

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2214

H.P. 1602

House of Representatives, January 22, 1990

Reported by Representative MITCHELL from the Joint Standing Committee on Energy and Natural Resources.

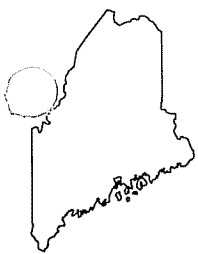
Reference to the Joint Standing Committee on Energy and Natural Resources suggested and printing ordered under Joint Rule 19.

Ed Pert
EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Clarify the Role of the Board of Environmental Protection.



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

2
3 Sec. 1. 2 MRSA §6, sub-§4, as repealed and replaced by PL
4 1989, c. 502, Pt. A, §2, and c. 585, Pt. A, §2, is repealed and
5 the following enacted in its place:

6 4. Range 80. The salaries of the following state officials
7 and employees shall be within salary range 88:

10 State Purchasing Agent;

12 Director, Arts and Humanities Bureau;

14 Director, State Museum Bureau;

16 Director of the Bureau of Parks and Recreation;

18 State Director of Alcoholic Beverages;

20 Director of Public Lands;

22 State Librarian;

24 Director of Employee Relations;

26 Director, Bureau of Air Quality Control;

28 Director, Bureau of Land Quality Control;

30 Director, Bureau of Water Quality Control;

32 Director, Bureau of Oil and Hazardous Materials Control;

34 Director, Bureau of Solid Waste Management;

36 Director, Bureau of Administration;

38 Director, Office of Planning;

40 Director, Office of Waste Reduction and Recycling;

42 Director, Office of Siting and Disposal Operations; and

44 Executive Director, Board of Environmental Protection.

46 Sec. 2. 5 MRSA §938-A is enacted to read:

48 §938-A. Board of Environmental Protection

50 1. Major policy-influencing positions. The following
51 positions are major policy-influencing positions within the Board
52 of Environmental Protection. Notwithstanding any other provision

2 of law, these positions and their successor positions shall be
3 subject to this chapter.

4 A. Executive Director.

6 **Sec. 3. 5 MRSA §12004-D, sub-§2,** as amended by PL 1989, c.
7 503, Pt. A, §8, is further amended to read:

8 2. Board of Legislative 38 MRSA §361
10 Environmental Protection Per-Diem §341-A
12 \$100 per day
13 plus expenses

14 **Sec. 4. 32 MRSA §§4172, 4173 and 4174,** as amended by PL 1971,
15 c. 618, §12, are further amended to read:

16 **§4172. Classification**

17 The board commissioner shall classify all wastewater
18 treatment plants actually used or intended for use by the public
19 with due regard to the size, type, character of wastewater to be
20 treated and other physical conditions affecting such those
21 treatment plants and shall specify the qualifications the
22 operator in responsible charge must have to supervise
23 successfully the operation of said those facilities so as to
24 protect the public health or prevent nuisance conditions or
25 unlawful pollution.

26 **§4173. Certification**

27 The board commissioner shall certify persons as to their
28 competency to supervise successfully the operation of wastewater
29 treatment plants. ~~No~~ A certification ~~shall-be~~ is not required of
30 an operator who is a registered professional engineer.

31 **§4174. Examination; criteria; standards**

32 The board commissioner shall hold at least one examination
33 each year for the purpose of examining candidates for
34 certification at a time and place designated by ~~it~~ the
35 commissioner. ~~Additional-meetings-may-be-called-by-the-board-as~~
36 ~~may-be-necessary-to-carry-out-this-chapter.~~

37 The board shall establish the criteria and conditions for
38 the classification of wastewater treatment plants or systems,
39 using as a basis the standards established by the New England
40 Water Pollution Control Association.

41 The board shall establish by ~~regulation~~ rule the
42 qualifications, conditions and licensing standards and procedures
43 for the certification of individuals to act as operators.

44

2 **Sec. 5. 32 MRSA §4175**, as amended by PL 1977, c. 694, §635,
is further amended to read:

4 **§4175. Certificates**

6 The ~~board~~ commissioner shall issue certificates attesting to
the competency of individuals to act as operators. The
8 certificate shall indicate the classification level of the
systems or plants for the operation of which the individual is
10 qualified to act as an operator.

12 Certificates shall continue in effect unless revoked by the
Administrative Court.

14 The Administrative Court may revoke the certificate of an
operator, in accordance with Title 4, chapter 25, when it is
16 found that the operator has practiced fraud or deception; that
reasonable care, judgment or the application of ~~his~~ the
18 operator's knowledge or ability was not used in the performance
of ~~his~~ the operator's duties; or that the operator is incompetent
20 or unable properly to perform ~~his~~ the operator's duties.

22 Operators whose certificates are invalidated under this
24 section may be issued new certificates of a like classification
provided appropriate proof of competency is presented to the
26 ~~board~~ commissioner.

