

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 950, L.D. 1372, Bill, "An Act to Establish the Environmental Appeals Board and to Amend Licensing and Permitting Procedures within the Department of Environmental Protection"

Amend the bill by striking out the title and substituting the following:

'An Act to Improve the Efficiency and Effectiveness of the State's Natural Resources Protection Programs'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

PART A

Sec. A-1. 38 MRSA §341-D, sub-§1, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

1. Rulemaking. Subject to the Maine Administrative Procedure Act, ~~Title-5, chapter-375,~~ the board shall adopt, amend 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 board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

If a comment is received during the hearing process on any rule proposed by the board regarding a specific provision in the rule that imposes a regulatory burden more stringent than the burden that would be imposed by the adoption of a federal minimum standard, the board shall respond to that comment in the basis statement of the adopted rule.

Sec. A-2. 38 MRSA §342, sub-§14 is enacted to read:

2 14. Environmental priorities report. Contingent upon
3 available funding, the commissioner shall conduct a study of the
4 State's environmental priorities and shall report annually to the
5 Governor and the joint standing committee of the Legislature
6 having jurisdiction over energy and natural resource matters on
7 the findings and implementation strategy for the study. The
8 commissioner shall include agencies of government as well as the
9 public in conducting this study. The study must evaluate the
10 risks posed by different environmental problems based on their
11 threat to the public health and the environment, recommend
12 environmental priorities and recommend strategies for reducing
13 the risks associated with each priority.

14 Sec. A-3. 38 MRSA §344, sub-§7, as enacted by PL 1983, c. 453,
15 §4, is amended to read:

16
17 7. Permit by rule. The Board of Environmental Protection
18 may permit, by rule, any class of activities which ~~that~~ would
19 otherwise require the individual issuance of a permit or approval
20 by the board, if the board determines that activities within the
21 class will have no significant impact upon the environment. Any
22 such rule shall ~~must~~ describe with specificity the class of
23 activities covered by the rule, and may establish standards of
24 design, construction or use as may be deemed considered necessary
25 to avoid adverse environmental impacts. Any such rule shall ~~must~~
26 require notification to the commissioner prior to the undertaking
27 of the regulated activity.

28 The commissioner shall annually review activities requiring
29 permits or approval from the department to determine whether any
30 additional classes of activities are more effectively
31 administered under a permit by rule system. As part of this
32 review, the commissioner shall solicit public comments on
33 recommendations for activities to be included under permit by
34 rule and shall review the performance of the existing permit by
35 rule program, including a review of the compliance record of the
36 permit by rule program. The commissioner shall annually
37 recommend to the board any additional categories of permits for
38 the board to permit by rule.

39 Sec. A-4. 38 MRSA §345-A, sub-§2-A is enacted to read:

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41 2-A. Intervenor procedures. The board shall adopt rules
42 that define the procedures and scope of participation for
43 intervenors.

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48 PART B

49 Sec. B-1. 38 MRSA §343-B is enacted to read:

2 §343-B. Preapplication and presubmission meetings

4 At the request of a potential applicant or when required by
6 rule, the department shall hold a preapplication meeting to
8 identify the issues, types of information and documentation
10 necessary for the department to properly assess a specific
12 project. For any application that has had a preapplication
14 meeting, the department shall also hold a presubmission meeting
16 to review the application prior to the application being filed by
18 the applicant.

14 The board may adopt rules that identify classes of
16 applications that require an applicant to attend a preapplication
18 and presubmission meeting held by the department prior to
20 submitting the application.

18 **Sec. B-2. 38 MRSA §344, sub-§1, as amended by PL 1989, c. 890,**
20 **Pt. A, §20 and affected by §40, is further amended to read:**

22 **1. Acceptance and notification.** The commissioner shall,
24 ~~within 10 working days of receipt of an application, determine~~
26 ~~whether the application is in a form acceptable for processing~~
28 ~~and shall~~ notify the applicant in writing of the official date on
30 which the application was accepted as complete for processing or
32 the reasons the application was not accepted. If a written
34 notice of acceptance or nonacceptance is not mailed to the
36 applicant within 15 working days of receipt of the application,
38 the application is deemed to be accepted as complete for
40 processing on the 15th working day after receipt by the
42 department. If the application is not accepted, the commissioner
44 shall return the application to the applicant with the reasons
46 for nonacceptance specified in writing. Any applicant whose
48 application has not been accepted by the commissioner shall
attend a presubmission meeting with the department before
resubmitting that application. The commissioner shall notify the
board of all applications accepted as complete.

