

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1372

H.P. 950

House of Representatives, April 1, 1991

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

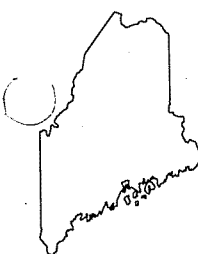
Presented by Representative GWADOSKY of Fairfield.

Cosponsored by Senator CAHILL of Sagadahoc, President PRAY of Penobscot and Representative WHITCOMB of Waldo.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Establish the Environmental Appeals Board and to Amend
Licensing and Permitting Procedures within the Department of
Environmental Protection.**



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

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Sec. 1. 5 MRSA §12004-D, sub-§5 is enacted to read:

5. Environmental Appeals Board Legislative Per Diem 38 MRSA §341-H

Sec. 2. 38 MRSA §341-A, sub-§§1, 2 and 4, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, are amended to read:

1. **Purpose.** The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State in a manner that incorporates and is directed by the State's comprehensive environmental strategies and goals as determined by the board and that balances environmental priorities with social and economic growth and activity by minimizing the economic impact of environmental regulation whenever possible. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

2. **Composition.** The department shall ~~consist~~ consists of the Board of Environmental Protection, in the laws administered by the department called the "board," and of a the Commissioner of Environmental Protection, in the laws administered by the department called ~~"commissioner,"~~ the "commissioner," and of the Environmental Appeals Board, in the laws administered by the department called the "appeals board."

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

Sec. 3. 38 MRSA §341-B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is repealed and the following enacted in its place:

§341-B. Purpose of the board

The purpose of the board is to provide all elements of society and the economy with fair and responsible participation in the protection of the State's natural environment. The board shall fulfill its purpose through the development of the State's environmental strategies and goals, through rulemaking and by recommending changes in the law to the Governor and the Legislature. In the development of the State's environmental strategies and goals and in adopting rules, the board shall, to the maximum extent possible, balance the goals of protecting the

2 State's natural resources with the need to protect the
3 competitiveness of the State's businesses and industries.

4 **Sec. 4. 38 MRSA §341-C, sub-§§5 and 8,** as enacted by PL 1989,
5 c. 890, Pt. A, §13 and affected by §40, are repealed.

6 **Sec. 5. 38 MRSA §341-D, sub-§1,** as enacted by PL 1989, c. 890,
7 Pt. A, §13 and affected by §40, is amended to read:

10 **1. Rulemaking.** Subject to the Maine Administrative
11 Procedure Act, Title 5, chapter 375, the board shall adopt, amend
12 or repeal reasonable rules and emergency rules necessary for the
13 interpretation, implementation and enforcement of any provision
14 of law that the department is charged with administering. The
15 board shall also adopt, amend and repeal rules as necessary for
16 the conduct of its business.

18 Before the board may adopt, amend or repeal any rule, the
19 commissioner shall submit to the board a written analysis and
20 report detailing:

22 A. The expected costs and benefits to the public and
23 private sectors imposed by the rule;

24 B. The availability of public and private sector resources
25 required by the rule, if applicable; and

28 C. The cost and benefit of the rule in relation to the
29 State's comprehensive environmental strategies and goals.
30 The board shall solicit written comments, analyses and
31 reports from the public and private sectors on any new,
32 amended or repealed rule regarding the expected costs and
33 benefits and the availability of required resources.
34 Assessment of costs, benefits and required resources must be
35 made in terms of dollar value. This subsection does not
36 preempt or impair the provisions of Title 5, section 8052,
37 subsection 5-A.

38 **Sec. 6. 38 MRSA §341-D, sub-§§2 to 5,** as enacted by PL 1989, c.
39 890, Pt. A, §13 and affected by §40, are repealed.

42 **Sec. 7. 38 MRSA §341-D, sub-§2-A** is enacted to read:

44 **2-A. Policy development.** Upon request by the commissioner,
45 the board may develop policies for permits and licenses that:

46 A. Involve policies, rules or laws that the department has
47 not previously interpreted;

50 B. Involve important policy questions that the department
51 has not resolved; or

2 C. Involve important policy questions or interpretations or
rules or laws that require reexamination.

4 Sec. 8. 38 MRSA §341-D, sub-§§6 and 7, as enacted by PL 1989,
c. 890, Pt. A, §13 and affected by §40, are amended to read:

6 6. Enforcement. The board shall:

8 A. Advise the commissioner on enforcement priorities and
10 activities; and

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

14 ~~C. Approve administrative consent agreements pursuant to~~
16 ~~section 347-A, subsection 1, and~~

18 ~~D. Hear appeals of emergency orders pursuant to section~~
20 ~~347-A, subsection 3.~~

22 7. Comprehensive environmental strategies and goals. The
board shall report to the Governor and the joint standing
24 committee of the Legislature having jurisdiction over energy and
26 natural resource matters by January 15th of the first regular
session of each Legislature on the--effectiveness--of--the
environmental--laws--of--the--State--and--any--recommendations--for
28 amending--those--laws--or--the--laws--governing--the--board 2-year and
5-year comprehensive environmental strategies and goals for the
30 protection of the State's natural resources. These reports must
identify priorities based upon scientific analyses of risk that
32 are generally accepted by the scientific community, the economic
climate and the availability of public and private resources.

34 A. Priorities established by the board must address the
36 most serious health and environmental risks and rely on
scientifically based studies that are generally accepted by
38 the scientific community to determine and evaluate
environmental issues. In developing strategies, the board
40 shall strive to enhance quality of life, economic climate
and the protection of natural resources, while minimizing
42 the impact of environmental regulation whenever possible.

44 B. In developing strategies and goals pursuant to this
subsection, the board shall follow applicable provisions of
46 the Maine Administrative Procedure Act for rulemaking to
ensure public participation.

48 Sec. 9. 38 MRSA §§341-H and 341-I are enacted to read:

50 §341-H. Environmental Appeals Board; establishment and
52 administration

2 There is established, pursuant to Title 5, section 12004-D,
3 subsection 5, the Environmental Appeals Board, referred to in the
4 laws administered by the department as the "appeals board."

5 1. Purpose. The purpose of the appeals board is to review
6 and decide appeals of license or permit decisions by the
7 commissioner.

8 2. Appeals board membership. The appeals board consists of
9 5 members. Members must be appointed by the Governor subject to
10 review by the joint standing committee of the Legislature having
11 jurisdiction over natural resource matters and confirmation by
12 the Legislature. The members shall elect a chair from within
13 their membership. Members must possess technical competence and
14 experience in the administration or application of state and
15 federal environmental laws. A member of the appeals board may
16 not serve concurrently on the board.

17 3. Terms. The members are appointed for 3-year terms,
18 except that a vacancy must be filled for the unexpired portion of
19 the term. One member shall serve an initial term of one year, 2
20 members shall serve initial terms of 2 years and 2 members shall
21 serve initial terms of 3 years. A member may not serve more than
22 2 consecutive 3-year terms.

23 4. Compensation. Members are entitled to compensation
24 according to Title 5, section 12004-D, subsection 5.

25 5. Conflict of interest. Members are governed by the
26 conflict of interest provision in Title 5, section 18.

27 6. Contracting authority. The appeals board may obtain the
28 services of consultants on a contractual basis or otherwise as
29 necessary to carry out the responsibilities under this Title.

30 7. Staffing. The appeals board must be staffed by the
31 department.

32 8. Standing for appeals. By January 1, 1992, the appeals
33 board shall by rule establish standards to define what
34 constitutes substantial and direct effects of a proceeding to
35 establish standing, under Title 5, section 9054, to intervene in
36 an appeal before the appeals board.

37 9. Federal Water Pollution Control Act requirements. When
38 the State receives authority to grant permits under the Federal
39 Water Pollution Control Act, 33 United States Code, Section 1251
40 et seq. (1982), as amended, a person may not serve as an appeals
41 board member if that person receives, or during the 2 years prior
42 to appointment has received, a significant portion of income
43 directly or indirectly from a license or permit holder or from
44

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

4 **§341-I. Appeals process**

6 1. Duties of appeals board. The appeals board shall
7 review, may hold a hearing on and shall affirm, amend or reverse
8 any final license or permit decisions made by the department when
9 a person aggrieved by a decision of the department appeals that
10 decision to the appeals board within 30 working days of the
11 applicant's receipt of the written decision.

12 2. Acceptance; appeal. The appeals board shall, within 14
13 working days of receipt of a written appeal, determine whether
14 the appeal is in a form acceptable for processing and notify the
15 applicant in writing of the official date on which the appeal was
16 accepted or the reasons why the appeal was not accepted.

17 3. Published notice. The appeals board shall publish a
18 legal notice of each appeal in a newspaper of general circulation
19 no later than 7 days from the date the appeal is accepted.