28 This chapter shall not be construed to affect or prevent the
practice of any other legally recognized profession.

30 **Sec. 6. 32 MRSA §4176**, as amended by PL 1971, c. 618, §12, is
32 further amended to read:

34 **§4176. Without examination, other states**

36 The ~~board~~ commissioner, upon application therefor, may issue
a certificate, without examination, in a comparable
38 classification, to any person who holds a certificate in any
state, territory or possession of the United States or any
40 country, providing the requirements for certification of
operators under which the person's certificate was issued do not
42 conflict with this chapter and are of a standard not lower than
that specified by ~~regulations~~ rules adopted under this chapter.

44 **Sec. 7. 32 MRSA §4179**, as repealed and replaced by PL 1977,
46 c. 300, §8, is amended to read:

48 **§4179. Rules**

50 The Board of Environmental Protection shall ~~make~~ adopt rules
and ~~regulations~~ which include, but are not limited to, provisions
52 establishing the basis for classification of treatment plants in

2 accordance with section 4172 and provisions establishing
requirements for certification and procedures for examination of
4 candidates.

6 **Sec. 8. 32 MRSA §4181**, as amended by PL 1973, c. 625, §224,
is further amended to read:

8 **§4181. Penalty**

10 ~~On or after one year following October 1, 1969, it shall be~~
12 It is unlawful for any person, firm or corporation, both
municipal and private, ~~operating to operate~~ a wastewater
14 treatment plant ~~to operate same~~ unless the competency of the
operator ~~only~~ is certified to by the ~~board~~ commissioner under
16 this chapter. It ~~shall be~~ is unlawful for any person to perform
the duties of an operator, as defined, without being duly
18 certified under this chapter. The ~~board~~ commissioner may further
grant a waiver for a period not exceeding one year for the
20 operation of a wastewater treatment plant serving not more than
500 services in the event that the certification requirements
cannot be met.

22
24 **Sec. 9. 36 MRSA §656, sub-§1, ¶E**, as amended by PL 1985, c.
298, is further amended to read:

26 **E. Pollution control facilities.**

28 (1) Water pollution control facilities having a
capacity to handle at least 4,000 gallons of waste per
30 day, certified as such by the ~~Board~~ Commissioner of
Environmental Protection, and all parts and accessories
32 thereof.

34 As used in this paragraph, unless the context
otherwise indicates, the following terms have the
36 following meanings.

38 (a) "Facility" means any disposal system or any
treatment works, appliance, equipment, machinery,
40 installation or structures installed, acquired or
placed in operation primarily for the purpose of
42 reducing, controlling or eliminating water
pollution caused by industrial, commercial or
44 domestic waste.

46 (b) "Disposal system" means any system used
primarily for disposing of or isolating
48 industrial, commercial or domestic waste and
includes thickeners, incinerators, pipelines or
50 conduits, pumping stations, force mains and all
other constructions, devices, appurtenances and
52 facilities used for collecting or conducting water

2 borne industrial, commercial or domestic waste to
3 a point of disposal, treatment or isolation,
4 except that which is necessary to the manufacture
5 of products.

6 (c) "Industrial waste" means any liquid, gaseous
7 or solid waste substance capable of polluting the
8 waters of the State and resulting from any
9 process, or the development of any process, of
10 industry or manufacture.

12 (d) "Treatment works" means any plant, pumping
13 station, reservoir or other works used primarily
14 for the purpose of treating, stabilizing,
15 isolating or holding industrial, commercial or
16 domestic waste.

18 (e) "Commercial waste" means any liquid, gaseous
19 or solid waste substance capable of polluting the
20 waters of the State and resulting from any
21 activity which is primarily commercial in nature.

22 (f) "Domestic waste" means any liquid, gaseous or
23 solid waste substance capable of polluting the
24 waters of the State and resulting from any
25 activity which is primarily domestic in nature.

28 (2) Air pollution control facilities, certified as
29 such by the Board Commissioner of Environmental
30 Protection, and all parts and accessories thereof.

32 As used in this paragraph, unless the context
33 otherwise indicates, the following terms have the
34 following meanings.

36 (a) "Facility" means any appliance, equipment,
37 machinery, installation or structures installed,
38 acquired or placed in operation primarily for the
39 purpose of reducing, controlling, eliminating or
40 disposing of industrial air pollutants.

42 Facilities such as air conditioners, dust collectors,
43 fans and similar facilities designed, constructed or
44 installed solely for the benefit of the person for whom
45 installed or the personnel of such that person shall
46 not be deemed air pollution control facilities.

48 (3) The Department Commissioner of Environmental
49 Protection shall issue a determination regarding
50 certification by April 1st for any air or water
pollution control facility for which it has received a

complete application by December 15th of the preceding year.

Sec. 10. 36 MRSA §1760, sub-§29, as amended by PL 1975, c. 618, §12, is further amended to read:

29. Water pollution control facilities. Sales of any water pollution control facility, certified as such by the Beard Commissioner of Environmental Protection, and any part or accessories thereof, or any materials for the construction, repair or maintenance of such a facility.

As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

A. "Disposal system" means any system used primarily for disposing of or isolating industrial or other waste and includes thickeners, incinerators, pipelines or conduits, pumping stations, force mains and all other constructions, devices, appurtenances and facilities used for collecting or conducting water borne industrial or other waste to a point of disposal, treatment or isolation, except that which is necessary to the manufacture of products.