An application is acceptable as complete for processing if the
application is properly filled out and information is provided
for each of the items included on the form. Acceptance of an
application as complete for review does not constitute a
determination by the department on the sufficiency of that
information and does not preclude the department from requesting
additional information during processing.

The commissioner shall require the applicant to provide notice to
the public for each application for a permit or license
accepted. The commissioner shall solicit comments from the

2 public for each application in a manner prescribed by the board
in the rules.

4 All correspondence notifying an applicant of denial of an
6 application by the board or commissioner shall must be by
certified mail, return receipt requested.

8 **Sec. B-3. 38 MRSA §344, sub-§2-A, ¶C**, as enacted by PL 1989,
c. 890, .Pt. A, §22 and affected by §40, is amended to read:

10 C. For those applications which that do not fall under the
12 permit by rule provisions of subsection 7, the commissioner
shall decide upon the application as--expeditiously--as
14 possible--after--notifying--the--applicant--of--acceptance--of--the
application pursuant to the provisions of section 344-B.

16 **Sec. B-4. 38 MRSA §344-B** is enacted to read:

18 **§344-B. Timetables for processing permit applications**

20 Pursuant to the provisions of this section, the commissioner
22 shall determine and annually publish a processing time for each
24 type of permit or license issued by the department. When
establishing processing times for permits or licenses, the
26 commissioner shall take into consideration all duties and
responsibilities of the department and the availability of
28 resources.

The provisions of this section apply only to new permit and
30 license applications.

32 **1. Publication of timetables.** No later than August 1st of
34 each year, the commissioner shall publish processing timetables
for each permit and license issued by the department. Permit and
36 license processing timetables must be published simultaneously in
all newspapers designated by the Secretary of State as papers of
38 record under Title 5, section 8053, subsection 5. The
commissioner shall enter the published processing timetables into
40 the record of the board at the first meeting of the board
following publication.

42 Except as provided in this section, the deadline governing the
processing of an application is determined by the timetable in
44 effect on the date the application is determined to be complete.

46 **2. Consultation.** Prior to publishing timetables pursuant
48 to subsection 1, the commissioner shall review the proposed
processing timetables with an advisory committee established for
50 that purpose. The commissioner shall appoint the members of the
advisory committee. In appointing the members, the commissioner

2 shall seek to appoint a committee that is broadly representative
3 of business, environmental and other interest groups. The
4 purpose of the committee is solely advisory.

5 3. Processing period. The processing period for an
6 application begins on the date the commissioner notifies the
7 applicant that the application is complete. Except as provided
8 in paragraph A, the consent of the applicant is required to stop
9 the processing period or to extend the deadline.

10 A. The processing time for an application stops if:

11 (1) The commissioner determines that a public hearing
12 is required. Under this subparagraph, the processing
13 period may be stopped only for as long as necessary to
14 accommodate the public hearing process and must
15 commence at the end of the comment period following the
16 public hearing;

17 (2) The board assumes jurisdiction over an
18 application. If the board assumes jurisdiction over an
19 application, the board shall set a new timetable for
20 the application and shall stop the processing period or
21 extend the deadline subject to the conditions of this
22 subsection. The forfeiture provisions of subsection 5
23 do not apply to timetables set by the board; or

24 (3) The commissioner determines that the applicant has
25 significantly modified the application. Under this
26 subparagraph, the processing period is stopped until
27 the applicant and the commissioner agree to a new
28 timetable.

29 B. The commissioner may stop the processing time with the
30 consent of the applicant for any period of time agreeable to
31 the commissioner and the applicant if the commissioner
32 determines that:

33 (1) Additional information is required from the
34 applicant;

35 (2) Agencies other than the department that are
36 required to comment on an application do not respond
37 within the time frames established by a memorandum of
38 understanding between the agencies; or

39 (3) The applicant wishes to stop the processing period
40 or to extend the deadline.

Expiration of a processing period may not be the sole reason for denial of an application.

4. Multiple permits. For projects that require more than one permit from the department, the commissioner and the applicant shall determine the timetable or timetables applicable to all permit or license applications required for that project at a presubmission meeting.

5. Forfeiture. If the commissioner fails to approve or deny an application prior to the applicable deadline, the commissioner shall pay the applicant an amount equal to 50% of the permit or license processing fee. The remainder of the permit or license processing fee is payable to the applicant if the commissioner does not approve or deny the application within 120 calendar days after that deadline. Forfeitures payable under this subsection may not exceed the permit or license processing fee paid by the applicant.

6. Report. Beginning on January 1, 1994, the commissioner shall report annually to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters on permitting and licensing activities under this section. The report must include, but is not limited to, a list of the reasons for permit or license extensions and a summary of the number of permit or license extensions required as a result of the failure of an outside agency to provide the department with comments within the required time established by a memorandum of understanding.