20 4. Intervenors. Any person wishing to participate as an
21 intervenor, offer testimony and participate in the appeals
22 process held under this section shall file a petition with the
23 appeals board within 10 working days of the published notice of
24 appeal. A petition for intervention that is not filed within
25 that time must be denied unless the petitioner shows to the
26 satisfaction of the chair good cause for failure to file on
27 time. The chair of the appeals board shall decide whether to
28 grant intervenor status within 7 days of receiving a petition.
29 Appeals of the chair's decision must be to the entire appeals
30 board. For purposes of Title 5, section 9054, subsection 1, the
31 chair of the appeals board is the agency for deciding intervenor
32 status.

33 5. Decision within 90 days. Within 90 working days after
34 the date of official acceptance of the appeal, the appeals board
35 shall affirm, amend or reverse any final license or permit
36 decisions made by the commissioner.

37 6. Review. The appeals board is not bound by the
38 commissioner's findings of fact or conclusions of law but may
39 adopt, modify or reverse findings of facts or conclusion of law
40 established by the commissioner. Any decisions made by the
41 appeals board under this section must be based upon the appeals
42 board's review of the record and any hearings held by the appeals
43 board.

44 7. Stay of action. An appeal does not automatically stay
45 any action of the commissioner but, upon application and for good
46 cause, the commissioner may stay any action of the commissioner
47 pending the appeal.

2 cause, the appeals board may stay the action pending the
3 disposition of the appeal.

4 8. Judicial appeals. The filing of an appeal with the
5 appeals board is not an administrative or judicial prerequisite
6 for the filing of an appeal under section 346.

7 9. Consent agreements. The appeals board shall approve
8 administrative consent agreements.

9
10 Sec. 10. 38 MRSA §342, sub-§1-A, as amended by PL 1989, c.
11 890, Pt. A, §14 and affected by §40, is further amended to read:

12
13 1-A. Administration of department. The commissioner is the
14 chief administrative officer of the department and responsible
15 for all administrative matters of the department, except as
16 otherwise specified. The commissioner shall assure that all
17 determinations made by the staff of the department are promptly
18 rendered. The commissioner shall resolve disputes between
19 department staff and applicants with respect to any questions
20 regarding requirements, interpretation or application of the
21 laws, rules or department policy. In resolving disputes, the
22 commissioner shall attempt to reach a fair and appropriate result
23 given all of the circumstances of the issue and may utilize the
24 services of such consultants or experts as the commissioner
25 determines would be helpful to resolve any disputed issue. For
26 purposes of this subsection, subsection 1-B and section 341-A,
27 subsection 3, paragraph C, staff of the department does not
28 include staff of the board.

29 Sec. 11. 38 MRSA §342, sub-§1-B is enacted to read:

30
31 1-B. Resolution of disputes. The commissioner shall
32 promptly resolve disputes between department staff and applicants
33 regarding:

34
35 A. Licensing matters, including but not limited to the
36 information required for an application; and

37
38 B. The requirements, interpretation or application of laws,
39 rules or policies of the department.

40
41 The commissioner shall attempt to reach a fair, impartial and
42 appropriate decision given all of the circumstances and may
43 utilize the services of consultants or experts to resolve any
44 dispute. The commissioner's decision may not impose unnecessary
45 or unreasonable economic burdens upon the applicant.

46
47 In resolving disputes brought pursuant to section 344, subsection
48 3-A, the department staff shall demonstrate that the disputed
49 requirements, conditions or interpretations are necessary to
50 comply with the requirements of any law or rule at issue and are
51 comply with the requirements of any law or rule at issue and are
52

2 not more economically burdensome upon the applicant than
3 necessary and that the concerns of the department staff can not
4 be adequately addressed in a manner less burdensome to the
5 applicant.

6 Sec. 12. 38 MRSA §342, sub-§13 is enacted to read:

8 13. Modification, revocation or suspension. After written
9 notice and opportunity for a hearing pursuant to Title 5, chapter
10 375, subchapter IV, the commissioner may modify in whole or in
11 part any license, may issue an order prescribing necessary
12 corrective action, or may act in accordance with the Maine
13 Administrative Procedure Act to revoke or suspend a license,
14 whenever the commissioner finds that:

15 A. The licensee has violated any condition of the license;

17 B. The licensee has obtained a license by misrepresenting
18 or failing to disclose fully all relevant facts;

19 C. The licensed discharge or activity poses a threat to
20 human health or the environment;

21 D. The license fails to include any standard or limitation
22 legally required on the date of issuance;

23 E. There has been a change in a condition or circumstance
24 that requires revocation, suspension or a temporary or
25 permanent modification of the terms of the license; or

26 F. The licensee has violated any law administered by the
27 department.

28 For the purposes of this subsection, the term "license" includes
29 any license, permit, order, approval or certification issued by
30 the commissioner and the term "licensee" means the holder of the
31 license.

