

# MAINE STATE LEGISLATURE

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RUB

L.D. 952

2 DATE: June 15, 1995

(Filing No. S- 275 )

4  
6 **NATURAL RESOURCES**

8 Reported by: The Majority of the Committee.

10 Reproduced and distributed under the direction of the Secretary  
12 of the Senate.

14 **STATE OF MAINE**  
**SENATE**  
**117TH LEGISLATURE**  
**FIRST REGULAR SESSION**

18 **COMMITTEE AMENDMENT " A " to S.P. 347, L.D. 952, Bill, "An**  
20 **Act to Ensure Consistency Between State and Federal Environmental**  
22 **Requirements"**

24 Amend the bill by striking out everything after the enacting  
26 clause and before the statement of fact and inserting in its  
28 place the following:

**Sec. 1. 38 MRSA §341-D, sub-§1, as amended by PL 1993, c.**  
**328, §1, is further amended to read:**

30 **1. Rulemaking.** Subject to the Maine Administrative  
32 Procedure Act, the board shall adopt, amend or repeal reasonable  
34 rules and emergency rules necessary for the interpretation,  
36 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.

38 The department shall identify in its regulatory agenda, ~~where~~  
40 when feasible, a proposed rule or provision of a proposed rule  
42 that is anticipated to be more stringent than the federal  
standard statute or regulation, if an applicable federal standard  
statute or regulation exists.

44 During the consideration of any proposed rule by the board, ~~where~~  
46 when feasible, and using information available to it, the  
48 department shall identify provisions of the proposed rule that  
the department believes would impose a regulatory burden more  
stringent than the burden imposed by the corresponding federal  
standard statute or regulation, if such a federal standard

**COMMITTEE AMENDMENT**

R 46

COMMITTEE AMENDMENT "A" to S.P. 347, L.D. 952

2 statute or regulation exists, and shall explain in a separate  
3 section of the basis statement the justification for the  
4 difference between the agency rule and the federal standard  
5 statute or regulation.

6 This subsection is repealed January 1, 1998.

8 **Sec. 2. 38 MRSA §341-D, sub-§§1-A and 1-B are enacted to read:**

10 **1-A. Stay.** Except to the extent the department determines  
11 that a proposed rule implements a state law that is more  
12 stringent than the corresponding federal statute or regulation,  
13 any provision of the proposed rule that is determined by the  
14 department to be more stringent than the corresponding federal  
15 statute or regulation must be stayed for 60 days following  
16 adoption. During this 60-day period, interested persons may  
17 petition the board to have the Legislature review those  
18 provisions of the proposed rule that have been determined to be  
19 more stringent. The filing with the board of petitions from 5 or  
20 more interested persons stays the effective date of those  
21 provisions of the rule until 60 days after the filing, if the  
22 Legislature is then in session. If the Legislature is not then  
23 in session and is not scheduled to convene within the next 60  
24 days, then those provisions of the rule that have been determined  
25 to be more stringent are stayed for 60 days after filing of the  
26 petitions to permit consultation between the legislative  
27 committee of jurisdiction, the department and other interested  
28 persons. Copies of the petitions that are filed, along with a  
29 statement from the department outlining the provisions of the  
30 rule that have been determined to be more stringent and the  
31 accompanying basis statement, must be submitted by the department  
32 to the Executive Director of the Legislative Council pursuant to  
33 Title 5, section 8053-A, subsection 3 upon receipt of the  
34 petitions. This subsection applies to new rules that are adopted  
35 by the board after the effective date of this subsection.

36 This subsection is repealed January 1, 1998.

38 **1-B. Rulemaking.** Subject to the Maine Administrative  
39 Procedure Act, the board shall adopt, amend or repeal reasonable  
40 rules and emergency rules necessary for the interpretation,  
41 implementation and enforcement of any provision of law that the  
42 department is charged with administering. The board shall also  
43 adopt, amend and repeal rules as necessary for the conduct of its  
44 business.

46 The department shall identify in its regulatory agenda, when  
47 feasible, a proposed rule or provision of a proposed rule that is  
48 feasible, a proposed rule or provision of a proposed rule that is

R 48

COMMITTEE AMENDMENT "A" to S.P. 347, L.D. 952

2 anticipated to be more stringent than the federal standard, if an applicable federal standard exists.

4 During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard.

12 This subsection takes effect January 1, 1998.

14 **Sec. 3. 38 MRSA §480-H, first ¶**, as repealed and replaced by PL 16 1991, c. 66, Pt. A, §16, is amended to read:

18 In fulfilling its responsibilities to adopt rules pursuant to section 341-D, ~~subsection--1~~, the board, to the extent 20 practicable, shall adopt performance and use standards for activities regulated by this article. These standards at a 22 minimum must include:'

24 Further amend the bill by inserting at the end before the statement of fact the following:

26 **FISCAL NOTE**

28 The Legislature will incur some minor additional costs to 30 review certain rules adopted by the Board of Environmental Protection. These costs can be absorbed within the Legislature's 32 existing budgeted resources.'

34 **STATEMENT OF FACT**

36 This amendment replaces the bill. It applies only to rules 38 adopted by the Board of Environmental Protection and it requires a comparison of state rules with federal laws and regulations 40 only if a corresponding federal law or regulation exists. If no corresponding federal law or regulation exists, or if the state 42 rule implements a state law that is more stringent than the corresponding federal law or regulation, the amendment does not 44 affect the rulemaking process.

46 A provision of a state rule that is more stringent than a 48 corresponding federal law or regulation is stayed for 60 days after its adoption, to allow interested persons a chance to petition the Board of Environmental Protection to have the 50 Legislature review the more stringent provision. If 5 petitions

are filed at any time within the 60-day period, the more stringent provision is stayed 60 days from the filing of the petitions.

During the 60-day stay period after filing of the petitions, the Legislature has an opportunity to review the proposed rule, to confer with the Department of Environmental Protection and interested parties and to take whatever action it finds necessary. The legislative committee of jurisdiction may choose to urge the Board of Environmental Protection to take whatever course the committee considers advisable or to introduce legislation to invalidate the rule.

If petitions are filed seeking legislative review, the department will send to the Legislature an outline of the more stringent rule provisions, a copy of the basis statement for the rule and copies of the petitions requesting review.

This process is repealed January 1, 1998 and the current law is reinstated. Current law requires the department to identify proposed state rules that it believes to be more stringent than federal law or regulations and to include in the basis statement for the rule a justification for the more stringent state rule.

The amendment also adds a fiscal note to the bill.