Sec. B-5. Application. The provisions of this Act apply only to new permit or license applications the Department of Environmental Protection determines to be complete on or after August 1, 1992. Nothing in this Act may be construed to apply to any permit or license renewals or amendments, or to permit or license applications the department determines to be complete prior to August 1, 1992.

Sec. B-6. Timetables published prior to August 1, 1992. Prior to August 1, 1992, the Commissioner of Environmental Protection must publish timetables for each type of permit and license issued by the department. The commissioner shall publish permit and license timetables in a manner consistent with the provisions of this Part.

Sec. B-7. Effective date. Sections 1 to 5 of this Part take effect August 1, 1992.

PART C

2 **Sec. C-1. 5 MRSA §12004-I, sub-§22-B** is enacted to read: •
4

6 22-B. Pollution Pre- Expenses 38 MRSA
8 Environ- vention Adviso- Only §343-D
 ment: Nat- ry Committee
 ural Re-
 sources.

10 **Sec. C-2. 38 MRSA §342, sub-§4, ¶B,** as enacted by PL 1991, c.
12 520, §1, is amended to read:

14 B. The Office of Pollution Prevention is established within
16 the department to review department programs and make
18 recommendations to the commissioner on means of integrating
 pollution prevention into department programs. The Office
 of Pollution Prevention has the following functions:

20 (1) To establish pollution prevention priorities
 within the department;

22 (2) To coordinate department pollution prevention
24 activities with those of other agencies and entities;

26 (3) To ensure that rules, programs and activities of
28 the department are consistent with pollution prevention
 goals and do not hinder pollution prevention
30 initiatives;

32 (4) To provide technical assistance, training and
34 educational activities to assist the general public,
 governmental entities and the regulated community with
 development and implementation of pollution prevention
36 programs as funds allow;

38 (5) To establish an award program to recognize
40 businesses, local governments, department staff and
 others that have implemented outstanding or innovative
 pollution prevention programs, activities or methods;

42 (6) To identify opportunities to use the state
44 procurement system to encourage pollution prevention;

46 (7) To develop procedures to determine the
48 effectiveness of the department's pollution prevention
 programs and activities; and

50 (8) To assume responsibility for the administration
 and implementation of chapter 26.; and

2 (9) To administer and evaluate the Technical and
4 Environmental Assistance Program established in section
 343-B.

6 The commissioner shall designate an employee of the
8 department to manage the functions of the Office of
 Pollution Prevention. That person may provide independent
10 testimony to the Legislature, may make periodic reports to
 the administrator of the federal Environmental Protection
12 Agency for transmittal to the United States Congress and may
 address problems or concerns related to the functions of the
14 office, including the investigation of complaints concerning
 the Technical and Environmental Assistance Program.

16 The commissioner shall identify a staff person or persons in
18 each bureau of the department whose primary responsibility
 is to provide guidance to any party through the permit
 review process.

20 Sec. C-3. 38 MRSA §§343-C and 343-D are enacted to read:

22 §343-C. Technical and Environmental Assistance Program

24 The Technical and Environmental Assistance Program, referred
26 to in this section as the "program," is administered by the
 Office of Pollution Prevention. Participation in the program by
28 any person is voluntary. The department may not require any
 person to participate in the program.

30 1. Program components. The program must:

32 A. Provide for the development, collection and coordination
34 of information concerning compliance methods and
 technologies;

36 B. Provide for the encouragement of lawful cooperation
38 among persons engaged in activities regulated by the
 department;

40 C. Provide assistance with pollution prevention and
42 accidental release detection and prevention;

44 D. Ensure that a person engaging in an activity that is
46 subject to regulation by the department is informed of that
 person's rights and obligations under environmental programs
48 administered by the department, and assist persons in
 determining the applicable permitting and programmatic
50 requirements of the department; and

2 E. Develop procedures to consider requests from regulated
4 persons to modify work practice or technological compliance
6 methods or the milestones for implementing those methods.

8 Any instance of noncompliance identified as a result of a person
10 requesting assistance through the program must be corrected by
12 that person. The commissioner is not required to initiate a
14 formal enforcement action against a person found to be in
16 noncompliance as a result of a request for assistance through the
18 program.

