

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1915

S.P. 730

In Senate, May 30, 1991

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Referred to the Committee on State and Local Government and ordered printed. Sent down
forthwith for concurrence.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President PRAY of Penobscot

Cosponsored by Representative GWADOSKY of Fairfield, Representative LARRIVEE of
Gorham and Senator BERUBE of Androscoggin.

STATE OF MAINE

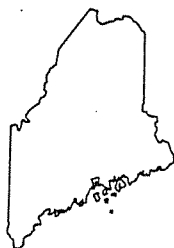
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Reorganize the Management and Regulatory Functions of
State Government Pertaining to Natural Resources.**

(AFTER DEADLINE)

(EMERGENCY)

Printed on recycled paper



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

4 Whereas, the management and regulatory functions of State
6 Government concerning natural resources are scattered among at
least 6 state agencies; and

8 Whereas, the lack of effective coordination severely
10 undermines the coherence and consistency of state natural
resource policy to the detriment of both the natural resources
12 and economy of the State; and

14 Whereas, numerous efficiencies and economies of scale could
be realized through the creation and implementation of a single,
16 integrated natural resource agency; and

18 Whereas, prompt realization of these benefits requires
immediate action; and

20 Whereas, in the judgment of the Legislature, these facts
22 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
24 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

28 **PART A**

30 **38-A MRSA is enacted to read:**

32 **TITLE 38-A**

34 **NATURAL RESOURCES**

36 **PART 1**

38 **ADMINISTRATION AND ORGANIZATION**

40 **CHAPTER 1**

42 **DEPARTMENT OF NATURAL RESOURCES**

44 **§101. Definitions**

46 As used in this Part, unless the context otherwise
48 indicates, the following terms have the following meanings.

50 1. Commissioner. "Commissioner" means the Commissioner of
Natural Resources.

2 2. Department. "Department" means the Department of
3 Natural Resources.

4 §102. Department established

6 The Department of Natural Resources is established within
7 the executive branch to administer those laws of the State
8 pertaining to sound natural resource management, the protection
9 and improvement of environmental quality and the promotion of the
10 State's natural resource products.

12 §103. Commissioner

14 1. Appointment. The department is administered by a
15 commissioner who must be appointed by the Governor subject to
16 review by the special select committee of the Legislature having
17 jurisdiction over the development and implementation of the
18 department and subject to confirmation by the Legislature. The
19 commissioner serves at the pleasure of the Governor.

20 2. Interim authority limited. Notwithstanding the
21 establishment of the department in this Part, the commissioner
22 may not undertake the administration of programs or services
23 currently administered by the Department of Agriculture, Food and
24 Rural Resources; the Department of Conservation; the Department
25 of Environmental Protection; the Department of Human Services;
26 the Department of Inland Fisheries and Wildlife; the Department
27 of Marine Resources; or the Maine Waste Management Agency until
28 July 1, 1992.

30 3. Responsibilities. The commissioner is responsible for
31 the sound management and administration of the department. On
32 and after July 1, 1992, the commissioner has all of the
33 decision-making responsibilities of the former Commissioner of
34 Environmental Protection. In order to make most efficient use of
35 the department's resources, the commissioner shall resolve all
36 questions of jurisdiction over regulatory matters that may arise
37 between bureaus.

40 4. Natural resource planning and priorities. The
41 commissioner shall conduct an ongoing effort to plan for the
42 management, utilization, enhancement and protection of the
43 natural resources of the State, including its air, water,
44 mineral, soil, forest, fish, wildlife and agricultural
45 resources. The commissioner shall establish a process for
46 collecting public input to this effort and shall solicit the
47 input of the relevant advisory and regulatory boards and
48 commissions of the department. By January 1, 1993, the
49 commissioner shall submit to the Legislature a 5-year agenda for
50 natural resource management, utilization, enhancement and
 protection. The agenda must include a ranking of the most

2 important natural resource issues that, in the judgment of the
3 commissioner, confront the State.

