

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1213

S.P. 446

In Senate, April 5, 1995

**An Act to Implement the Recommendations of the Special Commission
on Governmental Restructuring.**

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator AMERO of Cumberland.

Cosponsored by Senators: ABROMSON of Cumberland, BUTLAND of Cumberland, CARPENTER of York, CASSIDY of Washington, FERGUSON of Oxford, HARRIMAN of Cumberland, KIEFFER of Aroostook, STEVENS of Androscoggin, Representatives: DEXTER of Kingfield, LANE of Enfield, ROBICHAUD of Caribou, SAVAGE of Union, YACKOBITZ of Hermon.

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

4 **PART A**

6 **Sec. A-1. 2 MRSA §6, sub-§5**, as repealed and replaced by PL 1993, c. 410, Pt. L, §1, is amended to read:

8 **5. Range 86.** The salaries of the following state officials and employees are within salary range 86:

10 Director of Labor Standards;

12 Deputy Chief of the State Police;

14 State Archivist;

16 Director of Maine Geological Survey;

18 Executive Director, Maine Land Use Regulation Commission;

20 Chair, Maine Unemployment Insurance Commission;

22 ~~Child-Welfare-Services-Ombudsman;~~

24 Director of the Maine Drug Enforcement Agency; and

26 Executive Director, Maine Science and Technology Commission.

28 **Sec. A-2. 5 MRSA §12004-G, sub-§14-B** is enacted to read:

30 **14-B.**

| | | |
|------------------|-----------------|---------------|
| <u>Advocacy</u> | <u>Expenses</u> | <u>5 MRSA</u> |
| <u>Human</u> | <u>Board</u> | <u>Only</u> |
| <u>Services:</u> | | <u>§19603</u> |
| <u>Advocacy</u> | | |

36 **Sec. A-3. 5 MRSA c. 513** is enacted to read:

38 **CHAPTER 513**

40 **OFFICE OF ADVOCACY**

42 **§19601. Definitions**

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

48 **1. Advocacy services.** "Advocacy services" means services
50 directed at an individual or a class of people that empower the
individual or class of people to assert legal rights or to
improve their status in society.

2 2. Board. "Board" means the Advocacy Board as established
in section 19603.

4 3. Office. "Office" means the Office of Advocacy as
6 established in section 19602.

8 **§19602. Establishment; purpose**

10 The Office of Advocacy is established within the Executive
12 Department to provide advocacy services for people with
14 disabilities, people with mental illness, older people, women,
16 people receiving long-term care services, children and families
at risk of abuse or neglect, people who lack basic necessities
and people who are incarcerated in the correctional system.

18 The Office of Advocacy shall provide advocacy services in a
20 manner that eliminates duplication of effort and provides
effective and efficient advocacy.

22 **§19603. Advocacy Board**

24 The Advocacy Board, as established by section 12004-G,
26 subsection 14-B, is the governing body of the Office of
Advocacy. The board has 11 members, appointed in accordance with
subsection 1.

28 1. Appointment; qualifications. Members of the board must
be appointed as follows.

30 A. The Governor shall appoint 5 members. One appointee
32 must be familiar with mental and physical disabilities, one
34 must be a woman involved in women's issues, one must be a
36 former inmate of the correctional system or a family member
38 of an inmate or a former inmate, one must be familiar with
40 child abuse and neglect and one must have experience and
knowledge of advocacy services. The Governor's appointees
serve 3-year terms, except that of the initial appointees, 2
must be appointed for 3 years, 2 must be appointed for 2
years and one must be appointed for one year.

42 B. The President of the Senate and the Speaker of the House
44 of Representatives shall appoint jointly 5 members. One
46 appointee must be a person with mental illness or a family
48 member of a person with mental illness, one must be an older
50 person, one must be familiar with poverty issues and 2 must
have experience and knowledge of advocacy services. The
appointees of the President of the Senate and the Speaker of
the House of Representatives serve 3-year terms, except that
of the initial appointees, 2 must be appointed for 3 years,

2 2 must be appointed for 2 years and one must be appointed
3 for one year.

4 C. Members appointed in accordance with paragraphs A and B
5 shall, by majority vote, select one additional member, who
6 serves as chair and whose term is for 3 years.

7 D. Members may serve after the expiration of their terms
8 until their successors have been appointed. Members may be
9 reappointed, but a member may not serve more than 2
10 consecutive terms of 3 years each. Any member appointed to
11 fill a vacancy occurring prior to the expiration of the term
12 for which that member's predecessor was appointed is
13 appointed only for the remainder of that term.

14 2. Authority. The board may employ staff in accordance
15 with the Civil Service Law, may authorize the use of volunteers,
16 may enter into contracts and may accept private funds to carry
17 out the purposes of the office. The board may appoint
18 subcommittees that include representatives who are not board
19 members.

20 3. Meetings. The board shall meet at the call of the chair
21 or at the call of 5 members. The board shall meet at least once
22 every 3 months and shall keep minutes of all meetings.

23 4. Expenses. Members are entitled to reimbursement for
24 expenses in accordance with chapter 379.

25 5. Report. The board shall submit annually by December
26 15th a written report to the joint standing committee of the
27 Legislature having jurisdiction over human resource matters. The
28 report must include a description of the office's activities and
29 recommendations and implementing legislation for further
30 consolidation of the advocacy system.

31 **§19604. Executive director**

32 The board shall hire an executive director to carry out the
33 day-to-day management of the office. The executive director
34 serves at the pleasure of the board and shall report only to the
35 board. The executive director may hire staff with the consent of
36 the board and shall carry out all other duties assigned by the
37 board.

38 **§19605. Duties; authority**

39 The office has the following duties and authority.

2 1. Grievances. The office shall investigate the claims and
3 grievances of people receiving long-term care services from any
4 entity that receives public funds or is licensed by the State,
5 people whose rights may be abridged by the State's child welfare
6 system and people receiving any services that are delivered,
7 funded or licensed by the Department of Mental Health and Mental
8 Retardation or the Department of Corrections. The office shall
9 conduct a joint investigation with the Department of Human
10 Services when the grievance involves abuse in a state institution
11 of any child or of an adult who is a ward of the Department of
12 Human Services. If the office finds that any grievance it
13 investigates has merit, it shall intercede on behalf of the
14 aggrieved person with officials of the institution, facility or
15 agency. The office may assist the aggrieved person in any
16 hearing or grievance proceeding of any department and may refer
17 the person to other agencies or entities for the purpose of
18 asserting the rights of the person.

19 2. Advocacy. The office shall advocate for the well-being
20 of the groups of people described in section 19602 by proposing
21 and supporting legislation, monitoring the rule-making process
22 and other activities of federal and state agencies, conducting
23 research and providing advice, assistance and information to
24 public officials and the general public.

25 3. Access to files and records. The office has access,
26 limited only by law, to the files, records and personnel of any
27 institution, facility or agency administered, licensed or funded
28 by the State.

29 4. Confidentiality. Any request by a person for action by
30 the office and all written records or accounts related to the
31 request are confidential as to the identity of the person making
32 the request. The records and accounts may be released only as
33 provided by law.

34 5. Rules. The office shall adopt rules to carry out the
35 purposes of the office.

36 **§19606. Protection for employees**

37 1. Protection for staff. An employee of the office may not
38 be disciplined or sanctioned for actions taken on behalf of a
39 person receiving advocacy services if the employee acts within
40 the law and within the rules of the office.

41 2. Protection for agency employees. An employee of a
42 public or private agency may not be disciplined or sanctioned for
43 reporting abuse or suspected abuse to the office in good faith.
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§19607. Repeal

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This chapter is repealed on July 1, 1997. Prior to July 1, 1997, the joint standing committee of the Legislature having jurisdiction over human resource matters shall review the performance and duties of the office.

