

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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Legislative Document

No. 2157

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H.P. 1528

House of Representatives, January 14, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.  
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 MITCHELL of Freeport.

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STATE OF MAINE

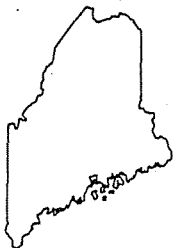
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-TWO

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

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

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Sec. 1. 2 MRSA §6-E is enacted to read:

§6-E. Salaries of members of the Board of Environmental Protection

The salary for the chair and other members of the Board of Environmental Protection is within salary range 88.

Sec. 2. 5 MRSA §12004-D, sub-§5 is enacted to read:

5. Council on Environmental Quality                      Not Authorized                      38 MRSA §1051

Sec. 3. 38 MRSA §341-B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

§341-B. Purpose of the board

The purpose of the Board of Environmental Protection is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and; to provide for credible, fair and responsible public participation in department decisions; and to assist in the promotion of coordination, consistency and efficiency among the State's natural resources and environmental programs and in the establishment of administrative and legislative priorities. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, review of the commissioner's licensing and enforcement actions, participation on the Council on Environmental Quality through the chair of the board and recommending recommendations of changes in the law to the Legislature.

Sec. 4. 38 MRSA §341-C, sub-§§1, 2, 4, 6 and 7, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, are repealed and the following enacted in their place:

1. Appointments. The board consists of 3 members. The Governor shall appoint 2 members, one from candidates suggested by citizens' environmental groups and one from candidates suggested by representatives of business and industry interests. The 3rd member is appointed as provided in subsection 4.

2. Qualifications and requirements. Members of the board must possess professional training and experience directly related to the administration and implementation of this Title and all other laws that the board administers. At least one member must reside in the 2nd congressional district, as defined in Title 21-A, chapter 15. A person may not serve as a board

2 member if that person receives, or during the 2 years prior to  
3 appointment has received, a significant portion of income  
4 directly or indirectly from holders of or applicants for licenses  
5 or permits issued under laws the board is charged with  
6 administering.

7 4. Chair. The 2 members appointed under subsection 1 shall  
8 appoint the 3rd member to serve as chair.

9 6. Salary and conditions of employment. Board members'  
10 salaries must be set by the commissioner within ranges  
11 established by Title 2, section 6-E. A willful violation of this  
12 Title by a board member constitutes sufficient cause for that  
13 member's removal by the Governor.

14 7. Conflict of interest. In addition to the limitations of  
15 Title 5, section 18, a board member may not serve on or under a  
16 committee of a political party or hold any other civil office of  
17 profit or trust under Federal Government or State Government,  
18 except the office of notary public.

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

21 7. Reports to the Legislature. The board shall report to  
22 the joint standing committee of the Legislature having  
23 jurisdiction over energy and natural resource matters by January  
24 15th of the first regular session of each Legislature on the  
25 effectiveness of the environmental laws of the State and any  
26 recommendations for amending those laws or the laws governing the  
27 board. The board may satisfy this requirement through inclusion  
28 of its recommendations in the report required by section 1053.

29 Sec. 6. 38 MRSA §341-E, sub-§1, as enacted by PL 1989, c. 890,  
30 Pt. A, §13 and affected by §40, is repealed and the following  
31 enacted in its place:

32 1. Quorum; effect of majority vote. A majority of the duly  
33 appointed members constitutes a quorum. The act or decision of a  
34 majority of board members present, if at least a quorum is  
35 present, is deemed to be the act or decision of the board on any  
36 matter before the board.

37 Sec. 7. 38 MRSA c. 10 is enacted to read:

38 CHAPTER 10

39 COUNCIL ON ENVIRONMENTAL QUALITY

40 §1051. Council on Environmental Quality

2           The Council on Environmental Quality, authorized pursuant to  
3 Title 5, section 12004-D, subsection 5 and referred to in this  
4 chapter as the "council," is established to promote coordination,  
5 consistency and efficiency among state activities and programs  
6 that prevent, abate and control pollution and to manage,  
7 preserve, improve and prevent diminution of the State's natural  
8 resources. The council shall advise the Governor and the  
9 Legislature on the creation, modification or repeal of these  
10 activities and programs and the establishment of priorities among  
11 them.

12       **§1052. Membership**

13           **1. Members. The council consists of:**

14           **A. The Commissioner of Environmental Protection; the**  
15 **Commissioner of Conservation; the Commissioner of Inland**  
16 **Fisheries and Wildlife; the Commissioner of Marine**  
17 **Resources; the Commissioner of Agriculture, Food and Rural**  
18 **Resources; the Commissioner of Transportation; the**  
19 **Commissioner of Economic and Community Development; the**  
20 **vice-president for research and public services at the**  
21 **University of Maine; and the Director of the State Planning**  
22 **Office;**

23           **B. The Chair of the Board of Environmental Protection; and**

24           **C. The following 6 public members:**

25                   **(1) Two members appointed by the Governor, one**  
26 **representing business interests and one with**  
27 **professional training and experience in biological**  
28 **sciences;**

29                   **(2) Two members appointed by the President of the**  
30 **Senate, one with professional training and experience**  
31 **in public health and one with professional training and**  
32 **experience in engineering; and**

33                   **(3) Two member appointed by the Speaker of the House**  
34 **of Representatives, one with legal training and**  
35 **experience and one representing citizen environmental**  
36 **group interests.**

37           **2. Chair; general duties. The Director of the State**  
38 **Planning Office shall serve as the chair of the council. The**  
39 **chair is responsible for the organization and conduct of the**  
40 **council's work and presiding at meetings of the council.**

41           **3. Staff. The State Planning Office shall provide staff to**  
42 **the council. The council may employ additional staff and**  
43

2 consultants as necessary to carry out its duties within available  
3 appropriations.