4 **§104. Environmental appeals officer**

6 By March 1, 1992, the Governor shall appoint an
7 environmental appeals officer subject to review by the special
8 select committee of the Legislature having jurisdiction over the
9 development and implementation of the department and subject to
10 confirmation by the Legislature. The environmental appeals
11 officer shall serve for a term of 5 years commencing no earlier
12 than July 1, 1992 and may only be removed for cause.

14 Except for those cases decided by the Board of Environmental
15 Protection, the environmental appeals officer shall review, may
16 hold a hearing at the officer's discretion on and may affirm,
17 amend or reverse any of the following:

18 1. Appeal by aggrieved parties. Final license or permit
19 decisions made by the commissioner when a person aggrieved by a
20 decision of the commissioner appeals that decision to the
21 environmental appeals officer within 30 days of the filing of the
22 decision. The environmental appeals officer shall give written
23 notice to persons that have asked to be notified of the
24 decision. The environmental appeals officer may review
25 procedural issues, issues of fact and conclusions of law. The
26 environmental appeals officer is not bound by the commissioner's
27 findings of fact or conclusions of law but may adopt, modify or
28 reverse findings of fact or conclusions of law established by the
29 commissioner. Any changes made by the environmental appeals
30 officer under this subsection must be based on the environmental
31 appeals officer's review of the record and any hearing held by
32 the environmental appeals officer;

34 2. Discretionary review. License or permit decisions made
35 by the commissioner. The environmental appeals officer shall
36 notify the commissioner of the officer's intent to review within
37 30 days of the filing of the decision. The procedures for review
38 are the same as provided under subsection 1; and

40 3. Other appeals. License or permit decisions appealed to
41 the Board of Environmental Protection under another law. Unless
42 the law provides otherwise, the standard of review is the same as
43 provided under subsection 1.

44 **§105. Bureaus established**

46 On July 1, 1992, there are established within the department
47 the following bureaus.

48 1. Permits and licensing. The Bureau of Environmental
49 Regulation is responsible for the administration of all state
50 and local permits and licenses.

2 permitting and licensing procedures established under Title 7,
3 chapter 103; Title 12, chapter 201-A, subchapter II; Title 22,
4 section 42, subsections 3 to 3-B; Title 22, chapter 258-A; and
5 Title 38, chapters 2 to 5, 9, 12-A to 14-A, 16 and 26. The
6 bureau shall also perform the functions of the former Department
7 of Environmental Protection with regard to the provisions of
8 Title 38, chapters 11, 12, 23 and 23-A. The bureau shall provide
9 all necessary staff support to the Board of Environmental
10 Protection, the Board of Pesticides Control and the Maine Land
11 Use Regulation Commission as required by the licensing and
12 permitting functions of these entities.

13
14 2. Land use regulation. The Bureau of Land Use Regulation
15 shall provide necessary staff support for the planning, zoning
16 and other regulatory functions of the Maine Land Use Regulation
17 Commission under Title 12, chapter 206-A.

18 3. Solid waste management. The Bureau of Solid Waste
19 Management shall administer the provisions of Title 38, chapter
20 24 regarding the reduction, reuse, recycling, composting and
21 disposal of solid waste.

22
23 4. Fish and wildlife management. The Bureau of Fish and
24 Wildlife Management shall administer the provisions of Title 12,
25 Part 10.

26
27 5. Public lands management. The Bureau of Public Lands
28 Management shall plan for and manage the use of all publicly
29 owned lands held and managed by the former Bureau of Public Lands
30 under Title 12, chapter 202; the former Bureau of Parks and
31 Recreation under Title 12, chapters 203 and 206; and the former
32 Department of Inland Fisheries and Wildlife under Title 12,
33 chapter 713, subchapter I.

34
35 6. Forest resources. The Bureau of Forest Resources shall
36 administer the provisions of Title 12, Part 11 regarding the
37 protection, marketing and management of forest resources.

38
39 7. Marine resources. The Bureau of Marine Resources shall
40 administer the provisions of Title 12, Part 9 regarding the
41 protection, marketing and management of marine resources.

42
43 8. Agricultural resources. The Bureau of Agriculture shall
44 administer the provisions of Title 7; Title 32, chapters 27 and
45 28; and any other provisions of law formerly administered by the
46 former Department of Agriculture, Food and Rural Resources and
47 not administered by another bureau under this Title.