B. "Facility" means any disposal system or any treatment works, appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial or other waste, except septic tanks and the pipelines and leach fields connected or appurtenant thereto.

C. "Industrial waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any process, or the development of any process, of industry or manufacture.

D. "Treatment works" means any plant, pumping station, reservoir or other works used primarily for the purpose of treating, stabilizing, isolating or holding industrial or other waste.

Sec. 11. 36 MRSA §1760, sub-§30, as amended by PL 1973, c. 575, §2, is further amended to read:

30. Air pollution control facilities. Sale of any air pollution control facility, certified as such by the Beard Commissioner of Environmental Protection, and any part or accessories thereof, or any materials for the construction, repair or maintenance thereof.

2 As used in this subsection+, unless the context otherwise
3 indicates, the following terms have the following meanings.

4 A. "Facility" means any appliance, equipment, machinery,
5 installation or structures installed, acquired or placed in
6 operation primarily for the purpose of reducing,
7 controlling, eliminating or disposing of industrial or other
8 air pollutants.

9 Facilities such as air conditioners, dust collectors, fans
10 and similar facilities designed, constructed or installed
11 solely for the benefit of the person for whom installed or
12 the personnel of such person, and facilities designed or
13 installed for the reduction or control of automobile exhaust
14 emissions shall not be deemed air pollution control
15 facilities for purposes of this subsection.

16
17 Sec. 12. 38 MRSA §341, as amended by PL 1983, c. 812, §289,
18 is repealed.

19
20 Sec. 13. 38 MRSA §§341-A to 341-F are enacted to read:

21
22 §341-A. Department of Environmental Protection

23
24 There is established a Department of Environmental
25 Protection, in this Title called the "department."

26
27
28 1. Purpose. The department, exercising the police powers
29 of the State, shall control, abate and prevent the pollution of
30 the air, water and land and preserve, improve and prevent
31 diminution of the natural environment of the State.

32
33
34 2. Composition. The department shall consist of the Board
35 of Environmental Protection, in the laws administered by the
36 department called "board," and of a Commissioner of Environmental
37 Protection, in the laws administered by the department called
38 "commissioner."

39
40
41 3. Commissioner. The commissioner shall be appointed by
42 the Governor, subject to review by the joint standing committee
43 of the Legislature having jurisdiction over energy and natural
44 resource matters and to confirmation by the Legislature.

45
46
47 A. The commissioner shall serve at the pleasure of the
48 Governor.

49
50
51 B. When the State receives authority to issue permits under
52 the Federal Water Pollution Control Act, 33 United States
53 Code 1982, Section 1251 et seq., as amended, a person may
54 not serve as commissioner who receives, or during the 2
55 years prior to appointment has received, a significant
56 portion of income directly or indirectly from license or

2 permit holders or applicants for a license or permit under
3 the Federal Water Pollution Control Act.

4 C. The commissioner may delegate duties assigned to the
5 commissioner under this Title to department staff.

6 4. Licenses and permits. For purposes of this Title,
7 licenses or permits issued by the department may be issued by
8 either the commissioner or the board subject to the provisions of
9 section 341-D, subsection 2.

12 **§341-B. Purpose of the board**

13 The purpose of the Board of Environmental Protection is to
14 provide informed, independent and timely decisions on the
15 interpretation, administration and enforcement of the laws
16 relating to environmental protection and to provide for credible,
17 fair and responsible public participation in department
18 decisions. The board shall fulfill its purpose through
19 rulemaking, decisions on selected permit applications, review of
20 the commissioner's licensing and enforcement actions and
21 recommending changes in the law to the Legislature.

24 **§341-C. Board membership**

25 Membership of the Board of Environmental Protection is
26 governed by this section.

27 1. Appointments. The board shall consist of 10 members
28 appointed by the Governor, subject to review by the joint
29 standing committee of the Legislature having jurisdiction over
30 energy and natural resource matters and to confirmation by the
31 Legislature.

32 2. Qualifications and requirements. Members of the board
33 must be chosen to represent the broadest possible interest and
34 experience that can be brought to bear on the administration and
35 implementation of this Title and all other laws which the board
36 is charged with administering. At least 4 members must be
37 residents of the First Congressional District and at least 4
38 members must be residents of the Second Congressional District.
39 The boundaries of the congressional districts are defined in
40 Title 21-A, chapter 15.

41 3. Terms. The members must be appointed for staggered
42 4-year terms, except that a vacancy must be filled for the
43 unexpired portion of the term. A member may not serve more than 2
44 consecutive 4-year terms.

45 4. Chair. The Governor shall appoint one member to serve
46 as chair.

2 5. Expired terms. Any member who has not been renominated
by the Governor within 90 days of the expiration of that member's
4 term may not continue to serve on the board unless the Governor
notifies the Legislature, in writing and within 90 days of the
6 expiration of that member's term, that extension of the member's
term is required to ensure fair consideration of specific major
8 applications pending before the board. That member's term
terminates upon final board actions on the specific applications
identified in the Governor's communication.