Sec. A-4. 22 MRSA §4002, sub-§3-A, as enacted by PL 1987, c. 511, Pt. A, §2, is repealed.

Sec. A-5. 22 MRSA §4008, sub-§3, ¶D, as amended by PL 1987, c. 511, Pt. A, §3, is further amended to read:

D. An appropriate state executive or legislative official with responsibility for child protection services ~~or--the Child--Welfare--Services--Ombudsman~~ in carrying out his official functions, provided that no personally identifying information may be made available unless necessary to his those functions;

Sec. A-6. 22 MRSA c. 1071, sub-c. X-A, as enacted by PL 1989, c. 400, §§7 and 14, is repealed.

Sec. A-7. 22 MRSA §4089, sub-§1, ¶E, as enacted by PL 1989, c. 819, §6, is repealed.

Sec. A-8. 22 MRSA §7924, sub-§1, as amended by PL 1981, c. 493, §2, is further amended to read:

1. Alleged violations reported and investigated. Any person who believes that any of those ~~regulations~~ rules governing the licensure of long-term care facilities duly ~~promulgated~~ adopted by the Department of Human Services pertaining to residents' rights and conduct of resident care has been violated may report the alleged violation to ~~the protection and advocacy agency designated pursuant to section 3551, the Maine Committee on Aging pursuant to section 5112, subsection 2;~~ the Office of Advocacy pursuant to Title 34 5, section ~~1-A~~ 19605 and any other agency or person whom the Commissioner of Human Services and the Commissioner of Mental Health and Mental Retardation may designate.

Sec. A-9. 34-A MRSA §1203, as amended by PL 1991, c. 314, §§10 to 13, is repealed.

Sec. A-10. 34-A MRSA §1402, sub-§5, as amended by PL 1991, c. 314, §19, is further amended to read:

2 **5. Grievance procedures.** The commissioner shall establish
3 procedures for hearing grievances of clients as described in
4 Title 5, section 1203 19605, subsection 1.

6 **Sec. A-11. 34-B MRSA §1205,** as amended by PL 1989, c. 731,
7 §§1 to 3, is repealed.

8 **Sec. A-12. 34-B MRSA §5606, sub-§1,** as amended by PL 1993, c.
9 326, §10, is further amended to read:

10 **1. Report and investigation.** Any alleged violation of the
11 rights of a person receiving services must be reported
12 immediately to the Office of Advocacy ~~of the department~~ and to
13 the Attorney General's office.

14 A. The Office of Advocacy shall conduct an investigation of
15 each alleged violation pursuant to Title 5, section 1205
16 19605.

17 B. The Office of Advocacy shall submit a written report of
18 the findings and results of the investigation to the chief
19 administrative officer of the facility in which the rights
20 of the person receiving services were allegedly violated and
21 to the commissioner within 2 working days after the day of
22 the occurrence or discovery of the alleged incident.

23 **Sec. A-13. Transition provisions.** The following transition
24 provisions apply to this Part.

25 1. Beginning January 1, 1996, and continuing as long as the
26 Office of Advocacy chooses, the Department of Corrections shall
27 provide to the Office of Advocacy the same office space and
28 clerical support that was provided to the Department of
29 Corrections, Office of Advocacy on December 31, 1995. Beginning
30 January 1, 1996, and continuing as long as the Office of Advocacy
31 chooses, the Department of Mental Health and Mental Retardation
32 shall provide to the Office of Advocacy the same office space and
33 clerical support that was provided to the Department of Mental
34 Health and Mental Retardation, Office of Advocacy on December 31,
35 1995.

36 2. All forms, licenses, contracts and agreements pertaining
37 to the Department of Corrections, Office of Advocacy; Department
38 of Mental Health and Mental Retardation, Office of Advocacy; and
39 the Child Welfare Services Ombudsman are transferred to the
40 Office of Advocacy on January 1, 1996.

41 3. Notwithstanding the provisions of the Maine Revised
42 Statutes, Title 5, all accrued expenditures, assets, liabilities,
43 balances or appropriations, allocations, transfers, revenues or
44 other available funds in an account or subdivision of an account
45

2 of the Department of Corrections, Office of Advocacy; Department
of Mental Health and Mental Retardation, Office of Advocacy; and
4 the Child Welfare Services Ombudsman are transferred to the
Office of Advocacy on January 1, 1996.

6 4. Any positions that are authorized and allocated on
December 31, 1995 to the Department of Corrections, Office of
8 Advocacy; Department of Mental Health and Mental Retardation,
Office of Advocacy; and the Child Welfare Services Ombudsman are
10 transferred to the Office of Advocacy on January 1, 1996. The
following provisions apply to any state personnel transferred
12 under this subsection.

14 A. The employees retain their accrued fringe benefits,
including vacation and sick leave, health and life insurance
16 and retirement benefits.

18 B. Employees who are members of collective bargaining units
on December 31, 1995 remain members in their respective
20 bargaining units and retain all rights, privileges and
benefits provided by their collective bargaining agreements
22 with respect to state service.

24 C. Employees who are members of the Maine State Retirement
System remain members of the Maine State Retirement System.

26 D. The Department of Administrative and Financial Services,
28 Bureau of Human Resources shall assist with the orderly
implementation of these provisions.

30 5. Any position that is identified for transfer to another
32 agency in this section and is vacant on January 1, 1996 is
abolished.

34 **Sec. A-14. Maine Revised Statutes amended; revision clause.**

36 Effective January 1, 1996, wherever in the Maine Revised Statutes
the words "Maine Committee on Aging," "Committee on Aging,"
38 "Child Welfare Services Ombudsman," "Maine Commission on Mental
Health," "Commission on Mental Health," "Maine Commission for
40 Women" or "Commission for Women" appear or reference is made to
those words, they are amended to read and mean "Office of
42 Advocacy" and the Revisor of Statutes shall implement this
revision when updating, publishing or republishing the statutes.

44 **Sec. A-15. Effective date; transition period.** This Part takes

46 effect January 1, 1996 except that the Governor, the President of
the Senate and the Speaker of the House of Representatives shall
48 make all initial appointments to the Advocacy Board, as
established by this Part, by October 15, 1995. The Governor
50 shall call the first meeting of the Advocacy Board, to be held no
later than November 1, 1995, at which time the Advocacy Board
52 shall select

2 its final member. The board shall make every effort to hire the
3 executive director by December 15, 1995. If the board does not
4 hire a permanent executive director by January 1, 1996, it shall
5 appoint the person who was Chief Advocate of the Office of
6 Advocacy within the Department of Mental Health and Mental
7 Retardation on December 31, 1995 as interim executive director,
8 to serve until a permanent executive director is hired.

9 PART B

10 Sec. B-1. 20-A MRSA c. 2 is enacted to read:

11 CHAPTER 2

12 PUBLIC EDUCATION STRATEGIC 13 PLANNING COUNCIL

14 §101. Establishment

15 The Public Education Strategic Planning Council, referred to
16 in this chapter as the "council," is established to create and
17 maintain a long-term strategic plan for public education, make
18 annual funding recommendations to the Legislature and study and
19 recommend policy on significant education issues.

20 §102. Purpose

21 The council is authorized and directed to:

22 1. Assess needs. Assess elementary, secondary and
23 postsecondary education needs of this State and examine whether
24 existing programs meet those needs;

25 2. Ensure consistency of missions. Ensure that the
26 educational missions of the university campuses, technical
27 colleges, maritime academy and elementary and secondary schools
28 are consistent and do not overlap unnecessarily;

29 3. Establish 5-year plans. Establish 5-year strategic
30 plans for public education statewide;

31 4. Stress collaboration. Stress collaboration and
32 collective use of education resources among public education
33 systems with a particular emphasis on physical facilities;

34 5. Review new program placement. Review and recommend
35 optimal program location for new education programs;

36 6. Develop plans for transfer of academic credit. Develop
37 plans for increased transferability of comparable academic
38 credits between postsecondary institutions;

2 7. Promote technology. Promote the use of technology in
academic curricula and information exchange; and

4 8. Recommend funding levels. Annually recommend school
funding levels to the Legislature.