32 Sec. 13. 38 MRSA §344, sub-§1, as amended by PL 1989, c. 890,
33 Pt. A, §20 and affected by §40, is further amended to read:

34 1. Acceptance and notification. The commissioner shall,
35 within 10 30 working days of receipt of an any written
36 application, determine whether the application is in a form
37 acceptable for processing and shall notify the applicant in
38 writing of the official date on which the application was
39 accepted or the reasons the application was not accepted. The
40 commissioner shall notify the board of all applications accepted
41 as complete. An application is acceptable for processing if it
42 contains sufficient information for the commissioner to determine
43 whether applicable standards will be met. A determination that

2 an application is acceptable for processing does not require a
3 decision by the commissioner that standards will be met.

4 If the commissioner does not notify the applicant in writing of
5 acceptance or rejection of the application within 30 working days
6 of receipt of the application, the application must be accepted
7 for processing by the commissioner. If an application is found
8 to be incomplete, it must be returned to the applicant and the
9 commissioner shall specify in writing the reasons for returning
10 the application and what information is required to complete the
11 application.

12 The commissioner shall require the applicant to provide notice to
13 the public for each application for a permit or license
14 accepted. The commissioner shall must solicit comments from the
15 public for each application in a manner prescribed by the board
16 in the rules.

17 All correspondence notifying an applicant of denial of an
18 application by the ~~board--or~~ commissioner shall must be by
19 certified mail, return receipt requested.

20
21 **Sec. 14. 38 MRSA §344, sub-§1-A is enacted to read:**

22
23 **1-A. Application sufficiency meeting.** The department shall
24 conduct an application sufficiency meeting with every applicant
25 from whom the commissioner has accepted an application no later
26 than 45 days after the date of acceptance. The commissioner
27 shall notify the applicant at the meeting that:

28
29 **A. No other information is required by the commissioner to**
30 **make a decision upon the application; or**

31
32 **B. The commissioner requires additional information to make**
33 **a decision on the application. If the commissioner requires**
34 **additional information, the commissioner shall identify**
35 **specific information at this meeting.**

36
37 After the application sufficiency meeting, the commissioner may
38 request additional information in support of the application only
39 with the consent of the applicant.

40
41 **Sec. 15. 38 MRSA §344, sub-§2-A, as enacted by PL 1989, c.**
42 **890, Pt. A, §22 and affected by §40, is amended to read:**

43
44 **2-A. Processing time limits, decisions and appeals.** After
45 the commissioner accepts an application for processing, the
46 commissioner may approve, approve with conditions, disapprove or
47 refer the application as follows.

48
49 ~~A.---The---commissioner---shall---decide---as---expeditiously---as~~
50 ~~possible-if-an-application-meets-one-or-more-of-the-criteria~~
51

2 ~~set forth in section 341-D, subsection 2 and shall request~~
3 ~~that the board assume jurisdiction of that application. -- If~~
4 ~~at any subsequent time during the review of an application~~
5 ~~the commissioner decides that the application falls under~~
6 ~~section 341-D, subsection 2, the commissioner shall request~~
7 ~~that the board assume jurisdiction of the application.~~

8 B. The commissioner shall decide whether an application
9 meets the permit by rule provisions under subsection 7
10 within 20 14 working days after notifying the applicant of
11 acceptance of the application.

12 C. ~~For these applications which do~~ an application that does
13 not fall under the permit by rule provisions of subsection
14 7, the commissioner shall decide upon the application as
15 expeditiously as possible within 90 working days after
16 notifying the applicant of acceptance of the application,
17 approve the application or notify the applicant in writing
18 of the reasons why the application is not approvable and
19 specify the information required to allow the application to
20 be approved. Only after the applicant has had a reasonable
21 amount of time to address deficiencies identified in writing
22 by the commissioner may the commissioner disapprove the
23 application.