10
12 6. Compensation. Members are entitled to compensation
according to the provisions of Title 5, section 12004-D.

14 7. Conflict of interest. Members are governed by the
conflict of interest provisions of Title 5, section 18.

16
18 8. Federal Water Pollution Control Act requirements. When
the State receives authority to grant permits under the Federal
20 Water Pollution Control Act, 33 United States Code 1982, Section
1251 et seq., as amended, a person may not serve as a board
22 member who receives, or during the 2 years prior to appointment
has received, a significant portion of income directly or
24 indirectly from license or permit holders or applicants for a
license or permit under the Federal Water Pollution Control Act.

26 **§341-D. Board responsibilities and duties**

28 The board is charged with the following duties and
responsibilities.

30
32 1. Rulemaking. Subject to the Maine Administrative
Procedure Act, Title 5, chapter 375, the board shall adopt, amend
34 or repeal reasonable rules and emergency rules necessary for the
interpretation, implementation and enforcement of any provision
of law that the department is charged with administering. The
36 board shall also adopt, amend and repeal rules as necessary for
the conduct of its business.

38
40 A. In addition to requirements under the Maine
Administrative Procedure Act, Title 5, chapter 375, any
42 rules or rule revisions proposed for final adoption by the
board must be submitted to the board and available to the
44 public at least 14 days prior to the scheduled board meeting
at which a vote for final adoption is scheduled to take
46 place. The board shall consider any written public comments
submitted during this period. Emergency rules are not
subject to this requirement.

48
50 2. Permit and license applications. The board shall decide
each application for approval of permits and licenses that in its
52 judgment:

- 2 A. Involves a policy, rule or law that the board has not
previously interpreted;
- 4 B. Involves important policy questions that the board has
not resolved;
- 6 C. Involves important policy questions that require
8 reexamination; or
- 10 D. Have generated substantial public interest.

12 The board shall assume jurisdiction over applications referred to
14 it under section 344, subsection 2-A, when it finds that the
criteria of this subsection have been met.

16 The board shall on its own motion assume jurisdiction of an
18 application if it finds that one or more of the criteria in this
subsection have been met.

20 The board shall make a decision on an application within 105
22 working days after the acceptance of the application under
section 344, subsection 1. The board may waive this time limit
24 requirement upon a vote of 2/3 of the board members.

26 3. Modification, revocation or suspension. After written
28 notice and opportunity for a hearing pursuant to the Maine
30 Administrative Procedure Act, Title 5, chapter 375, subchapter
IV, the board may modify in whole or in part any license, or may
act in accordance with the Maine Administrative Procedure Act to
revoke or suspend a license, whenever the board finds that:

- 32 A. The licensee has violated any condition of the license;
- 34 B. The licensee has obtained a license by misrepresenting
36 or failing to disclose fully all relevant facts;
- 38 C. The licensed discharge or activity poses a threat to
40 human health or the environment;
- 42 D. The license fails to include any standard or limitation
legally required on the date of issuance;
- 44 E. There has been a change in any condition or circumstance
46 that requires revocation, suspension or a temporary or
permanent modification of the terms of the license; or
- 48 F. The licensee has violated any law administered by the
50 department.

52 For the purposes of this subsection, the term "license" includes
any license, permit, order, approval or certification issued by

2 the department and the term "licensee" means the holder of the
3 license.

4 4. Review. The board shall review, may hold a public
5 hearing at its discretion and may affirm, amend or reverse any of
6 the following:

8 A. Final license or permit decisions made by the
9 commissioner when a person aggrieved by a decision of the
10 commissioner appeals that decision to the board within 30
11 days of the next regularly scheduled board meeting following
12 written notification to the board of the decision. The
13 board may supplement the record when it finds that the
14 evidence offered is relevant and material and that:

16 (1) An interested party seeking to supplement the
17 record has shown due diligence in bringing the evidence
18 to the licensing process at the earliest possible time;
19 or

20 (2) The evidence is newly discovered and could not, by
21 the exercise of diligence, have been discovered in time
22 to be presented earlier in the licensing process.

24 The board may adopt, modify or reverse findings of fact or
25 conclusions of law established by the commissioner. Any
26 changes made by the board under this paragraph must be based
27 upon the board's review of the record, any supplemental
28 evidence admitted by the board and any adjudicatory hearing
29 held by the board;

32 B. License or permit decisions made by the commissioner
33 that the board wishes to review on its own motion within 30
34 days of the next regularly scheduled board meeting following
35 written notification to the board of the commissioner's
36 decision. The procedures for review are the same as
37 provided under paragraph A; and

38 C. License or permit decisions appealed to the board under
39 another law. Unless the law provides otherwise, the
40 procedures for review are the same as provided under
41 paragraph A.

44 5. Requests for reconsideration. Within 30 days of a
45 decision by the board, any person aggrieved by the decision may
46 petition the board in writing for:

48 A. Correction of any part of the decision which the
49 petitioner believes to be in error and not intended by the
50 board;

2 B. An opportunity to present new or additional evidence to
3 secure reconsideration of any part of the decision; or

4 C. A challenge to any fact of which official notice was
5 taken.

6
7 The petition must set forth in detail the findings, conclusions
8 or conditions to which the petitioner objects, the basis of the
9 objections, the nature of any new or additional evidence to be
10 offered and the nature of the relief requested.