6 **§103. Members**

8
10 The council consists of 8 members, including: the Chancellor
of the University of Maine System; the President of the Maine
12 Technical College System; the President of the Maine Maritime
Academy; the Commissioner of Education; one member from each of
14 the boards of trustees of the University of Maine System, the
Maine Technical College System and the Maine Maritime Academy;
and one member from the State Board of Education. The
16 Commissioner of Education is the chair of the council.

18 **§104. Annual report**

20 The council shall present annually to the Governor and the
Legislature a report that includes proposed adjustments in the
22 5-year strategic plan established pursuant to section 102,
recommends public education funding levels and makes other
24 education policy recommendations.

26 **PART C**

28 **Sec. C-1. 2 MRSA §6, sub-§4,** as amended by PL 1991, c. 780,
30 Pt. Y, §4, is further amended to read:

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

34 Director of the Bureau of Parks and Recreation;

36 Director of Public Lands;

38 Director of Employee Relations;

40 ~~Director, Bureau of Air Quality Control;~~

42 ~~Director, Bureau of Land Quality Control;~~

44 ~~Director, Bureau of Water Quality Control;~~

46 ~~Director, Bureau of Oil and Hazardous Materials Control;~~

48 ~~Director, Bureau of Administration;~~

2 Director, Office of Planning;
4 Director, Office of Waste Reduction and Recycling;
6 Director, Office of Siting and Disposal Operations; and
8 Executive Director, Board of Environmental Protection;
10 Director, Bureau of Enforcement;
12 Director, Bureau of Licensing; and
14 Director, Bureau of Technical Services.

16 **Sec. C-2. 5 MRSA §938, sub-§1, ¶C**, as repealed and replaced by
PL 1987, c. 419, §2, is repealed.

18 **Sec. C-3. 5 MRSA §938, sub-§1, ¶¶D and E**, as enacted by PL
20 1985, c. 746, §3, are repealed.

22 **Sec. C-4. 5 MRSA §938, sub-§1, ¶¶F and G**, as amended by PL
24 1987, c. 816, Pt. KK, §8, are repealed.

26 **Sec. C-5. 5 MRSA §938, sub-§1, ¶¶H and I**, as enacted by PL
1987, c. 787, §3, are amended to read:

28 H. Director, Bureau of Solid Waste Management; and
30 I. Director, Policy and Planning;

32 **Sec. C-6. 5 MRSA §938, sub-§1, ¶¶N to P** are enacted to read:

34 N. Director, Bureau of Enforcement;
36 O. Director, Bureau of Licensing; and
38 P. Director, Bureau of Technical Services.

40 **Sec. C-7. 5 MRSA §12004-D, sub-§2**, as amended by PL 1989, c.
890, Pt. A, §3 and affected by §40, is further amended to read:

42 2. Board of Legislative 38 MRSA §341-A
44 Environmental Protection Per-Diem
46 \$200 per day
48 not to exceed
\$20,000 per
calendar year

2 **Sec. C-8. 38 MRSA §341-A, sub-§4**, as enacted by PL 1989, c.
890, Pt. A, §13 and affected by §40, is amended to read:

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

10 **Sec. C-9. 38 MRSA §341-B**, as enacted by PL 1989, c. 890, Pt.
A, §13 and affected by §40, is amended to read:

12 **§341-B. Purpose of the board**

14
16 The purpose of the Board of Environmental Protection is to
provide informed, independent and timely decisions on the
18 interpretation, administration and enforcement of the laws
relating to environmental protection and to provide for credible,
20 fair and responsible public participation in the appeal of
department decisions. The board shall fulfill its purpose
22 through ~~rulemaking, decisions on selected permit applications,~~
review of the commissioner's licensing and enforcement actions
24 and recommending changes in the law to the Legislature when such
actions are appealed to the board.

26 **Sec. C-10. 38 MRSA §341-C, sub-§§1 to 3**, as enacted by PL 1989,
c. 890, Pt. A, §13 and affected by §40, are amended to read:

28
30 **1. Appointments.** The board ~~shall consist~~ consists of ~~10~~ 3
members appointed by the Governor, subject to review by the joint
32 standing committee of the Legislature having jurisdiction over
energy and natural resource matters and to confirmation by the
Legislature.

34
36 **2. Qualifications and requirements.** Members of the board
must be chosen to represent the broadest possible interest and
38 experience that can be brought to bear on the administration and
implementation of this Title and all other laws ~~which~~ that the
board is charged with administering. ~~At least 4 members must be~~
40 ~~residents of the First Congressional District and at least 4~~
~~members must be residents of the Second Congressional District.~~
42 ~~The boundaries of the congressional districts are defined in~~
Title ~~21-A, chapter 15.~~ Members of the board must be
44 knowledgeable in issues pertaining to environmental regulation.

46 **3. Terms.** The members must be appointed for staggered
~~4-year~~ 5-year terms, except that a vacancy must be filled for the

unexpired portion of the term. A member may not serve more than 2
2 consecutive 4-year 5-year terms.

4 **Sec. C-11. 38 MRSA §341-D, sub-§1**, as amended by PL 1993, c.
328, §1, is repealed.

6 **Sec. C-12. 38 MRSA §341-D, sub-§§2 and 3**, as enacted by PL
8 1989, c. 890, Pt. A, §13 and affected by §40, are repealed.

10 **Sec. C-13. 38 MRSA §341-D, sub-§4**, as enacted by PL 1989, c.
12 890, Pt. A, §13 and affected by §40, is amended to read:

14 **4. Appeal or review.** The board shall review, may hold a
hearing at its discretion on and may affirm, amend or reverse any
of the following:

16 A. Final license or permit decisions made by the
18 commissioner when a person aggrieved by a decision of the
commissioner appeals that decision in writing to the board
20 within 30 days of the ~~filing of the~~ commissioner's decision
~~with the board staff.~~ The board staff shall give written
22 notice to persons that have asked to be notified of the
decision. The board may allow the record to be supplemented
24 when it finds that the evidence offered is relevant and
material and that:

26 (1) An interested party seeking to supplement the
28 record has shown due diligence in bringing the evidence
to the licensing process at the earliest possible time;
30 or

32 (2) The evidence is newly discovered and could not, by
the exercise of diligence, have been discovered in time
34 to be presented earlier in the licensing process.

36 The board is not bound by the commissioner's findings of
fact or conclusions of law but may adopt, modify or reverse
38 findings of fact or conclusions of law established by the
commissioner. Any changes made by the board under this
40 paragraph must be based upon the board's review of the
record, any supplemental evidence admitted by the board and
42 any hearing held by the board;

44 ~~B. License or permit decisions made by the commissioner~~
~~that the board votes to review within 30 days of the next~~
46 ~~regularly scheduled board meeting following written~~
~~notification to the board of the commissioner's decision.~~
48 ~~The procedures for review are the same as provided under~~
paragraph A; and

50

2 C. License or permit decisions appealed to the board under
another law. Unless the law provides otherwise, the
4 standard of review is the same as provided under paragraph
A; and

6 D. Orders issued pursuant to section 342-C and appeals of
emergency orders issued pursuant to section 347-A,
8 subsection 3.

10 **Sec. C-14. 38 MRSA §341-D, sub-§5,** as amended by PL 1993, c.
356, §1, is repealed.

12 **Sec. C-15. 38 MRSA §341-D, sub-§6,** as enacted by PL 1989, c.
14 890, Pt. A, §13 and affected by §40, is repealed.