48
49 9. Science and research. The Bureau of Science and
50 Research shall conduct all scientific research necessary to
51 support the functions of the department. The bureau shall also

2 provide laboratory services to all other bureaus of the
3 department.

4 10. Enforcement. The Bureau of Enforcement shall enforce
5 all laws administered by the department.

6 11. Administration. The Bureau of Administration shall
7 provide all necessary staff support to the commissioner and shall
8 provide personnel, financial, data management and administrative
9 management services to all bureaus of the department.

12 **§105. Confirmation of bureau directors**

13 All bureau directors are appointed by the commissioner
14 subject to review by the special select committee of the
15 Legislature having jurisdiction over the development and
16 implementation of the department and subject to confirmation by
17 the Legislature. A bureau director serves at the pleasure of the
18 commissioner. The commissioner shall appoint all bureau
19 directors before March 1, 1992. A bureau director may not enter
20 state service until July 1, 1992.

22
23
24 **PART B**

25
26 **Sec. B-1. Special select committee; established.** The Special
27 **Select Committee on the Reorganization of Natural Resource**
28 **Management and Regulation is established to consider all**
29 **legislation and recommendations submitted to the Legislature for**
30 **the implementation of the Department of Natural Resources. The**
31 **committee shall also consider all appointments for the**
32 **Commissioner of Natural Resources and those of any bureau**
33 **directors subject to legislative confirmation.**

34 **1. Membership.** The committee is made up of 15 members
35 **comprised of 6 Senators appointed by the President of the Senate**
36 **and 8 members of the House of Representatives appointed by the**
37 **Speaker of the House of Representatives. The Chair of the**
38 **Legislative Council shall serve as the chair of the committee.**
39 **At least one Senator and 3 members of the House of**
40 **Representatives must be members of the minority party in their**
41 **respective bodies. At least 3 members must be members of the**
42 **Joint Standing Committee on Energy and Natural Resources.**

43 **2. Rules.** The committee is subject to all joint rules
44 **adopted by the Legislature.**

45 **3. Meetings.** The committee shall meet in December 1991 to
46 **review the draft legislation prepared by the technical advisory**
47 **committee. All members of the committee must receive notice of**
48 **all meetings of the technical advisory committee and its**
49 **subcommittees.**
50
51
52

2 4. **Repeal.** This section is repealed on January 1, 1994.

4 **Sec. B-2. Technical Advisory Committee on the Formation of the**
6 **Department of Natural Resources; established; charge.** The Technical
8 Advisory Committee on the Formation of the Department of Natural
10 Resources, referred to in this section as "the technical advisory
12 committee," is established to develop a plan and necessary
legislation to implement the Department of Natural Resources and
to effect a transition of all functions and necessary personnel
of the affected existing agencies to the new department.

14 1. **Membership.** The technical advisory committee is
16 composed of 14 members as follows:

18 A. Three members chosen by the President of the Senate, one
20 each representing fishery and wildlife interests and
22 business interests and one with legal training;

24 B. Three members chosen by the Speaker of the House of
26 Representatives, one each representing environmental
28 interests, agricultural interests and the employees of the
30 affected state agencies;

32 C. Six members chosen by the Governor, one each
34 representing the business community, marine fisheries, solid
36 waste management, environmental interests, the forest
products industry and local government. The local
government representative must have training and background
as a city or town manager;

38 D. A cochair chosen jointly by the President of the Senate
40 and the Speaker of the House of Representatives; and

42 E. The Commissioner of Natural Resources who shall serve as
44 a cochair.

46 All appointments must be made within 30 days of the effective
48 date of this Act. The appointing authorities shall notify the
50 Executive Director of the Legislative Council upon making their
appointments.

 2. **Convening.** When appointment of all members of the
technical advisory committee is completed, the Chair of the
Legislative Council shall call the technical advisory committee
together for its first meeting no later than August 15, 1991.