11 The board shall, within 30 days of receipt of a reconsideration
12 petition and after appropriate notice, grant the petition in full
13 or in part, order a public hearing or dismiss the petition. Any
14 public hearing held under this subsection shall be held within 45
15 days of receipt of the petition and at the discretion of the
16 board. The board shall provide reasonable notice to interested
17 persons.

18
19 The running of the time for appeal under section 346, subsection
20 1, is terminated by a timely petition for reconsideration filed
21 under this subsection. The full time for appeal commences and is
22 to be computed from the date of the final board action dismissing
23 the petition or another final board action as a result of the
24 petition.

25
26 The filing of a petition for reconsideration is not an
27 administrative or judicial prerequisite for the filing of an
28 appeal under section 346, subsection 1.

29
30 **6. Enforcement.** The board shall:

31 A. Advise the commissioner on enforcement priorities and
32 activities;

33 B. Advise the commissioner on the adequacy of penalties and
34 enforcement activities;

35 C. Approve administrative agreements pursuant to section
36 347-A, subsection 1; and

37 D. Hear appeals of emergency orders pursuant to section
38 347-A, subsection 3.

39
40 **7. Reports to the Legislature.** The board shall report to
41 the joint standing committee of the Legislature having
42 jurisdiction over energy and natural resource matters by January
43 15th of the first regular session of each Legislature on the
44 effectiveness of the environmental laws of the State and any
45 recommendations for amending those laws or the laws governing the
46 board.

2 8. Other duties. The board shall carry out other duties as
required by law.

4 §341-E. Board meetings

6 Board meetings held under section 341-D, subsections 1 to 7,
are governed by the following provisions.

8 1. Quorum. Six members of the board constitute a quorum
10 for a vote of the board, 6 members constitute a quorum for
rule-making hearings held by the board and 3 members constitute a
12 quorum for other hearings held by the board.

14 2. Proceedings recorded. All proceedings before the board
must be recorded electronically.

16 §341-F. Administration

18 Responsibility for the administration of the board lies with
20 the chair.

22 1. Staff. Staff of the board must be hired by the chair
with the consent of the board. The executive director shall
24 direct the daily operations of the board staff.

26 2. Unclassified employees. Professional staff of the board
are unclassified and may be removed, only for cause, by the chair
28 with consent of the board.

30 3. Conflict of interest. Notwithstanding Title 5, section
18, subsection 1, each professional staff member of the board is
32 an "executive employee" solely for the purposes of Title 5,
section 18.

34 4. Budget. The board shall prepare and adopt a biennial
36 operating budget to be submitted to the commissioner for
inclusion in the department's budget.

38 5. Consultants. The board may obtain the services of
40 consultants on a contractual basis or otherwise as necessary to
carry out the responsibilities under this Title.

42 6. Cooperation with other agencies. The board may
44 cooperate with other state or federal departments or agencies to
carry out the responsibilities under this Title.

46 Sec. 14. 38 MRSa §342, sub-§1-A, as amended by PL 1987, c.
48 205, is further amended to read:

50 1-A. Administration of department. He ~~The~~ commissioner is
the chief administrative officer of the Department--of
52 Environmental--Protection department and responsible for all

2 administrative matters of the department, except as otherwise
3 specified. ~~It is the responsibility of the~~ The commissioner to
4 shall assure that all determinations made by the staff of the
5 department are promptly rendered. ~~It is the responsibility of~~
6 the The commissioner to shall resolve disputes between department
7 staff and applicants with respect to any questions regarding
8 requirements, interpretation or application of the laws, rules or
9 department policy. In resolving disputes, the commissioner shall
10 attempt to reach a fair and appropriate result given all of the
11 circumstances of the issue ~~before him~~ and may utilize the
12 services of such consultants or experts as he the commissioner
13 determines would be helpful to resolve any disputed issue. For
14 purposes of this subsection, staff of the department does not
include staff of the board.

16 **Sec. 15. 38 MRSA §342, sub-§2, as repealed and replaced by PL**
17 **1985, c. 819, Pt. B, §§6 and 7, is amended to read:**

18 **2. Employment of personnel.** He The commissioner may
19 employ, subject to the Civil Service Law, such personnel for the
20 department and prescribe the duties of such these employees,
21 except persons occupying the positions defined in Title 5,
22 section 938, subsection 1, as he the commissioner deems
23 necessary to fulfill the duties of the department and of the
24 ~~Board of Environmental Protection~~ board. For purposes of this
25 subsection, personnel for the department does not include staff
26 of the board.

28 **Sec. 16. 38 MRSA §342, sub-§3, as enacted by PL 1971, c. 618,**
29 **§8, is repealed.**

32 **Sec. 17. 38 MRSA §342, sub-§3-A is enacted to read:**

34 **3-A. Negotiating agreements.** The commissioner may
35 negotiate and enter into agreements with federal, state and
36 municipal agencies.