16 **Sec. C-16. 38 MRSA §341-E, first ¶,** as enacted by PL 1989, c.
18 890, Pt. A, §13 and affected by §40, is amended to read:

20 Board meetings held under section 341-D, ~~subsections 1 to 7,~~
are governed by the following provisions.

22 **Sec. C-17. 38 MRSA §341-E, sub-§1,** as enacted by PL 1989, c.
24 890, Pt. A, §13 and affected by §40, is amended to read:

26 1. **Quorum.** ~~Six~~ Three members of the board constitute a
quorum for a vote of the board, ~~6 members constitute a quorum for~~
~~rule-making hearings held by the board~~ and ~~3~~ 2 members constitute
28 a quorum for other hearings held by the board.

30 **Sec. C-18. 38 MRSA §342, sub-§4,** as amended by PL 1991, c.
32 804, Pt. C, §2, is further amended to read:

34 **4. Organization of department.** The commissioner, ~~after~~
~~consultation with the Board of Environmental Protection,~~ shall
organize the department into the bureaus, Bureau of Licensing,
36 the Bureau of Technical Services and the Bureau of Enforcement.
The commissioner may organize these bureaus into divisions,
38 regional offices and other administrative units necessary to
fulfill the duties of the department, provided that those
40 divisions, regional offices and administrative units preserve the
functional organizational structure of the department's
42 licensing, technical services and enforcement bureaus. After
~~consultation with the board,~~ ~~the~~ The commissioner shall ~~prescribe~~
44 ~~the functions of the bureaus and other administrative units to~~
insure ensure that the powers and duties of the department are
46 administered efficiently so that all license applications and
other business of the department may be expeditiously completed
48 in the public interest.

2 A. In coordination with the Health and Environmental
3 Testing Laboratory in the Department of Human Services, the
4 commissioner shall ensure that sampling, data handling and
5 analytical procedures are carried out in accordance with the
6 highest professional standards so that data generated for
7 departmental programs are of known and predictable precision
8 and accuracy.

10 B. The Office of Pollution Prevention is established within
11 the department Bureau of Technical Services to review
12 department programs and make recommendations to the
13 commissioner on means of integrating pollution prevention
14 into department programs. The Office of Pollution
Prevention has the following functions:

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

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

22 (3) To ensure that rules, programs and activities of
23 the department are consistent with pollution prevention
24 goals and do not hinder pollution prevention
25 initiatives;

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

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

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

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

46 (8) To assume responsibility for the administration
47 and implementation of chapter 26; and

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

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

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

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

20 **Sec. C-19. 38 MRSA §342, sub-§9**, as enacted by PL 1989, c.
21 890, Pt. A, §18 and affected by §40, is repealed and the
22 following enacted in its place:

24 **9. Rules.** Subject to the Maine Administrative Procedure
25 Act, the commissioner shall adopt, amend or repeal rules and
26 emergency rules necessary for the interpretation, implementation
27 and enforcement of any provision of law that the department is
28 charged with administering. The commissioner shall also adopt,
29 amend and repeal rules as necessary for the conduct of the
30 department's business.

32 **Sec. C-20. 38 MRSA §342-C** is enacted to read:

34 **§342-C. Modification, revocation or suspension of licenses**

36 After written notice and opportunity for a hearing pursuant
37 to Title 5, chapter 375, subchapter IV, the commissioner may
38 modify in whole or in part any license, or may issue an order
39 prescribing necessary corrective action, or may act in accordance
40 with the Maine Administrative Procedure Act to revoke or suspend
41 a license, whenever the commissioner finds that:

44 **1. Violation of license condition.** The licensee has
45 violated any condition of the license;

46 **2. Misrepresentation.** The licensee has obtained a license
47 by misrepresenting or failing to disclose fully all relevant
48 facts;

50

2 3. Threat. The licensed discharge or activity poses a
3 threat to human health or the environment;

4 4. Absence of standards. The license fails to include any
5 standard or limitation legally required on the date of issuance;

6 5. Change of circumstances. There has been a change in any
7 condition or circumstance that requires revocation, suspension or
8 a temporary or permanent modification of the terms of the
9 license; or

10 6. Violation of law. The licensee has violated any law
11 administered by the department.

12 For the purposes of this section, the term "license"
13 includes any license, permit, order, approval or certification
14 issued by the department and the term "licensee" means the holder
15 of the license.

16 **Sec. C-21. 38 MRSA §343-D, sub-§1**, as amended by PL 1993, c.
17 500, §2 and affected by §5, is further amended to read:

18 **1. Appointment; composition.** The committee consists of 16
19 15 voting members.

20 A. The Governor shall appoint 2 representatives from the
21 business community, 2 elected or appointed municipal
22 officials who are not owners or representatives of owners of
23 small business stationary sources, and 2 representatives of
24 organized labor.

25 B. The President of the Senate shall appoint one member
26 from a public health organization, one member from an
27 environmental organization and one public member who is an
28 owner or represents an owner of a small business stationary
29 source.

30 C. The Speaker of the House of Representatives shall
31 appoint one member from a public health organization, one
32 member from an environmental organization and one public
33 member who is an owner or represents an owner of a small
34 business stationary source.

35 D. The commissioner shall appoint a designee to represent
36 the department.

37 E. The Senate Minority Leader and the House Minority Leader
38 shall each appoint one member who is an owner or represents
39 an owner of a small business stationary source.

2 ~~F.--The Director of the Bureau of Air Quality Control shall~~
~~appoint a designee to represent the bureau.~~

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

8
10 As used in this subsection, unless the context otherwise
12 indicates, a "small business stationary source" means a source
that meets the eligibility requirements of 42 United States Code
Annotated, Section 7661f.

14 **Sec. C-22. 38 MRSA §344, sub-§1**, as amended by PL 1991, c.
804, Pt. B, §2 and affected by §7, is further amended to read:

16 **1. Acceptance and notification.** The commissioner shall
18 notify the applicant in writing of the official date on which the
20 application was accepted as complete for processing or the
reasons the application was not accepted. If a written notice of
22 acceptance or nonacceptance is not mailed to the applicant within
15 working days of receipt of the application, the application is
24 deemed to be accepted as complete for processing on the 15th
working day after receipt by the department. If the application
is not accepted, the commissioner shall return the application to
26 the applicant with the reasons for nonacceptance specified in
writing. Any applicant whose application has not been accepted
28 by the commissioner shall must attend a presubmission meeting
with the department before resubmitting that application. The
30 ~~commissioner shall notify the board of all applications accepted~~
~~as complete.~~

32
34 An application is acceptable as complete for processing if the
application is properly filled out and information is provided
36 for each of the items included on the form. Acceptance of an
application as complete for review does not constitute a
38 determination by the department on the sufficiency of that
information and does not preclude the department from requesting
40 additional information during processing.

42 The commissioner shall require the applicant to provide notice to
the public for each application for a permit or license
44 accepted. The commissioner shall solicit comments from the
public for each application in a manner prescribed by the ~~board~~
commissioner in the rules.

46
48 All correspondence notifying an applicant of denial of an
application by the ~~board or~~ commissioner must be by certified
50 mail, return receipt requested.

2 **Sec. C-23. 38 MRSA §344, sub-§2-A**, as amended by PL 1991, c.
804, Pt. B, §3 and affected by §7, is further amended to read:

4 **2-A. Processing time limits, decisions and appeals.** After
the commissioner accepts an application for processing, the
6 commissioner may approve, approve with conditions, or disapprove
~~or refer~~ the application as follows.