20 2. Other duties. In administering the program, the Office
22 of Pollution Prevention shall:

24 A. Operate a telephone hotline to enhance accessibility of
26 the program;

28 B. Prepare reports periodically on the status of the
30 program for distribution to the public, the Legislature and
32 other appropriate federal and state agencies; and

34 C. Periodically review the program with trade associations,
36 municipal organizations and regulated persons.

38 §343-D. Pollution Prevention Advisory Committee

40 The Pollution Prevention Advisory Committee, established by
42 Title 5, section 12004-I, subsection 22-B and referred to in this
44 section as the "committee," serves as a review body to assess the
46 progress in the reduction of toxics use, toxics release and
48 hazardous waste and implementation of the provisions of chapter
50 26, the Office of Pollution Prevention and the Technical and
Environmental Assistance Program and may render advisory opinions
to the commissioner on the effectiveness of each.

1. Appointment; composition. The committee consists of 15
voting members.

A. The Governor shall appoint 4 representatives from the
business community, 2 elected or appointed municipal
officials and 2 representatives of organized labor.

B. The President of the Senate shall appoint one member
from a public health organization, one member from an
environmental organization and one public member.

C. The Speaker of the House of Representatives shall
appoint one member from a public health organization, one
member from an environmental organization and one public
member.

2 D. The commissioner or the commissioner's designee is a
3 voting member.

4
5 The Commissioner of Labor, the Director of the Maine Emergency
6 Management Agency and the Executive Director of the Maine Waste
7 Management Agency serve as ex officio members and do not vote on
8 committee matters.

10 2. Terms. Except for the commissioner, who shall serve a
11 term coincident with that person's appointment as the
12 commissioner, all members are appointed for staggered terms of 3
13 years. A vacancy must be filled by the same appointing authority
14 that made the original appointment. Appointed members may not
15 serve more than 2, 3-year terms.

16 3. Compensation. Members are entitled to compensation for
17 expenses according to Title 5, section 12004-I, subsection 22-B.

18 4. Quorum; actions. A quorum is a majority of the voting
19 members of the committee. An affirmative vote of the majority of
20 the members present at a meeting is required for any action.
21 Action may not be considered unless a quorum is present.

22 5. Chair. The Governor shall appoint one member to serve
23 as chair.

24 6. Meetings. The committee shall meet at least 4 times per
25 year and at any time at the call of the chair or upon written
26 request to the chair by 4 of the voting members.

27 7. Staff support. The commissioner shall provide the
28 committee with staff support.

29 8. Duties; powers. The committee may review and may render
30 advisory opinions to the commissioner on the operation and
31 effectiveness of the following programs:

32 A. Toxics Use, Toxics Release and Hazardous Waste Reduction
33 Program, established in chapter 26. The committee may:

34 (1) Review program priorities for toxics use, toxics
35 release and hazardous waste reduction and may identify
36 user groups as priorities for department technical
37 assistance activities;

38 (2) Review the criteria for the submission of toxics
39 use, toxics release and hazardous waste reduction plans;

2 (3) Study and evaluate the practicability of achieving
4 reductions in the use or release of specific substances
6 through the use of substitutes, alternate procedures or
 processes or other means of achieving toxics use,
 toxics release and hazardous waste reduction;

8 (4) Recommend revisions to the department, if
10 appropriate, to toxics use, toxics release and
 hazardous waste reduction goals and to the Toxics Use,
 Toxics Release and Hazardous Waste Reduction Program;
12 and

14 (5) Evaluate existing programs related to chemical
16 production and use, hazardous waste generation,
18 industrial hygiene, worker safety and public exposure
 to toxics and toxics releases and recommend
 coordination of information and program changes or
 development;

20 B. The Technical and Environmental Assistance Program
22 established under section 343-B. In reviewing that program,
 the committee may:

24 (1) Review information developed or distributed by the
26 Technical and Environmental Assistance Program to
 ensure that the information is understandable to the
 general public; and

28 (2) Prepare periodic reports to the Governor on the
30 compliance status of the Technical and Environmental
32 Assistance Program. The reports must be forwarded to
34 the federal Environmental Protection Agency complying
36 with the requirements of the federal Paperwork
 Reduction Act of 1980, Public Law 96-511, as amended;
 the federal Regulatory Flexibility Act, 5 United States
 Code, Sections 601 to 612; and the federal Equal Access
 to Justice Act, Public Law 96-481, as amended; and

38 C. The Office of Pollution Prevention established under
40 section 342, subsection 4, paragraph B.

42 In conducting its review under paragraphs A to C, the committee
44 may submit recommendations for statutory changes to the joint
 standing committee of the Legislature having jurisdiction over
 energy and natural resources matters.

46 Sec. C-4. 38 MRSA §2310, as amended by PL 1991, c. 520, §§20
48 and 21, is repealed.

Sec. C-5. Transition; Toxic Waste Advisory Committee. On the effective date of this Part, those persons serving as members of the former Toxic Waste Advisory Committee under the Maine Revised Statutes, Title 38, section 2310 are deemed to be members of the Pollution Prevention Advisory Committee established in Title 38, section 343-D and may serve the remainder of their appointed terms.