 3. **Charge.** The technical advisory committee shall develop
a plan for the implementation of the Department of Natural
Resources that achieves the following purposes:

- 2 A. Development and implementation of comprehensive,
integrated natural resource policy for the State;
- 4 B. Close coordination of all environmental regulatory
functions;
- 6 C. Efficient law enforcement efforts;
- 8 D. Efficient administration of departmental personnel, and
10 fiscal, data management and other technical services;
- 12 E. Efficient regional delivery of services; and
- 14 F. Identification of properties and other real estate
16 surplus to the needs of the Department of Natural Resources.

18 In addition, the technical advisory committee shall develop
legislation necessary to transfer all relevant functions and
20 personnel of the affected state agencies to the Department of
Natural Resources and to make all necessary changes in references
22 to administrative and regulatory authorities throughout the laws
of the State. The implementing legislation must contain
24 provisions for early retirement incentives for all affected law
enforcement personnel above the rank of sergeant or the
equivalent in the nonmilitary law enforcement branches and for a
26 schedule for conversion of the separate law enforcement staffs of
the affected agencies into a single integrated command structure.

28 **4. Working groups.** The chair of the technical advisory
30 committee shall form a special advisory subcommittee on
environmental regulation. This subcommittee consists of 2
32 members of the technical advisory committee representing business
interests, 2 members representing nonprofit environmental
34 interest groups, up to 2 members of the Special Select Committee
on the Reorganization of Natural Resource Management and
36 Regulation who serve on the Joint Standing Committee on Energy
and Natural Resources and the cochairs of the technical advisory
38 committee who shall also chair the subcommittee's meetings. This
subcommittee shall draft proposals on environmental regulation
40 issues for the consideration of the technical advisory
committee. In addition to any other matters it may consider,
42 this subcommittee shall provide for the creation of a "licensing
consultant" job position within the Bureau of Environmental
44 Regulation to familiarize applicants with the licensing process
and to provide applicants with assistance during the process.
46 The subcommittee shall consider the new position as an entry
level position to all other licensing positions with the Bureau
48 of Environmental Regulation.

50 The cochairs of the technical advisory committee are empowered to
create other special advisory subcommittees as needed. The

2 cochairs shall use the composition of the subcommittee on
environmental regulation as a model for other subcommittees.

4 5. **Staff.** The technical advisory committee shall request
staffing assistance from the Legislative Council. The technical
6 advisory committee may contract with private consultants as it
considers necessary. The technical advisory committee shall
8 request assistance with the management of the consultants' work
from the Legislative Council. The Commissioner of Natural
10 Resources shall form a working group of the commissioners, or
their equivalent, of the affected state agencies and any other
12 state officials designated by the Governor. The working group
shall provide support to the technical advisory committee under
14 the direction of the technical advisory committee chairs and
staff. The working group shall also assist the executive branch
16 in the transition to the Department of Natural Resources.

18 6. **Compensation.** The members of the technical advisory
committee who are Legislators are entitled to the legislative per
20 diem as defined in Title 3, section 2 for each day's attendance
at technical advisory committee meetings and reimbursement for
22 travel and other necessary expenses upon application to the
Executive Director of the Legislative Council.

24 7. **Report.** The technical advisory committee shall present
the plan, together with the recommended legislation, to the
26 Special Select Committee on the Reorganization of Natural
Resource Management and Regulation and the Second Regular Session
28 of the 115th Legislature no later than December 1, 1991.

30 8. **Budget.** The Executive Director of the Legislative
32 Council shall administer the technical advisory committee's
budget.

34
36 **PART C**

38 **Sec. C-1. 2 MRSA §6, sub-§1, as amended by PL 1989, c. 700,**
Pt. A, §8, is further amended to read:

40 1. **Range 91.** The salaries of the following state officials
42 and employees shall be ~~are~~ within salary range 91:

- 44 Commissioner of Transportation;
- 46 ~~Commissioner of Conservation;~~
- 48 Commissioner of Natural Resources;
- 50 Commissioner of Finance;
- 52 Commissioner of Administration;

2 Commissioner of Education;
4 ~~Commissioner of Environmental Protection;~~
6 Commissioner of Human Services;
8 Commissioner of Mental Health and Mental Retardation;
10 Commissioner of Public Safety;
12 Commissioner of Professional and Financial Regulation;
14 Commissioner of Labor;
16 ~~Commissioner of Agriculture, Food and Rural Resources;~~
18 ~~Commissioner of Inland Fisheries and Wildlife;~~
20 ~~Commissioner of Marine Resources;~~
22 Commissioner of Corrections; and
24 Commissioner of Economic and Community Development.