8
10 ~~A.---The---commissioner---shall---decide---as---expeditiously---as~~
~~possible---if---an---application---meets---one---or---more---of---the---criteria~~
~~set---forth---in---section---341-D,---subsection---2---and---shall---request~~
~~that---the---board---assume---jurisdiction---of---that---application,---If~~
~~at---any---subsequent---time---during---the---review---of---an---application~~
~~the---commissioner---decides---that---the---application---falls---under~~
~~section---341-D,---subsection---2,---the---commissioner---shall---request~~
~~that---the---board---assume---jurisdiction---of---the---application.~~

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

22 C. For those applications that do not fall under the permit
24 by rule provisions of subsection 7, the commissioner shall
decide upon the application pursuant to the provisions of
26 section 344-B.

28 Any person aggrieved by a final license or permit decision of the
commissioner may appeal that decision to the board. The filing
30 of an appeal with the board is ~~not~~ a prerequisite for the filing
of a judicial appeal.

32 **Sec. C-24. 38 MRSA §344, sub-§4-A, ¶A**, as enacted by PL 1989,
34 c. 890, Pt. A, §25 and affected by §40, is amended to read:

36 A. For those applications ~~to be decided by the commissioner~~
that do not fall under the permit by rule provisions of
38 subsection 7, the commissioner shall, if requested by the
applicant or any interested party, issue a draft permit or
40 license and shall give reasonable notice to the applicant
and to any other person who has notified the commissioner of
42 an interest in the application before ~~the commissioner takes~~
taking final action on the application. The draft permit or
44 license must be made available to the applicant and to all
interested persons at the Augusta and appropriate regional
46 offices of the department at least 5 working days before the
commissioner takes final action on the application.

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

2 **Sec. C-26. 38 MRSA §344, sub-§7**, as amended by PL 1991, c.
304, Pt. A, §3, is further amended to read:

4
5 **7. Permit by rule.** ~~The Board of Environmental Protection~~
6 commissioner may permit, by rule, any class of activities that
7 would otherwise require the individual issuance of a permit or
8 ~~approval by the board~~, if the board commissioner determines that
9 activities within the class will have no significant impact upon
10 the environment. Any such rule must describe with specificity
11 the class of activities covered by the rule and may establish
12 standards of design, construction or use as may be ~~considered~~
13 determined necessary to avoid adverse environmental impacts. Any
14 such rule must require notification to the commissioner prior to
15 the undertaking of the regulated activity.

16
17 The commissioner shall annually review activities requiring
18 permits or approval from the department to determine whether any
19 additional classes of activities are more effectively
20 administered under a permit by rule system. As part of this
21 review, the commissioner shall solicit public comments on
22 recommendations for activities to be included under permit by
23 rule and shall review the performance of the existing permit by
24 rule program, including a review of the compliance record of the
25 permit by rule program. ~~The commissioner shall annually~~
26 ~~recommend to the board any additional categories of permits for~~
27 ~~the board to permit by rule.~~

28
29 **Sec. C-27. 38 MRSA §344, sub-§8**, as enacted by PL 1989, c.
30 890, Pt. A, §27 and affected by §40, is amended to read:

31
32 **8. Effective date of license.** Except as provided in this
33 subsection, a license ~~granted by the commissioner~~ is effective
34 when the commissioner signs the license. The commissioner may
35 attach a condition to the license requiring up to a 30-day delay
36 in any physical alteration of the project area and any
37 construction activity authorized by the license. ~~A license~~
38 ~~granted by the board is effective when the chair of the board or~~
39 ~~the chair's designee signs the license.~~

40
41 **Sec. C-28. 38 MRSA §345-A, sub-§4**, as enacted by PL 1985, c.
42 746, §10, is amended to read:

43
44 **4. Subpoena power.** ~~The board and~~ commissioner may each
45 issue subpoenas to compel the production of books, records and
46 other data related to the matters in issue at any hearing
47 conducted by the commissioner. The board may issue subpoenas to
48 compel the production of books, records and other data related to
49 matters in issue at any hearing conducted by the board. If any
50 person served with a subpoena demonstrates to the satisfaction of

2 the issuer of the subpoena that the production of the information
3 would, if made public, divulge methods or processes ~~which~~ that
4 are entitled to protection as trade secrets, the information
5 ~~shall~~ may be disclosed only at a nonpublic portion of the hearing
6 and ~~shall--be~~ is confidential and not available for public
7 inspection. If any person fails or refuses to obey such a
8 subpoena, the issuer of the subpoena may apply to any Justice of
9 the Superior Court for an order compelling that person to comply
10 with the subpoena. The Superior Court may issue an order and may
11 punish failure to obey the order as civil contempt.

12 **Sec. C-29. 38 MRSA §346, sub-§1**, as affected by PL 1989, c.
13 890, Pt. A, §40 and amended by Pt. B, §4, is repealed.

14 **Sec. C-30. 38 MRSA §346, sub-§1-A** is enacted to read:

15 **1-A. Final agency action; judicial appeal.** Any person
16 aggrieved by a decision or order of the commissioner may appeal
17 to the board as provided in section 341-D, subsection 4. A
18 decision of the board under section 341-D is a final agency
19 action for the purposes of judicial review of an appeal under
20 Title 5, chapter 375, subchapter VII.

21 **Sec. C-31. 38 MRSA §347-A, sub-§1, ¶A**, as repealed and
22 replaced by PL 1993, c. 204, §1, is amended to read:

23 A. Whenever it appears to the commissioner, after
24 investigation, that there is or has been a violation of this
25 Title, of rules adopted under this Title or of the terms or
26 conditions of a license, permit or order issued by ~~the board~~
27 ~~or~~ the commissioner, the commissioner may initiate an
28 enforcement action by taking one or more of the following
29 steps:

30 (1) Resolving the violation through an administrative
31 consent agreement pursuant to subsection 4, signed by
32 the violator and approved by the ~~board-and-the~~ Attorney
33 General;

34 (2) Referring the violation to the Attorney General
35 for civil or criminal prosecution;

36 (3) Scheduling and holding an enforcement hearing on
37 the alleged violation pursuant to subsection 2; or

38 (4) With the prior approval of the Attorney General,
39 initiating a civil action pursuant to section 342,
40 subsection 7.

2 **Sec. C-32. 38 MRSA §347-A, sub-§4, ¶D**, as enacted by PL 1993,
c. 204, §2, is amended to read:

4 D. The public may make written comments to the ~~board-at-the~~
6 ~~board's-discretion~~ commissioner on an administrative consent
agreement entered into by the commissioner ~~and-approved-by~~
8 ~~the-board~~.

10 **Sec. C-33. 38 MRSA §349-A**, as enacted by PL 1989, c. 874,
§1, is amended to read:

12 **§349-A. Mining rules**

14 The ~~board~~ commissioner and the Maine Land Use Regulation
16 Commission shall jointly adopt or amend rules necessary to
regulate nonferrous metal mining ~~by--February--1,--1991~~. The
18 commissioner and the Maine Land Use Regulation Commission shall
convene a joint task force composed of 3 members from each agency
20 to carry out the duties of this section. Any consultants hired
must be jointly chosen by both the commissioner and the Director
22 of the Maine Land Use Regulation Commission. Any rules adopted
pursuant to this section must include reclamation requirements
24 for a nonferrous metal mining site.

26 **Sec. C-34. 38 MRSA §352, sub-§2, ¶E**, as enacted by PL 1991, c.
384, §3 and affected by §16, is repealed.

28 **Sec. C-35. 38 MRSA §353-A, sub-§8**, as amended by PL 1991, c.
384, §8 and affected by §16, is further amended to read:

30 **8. Nonpayment of fee.** Failure to pay the annual fee within
32 30 days of the anniversary date of a license is sufficient
grounds for revocation of the license under section ~~341-D,~~
34 ~~subsection-3~~ 342-C.