24 If the commissioner does not approve the application or
25 notify the applicant as specified in this paragraph, the
26 commissioner must return 50% of the processing fee assessed
27 under section 352. The remainder of the processing fee must
28 be returned if the commissioner does not approve the
29 application or provide notice to the applicant as specified
30 in this paragraph within 120 working days after notifying
31 the applicant of acceptance of the application.

32 The deadlines established in this subsection may be extended with
33 the consent of the applicant.

34 Any person aggrieved by a final license or permit decision of the
35 commissioner may appeal that decision to the appeals board. The
36 filing of an appeal with the appeals board is not a prerequisite
37 for the filing of a judicial appeal.

38 **Sec. 16. 38 MRSA §344, sub-§§3-A and 3-B are enacted to read:**

39 **3-A. Resolution of disputes.** When a dispute arises between
40 the department staff and the applicant during the application
41 process, the applicant may notify the appropriate bureau
42 director. If so notified, the bureau director shall promptly
43 attempt to reach a fair, impartial and appropriate resolution
44 given all the circumstances. In resolving disputes, the bureau
45 director may not pay any greater deference to, or presume the

2 validity of, the staff position. Department staff shall
3 demonstrate that the disputed requirements, conditions or
4 interpretations imposed by the staff are necessary to comply with
5 the requirements of any law or rule at issue and are not more
6 economically burdensome upon the applicant than necessary and
7 that the concerns of the department staff can not be adequately
8 addressed in a manner less burdensome to the applicant.

9
10 Within 30 days of the bureau director's decision, the department
11 staff or applicant may request that the commissioner review that
12 decision under section 342, subsection 1-B.

13 3-B. Alternative proposals. In order to prevail,
14 intervenors shall demonstrate clearly to the department, by the
15 introduction of admissible evidence, that any alternative
16 proposal put forth as part of any application proceeding will not
17 cause adverse environmental or economic impact in excess of the
18 impact of the proposed project. Intervenors shall bear all costs
19 and expenses associated with generating and presenting evidence
20 concerning the economic and noneconomic impact of alternative
21 proposals. An alternative proposal advanced by an intervenor may
22 not be considered or adopted by the department unless the
23 intervenor satisfies the evidentiary and informational
24 requirements of this subsection.

25 Sec. 17. 38 MRSA §344, sub-§4-A, ¶B, as enacted by PL 1989, c.
26 890, Pt. A, §25 and affected by §40, is repealed.

27
28 Sec. 18. 38 MRSA §344, sub-§4-B is enacted to read:

29
30 4-B. Advisory rulings. If the commissioner finds that a
31 permit or license meets one or more of the criteria of section
32 341-D, subsection 2-A, the commissioner shall bring that permit
33 or license to the board to develop policies to aid the
34 commissioner in deciding whether to grant the permit or license.

35
36 Sec. 19. 38 MRSA §344, sub-§7, as enacted by PL 1983, c. 453,
37 §4, is amended to read:

38
39 7. Permit by rule. The Board of Environmental Protection
40 may permit, by rule, any class of activities which would
41 otherwise require the individual issuance of a permit or approval
42 by the board, if the board determines that activities within the
43 class will have no significant impact upon the environment. Any
44 such rule shall must describe with specificity the class of
45 activities covered by the rule, and may establish standards of
46 design, construction or use as may be deemed necessary to avoid
47 adverse environmental impacts. Any such rule shall must require
48 notification to the commissioner prior to the undertaking of the
49 regulated activity.
50

2 The commissioner shall annually review activities requiring
4 permits or approval from the department to determine whether any
6 additional classes of activities are more effectively
8 administered under a permit by rule system. As part of this
review, the commissioner shall solicit public comments on
recommendations for activities to be included under permit by
rule. The commissioner shall annually recommend to the board any
additional categories of permits for the board to permit by rule.

10 Sec. 20. 38 MRSA §344, sub-§8, as enacted by PL 1989, c. 890,
Pt. A, §27 and affected by §40, is amended to read:

12 8. Effective date of license. Except as provided in this
14 subsection, a license granted by the commissioner is effective
16 when the commissioner signs the license. The commissioner may
18 attach a condition to the license requiring up to a 30-day delay
20 in any physical alteration of the project area and any
~~construction activity authorized by the license. A license~~
~~granted by the board is effective when the chair of the board or~~
~~the chair's designee signs the license.~~

22 Sec. 21. 38 MRSA §345-A, sub-§§2-A and 2-B are enacted to read:

24 2-A. Intervention. Any person wishing to participate as an
26 intervenor, offer testimony and participate in cross-examination
28 in any hearing held under the laws administered by the department
30 must file with the department a petition to intervene. When
32 scheduling a public hearing, the department shall establish time
limits for the filing of petitions to intervene. A petition for
intervention that does not meet the deadline must be denied
unless the petitioner shows good cause for failure to file on
time.