26 Sec. C-2. 2 MRSA §6, sub-§2, as repealed and replaced by PL
28 1989, c. 878, Pt. A, §3, is amended to read:

30 2. Range 90. The salaries of the following state officials
and employees shall be are within salary range 90:

32 Superintendent of Banking;
34 Bureau of Consumer Credit Protection Superintendent;
36 State Tax Assessor;
38 Superintendent of Insurance;
40 Associate Commissioner for Programs, Department of Mental
42 Health and Mental Retardation;
44 Associate Commissioner of Administration, Department of
Mental Health and Mental Retardation; and
46 Associate Commissioner for Institutional Management; and
48 ~~Executive Director, Maine Waste Management Agency.~~

50 Sec. C-3. 2 MRSA §6, sub-§3, as repealed and replaced by PL
52 1989, c. 878, Pt. A, §4, is amended to read:

2 3. Range 89. The salaries of the following state
officials and employees shall ~~be~~ are within salary range 89:

4 Director of Public Improvements;

6 State Budget Officer;

8 State Controller;

10 ~~Director of the Bureau of Forestry;~~

12 Chief of the State Police;

14 Director, State Planning Office;

16 Director, Energy Resources Office;

18 Public Advocate;

20 Commissioner of Defense and Veterans' Services;

22 Director of Human Resources;

24 Director, Bureau of Mental Retardation;

26 Director, Bureau of Children with Special Needs; and

28 Director, Bureau of Mental Health;

30 Director, Bureau of Environmental Regulation;

32 Director, Bureau of Land Use Regulation;

34 Director, Bureau of Solid Waste Management;

36 Director, Bureau of Fish and Wildlife Management;

38 Director, Bureau of Public Lands Management;

40 Director, Bureau of Forest Resources;

42 Director, Bureau of Marine Resources;

44 Director, Bureau of Agricultural Resources;

46 Director, Bureau of Science and Research;

48 Director, Bureau of Enforcement; and

50 Director, Bureau of Administration.

2 Sec. C-4. 2 MRSA §6, sub-§4, as repealed and replaced by PL
3 1989, c. 700, Pt. A, §9; c. 875, Pt. E, §1 and c. 890, Pt. A, §1
4 and affected by §40, is repealed and the following enacted in its
5 place:

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

8 State Purchasing Agent;

10 Director, Arts and Humanities Bureau;

12 Director, State Museum Bureau;

14 State Director of Alcoholic Beverages;

16 State Librarian;

18 Director of Employee Relations;

20 Executive Director, Board of Environmental Protection; and

22 Director, Historic Preservation Commission.

24 Sec. C-5. 2 MRSA §6, sub-§5, as amended by PL 1989, c. 612, is
26 further amended to read:

28 5. Range 86. The salaries of the following state officials
29 and employees shall-be are within salary range 86:

30 Director of Labor Standards;

32 Deputy Chief of the State Police;

34 Director of State Lotteries;

36 State Archivist;

38 ~~Director of Maine Geological Survey;~~

40 ~~Executive Director, Maine Land Use Regulation Commission;~~

42 Director of the Risk Management Division;

44 Chairman Chair, Maine Unemployment Insurance Commission;

46 Director of the Bureau of State Employee Health;

48 Child Welfare Services Ombudsman;

50 Director of the Bureau of Intergovernmental Drug Enforcement;

52

2 Deputy Director, Operations, Retirement System;
4 Deputy Director, Investments, Retirement System;
6 Deputy Director, Administrative and Legal Affairs,
Retirement System; and
8 Executive Director, Maine Science and Technology Commission.

