

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1513

H.P. 1076

House of Representatives, March 13, 1997

**An Act to Change the Department of Environmental Protection's
Regulatory Process from an Instruction-based Process to a Contractual
Performance-based Approach.**

Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CAMPBELL of Holden.
Cosponsored by Senator BUTLAND of Cumberland and
Representatives: CIANCHETTE of South Portland, DEXTER of Kingfield, DONNELLY of
Presque Isle, GOOLEY of Farmington, LEMONT of Kittery, MACK of Standish,
PLOWMAN of Hampden, WATERHOUSE of Bridgton.

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

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4 **Sec. 1. 38 MRSA §341-D, sub-§1-B,** as enacted by PL 1995, c. 347, §3, is amended to read:

6 **1-B. Rulemaking.** Subject to the Maine Administrative
8 Procedure Act, the board shall adopt, amend or repeal reasonable
10 rules and emergency rules necessary for the interpretation,
12 implementation and enforcement of any provision of law that the
14 department is charged with administering. The board shall also
adopt, amend and repeal rules as necessary for the conduct of its
business. The board shall include performance-based criteria for
compliance in any rule adopted by the board after January 1, 1999.

16 The department shall identify in its regulatory agenda, when
18 feasible, a proposed rule or provision of a proposed rule that is
anticipated to be more stringent than the federal standard, if an
applicable federal standard exists.

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

30 This subsection takes effect January 1, 1998.

32 **Sec. 2. Commissioner to report to Legislature.** The Commissioner
of Environmental Protection shall study the implementation of
34 performance-based rules pursuant to the Maine Revised Statutes,
Title 38, section 341-D, subsection 1-B and shall report the
36 commissioner's findings and recommendations on that issue to the
to the Joint Standing Committee on Natural Resources no later
38 than January 1, 1998. That report must specify what
performance-based rules are anticipated to be adopted between
40 January 1, 1999 and December 31, 1999; what performance-based
compliance criteria are likely to be considered during the
42 rulemaking process; what compliance monitoring or enforcement
procedures of the Department of Environmental Protection must be
44 revised or restructured to accommodate performance-based
regulations, including an estimate of the cost or savings to the
46 department as a result of those changed procedures; and a
discussion of any state or federal laws that may inhibit or
48 otherwise limit the department's ability to fully comply with the
provisions of Title 38, section 341-D, subsection 1-B.

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SUMMARY

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4 This bill requires that all rules adopted by the Board of
6 Environmental Protection on or after January 1, 1999 include
8 performance-based criteria for compliance with those rules. The
10 bill also requires the Commissioner of Environmental Protection
12 to study the implementation of performance-based environmental
14 rules and to report by January 1, 1998 to the Joint Standing
16 Committee on Natural Resources on the performance-based rules
that will be adopted in 1999, the changes, if any, needed in the
department's procedures to ensure effective monitoring and
enforcement of performance-based rules, the costs or savings to
the Department of Environmental Protection of those changes in
procedure and a discussion of any state or federal laws that may
limit the department's ability to fully implement
performance-based environmental regulations.