34 2-B. Intervenor procedures. The board by rule shall define
36 the procedures and scope of participation for intervenors and any
other interested parties.

38 Sec. 22. 38 MRSA §346, sub-§1, as affected by PL 1989, c. 890,
Pt. A, §40 and amended by Pt. B, §4, is further amended to read:

40 1. Appeal to Superior Court. Except as provided in section
42 347-A, subsection 3, any person aggrieved by any order or
44 decision of the board ~~or, the commissioner or the appeals board~~
46 may appeal to the Superior Court. These appeals to the Superior
Court shall must be taken in accordance with Title 5, chapter
375, subchapter VII.

48 Sec. 23. 38 MRSA §347-A, sub-§1, as amended by PL 1989, c.
890, Pt. A, §31 and affected by §40, is further amended to read:

1. **General procedures.** Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules promulgated under this Title or of the terms or conditions of any board or commissioner license, permit or order, the commissioner may do one or more of the following, including, but not limited to:

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

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

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

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

Sec. 24. 38 MRSA §347-A, sub-§3, as enacted by PL 1989, c. 311, §4, is amended to read:

3. Emergency orders. Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations which the department administers or of the terms or conditions of any of the department's orders, which is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order issued under this emergency procedure shall must be made by the sheriff or deputy sheriff within the county where the person to whom the order is directed operates or resides. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the commissioner is unable to identify the person or persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.

The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but the person may apply to the appeals board for a hearing on the order which shall be held by the appeals board within 48 hours after receipt of application. Within 7 days after the hearing, the appeals board shall make findings of fact and continue, revoke or modify the

2 order. The decision of the appeals board may be appealed to the
Superior Court in the manner provided by section 346.

4 Sec. 25. 38 MRSA §347-A, sub-§4, as enacted by PL 1989, c.
890, Pt. A, §32 and affected by §40, is amended to read:

6
8 4. Administrative agreements. The public may make written
comment to the appeals board at the appeals board's discretion on
any administrative consent agreements entered into by the
10 commissioner and approved by the appeals board.

12 Sec. 26. 38 MRSA §349, sub-§5, ¶C, as affected by PL 1989, c.
890, Pt. A, §40 and amended by Pt. B, §8, is further amended to
14 read:

16 C. The extent to which the violation continued following an
order of the commissioner ~~ex-beard~~ to correct it; and

18
20 Sec. 27. 38 MRSA §413, sub-§8, as affected by PL 1989, c. 890,
Pt. A, §40 and amended by Pt. B, §28, is further amended to read:

22 8. Treated wastewater. Municipalities may apply to the
board for authority to issue licenses for the discharge of not
24 more than 2,500 gallons a day of treated domestic wastewater to
surface waters within their jurisdiction and for the inspection
26 and enforcement of the licenses, in conformance with this chapter
and applicable rule of the board.

28
30 Authority may be given to a municipality only after a finding by
the board that the municipality has the capability and will fully
32 execute all responsibilities under applicable state law, will
routinely inspect and monitor licensed discharges within its
jurisdiction and will take enforcement action against those
34 persons who violate discharge permit requirements.

36 Upon issuance of a license, a municipality shall forward a copy
of that license to the commissioner within 5 working days. The
38 commissioner shall review the application and, within 30 days of
receipt, approve the license as issued, disapprove or modify the
40 license. If the commissioner fails to take action within 30 days
of receipt, that inaction constitutes a decision to approve the
42 license as written. Within 30 days of a license decision by the
commissioner, any person aggrieved by the decision of the
44 municipality, or the commissioner, may appeal to the appeals
board to reverse the decision of the municipality or the
46 commissioner.

48 Municipalities delegated authority pursuant to this subsection
may prescribe, by ordinance, standards for the issuance of waste
50 discharge licenses and for minimum performance and maintenance of
treatment systems necessary to carry out the intent of this

2 subsection. No ordinance or other municipal law may establish
standards and procedures that are less stringent than those
4 required under relevant state and federal law and departmental
rule.

