes or the lot is offered for
23 sale or lease to the general public without the limitations set
 forth in paragraph F. For the purposes of this subsection only,
25 a parcel of land is defined as all contiguous land in the same
 ownership provided that lands located on opposite sides of a
27 public or private road shall be considered each a separate parcel
 of land unless that road was established by the owner of land on
 both sides of the road subsequent to January 1, 1970.

29 Sec. 11. 38 MRSA §562, sub-§8, as enacted by PL 1985, c. 496,
31 Pt. A, §14, is amended to read:

33 8. Oil. "Oil" means oil, petroleum products, oil additives
35 and their by-products of any kind and in any form including, but
 not limited to, petroleum, fuel oil, sludge, oil refuse, oil
37 mixed with other waste, crude oils and all other liquid
 hydrocarbons regardless of specific gravity.

39 Sec. 12. 38 MRSA §608-A is enacted to read:

41 §608-A. Soil decontamination

43 Any rotary drum mix asphalt plant may process up to 5,000
45 cubic yards of gasoline or #2 fuel oil contaminated soil per
 year. The 5,000 cubic yard per year may be exceeded with written
 authorization from the Department of Environmental Protection.

47 Sec. 13. 38 MRSA §1319-D, as amended by PL 1987, c. 750, §4,
49 is further amended by adding a new 3rd ¶ at the end to read:

51 The department shall submit budget recommendations for
 disbursements from the fund in accordance with section 1319-E,

1 subsection 1, paragraphs C and E for each biennium. The budget
2 shall be submitted in accordance with Title 5, sections 1663 to
3 1666. The State Controller shall authorize expenditures
4 therefrom as approved by the commissioner. Expenditures pursuant
5 to section 1319-E, subsection 1, paragraphs A and D may be made
6 as authorized by the State Controller following approval by the
7 commissioner.

9 **Sec. 14. 38 MRSA §1319-E, sub-§1**, as amended by PL 1987, c.
10 517, §26, is further amended to read:

11
12 **1. Money disbursed.** Money in the Maine Hazardous Waste Fund
13 may be disbursed by the department for the following purposes,
14 but for no other:

15
16 **A.** Costs incurred in the removal or abatement of an
17 unlicensed discharge or threatened discharge of hazardous
18 waste or waste oil. Whenever practical, the department shall
19 offer the responsible party the opportunity to remove or
20 abate the discharge or threatened discharge;

21
22 ~~B. Notwithstanding paragraph A, disbursements to remove~~
23 ~~discharges of hazardous waste, which are not sudden and~~
24 ~~which involve costs exceeding \$10,000, may only be expended~~
25 ~~in accordance with an allocation approved by the Legislature;~~

26
27 **C.** Costs incurred for the purchase of necessary hazardous
28 waste and waste oil testing, response, inspection and
29 monitoring equipment and supplies, response and compliance
30 personnel and training of personnel in accordance with an
31 allocation approved by the Legislature;

32
33 **D.** Amounts necessary to reimburse municipalities as
34 required by section 1319-R, subsection 3; and

35
36 **E.** Costs incurred in the inspection or supervision of
37 hazardous waste activities and hazardous waste handlers.

38
39 ~~For the purposes of this subsection, "sudden" means an unexpected~~
40 ~~or abrupt discharge which occurs after September 1, 1981.~~

41

42

43 STATEMENT OF FACT

44

45
46 Sections 1 to 4 of this bill make technical corrections to
47 resolve existing conflicts in the law and designate 2 new
48 positions in the department as policy influencing. The directors
49 of Regional Office Operations will manage the regional offices as
50 the department moves more responsibilities to the regions. The
51 Director for the Board of Environmental Protection will serve as
52 staff to the board.

53

1 Section 5 of the bill streamlines the process of
2 apportioning fees collected as a result of Public Law 1987,
3 chapter 750, and prevents unnecessary paperwork.

5 Section 6 clarifies that the department's laboratory may
6 provide service to governmental agencies. There are some special
7 laboratory tests that only the department lab is capable of
8 performing.

9
10 In the Second Session of the 113th Legislature, the great
11 ponds, coastal wetlands and sand dunes, stream alteration and
12 freshwater wetlands laws were consolidated into the natural
13 resources protection laws. One of the purposes of this
14 consolidation was to provide greater consistency in the
15 administration of these laws, as well as to provide protection
16 for significant wildlife areas and fragile mountain areas.
17 Current law delegates only a portion of the consolidated laws to
18 the Commissioner of Environmental Protection. In order to
19 provide consistency in the administration of the consolidated
20 law, all of the natural resources protection laws have been
21 delegated to the commissioner by section 7 of this bill. Another
22 change to the delegation language includes the delegation of all
23 applications under the site location of development laws to the
24 commissioner for decision. Currently only a portion of the site
25 law is delegated to the commissioner. A third change in the
26 delegation language will allow the commissioner to make decisions
27 on waste oil dealer and waste oil transporter license
28 applications. In all cases, any decision of the commissioner
29 will remain appealable to the board and any of the delegated
30 applications can still be delegated back to the board when
31 appropriate.

33 Based on the present wording of the Maine Revised Statutes,
34 Title 38, section 480-R, subsection 2, a defense has been raised
35 by an alleged violator that the department has no jurisdiction to
36 enforce the natural resource protection laws. Section 8
37 clarifies that department staff have the power to enforce these
38 laws.

39
40 Sections 9 and 10 make it clear that the "subdivision"
41 definition as used in the site location of development law
42 applies only to the division of land into lots for residential
43 use; industrial and commercial parks will require a permit if
44 they occupy a land area in excess of 20 acres.

45
46 Section 11 amends Title 38, section 562, by expanding the
47 definition of oil to include oil additives.

49 Section 12 provides that soil contaminated by petroleum from
50 leaking tanks or spills must be stored in a manner that will
51 prevent water contamination or that the soil must be
52 decontaminated.

1 Section 13 provides that the Commissioner of Environmental
2 Protection may authorize expenditures from the fund for the
3 cleanup of discharges of hazardous waste as they occur. Unlike
4 the coastal and inland surface oil and groundwater oil cleanup
5 funds, the Hazardous Waste Fund's "All Other" category may be
6 spent only according to projected allocations established for
7 each fiscal quarter. Since the discharges cannot be predicted,
8 this has resulted in the department either delaying cleanup of
9 hazardous waste discharges or being unable to pay contractors for
10 clean-up work until the next quarter or until a new allocation
11 could be secured. This provision does not change the budget
12 approval process for personal services or capital expenditures.
13 This provision would make the discharge clean-up mechanism
14 identical to those now authorized for the oil clean-up funds.

15
16 Section 14 deletes language which is no longer necessary due
17 to the enactment of Title 38, chapter 13-B, the uncontrolled
18 hazardous substance sites program, which pertains to the cleanup
19 of nonsudden spills.