38 **Sec. 18. 38 MRSA §342, sub-§§8 to 12 are enacted to read:**

40 **8. Data base.** The commissioner shall develop and maintain
41 a data base of license applications received and decisions made
42 by the department. The data base must include information on all
43 applications pending or received after January 1, 1990. For each
44 application the data base must include:

46 **A. The type of license sought;**

48 **B. The name and address of the applicant and the name of a**
49 **natural person who is the representative of the applicant;**

50 **C. The location of the project;**

52

2 D. The date of acceptance of the application for processing;

4 E. The expected date of final decision on the application;

6 F. The current processing status of the application;

8 G. An indication of whether the commissioner or the board
will decide the application;

10 H. A brief description of the project, including any
substantial issues raised during the licensing process; and

12 I. A brief description of the final action taken by the
14 department, either by the commissioner or the board, on the
16 application.

18 The commissioner shall maintain a central archive of all
applications received and licenses issued by the department.

20 9. Rules. The commissioner may submit to the board new or
22 amended rules for its adoption. The commissioner shall publish
notice of intent to propose a rule or rule revision no less than
24 30 days prior to the commissioner's submission of the proposed
rule or rule revision to the board for the initiation of
26 rulemaking under section 341-D, subsection 1. The commissioner
shall solicit public comment on the proposed rules during this
28 30-day period.

30 10. Consultants. The commissioner may contract with or
32 otherwise employ consultants for services necessary to carry out
duties under this Title.

34 11. Administrative duties for the board. The commissioner
shall meet the administrative requirements of the board including
36 bookkeeping, expense reimbursement and payroll matters.

38 12. Coordination and assistance procedures. The
commissioner shall establish procedures to assist the public and
40 applicants and coordinate processing for all environmental
permits issued by agencies of the State for activities within the
42 organized municipalities. These procedures must, to the extent
practicable, ensure:

44 A. Availability to the public of necessary information
concerning these environmental permits;

46 B. Provision of assistance to applicants in obtaining
48 environmental permits from state agencies; and

50 C. Coordination of application procedures, time schedules,
application forms and similar requirements to reduce delay

2 and duplication of effort by the applicant and the issuing
3 agencies.

4 State agencies issuing environmental permits shall cooperate with
5 the commissioner in developing and implementing procedures under
6 this subsection.

8 Sec. 19. 38 MRSA §343-A, as enacted by PL 1983, c. 566, §4,
9 is repealed.

10 Sec. 20. 38 MRSA §344, sub-§1, as amended by PL 1985, c. 746,
11 §7, is further amended to read:

12 1. **Acceptance and notification.** The Commissioner--of
13 Environmental--Protection commissioner shall, within 10 working
14 days of receipt of an application, determine whether the
15 application is in a form acceptable for processing and shall
16 notify the applicant of the official date on which the
17 application was accepted or the reasons why the application was
18 not accepted. The commissioner shall notify the board of all
19 applications accepted as complete.

20 ~~Notice shall be provided~~ The commissioner shall provide notice to
21 the public for each application for a permit or license accepted
22 by--the--commissioner. ~~Comments--shall--be--solicited~~ The
23 commissioner shall solicit comments from the public for each
24 application in a manner prescribed by the board in the
25 regulations rules.

26 A.--~~For those applications delegated to the commissioner~~
27 ~~under subsection 2 which do not fall under the permit by~~
28 ~~rule provisions of subsection 7, the commissioner shall, if~~
29 ~~requested by the applicant or any interested party, issue a~~
30 ~~draft permit or license and shall give reasonable notice to~~
31 ~~the applicant and to any other person who has notified the~~
32 ~~commissioner of his interest in the application before he~~
33 ~~takes final action on the application. The draft permit or~~
34 ~~license shall be made available to the applicant and to all~~
35 ~~interested persons at the Augusta office of the department~~
36 ~~at least 5 working days before the commissioner takes final~~
37 ~~action on the application.~~

38 B.--~~For those applications not delegated to the commissioner~~
39 ~~under subsection 2, the commissioner shall provide a summary~~
40 ~~of the application to the board and all interested~~
41 ~~governmental agencies and other interested parties in a~~
42 ~~manner prescribed by the board in the regulations. At least~~
43 ~~10 working days shall be provided for the receipt of~~
44 ~~comments on the application prior to the preparation of a~~
45 ~~draft permit or license. The commissioner shall, if~~
46 ~~requested by the applicant or any interested party, prepare~~
47 ~~a draft permit or license and shall give reasonable notice~~

2 to the applicant and to any other person who has notified
the commissioner of his interest in the application of the
4 date the board will act on the application. The draft permit
or license shall be made available to the applicant and to
6 all interested persons at the Augusta office of the
department at least 15 working days before the board acts on
the application.

8
10 All correspondence notifying the applicant of board or
commissioner decisions shall be by certified mail, return receipt
requested.

12
14 **Sec. 21. 38 MRSA §344, sub-§2, as amended by PL 1989, c. 546,
§§5 and 6, is repealed.**

16 **Sec. 22. 38 MRSA §344, sub-§§2-A and 2-B are enacted to read:**

18 **2-A. Processing time limits, decisions and appeals.** After
the commissioner accepts an application for processing, the
20 commissioner may approve, approve with conditions, disapprove or
refer the application as follows.

