

STATE OF MAINE 115TH LEGISLATURE FIRST REGULAR SESSION

Final Report of the

COMMISSION TO STUDY STATE PERMITTING AND REPORTING REQUIREMENTS

December 1991

Members: Sen. Bonnie Titcomb

Rep. Marge L. Kilkelly Rep. Rita B. Melendy

> *Dean Beaupain Alton Cianchette Danny Levesque Luke Muzzy Gary Patzlaff Lynn Ricker

Staff: John B. Knox, Legislative Analyst Jill Ippoliti, Legislative Analyst

Office of Policy and Legal Analysis Room 101, State House–Sta. 13 Augusta, Maine 04333 (207) 289-1670

*Denotes Chair

TABLE OF CONTENTS

			<u>Page</u>
Exec	utive	Summary	i
I.	Background		1
П.	Majority Findings and Recommendations		2
	A.	Economic Climate and the Environmental Permitting Process	2
	В.	Business Licenses Required by the State of Maine	9
	C.	Economic Impact Analysis	11
Ш.	Mi	nority Report	14
Bibli	ograj	phy	20
Appe	endic	es	
	A.	Establishment of Commission	
		Part D of LD 1769 "An Act to Encourage Business Investments"	
	B.	Commission Members	
	C.	Meeting Agendas	
	D.	List of Carry-over Legislation	
	E.	List of Unsuccessful Legislation Introduced in the Past 15 Years	
	F.	Recommendations from Previous Studies	
		 Governor's Business Task Force on the Maine Economy (15.) 	
		 Report on the Environmental Regulatory Process (25.) 	
	G.	Establishment of a Maine Land & Water Resources Council, Executive Order 9 FY 80/81	
	H.	Text of Remarks to Commission on Regulations & Permitting Professor Dave Davis, Dean, College of Arts & Sciences, University of Southern Maine	
	I.	Streamline Regulatory Process, Executive Office of Environmental Affairs, the Commonwealth of Massachusetts	

- J. Proposed Legislation
 - An Act Concerning Economic Impact Analysis in Agency Rulemaking
 - An Act to Provide Regulatory and Permitting Assistance to Business
 - An Act to Revise the Purpose of the Environmental Agencies and to Temporarily Exempt Certain Activities from Needing Permits Under Two Environmental Acts."
 - An Act to Improve the Environmental Permitting Process
 - Joint Resolution Supporting Creation of the Wolfe Neck Institute
- K. Case Studies, Staff memo to Commission, Nov. 19, 1991
- L. Reply to Information Request, Dean C. Marriott, Commissioner, Department of Environmental Protection, Nov. 27, 1991
- M. "State Regulations & Economic Competitiveness", SRI International, August, 1989
- N. The Importance of Environmental Protection, Dean C. Marriott, Commissioner, Department of Environmental Protection, October 30, 1991

EXECUTIVE SUMMARY

The Commission to Study State Permitting and Reporting Requirements was authorized by Public Law 1991, Chapter 606, Part D. (Appendix A) The commission was charged with studying current state permitting and reporting requirements for businesses and determining ways to reduce the time and expense associated with these requirements. Non-legislative members brought to the commission experience from business and private industry. (Appendix B) Legislative members were Senator Bonnie Titcomb, Senate Chair of Joint Standing Committee on Energy & Natural Resources, Rep. Rita Melendy, House Chair of Joint Standing Committee of Housing & Economic Development and Rep. Marge Kilkelly, a member of the Joint Standing Committee on Housing & Economic Development.

Faced with a broad charge and less than 3 months to conclude its work, the commission focused on 2 areas of tantamount concern; 1.) the environmental permitting process and 2.) the issuance of business licenses and permits required by the State of Maine. Regulatory impact analysis was discussed as a somewhat subordinate area of focus for the commission.

The broad findings of the commission are:

- The commission supports the level of protection provided by Maine's environmental laws. Changes to these laws should be to expedite the process not alter the goal.
- Businesses, particularly retail and service industry businesses, are overburdened by the current licensing system.