6 The board may promulgate rules governing the minimum requirements
that control the licensing and enforcement of discharges by the
8 municipalities. These rules must include a model ordinance that,
if adopted by municipalities, will satisfy the requirements of
10 the rules.

12 Notwithstanding section 352, municipalities may establish
reasonable fees, not to exceed \$200 per year, to defray the costs
14 of discharge license issuance, inspection and testing. The
department may not collect fees associated with those licenses
16 delegated under this subsection.

18 The commissioner may provide municipalities with technical
assistance in their licensing, inspections and enforcement
20 programs.

22 If at any time the board determines that a municipality may be
failing to exercise its license-granting authority in accordance
24 with its approval procedures or the purposes of this chapter and
rules promulgated by the board, the board shall notify the
26 municipality of the specific alleged deficiencies and shall order
a public hearing, of which adequate public notice must be given,
28 to be held in the municipality to solicit public or official
comment on those alleged deficiencies. Following the hearing, if
30 the board finds deficiencies, the board may revoke the
municipality's license-granting authority. The municipality may
32 reapply for authority at any time. Nothing in this subsection
limits the commissioner's authority to inspect or initiate
34 enforcement action against any discharge within a municipality.

36 **Sec. 28. 38 MRSA §438-A, sub-§3, as affected by PL 1989, c.**
890, Pt. A, §40 and amended by Pt. B, §44, is further amended to
38 read:

40 **3. Commissioner approval.** Municipal ordinances, amendments
and any repeals of ordinances are not effective unless approved
42 by the commissioner. In determining whether to approve municipal
ordinances or amendments, the commissioner shall consider the
44 legislative purposes described in section 435, the minimum
guidelines and any special local conditions which, in the
46 judgment of the commissioner, justify a departure from the
requirements of the minimum guidelines in a manner not
48 inconsistent with the legislative purposes described in section
435. Recognizing that the guidelines are intended as minimum
50 standards, the commissioner shall approve a municipal ordinance
that imposes more restrictive standards than those in the
52 guidelines. If an ordinance or an amendment adopted by a

2 municipality contains standards inconsistent with or less
3 stringent than the minimum guidelines, the commissioner, after
4 notice and hearing, may approve the proposed ~~ordinances~~ ordinance
5 or amendment with conditions imposing the minimum guidelines in
6 place of the inconsistent or less stringent standard or
7 standards. Those conditions are effective and binding within the
8 municipality and must be administered and enforced by the
9 municipality. If the commissioner fails to act on any proposed
10 municipal ordinance or amendment within 45 days of the
11 commissioner's receipt of the proposed ordinance or amendment,
12 the ordinance or amendment is automatically approved. Any
13 application for a shoreland zoning permit submitted to a
14 municipality within the 45-day period is governed by the terms of
15 the proposed ordinance or amendment if the ordinance or amendment
16 is approved under this subsection. A municipality may appeal to
17 the appeals board a decision of the commissioner under this
18 subsection.

19 Sec. 29. 38 MRSA §489-A, sub-§10, as affected by PL 1989, c.
20 890, Pt. A, §40 and amended by Pt. B, §102, is further amended to
21 read:

22 10. Appeal of decision by commissioner to review. An
23 aggrieved party may appeal the decision by the commissioner to
24 exert or not exert state jurisdiction over the proposed project
25 to the appeals board. Review and actions taken by the department
26 are subject to appeal procedures governing the department under
27 section ~~341-D,--subsections-4-and-5~~ 341-I.

28 Sec. 30. 38 MRSA §568, sub-§3, ~~¶B~~, as amended by PL 1989, c.
29 865, §14 and affected by c. 890, Pt. A, §40 and amended by Pt. B,
30 §102, is repealed and the following enacted in its place:

31 B. A responsible party to whom such an order is directed
32 may apply to the appeals board for a hearing on the order if
33 the application is made within 10 working days after receipt
34 of the order by a responsible party. The appeals board
35 shall appoint an independent hearing examiner to hold a
36 hearing as soon as possible after receipt of the
37 application. The nature of the hearing must be an appeal.
38 At the hearing, all witnesses must be sworn and the
39 commissioner shall first establish the basis for the order
40 and for naming the person to whom the order was directed.
41 The burden of going forward then shifts to the person
42 appealing to demonstrate, based upon a preponderance of the
43 evidence, that the order should be modified or rescinded.
44 Within 7 days after the hearing, the hearing examiner shall
45 make findings of fact. The appeals board shall vote to
46 accept, reject or modify the findings of the hearing
47 examiner and shall continue, revoke or modify the
48 commissioner's order. The decision of the appeals board may
49 be appealed to the Superior Court in accordance with the
50 rules of procedure in the Superior Court.
51 The decision of the appeals board may be appealed to the Superior Court in accordance with the
52 rules of procedure in the Superior Court.