1. Not later than 30 days after the effective date of this Part, the Governor shall appoint 2 elected or appointed municipal officials as members of the Pollution Prevention Advisory Committee pursuant to Title 38, section 343-D.

PART D

Sec. D-1. Natural resource protection law review. Before March 1, 1993, the Maine Land Use Regulation Commission shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the procedures and related issues of the commission developing consistent standards for and administering the review of activities under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A for protected natural resources in areas of the State subject to the jurisdiction of the commission. Subject to available funding, the commission shall prepare maps delineating the boundaries of freshwater wetlands meeting the definition set forth in Title 38, section 480-B, subsection 4 for areas subject to the jurisdiction of the commission. These activities are to be funded through the municipal cost component of the unorganized territories. The report must describe the progress made by the commission in preparing these maps.

Sec. D-2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1992-93

CONSERVATION, DEPARTMENT OF

Land Use Regulation Commission

Positions	(1.0)
Personal Services	\$44,519
All Other	51,181
Capital Expenditures	4,300

Provides funds for one Chief Planner position and contractual mapping services.

This appropriation will be reimbursed from the Unorganized Territory Education and Services Fund, increasing General Fund revenue by \$100,000 in fiscal year 1992-93.

DEPARTMENT OF CONSERVATION
TOTAL

\$100,000

FISCAL NOTE

1992-93

APPROPRIATIONS/ALLOCATIONS

General Fund

\$100,000

REVENUES

General Fund

\$100,000

The Department of Environmental Protection will incur additional costs as a result of conducting an environmental priorities study, publishing processing deadlines for new permit and license applications, potentially reimbursing processing fees to permittees and establishing the Technical and Environmental Assistance Program. These costs can be absorbed within the department's existing budgeted resources.

The Maine Land Use Regulation Commission will require a General Fund appropriation of \$100,000 in fiscal year 1992-93 for a Chief Planner position and contractual mapping services. This appropriation will be reimbursed from the Unorganized Territory Education and Services Fund, increasing General Fund revenue by \$100,000 in fiscal year 1992-93.

The additional costs associated with reporting to the Joint Standing Committee on Energy and Natural Resources on the appropriateness of transferring review of requirements under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A by March 1, 1993 can be absorbed by the Maine Land Use Regulation Commission utilizing existing budgeted resources.

STATEMENT OF FACT

Part A of this amendment requires that the Board of Environmental Protection respond to comments received during rulemaking regarding how the proposed rule compares to federal

2 minimum standards. Part A also requires the Commissioner of
Environmental Protection to submit a study on environmental
4 priorities, contingent upon available funding, and to review the
performance of the permit by rule program of the Department of
Environmental Protection.

6
8 Part B establishes a procedure that requires the
Commissioner of Environmental Protection to publish timetables
10 for new permit and license applications. Provisions are included
for stopping the processing period on any given permit or license
12 application and for extending the deadline for deciding upon an
application. If the commissioner does not accept or reject an
14 application within the applicable timetable, the applicant is
entitled to reimbursement of 50% of the permit or license
16 processing fee. The applicant is entitled to reimbursement of
the remainder of the processing fee if a decision is not made
within 120 calendar days after the deadline.

18
20 Part C establishes the Technical and Environmental
Assistance Program within the Department of Environmental
Protection. The Pollution Prevention Advisory Committee is
22 established, consisting of the members of the former Toxic
Reduction Advisory Committee, which is abolished in this
24 amendment. Three new voting members are added to the advisory
committee: 2 persons selected by the Governor from elected or
26 appointed municipal officials and the Commissioner of
Environmental Protection or the commissioner's designee. The
28 duties of the Pollution Prevention Advisory Committee include the
duties of the former Toxic Reduction Advisory Committee. The
30 committee is also charged with advising the commissioner on the
functioning of the Technical and Environmental Assistance Program
32 and reviewing the functions and programs administered by the
Office of Pollution Prevention.

34
36 Part D requires the Maine Land Use Regulation Commission to
prepare maps of freshwater wetlands within the jurisdiction of
the Maine Land Use Regulation Commission and to report to the
38 joint standing committee of the Legislature having jurisdiction
over energy and natural resources matters on those efforts by
40 March 1, 1993. Part D also adds an appropriation section.

42 The amendment also adds a fiscal note.

Reported by the Committee on Energy and Natural Resources
Reproduced and distributed under the direction of the Clerk of the
House
3/23/92

(Filing No. H-1190)