The majority of the Commission supports 14 recommendations covering the following topics:

- 1. Economic impact analysis in agency rule-making;
- 2. Provision of comprehensive permitting information and assistance by the Department of Economic & Community Development;
- 3. A study of the feasibility of one-stop licensing;
- 4. Exemption of certain activities from permit requirements under Site Location of Development Law and the Natural Resources Protection Act;
- 5. Inclusion of economic considerations in the purpose statements of the Department of Environmental Protection and the Board of Environmental Protection;
- 6. Support for the creation of an environmental institute; and
- 7. A study of permitting efficiency by the Maine Land and Water Resources Council.

Meeting agendas and staff memoranda provided in the appendices of this report indicate the breadth and detail with which the commission studied its charge. The findings and recommendations contained in Part II reflect the majority consensus on areas most productively explored for improving Maine's regulatory process.

A minority report is issued in Part III. In issuing this report, certain commission members recognize conceptual agreement with many of the majority findings. They respectfully acknowledge the Commission's diligence in addressing its charge within a severe time constraint. Their conclusion is, however, that even where there is conceptual agreement, the proposed legislation needs refinement to effectively present the commission's intent to the Legislature. The minority asserts that several of these issues are already before legislative committees as carry over bills from the First Regular Session of the 115th. The committee process will provide the opportunity for more public input and illumination of the issues than could be afforded within the context of this study.

I. Background

LD 1769, "An Act to Encourage Business Investments " was signed into law on July 30, 1991, PL 1991, c. 606. Part A of this bill established a state tax increment financing program. The Maine Street Investment Program Fund and the Economic Opportunity Fund were created in this law and, in Part D, the Commission to Study State Permitting and Reporting Requirements was established. LD 1769 was emergency legislation. The bill was introduced by Representative John Cashman with Representatives Marge Kilkelly and Rita Melendy and Senator Joseph Brannigan as co-sponsors.

The following factors affected the commission's approach to its charge.

- •. Legislation required the first meeting of the Commission by July 15th, however, the bill was not signed into law until July 30, 1991. Because of other priorities occasioned by the State's budget crisis, members were not appointed until the last week in September and were not called together until October 16, 1991.
- At its first meeting, the commission elected Dean Beaupain, Chair, requested that its report deadline be extended from November 1, 1991 to December 15, 1991, and attempted to focus on elements of its charge that could be addressed in the time allowed.
- At the same time this Commission was operating, the Special Commission on Governmental Restructuring was meeting. In addition, the Appropriations Committee prompted by the State's budget crisis was conducting extensive investigations of state government organizations. The Governor was also holding a series of Job Summits during this time.
- The Commission's study took place shortly after numerous changes in environmental regulation, laws and rules. The recency of these changes made it difficult to evaluate their impact on expediting the permitting process.
- Five bills addressing various aspects of the commission's charge were being carried over from the first session of the 115th to the second session. (Appendix D)
- The economic recession the state was experiencing at the time of this commission's deliberations lent a sense of urgency that something be done to reduce any impediments to economic growth.

In spite of these circumstances under which it operated, the Commission made significant contributions to the highly charged area of state regulation. The limited scope of responsibility relative to that of other current study groups allowed it to develop 14 recommendations, which the majority feels exceed other efforts in their specificity. 2 State Permitting & Reporting Requirements •

II. Majority Findings and Recommendations

A. Economic Climate and The Environmental Permitting Process

<u>Background:</u> The commission began its deliberations with a discussion of the regulatory environment in Maine and its effect on the competitive position of businesses in Maine. <u>State Regulations & Economic Competitiveness</u> published by the Center for Economic Competitiveness provided an overview of the central issue this commission is charged with studying. Excerpts from this report are included in Appendix M.

Several "report cards" are published which rank the economic climate of the states based on a set of criteria. Of those reviewed by staff, the criteria used by the Corporation for Enterprise Development in its 1991 DEVELOPMENT REPORT CARD FOR THE STATES most clearly defined 'regulatory reform' as a component of its governance subindex. (8.) Maine's grade on CFED's State Policy Report Card for '91 is B with a rank of 17. It's grade on the governance subindex is A with a rank of 7. The governance subindex includes measures of a state's tax & fiscal system, regulatory reform, and economic development governance.