2 Maine Administrative Procedure Act, Title 5, chapter 375,
3 subchapter VII.

4 **Sec. 31. 38 MRSA §568-A, sub-§1, ¶B,** as enacted by PL 1989, c.
5 865, §15 and affected by §§24 and 25, is amended by amending the
6 last paragraph to read:

7 The burden of proof is on the department to show a lack of
8 substantial compliance. The commissioner shall make written
9 findings of fact when making a determination under this
10 paragraph. These findings are subject to appeal to the
11 appeals board. The appeals board's decision is subject to
12 judicial review pursuant to Title 5, chapter 375, subchapter
13 VII.

14 **Sec. 32. 38 MRSA §837, sub-§6-A,** as affected by PL 1989, c.
15 890, Pt. A, §40 and enacted by Pt. B, §196, is amended to read:

16 **6-A. Appeal.** The award of ownership under this section may
17 be appealed to the appeals board and is governed by the
18 provisions of section 341-D, ~~subsection-4~~ 341-I.

19 **Sec. 33. 38 MRSA §837, sub-§8,** as affected by PL 1989, c. 890,
20 Pt. A, §40 and amended by Pt. B, §196, is further amended to read:

21 **8. Final agency action.** A decision by the appeals board
22 under this section constitutes final agency action for the
23 purposes of appeal under Title 5, chapter 375, subchapter VII.

24 **Sec. 34. 38 MRSA §840, sub-§6,** as affected by PL 1989, c. 890,
25 Pt. A, §40 and enacted by Pt. B, §201, is amended to read:

26 **6. Appeal.** The commissioner's order may be appealed to the
27 appeals board. The appeal is governed by the provisions of
28 section 341-D, ~~subsection-4~~ 341-I.

29 **Sec. 35. 38 MRSA §1365, sub-§4,** as affected by PL 1989, c.
30 890, Pt. A, §40 and amended by Pt. B, §268, is further amended to
31 read:

32 **4. Compliance; appeal.** The person to whom the order is
33 directed shall comply immediately and may apply to the appeals
34 board for a hearing on the order if the application is made
35 within 5 days after receipt of the order by a responsible party.
36 The hearing must be held by the appeals board within 5 days after
37 receipt of application. The nature of the hearing before the
38 appeals board is an appeal. At the hearing, all witnesses shall
39 must be sworn and the commissioner shall first establish the
40 basis for the order and for naming the person to whom the order
41 is directed. The burden of going forward then shifts to the
42 person appealing to demonstrate, based upon a preponderance of
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2 the evidence, that the order should be modified or rescinded.
3 Within 7 days after the hearing, the appeals board shall make
4 findings of fact and shall continue, revoke or modify the order.
5 The decision of the board may be appealed to the Superior Court
6 in accordance with the Maine Administrative Procedure Act, Title
7 5, chapter 375, subchapter VII.

8
9 **STATEMENT OF FACT**

10 This bill changes the structure of the Department of
11 Environmental Protection in several important ways. It
12 establishes the Environmental Appeals Board to hear all appeals
13 of departmental licensing and permitting decisions as well as
14 enforcement proceedings.

15 The Board of Environmental Protection's role is modified to
16 consist of rulemaking, development of comprehensive environmental
17 strategies and goals, and definition of certain policies.

18 The duties of the Commissioner of Environmental Protection
19 are expanded to include: deciding all licenses and permits;
20 revoking, modifying and suspending permits; reviewing licensing
21 categories to recommend additional permit by rule categories; and
22 resolving disputes between staff and applicants.

23 In addition, this bill changes procedures for rulemaking and
24 application processing. These changes include:

- 25 1. Increasing economic impact information requirements for
26 departmental rulemaking;
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28 2. Specifying appeals procedures with time limitations;
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30 3. Imposing time limits for application processing;
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32 4. Specifying the information that is required early in the
33 application process to process an accepted application;
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35 5. Imposing additional requirements on parties who are
36 suggesting alternative proposals; and
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38 6. Defining explicit intervenor procedures and requirements.
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