36 **Sec. C-36. 38 MRSA §441, sub-§3, ¶C**, as amended by PL 1991, c.
346, §10, is further amended to read:

38 C. Keep a complete record of all essential transactions of
40 the office, including applications submitted, permits
granted or denied, variances granted or denied, revocation
42 actions, revocation of permits, appeals, court actions,
violations investigated, violations found and fees
44 collected. On a biennial basis, beginning in 1992, a
summary of this record must be submitted by March ~~1~~ 1st to
46 the ~~Director-of-the-Bureau-of-Land-Quality-Control-within~~
the Department of Environmental Protection; and
48

2 **Sec. C-37. 38 MRSA §464, sub-§6, ¶A**, as repealed and replaced
by PL 1991, c. 66, Pt. A, §13 and affected by §43, is amended to
read:

4
6 A. At any time during the term of a valid wastewater
discharge license that was issued prior to the effective
date of this article, the ~~board~~ commissioner may modify that
license in accordance with section ~~341-D, subsection 3~~ 342-C
if the discharger is not in compliance with the water
quality criteria pertaining to the protection of the
resident biological community. When a discharge license is
modified under this subsection, the ~~board~~ commissioner shall
establish a reasonable schedule to bring the discharge into
compliance with the water quality criteria pertaining to the
protection of the resident biological community.

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

20 In fulfilling ~~its~~ the responsibilities to adopt rules
pursuant to section ~~341-D~~ 342, subsection ~~1~~ 9, the ~~board~~
commissioner, to the extent practicable, shall adopt performance
and use standards for activities regulated by this article.
24 These standards at a minimum must include:

26 **Sec. C-39. 38 MRSA §489-A, sub-§9, ¶A**, as amended by PL 1993,
c. 383, §27 and affected by §42, is further amended to read:

28 A. The commissioner finds that the project:

30 (1) Meets one or more of the following criteria set
forth ~~in section 341-D, subsection 2, paragraph A, B or~~
6;

34 (a) The project involves a policy, rule or law
36 that the department has not previously interpreted;

38 (b) The project involves important policy
40 questions that the department has not resolved;

42 (c) The project involves important policy
44 questions or interpretations of a rule or law that
46 require reexamination; or

46 (d) The project has generated substantial public
48 interest;

50 (2) Will have a potentially significant environmental
effect; or

(3) Could affect more than one municipality.

In making these findings, the commissioner shall consider all public comments submitted to the department;

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

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

Sec. C-41. 38 MRSA §1310-N, sub-§6-D, as enacted by PL 1993, c. 680, Pt. A, §37, is amended to read:

6-D. Solid waste facilities licensed under rules valid on or after May 24, 1989. A solid waste facility license issued under applicable solid waste management rules valid on or after May 24, 1989 remains in effect unless modified, revoked or suspended under section 341-D, ~~---subsection---~~ 342-C. These licensees must:

A. Comply with applicable operating rules adopted by the ~~board~~ commissioner;

B. Comply with annual facility reporting rules adopted by the ~~board~~ commissioner; and

C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility.

Sec. C-42. 38 MRSA §1319-R, sub-§3, as amended by PL 1991, c. 205, is further amended to read:

3. Site review. All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility will be located. The municipality through its municipal officers is granted intervenor status in any proceeding for site review of a commercial hazardous waste facility. The commissioner shall reimburse the ~~municipalities'~~

2 municipality's direct costs, not to exceed \$5,000, for participation in the proceedings.

4 The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

6 The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

8 ~~Notwithstanding--section--341-D,--subsection--2,--the--board~~ The
10 commissioner shall decide all applications for commercial hazardous waste facilities.

12 The board commissioner shall hold at least one public hearing in the municipality in which the facility will be located.

14 During any proceeding ~~for~~ on the appeal of a decision by the commissioner regarding site review of a commercial hazardous waste facility, the legislative body of the municipality in which the facility is to be located may appoint 4 representatives to the board. If the facility is proposed to be located in an unorganized township, the county commissioners of that county may appoint 4 representatives. These representatives may vote on board decisions related to the proposed commercial hazardous waste facility. All representatives appointed under this subsection shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. An appeal of a decision by the commissioner concerning a license application may not be considered by the board unless all municipal members of the board and the municipality have been given written notice of the board meeting and provided copies of all written recommendations of the department, at least 30 days prior to the date of the meeting. The municipal members are entitled to the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department.

18 **Sec. C-43. 38 MRSA §1478, sub-§2-A,** as affected by PL 1989, c. 890, Pt. A, §40 and enacted by Pt. B, §273, is amended to read:

20 **2-A. Jurisdiction.** ~~Notwithstanding---section---341-D, subsection-2,--the--board~~ The commissioner shall decide all permits for low-level radioactive waste facilities.

22 **Sec. C-44. Transition provisions.** The following transition provisions apply to this Part.

24 1. Notwithstanding the Maine Revised Statutes, Title 38, section 341-C, subsection 3, the terms of incumbent members of

2 the Board of Environmental Protection expire on the effective
3 date of this Part. Notwithstanding Title 38, section 341-C,
4 subsection 5, those persons may not continue to serve on the
5 board after the effective date of this Part unless appointed by
6 the Governor and confirmed by the Legislature pursuant to Title
38, section 341-C, subsection 1.

8 2. Pursuant to the Maine Revised Statutes, Title 5, section
9 341-C, the Governor shall appoint 3 persons to serve on the Board
10 of Environmental Protection no later than 120 days after the
11 effective date of this Part.

12 3. On the effective date of this Part:

13 A. The disposition of any rule-making activity or license
14 application that is pending before the Board of
15 Environmental Protection becomes the responsibility of the
16 Commissioner of Environmental Protection;

17 B. The disposition of any license modification, revocation
18 or suspension action initiated under the Maine Revised
19 Statutes, Title 38, section 341-D, subsection 3 that is
20 pending before the board becomes the responsibility of the
21 commissioner;

22 C. The disposition of any appeal filed with the board
23 pursuant to Title 38, section 341-D, subsection 4 that is
24 pending before the board becomes the responsibility of, and
25 must be acted upon by, the 3-member board appointed under
26 subsection 2;

27 D. The disposition of any petition for reconsideration
28 filed with the board under Title 38, section 341-D,
29 subsection 5 that is pending before the board becomes the
30 responsibility of, and must be acted upon by, the 3-member
31 board appointed under subsection 2. Notwithstanding section
32 14 of this Part, the board shall dispose of those petitions
33 under the provisions of Title 38, section 341-D, subsection
34 5; and

35 E. All rules in effect on the effective date of this Part
36 are deemed rules adopted by the commissioner and remain in
37 effect until modified or repealed by the commissioner. The
38 commissioner shall implement and enforce the provisions of
39 any rule adopted by the board prior to the effective date of
40 this Part and shall adopt, modify or repeal rules as
41 necessary to carry out the purposes of this Part.

42 4. Nothing in this Part may be construed to affect any
43 judicial appeal pending on the effective date of this Part taken
44
45
46
47
48
49
50

2 to the Superior Court under the Maine Revised Statutes, Title 38,
section 346.

4 5. On the effective date of this Part, the following
positions in the Department of Environmental Protection are
6 abolished:

8 A. Director, Bureau of Administration;

10 B. Director, Bureau of Air Quality Control;

12 C. Director, Bureau of Land Quality Control;

14 D. Director, Bureau of Water Quality Control; and

16 E. Director, Bureau of Oil and Hazardous Materials Control.

18 6. On the effective date of this Part, the following
positions are established in the Department of Environmental
20 Protection at pay range 88:

22 A. Director, Bureau of Enforcement;

24 B. Director, Bureau of Licensing; and

26 C. Director, Bureau of Technical Services.

28 **Sec. C-45. Submission of legislation.** The Commissioner of
Environmental Protection or the commissioner's designee shall
30 review changes to the law necessitated by this Part and shall
submit any necessary implementing legislation to the Legislature
32 by January 1, 1996 to effectuate the transfer of rule-making
authority from the Board of Environmental Protection to the
34 commissioner.