4 4. Qualifications of members. Of the 6 members appointed  
5 under subsection 1, paragraph C, 3 members must be residents of  
6 the first congressional district and 3 members must be residents  
7 of the 2nd congressional district. The boundaries of the  
8 congressional districts are defined in Title 21-A, chapter 15.

10 5. Terms. The members appointed under subsection 1,  
11 paragraph C shall serve a 4-year term, except that a vacancy must  
12 be filled for the unexpired portion of the term.

14 6. Compensation. The members appointed under subsection 1,  
15 paragraph C are not entitled to compensation pursuant to Title 5,  
16 chapter 379.

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

20 8. Meetings. The council shall meet quarterly and may hold  
21 any additional special meetings called by the chair on delivery  
22 of 48 hours' written notice to each member.

24 9. Quorum. Seven members constitute a quorum and at least  
25 4 votes are required for any final determination.

28 10. Cooperation with other agencies. The council may  
29 cooperate with state or federal agencies or departments in the  
30 conduct of its responsibilities under this chapter.

32 11. Committees. The council, by majority vote of its  
33 members, may establish standing committees to focus on specific  
34 policies or issues.

36 **§1053. Council responsibilities and duties**

38 1. Biennial report. The council shall prepare and submit  
39 to the Governor and the joint standing committee of the  
40 Legislature having jurisdiction over energy and natural resource  
41 matters by January 15th of the first regular session of each  
42 Legislature a report on the state of the environment. The report  
43 must set forth:

44 A. Current and foreseeable trends in the quality,  
45 management and utilization of the State's environment and  
46 natural resources and the effects of such trends on the  
47 ecological, social, economic and health requirements of the  
48 State;

50 B. A review of the activities and programs of Federal  
51 Government, State Government and local government regarding

2 improvement or protection of the environment and  
3 conservation, development and utilization of natural  
4 resources;

5 C. Specific recommendations for enhancing coordination,  
6 consistency and efficiency among programs and activities  
7 reviewed under paragraph B and for remedying, through  
8 consolidation or other means, deficiencies compromising the  
9 effectiveness of state environmental and natural resources  
10 laws; and

11 D. A progress report on implementation of prior  
12 recommendations made under paragraph C.

13 **2. Priority setting.** The initial biennial report submitted  
14 by the council must contain, in addition to information required  
15 under subsection 1, recommendations using the assessment of the  
16 comparative risks of activities affecting the quality of the  
17 State's environment and natural resources as a tool for  
18 establishment of administrative and legislative priorities.

19 **Sec. 8. PL 1989, c. 890, Pt. A, §38, sub-§1 is amended to read:**

20 **1. Ex parte contacts.** Criteria governing what constitutes  
21 a prohibited ex parte contact for matters subject to rulemaking,  
22 hearings, decisions by the Commissioner of Environmental  
23 Protection and matters on the board agenda, by January 1, 1992.  
24 The criteria shall must address contacts between members of the  
25 board and its staff and the staff of the commissioner, the  
26 applicant, other parties and interested members of the public.  
27 With regard to matters subject to decision by the commissioner,  
28 the criteria must address contacts between the commissioner and  
29 the commissioner's staff and the board and the board's staff,  
30 other parties and interested members of the public;

31 **Sec. 9. Board membership; transition.** Members of the Board of  
32 Environmental Protection on the effective date of this Act may  
33 serve the remainder of their terms or until such time as the  
34 members provided for by this Act have been confirmed, whichever  
35 comes first.

36 **STATEMENT OF FACT**

37 This bill makes 2 fundamental changes to promote  
38 coordination, consistency, efficiency and enhance effectiveness  
39 of the State's natural resources and environmental programs and  
40 to increase the accountability of agencies administering those  
41 programs.

2 The bill requires submission of a biennial state of the  
environment report to the Governor and the Joint Standing  
4 Committee on Energy and Natural Resources. The report must  
include specific recommendations to improve the coordination,  
6 consistency and efficiency of the State's natural resources and  
environmental programs and to eliminate duplication through  
consolidation or other means.

8  
10 The Council on Environmental Quality, established by this  
bill, consists of the commissioners of the State's natural  
12 resources and environmental agencies, the Chair of the Board of  
Environmental Protection and 6 volunteer public members with  
14 pertinent expertise. The council is responsible for the  
development and submission of the report on the state of the  
environment. The initial report must include a recommendation  
16 regarding use of comparative risk assessment as a tool for  
setting administrative and legislative priorities.

18  
20 The bill replaces the current Board of Environmental  
Protection with a 3-member professional board. The bill makes no  
22 change in the division of responsibility under present law  
between the Board of Environmental Protection and the  
Commissioner of Environmental Protection.