22
24 **A. The commissioner shall decide as expeditiously as
possible if an application meets one or more of the criteria
set forth in section 341-D, subsection 2 and shall request
26 that the board assume jurisdiction of that application. If
at any subsequent time during the review of an application
28 the commissioner decides that the application falls under
section 341-D, subsection 2, the commissioner shall request
30 that the board assume jurisdiction of the application.**

32 **B. The commissioner shall decide whether an application
meets the permit by rule provisions of subsection 7 within
34 20 working days after notifying the applicant of acceptance
of the application.**

36 **C. For those applications which do not fall under the
38 permit by rule provisions of subsection 7, the commissioner
shall decide upon the application within 80 days after
40 notifying the applicant of acceptance of the application.**

42 **The commissioner may waive the time limit requirements of this
subsection at the request of the applicant.**

44
46 **Any person aggrieved by a final license or permit decision of the
commissioner may appeal that decision to the board. The filing
of an appeal with the board is not a prerequisite for the filing
48 of a judicial appeal.**

50 **2-B. Conflict with federal requirements.** The commissioner
may waive the provisions of this section for those activities

2 which require a federal permit or license when those provisions
3 are inconsistent with federal law.

4 Sec. 23. 38 MRSA §344, sub-§3, as amended by PL 1985, c. 589,
5 §1, is repealed.

6 Sec. 24. 38 MRSA §344, sub-§4, as amended by PL 1983, c. 779,
7 §1, is repealed.

10 Sec. 25. 38 MRSA §344, sub-§4-A is enacted to read:

12 4-A. Draft decisions and commissioner recommendations.
13 Draft permits and licenses and commissioner recommendations are
14 subject to the following provisions.

16 A. For those applications to be decided by the commissioner
17 which do not fall under the permit by rule provisions of
18 subsection 7, the commissioner shall, if requested by the
19 applicant or any interested party, issue a draft permit or
20 license and shall give reasonable notice to the applicant
21 and to any other person who has notified the commissioner of
22 an interest in the application before the commissioner takes
23 final action on the application. The draft permit or
24 license must be made available to the applicant and to all
25 interested persons at the Augusta office of the department
26 at least 5 working days before the commissioner takes final
27 action on the application.

28 B. For those applications to be decided by the board, the
29 commissioner shall provide a summary of the application to
30 the board, all interested governmental agencies and other
31 interested parties in a manner prescribed by the board by
32 rule. The rule must provide at least 10 working days for
33 the receipt of comments on the application prior to the
34 preparation of a draft permit or license. If requested by
35 the applicant or any interested party, the commissioner
36 shall prepare a draft permit or license and shall give
37 reasonable notice of the date the board will act on the
38 application to the applicant and to any other person who has
39 notified the commissioner of an interest in the
40 application. The draft permit or license must be made
41 available to the applicant and to all interested persons at
42 the Augusta office of the department at least 15 working
43 days before the board acts on the application.

46 Sec. 26. 38 MRSA §344, sub-§5, as amended by PL 1977, c. 694,
47 §754, is repealed.

48 Sec. 27. 38 MRSA §344, sub-§§8 and 9 are enacted to read:

50 B. Effective date of license. Except as provided in this
51 subsection, a license granted by the commissioner is effective
52

2 when the commissioner signs the license. The commissioner may
3 attach a condition to the license requiring up to a 30-day delay
4 in any physical alteration of the project area and any
5 construction activity authorized by the license. A license
6 granted by the board is effective when the chair of the board
7 signs the license.

8 9. License renewals and transfers. For purposes of this
9 section, a request for a license or permit renewal or transfer is
10 considered an application.

12 Sec. 28. 38 MRSA §345-A, sub-§1, as amended by PL 1985, c.
13 589, §2, is repealed.

14 Sec. 29. 38 MRSA §345-A, sub-§1-A is enacted to read:

16 1-A. Department hearings. The board and commissioner may
17 hold public hearings as necessary to carry out responsibilities
18 under this Title.

20 Sec. 30. 38 MRSA §345-A, sub-§2, as enacted by PL 1983, c.
21 566, §6, is amended to read:

24 2. Maine Administrative Procedure Act. Except as provided
25 in section 347, subsection 2 elsewhere, all hearings of the Board
26 of Environmental Protection shall department must be conducted in
27 accordance with the procedural requirements of the Maine
28 Administrative Procedure Act, Title 5, chapter 375.

30 Sec. 31. 38 MRSA §347-A, sub-§§1 and 2, as enacted by PL 1989,
31 c. 311, §4, are amended to read:

34 1. General procedures. Whenever it appears to the
35 department commissioner, after investigation, that there is or
36 has been a violation of this Title, of rules promulgated under
37 this Title or of the terms or conditions of any Department--of
38 Environmental--Protection--or--Board--of--Environmental--Protection
39 board or commissioner license, permit or order, the department
40 commissioner may do one or more of the following, including, but
41 not limited to:

42 A. Resolve the violation through an administrative
43 agreement approved by the board and the Attorney General;

44 B. Refer the violation to the Attorney General for
45 prosecution;

46 C. Schedule and hold an enforcement hearing on the alleged
47 violation pursuant to subsection 2; or

2 D. With the prior approval of the Attorney General,
initiate a civil action pursuant to section 342, subsection
4 7.

6 **2. Hearings.** The commissioner shall give at least 30 days'
written notice to the alleged violator of the date, time and
8 place of any hearing held pursuant to subsection 1, paragraph C.
The notice shall specify the act or omission which is claimed to
10 be in violation of law or regulation.