36 PART D

38 **Sec. D-1. 5 MRSA §1742, sub-§24, ¶B,** as repealed and replaced
by PL 1989, c. 502, Pt. A, §17, is amended to read:

40 B. The indoor air quality and ventilation standards applied
42 by the bureau shall remain in effect until the Board of
Occupational Safety and Health adopts air quality and
44 ventilation standards; and

46 **Sec. D-2. 5 MRSA §1742, sub-§25,** as enacted by PL 1989, c.
502, Pt. A, §18, is amended to read:

48 **25. Sites for child care programs.** To review, in
50 cooperation with the Office of Child Care Coordination in the

2 Department of Human Services, feasible sites for child care
3 programs offered primarily as a service to state employees
4 pursuant to Title 22, section 8307, subsection 2.;

6 **Sec. D-3. 5 MRSA §1742, sub-§§26 and 27** are enacted to read:

8 **26. Facilities planning.** To develop a plan for the
9 cost-effective consolidation of state-owned facilities. The plan
10 must complement the regionalization of any agency restructured by
11 the plan, maximize the location of different state agencies at
12 the same site, maximize cost savings to the State and promote
13 public accessibility. The plan must include a complete and
14 thorough analysis of existing state office space and facilities;
15 the development of a strategy to make the best use of the
16 existing office space and facilities through consolidation,
17 purchase, liquidation, construction or other improved use; and
18 the identification of specific state-owned facilities best suited
19 for sale. In developing the plan, the Director of the Bureau of
20 General Services shall contract for any necessary expertise and
21 shall avoid any conflict of interest; and

22 **27. Owning versus leasing.** To develop a model for
23 assessing the cost advantages to the State of owning facilities
24 as compared to leasing facilities. The Director of the Bureau of
25 General Services shall use the model developed under this
26 subsection in developing the plan required under subsection 26.

28 **Sec. D-4. 5 MRSA §1886, sub-§5**, as amended by PL 1991, c. 780,
29 Pt. Y, §88, is further amended to read:

30 **5. Develop and administer written standards for data
31 processing and telecommunications.** The director shall develop
32 and administer written standards for data processing and
33 telecommunications subject to approval by the board. These
34 written standards pertain to:

- 36 A. Acquisition of equipment;
37
38 B. Acquisition of computer programs;
39
40 C. The development of computer systems and computer
41 programs;
42
43 D. Computer operations; and
44
45 E. Any other standards determined necessary by the director
46 and the board.

48 The director shall ensure that standards developed under this
49 subsection make the best use of the electronic exchange of
50

2 information among agencies of State Government and promote
interagency telecommunications.

4 **Sec. D-5. Facilities Consolidation Commission established.** The
Governor shall establish the Facilities Consolidation Commission
6 to oversee the Bureau of General Services' planning process
established in the Maine Revised Statutes, Title 5, section 1742,
8 subsections 26 and 27. The commission shall rule on
recommendations from the Bureau of General Services for the sale
10 of state-owned facilities and shall report annually to the
Governor and the Legislature on these recommendations and on the
12 sales executed during the prior year. The commission's mandate
must include specific targets for facility liquidation. Unless
14 otherwise authorized by law, the Governor may sell surplus
facilities identified through that process. The commission shall
16 submit its first report and accompanying facilities sales
recommendations to the Legislature no later than December 15,
18 1996.

20 **PART E**

22 **Sec. E-1. 27 MRSA c. 18-A** is enacted to read:

24 **CHAPTER 18-A**

26 **MAINE CULTURAL FOUNDATION**

28 **§571. Establishment**

30 The Maine Cultural Foundation, referred to in this chapter
32 as the "foundation," is established to foster, support and assist
maintenance and development of the State's cultural heritage. The
34 foundation shall carry out its purposes in complement to and in
coordination with the cultural development activities of the
36 private sector, community and regional groups and State
Government.

38 The foundation exists as a nonprofit corporation with a
40 public purpose and the exercise by the foundation of the powers
conferred by this chapter is deemed to be an essential
42 governmental function.

44 **§572. Purpose**

46 The foundation shall foster, assist and participate in
efforts to support the State's cultural heritage, in coordination
48 with existing state, regional and local agencies.

50 **§573. Corporators**

2 The corporators of the foundation consist of individuals and
3 organizations classified as private sector corporators, public
4 sector corporators and ex officio corporators.

6 1. Private sector corporators. Private sector corporators
7 are those individuals, partnerships, firms, corporations and
8 other organizations providing support of at least \$250 annually
9 to the foundation.

10 2. Public sector corporators. Public sector corporators
11 are those agencies of State Government and such other public or
12 quasi-public entities as approved by the board of directors of
13 the foundation providing support of at least \$50 annually to the
14 foundation.

15 3. Ex officio corporators. Ex officio corporators include
16 all members of the Maine State Cultural Affairs Council as
17 provided in section 553 and members appointed as follows:

18 A. Three members from the Maine Arts Commission. The
19 Governor shall appoint one member, the President of the
20 Senate shall appoint one member and the Speaker of the House
21 of Representatives shall appoint one member;

22 B. Three members from the Maine Historic Preservation
23 Commission. The members must be appointed as described in
24 paragraph A;

25 C. Three members from the Maine Library Commission. The
26 members must be appointed as described in paragraph A; and

27 D. Three members from the Maine State Museum Commission.
28 The members must be appointed as described in paragraph A.

29 4. Voting rights. Each corporator has a vote in the
30 affairs of the foundation that involve the corporators, provided
31 that if the corporator is an organization and not an individual,
32 the governing body of that organization shall designate the
33 individual who is to exercise the voting right.

34 §574. Board of directors; officers

35 The board of directors of the foundation consists of 15
36 directors. The corporators shall elect 12 directors from among
37 the corporators. Seven of those directors must be elected from
38 among the private sector corporators and 5 of those directors
39 must be elected from among the public sector corporators. The
40 Governor shall appoint 2 directors from among the ex officio
41 corporators. A person may not serve as a director for more than 5

2 years in succession. The corporators shall elect a chair, a
3 vice-chair and a treasurer from the board of directors. The
4 directors shall appoint a president for the foundation and the
5 president becomes a director and the chief executive officer of
6 the foundation. The president may not be appointed from among the
7 other directors.

8 **§575. General powers**

10 The foundation is authorized to:

12 1. **Suit.** Sue or be sued in its own name;

14 2. **Application for and receipt of funds.** Apply for and
15 receive funds on a matching basis from the State and apply for
16 and receive funds from any private source or governmental entity,
17 whether by way of grant, donation, loan or any other manner;

18 3. **Cultural services; fees.** Provide services to public or
19 private entities to assist their efforts in maintaining and
20 promoting cultural development in the State and to charge fees
21 for these services as it may consider appropriate;

22 4. **Real and personal property.** Purchase, receive, hold,
23 lease or acquire by foreclosure; operate, manage and license; and
24 sell, convey, transfer, grant or lease real and personal
25 property, together with such rights and privileges as are
26 incidental and appurtenant to that property and the use of that
27 property, including, but not limited to, any real or personal
28 property acquired by the foundation in the satisfaction of debts
29 or enforcement of obligations;

30 5. **Expenditures and obligations regarding real and personal**
31 **property.** Make all expenditures and incur any obligations
32 reasonably required in the exercise of sound business principles
33 to secure possession of, preserve, maintain, insure and improve
34 real and personal property or interests in that property acquired
35 by the foundation;

36 6. **Securities.** Acquire, subscribe for, own, hold, sell,
37 assign, transfer, mortgage or pledge the stock, shares, bonds,
38 debentures, notes or other securities and evidences of interest
39 in or indebtedness of any person, firm, corporation, joint stock
40 company, partnership, association or trust and, while the owner
41 or holder thereof, exercise all the rights, powers and privileges
42 of ownership, including the right to vote thereon;