Commission members' perceptions of Maine's regulatory climate were not consistent with these relatively positive rankings but were consistent with the perception of other Maine business people. In 1990 the Governor's Business Task Force surveyed Maine's business community. (15.) In response to the question "Which factors will be the most important constraints on economic growth within the state during the next three to five years?", environmental regulations was the factor selected most frequently by the 89 respondents.

The business and industry representatives on the commission shared concerns with delays and uncertainty in the environmental permitting process. Despite the recent Peat Marwick study (20.) of the Department of Environmental Protection (DEP) and on-going implementation of study recommendations, businesses continue to see the DEP permitting process as a major obstacle to new projects and expansions. The commission did not believe further documentation of a problem through public hearings was necessary nor was it advisable given the time constraints on the commission.

Finding 1. Although the Department of Environmental Protection has developed and maintains a computer database of permit application information, summaries of past permit decisions and processing times are not readily available. The department's responses to requests for information on permitting and processing times as found in Appendix L call into question the functioning of this data base. Applicants for permits have difficulty accessing information on similar projects that have been through the process. Having decisions information accessible can improve the Department of Environmental Protection's accountability and encourage predictability. Similar information on permit decisions made by the Land Use Regulation Commission is also desirable.

<u>Recommendation 1.</u> The Department of Environmental Protection and the Land Use Regulation Commission should develop annual reports categorizing permit decisions, submit these reports to the Joint Standing Committee on Energy and Natural Resources and make these reports available to the public.

<u>Finding 2.</u> Under current law many projects are reviewed by a municipal reviewing authority or by the Land Use Regulation Commission in addition to review by the Department of Environmental Protection. In many instances, duplicate review is not necessary for environmental protection. Current laws provide for delegating Department of Environmental Protection permit authority to municipalities under Site Location of Development law (38 MRSA §489-A) and the Natural Resources Protection Act (NRPA) (38 MRSA §480-F). To date four municipalities have been registered to assume authority under site law and only one town has been issued authority to issue permits under coastal wetlands provisions of NRPA.

Towns that have growth management programs certified as consistent with the goals and guidelines of Maine's Comprehensive Planning and Land Use Regulation Act (30-A MRSA, Chapter 187, Subchapter II) are capable of making environmentally sound decisions when reviewing proposed development applications. For these municipalities, Department of Environmental Protection's review authority under site law should only be exerted when such review is requested by the municipality, by an adjoining municipality or when a proposed project is located in more than one municipality.

<u>Recommendation 2.</u> The Legislature should amend the site law to eliminate duplicate review of projects under site law when the municipality reviewing the project has a comprehensive plan certified by the Office of Comprehensive Planning and the Department of Environmental Protection does not act to exert state jurisdiction.

Finding 3. Identification of natural areas sensitive to development is vital to environmentally sound decision-making. Recording and mapping of sensitive areas throughout the state is being done by several agencies. The Maine Heritage Program is charged with coordinating inventory and data management activities with the Department of Inland Fisheries & Wildlife, Department of Environmental Protection, Department of Conservation, and the State Planning Office. The availability of this information can expedite permitting by directing a prospective developer away from sensitive areas before initiating the permitting process and, in many other instances, eliminating the need for an on site visit. In testimony before the commission, David Boulter, Director of the Land Use 4 State Permitting & Reporting Requirements •

Regulation Commission, indicated that LURC would be willing to assume sole review authority under NRPA for projects within its jurisdiction when various identification and mapping projects are complete. It is the commission's finding that these projects can now be afforded adequate review by LURC. Duplicative review is unnecessary.

<u>Recommendation 3.</u> The Legislature should amend the NRPA to exempt activities reviewed by the Land Use Regulation Commission from permitting requirements under the Natural Resources Protection Act.

<u>Finding 4.</u> Testimony before the commission indicated that permits are often delayed within both the Department of Environmental Protection process and the Land Use Regulation Commission process while these agencies await response to requests for information from other agencies. One example cited is a permit being held up while the Department of Inland Fisheries and Wildlife checks a project site's importance as wildlife habitat. As inventory and mapping efforts progress, these delays should be shortened, however, the Department of Environmental Protection and the Land Use Regulation Commission will continue to require input from other agencies in reviewing certain projects. It is important that these agencies, not having ultimate responsibility for approving or denying a permit, respond as expeditiously as possible to these requests.