12 Any hearing conducted under the authority of this subsection
shall be in accordance with the provisions of the Maine
14 Administrative Procedure Act, Title 5, chapter 375, subchapter
IV. At the hearing, the alleged violator may appear in person or
16 by attorney and answer the allegations of violation and file a
statement of the facts, including the methods, practices and
18 procedures, if any, adopted or used by that person to comply with
this chapter and present such evidence as may be pertinent and
20 relevant to the alleged violation.

22 After hearing, or in the event of a failure of the alleged
violator to appear on the date set for a hearing, the department
24 commissioner shall, as soon as practicable, make findings of fact
based on the record and, if ~~it~~ the commissioner finds that a
26 violation exists, shall issue an order aimed at ending the
violation. The person to whom an order is directed shall
28 immediately comply with the terms of that order.

30 **Sec. 32. 38 MRSA §347-A, sub-§§4 and 5** are enacted to read:

32 4. Administrative agreements. Any administrative
agreements entered into by the commissioner must be open to
34 public inspection for 7 days prior to approval by the board to
allow for written public comments to the board.

36 5. Enforcement. All orders of the department may be
enforced by the Attorney General. If any order of the department
38 is not complied with, the commissioner shall immediately notify
the Attorney General.

40 **Sec. 33. 38 MRSA §347-B**, as enacted by PL 1989, c. 311, §4,
42 is repealed.

44 **Sec. 34. 38 MRSA §361**, as amended by PL 1989, c. 503, Pt. B,
§175, is repealed.

46 **Sec. 35. 38 MRSA §366**, as amended by PL 1971, c. 618, §12, is
48 repealed.

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Sec. 36. 38 MRSA §§411-B and 412-B are enacted to read:

§411-B. Planning

The department is authorized to establish and conduct a continuous planning process in cooperation with federal, state, regional and municipal agencies consistent with the requirements of the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251, et seq., as amended.

§412-B. Consultation on waste water disposal

1. Consultation on disposal methods. The commissioner shall consult with and advise any person proposing or operating drainage, sewerage or industrial waste systems as to the best methods of disposal. In making recommendations, the commissioner shall consider the needs of the municipality, other municipalities and other persons affected.

2. Consultation on water pollution abatement and prevention. The commissioner may consult with and advise persons or corporations who are licensed or apply for a license under this subchapter on water pollution abatement and prevention.

3. Submission of plans for waste disposal. Any person who proposes a new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State shall submit plans and specifications for the system to the commissioner for approval. Purely storm water systems located in or on or draining from public ways and any alterations in existing facilities are exempt from this requirement.

Sec. 37. 38 MRSA §554, as amended by PL 1971, c. 618, §12, is repealed.

Sec. 38. Administrative rules. By January 15, 1991, the Board of Environmental Protection shall adopt rules pursuant to this section and report to the Joint Standing Committee on Energy and Natural Resources on the following:

1. Ex parte contacts. Criteria governing what constitutes a prohibited ex parte contact for matters subject to rulemaking, hearings and matters on the board agenda. The criteria shall address contacts between members of the board and its staff, and staff of the commissioner, the applicant, other parties and interested members of the public;

2. Adjudicatory proceedings. Criteria for establishing when an adjudicatory hearing will be held by the board, procedures for requesting an adjudicatory hearing and procedures governing requests for intervention and intervention rights; and

2 3. Public participation. Procedures governing public
3 participation in adjudicatory hearings. After a brief
4 presentation by each party during an adjudicatory hearing, these
5 procedures must provide for the public to comment initially. The
6 public comment period must precede presentation of witnesses and
7 cross-examination by the parties. A final public comment period
8 must be allowed after the parties have presented their case.

10
11 **STATEMENT OF FACT**

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13 This bill incorporates the recommendations of the
14 Subcommittee to Evaluate the Board of Environmental Protection,
15 convened by the Legislative Council.

16
17 The subcommittee found that the State is best served by
18 having a strong, independent citizen board for environmental
19 decision-making. This bill establishes a framework to provide
20 staff for the Board of Environmental Protection to develop an
21 independent decision-making capacity.

22
23 In addition, the subcommittee recommended that the functions
24 of the board and Commissioner of Environmental Protection be
25 clearly delineated. This bill makes the commissioner responsible
26 for all administrative matters, enforcement matters and routine
27 licensing. The board hears appeals of the commissioner's
28 decisions, decides precedent-setting applications and has final
29 authority over the settlement of enforcement actions. Finally, a
30 variety of smaller changes recommended by the subcommittee are
31 incorporated into the bill.