43 7. **Encumbrance of property.** Mortgage, pledge or otherwise
44 encumber any property right or thing of value acquired pursuant
45 to the powers contained in subsection 4, 5 or 6 as security for
46 the same;

2 the payment of any part of the purchase price of that property
3 right or thing of value;

4 8. Equity investments and loans. Make direct equity
5 investments in or loans to local and regional cultural
6 development entities;

8 9. Contracts and liabilities. Make contracts, including
9 contracts for services, and incur liabilities for any of the
10 purposes authorized in the contracts;

12 10. Debt. Borrow money for any of the purposes authorized
13 in this chapter; incur debt, including the power to issue for
14 that purpose its bonds, debentures, notes or other evidences of
15 indebtedness, whether secured or unsecured; and secure those
16 bonds, debentures, notes or other evidences of indebtedness by
17 mortgage, pledge, deed of trust or other lien on its property,
18 rights and privileges of every kind and nature, or any part of or
19 interest in its property, rights or privileges;

20 11. Cooperation with agencies and organizations. Cooperate
21 with and avail itself of the services of governmental agencies
22 and the University of Maine System; and cooperate and assist and
23 otherwise encourage organizations, local or regional, private or
24 public, in the communities of the State in the promotion and
25 development of the cultural heritage of those communities and the
26 State; and

28 12. Bylaws. Adopt bylaws consistent with this chapter for
29 the governance of its affairs, have the general powers accorded
30 corporations under Title 13-A, section 202 and do all other
31 things necessary or convenient to carry out the lawful purposes
32 of the foundation.

34 **§576. Limitation of powers**

36 The foundation, notwithstanding section 575, does not have
37 any power or authority to enter into contracts, obligations or
38 commitments of any kind on behalf of the State or any of its
39 agencies, nor does the foundation have the power of eminent
40 domain or any other power not provided to business corporations
41 generally. Bonds, notes and other evidences of indebtedness of
42 the foundation are not in any way a debt or liability of the
43 State and do not constitute a pledge of the faith and credit of
44 the State.

46 **§577. Liability of officers and directors**

48 All officers, directors, employees and other agents of the
49 foundation authorized to disburse the funds or entrusted with the
50 foundation authorized to disburse the funds or entrusted with the

2 custody of the securities of the foundation must be bonded,
3 either by a blanket bond or by individual bonds, with a surety
4 bond or bonds with a minimum limitation of \$100,000 coverage for
5 each person covered by the bonds, conditioned upon the faithful
6 performance of their duties, the premiums for which must be paid
7 from the assets of the foundation.

8 **§578. Prohibited interests of officers, directors and employees**

10 An officer, director or employee of the foundation or that
11 person's spouse or dependent children may not receive any direct
12 personal benefit from the activities of the foundation in
13 assisting any private entity. This provision does not prohibit
14 corporations or other entities with which an officer or director
15 is associated by reason of ownership or employment from
16 participating in cultural development activities with the
17 foundation, provided that this ownership or employment is made
18 known to the board of directors and the officer or director
19 abstains from voting on matters related to this participation.
20 This prohibition does not extend to corporators who are not
21 officers or directors of the foundation.

22 **§579. Donations to State**

24 The State, through the Governor, may accept donations,
25 bequests, devises, grants or other interests of any nature on
26 behalf of the foundation and transfer these funds, property or
27 other interests to the foundation.

30 **§580. Annual report; audit**

32 The foundation shall provide an annual report and an
33 independent audit of its activities to the Governor, the
34 Legislature and its corporators and members. The foundation is
35 subject to further audit and review as determined necessary by
36 the Governor or the Legislative Council at the expense of the
37 State.

38 **§581. General conditions; dissolution**

40 The foundation operates as a nonprofit organization
41 consistent with its composition and broad public purposes. The
42 following conditions apply to the operation or dissolution of the
43 foundation.

44 **1. Net earnings of foundation.** No part of the net earnings
45 of the foundation may inure to the benefit of any corporator,
46 officer, director or employee except that the foundation is
47 authorized to pay reasonable compensation for services rendered

2 and otherwise hold, manage and dispose of its property for the
3 purposes of the foundation.

4 2. Dissolution of foundation. Upon dissolution of the
5 foundation, the corporators, after paying or making provision for
6 the payment of all liabilities of the foundation, shall cause all
7 of the remaining assets of the foundation to be transferred to
8 the State.

10 **§582. Liberal construction**

12 This chapter must be construed liberally to effect the
13 interest and purposes of the foundation for an improved cultural
14 development effort in the State and may not be interpreted as a
15 limitation of the foundation's powers.

16 **Sec. E-2. Maine Cultural Foundation; initial organization.** In
17 order to provide for the initial organization of the Maine
18 Cultural Foundation, the Governor shall appoint an organizing
19 committee of 14 persons, 7 of whom must be eligible to be private
20 sector corporators and 7 of whom must be eligible to be public
21 sector corporators. The Governor shall appoint the committee
22 members by December 1, 1995. The Governor shall designate the
23 chair of the committee. The organizing committee shall solicit
24 individuals and corporations from the private and public sectors
25 as described in the Maine Revised Statutes, Title 27, section 573
26 to be corporators of the foundation.

28 The committee shall call and hold an initial meeting of the
29 corporators no later than 6 months from the effective date of
30 this section. The initial meeting is for the election of
31 directors and officers of the foundation. The committee shall
32 prepare an agenda for the chair and the chair shall chair the
33 initial meeting. The committee serves as the nominating committee
34 for the initial election only and may submit suggested bylaws and
35 procedures for consideration by the corporators.

38 After the initial meeting of the corporators, the organizing
39 committee is dissolved and its members serve the foundation only
40 as they may be qualified as corporators.

42

STATEMENT OF FACT

44

46 This bill contains the recommendations of the Special
47 Commission on Governmental Restructuring.

48 Part A of the bill implements the recommendations of the
49 majority of the Special Commission on Governmental Restructuring
50 regarding the creation of an Office of Advocacy to replace

2 several existing advocacy organizations. The commission's report
contains a minority view on this issue.

4 Part B of the bill establishes the 8-member Public Education
Strategic Planning Council. The members of the council are the
6 Chancellor of the University of Maine System, the President of
the Maine Technical College System, the President of the Maine
8 Maritime Academy, the Commissioner of Education, one person from
each of the boards of trustees of the University of Maine System,
10 the Maine Technical College System and the Maine Maritime Academy
and one person who is a member of the State Board of Education.
12 The purpose of the council is to create and maintain a long-term
strategic plan for public education in the State and make related
14 funding and policy recommendations to the Legislature.

16 Part C of the bill reorganizes the Department of
Environmental Protection along functional lines, reduces the size
18 of the Board of Environmental Protection from 10 members to 3
members and limits the board's authority to hearing appeals of
20 the license decisions of the Commissioner of Environmental
Protection. All other duties formerly vested in the board,
22 including all rule-making activities, all licensing functions and
the authority to modify, revoke or suspend licenses are assumed
24 by the commissioner. Part C makes an appeal to the board a
prerequisite for the filing of a judicial appeal. Appeals of
26 board decisions may be taken to Superior Court.

28 Part D of the bill requires the Director of the Bureau of
Information Services to ensure that standards for the acquisition
30 of data processing and telecommunications equipment by state
agencies optimize the electronic exchange of information and
32 promote interagency telecommunications. Part D also directs the
Bureau of General Services, within the Department of
34 Administrative and Financial Services, to develop a plan for the
cost-effective consolidation of state-owned facilities using a
36 model that incorporates assessment of cost advantages of owning
versus leasing.

38 Part E of the bill establishes the Maine Cultural Foundation
40 as a nonprofit corporation for the purpose of supporting the
State's cultural heritage.