10 Sec. C-6. 5 MRSA §933, as amended by PL 1983, c. 862, §11, is
12 repealed.

14 Sec. C-7. 5 MRSA §935, as amended by PL 1987, c. 349, Pt. H,
§§2 and 3, is repealed.

16 Sec. C-8. 5 MRSA §938, as amended by PL 1989, c. 111, is
18 repealed.

20 Sec. C-9. 5 MRSA §942, as amended by PL 1983, c. 862, §14, is
repealed.

22 Sec. C-10. 5 MRSA §945, as amended by PL 1989, c. 348, §1, is
24 repealed.

26 Sec. C-11. 5 MRSA §953-A, as enacted by PL 1989, c. 585, Pt.
A, §4, is repealed.

28 Sec. C-12. 7 MRSA c. 1, as amended, is repealed.

30 Sec. C-13. 12 MRSA c. 428, as amended, is repealed.

32 Sec. C-14. 12 MRSA §6021, as enacted by PL 1977, c. 661, §5,
34 is repealed.

36 Sec. C-15. 12 MRSA §6022, as amended by PL 1989, c. 502, Pt.
A, §35, is repealed.

38 Sec. C-16. 12 MRSA §6023, as amended by PL 1979, c. 541, Pt.
40 B, §73, is repealed.

42 Sec. C-17. 12 MRSA §6051, as amended by PL 1987, c. 599, §1,
is repealed.

44 Sec. C-18. 12 MRSA §6052, as amended by PL 1987, c. 599, §2,
46 is repealed.

48 Sec. C-19. 12 MRSA §7031, as amended by PL 1989, c. 493, §3,
is repealed.

50 Sec. C-20. 12 MRSA §7032, as amended by PL 1989, c. 410, §22,
52 is repealed.

2 Sec. C-21. 12 MRSA §7034, as amended by PL 1989, c. 913, Pt.
A, §1, is repealed.

4 Sec. C-22. 12 MRSA §7035, as amended by PL 1989, c. 441, §1,
is repealed.

6 Sec. C-23. 22 MRSA §42, sub-§3, as repealed and replaced by PL
8 1989, c. 878, Pt. A, §53, is repealed.

10 Sec. C-24. 22 MRSA §42, sub-§3-A, as amended by PL 1985, c.
612, §2, is repealed.

12 Sec. C-25. 22 MRSA §42, sub-§3-B, as amended by PL 1985, c.
14 612, §3, is repealed.

16 Sec. C-26. 38 MRSA §341-A, as enacted by PL 1989, c. 890,
Pt. A, §13 and affected by §40, is repealed.

18 Sec. C-27. 38 MRSA §341-D, sub-§4, as enacted by PL 1989, c.
20 890, Pt. A, §13 and affected by §40, is repealed.

22 Sec. C-28. 38 MRSA §342, as amended by PL 1991, c. 66, Pt. A,
§§1 to 3, is repealed.

24 Sec. C-29. 38 MRSA §346, sub-§1, as affected by PL 1989, c.
26 890, Pt. A, §40 and amended by Pt. B, §4, is further amended to
read:

28 1. **Appeal to Superior Court.** Except as provided in section
30 347-A, subsection 3, any person aggrieved by any order or
decision of the environmental appeals officer appointed under
32 Title 38-A, section 104, board or commissioner may appeal to the
Superior Court. These appeals to the Superior Court shall must
34 be taken in accordance with Title 5, chapter 375, subchapter VII.

36 Sec. C-30. 38 MRSA §2102, as enacted by PL 1989, c. 585, Pt.
A, §7, is repealed.

38 Sec. C-31. **Positions terminated.** The employment of all
40 commissioners, deputy commissioners and bureau directors in the
Department of Agriculture, Food and Rural Resources; the
42 Department of Conservation; the Department of Environmental
Protection; the Department of Inland Fisheries and Wildlife; and
44 the Department of Marine Resources is terminated. The employment
of the executive director and the office directors of the Maine
46 Waste Management Agency is terminated.

48 Sec. C-32. **Effective date.** This Part is effective July 1, 1992.

Emergency clause. In view of the emergency cited in the
preamble, this Act takes effect when approved unless otherwise
indicated.

STATEMENT OF FACT

This bill creates a new Department of Natural Resources.
The new department consolidates those portions of State
Government that exercise regulatory and management jurisdiction
over the State's natural resources. This consolidation will
ensure integrated natural resource policy development and
implementation. The new department will also realize significant
efficiencies in both human and financial resources.