<u>Recommendation 4.</u> The Department of Environmental Protection and the Land Use Regulation Commission should act upon a permit application without input from other agencies if those agencies have failed to respond to a written request for review within the time designated by the requesting agency.

<u>Finding 5.</u> One obvious solution to the problem of excessive time required to process a permit is to give the various departments time schedules within which permits must be processed.

Maine passed a law in 1983 which provided deadlines for processing permit applications. These deadlines were 105 days for the Board of Environmental Protection and 60 days for the Commissioner of DEP. There were no penalties for failure to meet these deadlines. In 1990, PL 1989 c. 890 repealed these deadlines. The Commission was told they were repealed because they had not been effective. Interestingly, however, the original LD that led to this repeal called for shortening the 105 days to 80.

LD 1372 (1.) gives the Commissioner a 90 day deadline and provides that fees are returned if this schedule is not met. By their letter of November 18, 1991, the Department placed a cost of \$1,027,845 on this requirement, most of which represented the addition of 22 people to the Department. • State Permitting & Reporting Requirements 5

Researching the statutes of the 12 states ranked as leaders in environmental policy by the Institute for Southern Studies (13.) yielded only one, Massachusetts, with a time schedule in law. Interestingly, Massachusetts merely requires a schedule and leaves setting the actual deadlines to rulemaking. (Sample Massachusetts deadlines are in Table 1 following).

Table 1

Time Schedule For Permit Processing in Massachusetts (From Application Approval)

<u>Air Quality</u>		Days					
Limited Plan		60					
Non-major Comprehens.	ive Plan	90					
Major Comprehensive	Plan	220					
Hazardous Waste Recycling							
Level 1		30					
Level 2		45					
Level 3		120					
Construction Solid Waste	Transfer						
<u>Station</u>		75					
Construction Solid Waste	Landfill	90					
<u>(</u>	<u>Groundwate</u> r	Surface Water					
<u>Major Industrial Waste</u> <u>Water Discharge</u>							
Conceptual Approach-							
Engineering Design	120	150					
Engineering Design Final Design	120	150					
Engineering Design Final Design	120 150	150 120					
Final Design Major Water Pollution Control							
Final Design <u>Major Water Pollution</u> <u>Control</u> Conceptual Approach-	150	120					
Final Design Major Water Pollution Control							

Fees must be returned if the deadline is not met. The Commissioner of the Department of Environmental Protection is required to appoint a Time Schedule and Fee Advisory Board. Their Executive Office of Environmental Affairs contends that this board serves to largely overcome the two initial objections to their procedure, i.e. having a department set its own schedules and the likelihood of a department disapproving a permit for which it can not meet the timedeadline. The availability of judicial appeal also serves to mitigate these objections. The appendix to that office's "Program Improvements and Fees" study (22.) gives guidelines for the development of permitting fees.

The commission is aware of concerns that a fee-for-service concept in which applicants can receive expedited processing in return for paying the additional costs incurred could result in delays for those not paying an "expediting fee". The commission finds that the existence of the proposed standard time schedule, current provisions for employment of outside reviewers (Title 38, section 344-A) and the availability of judicial appeal should be adequate to deal with this situation.

<u>Recommendation 5.</u> The Commission recommends that legislation be enacted to require the Department of Environmental Protection to adopt rules which set specific time periods for the various steps in processing permits. The rules should provide earlier completion dates to those who wish to pay the additional fee required for the Department to meet that date. The Department is to complete processing in no more than 90 days if the respondent is willing to pay the required extra fee. While the Department would be allowed to develop its own time schedule, the Commission recommends an attempt to attain the following objectives:

<u>% of Applicants</u>	Lapsed Time (Days)
60	90
75	120
85	150
97	220

The Department would be required to set up an Advisory Board consisting of business, municipal and environmental interests.

Should the Department fail to meet the time schedule or agreed upon time, the Department must return the applicant's fee plus \$100 for each day that the application decision is delayed. • State Permitting & Reporting Requirements 7

<u>Finding 6.</u> Several carryover bills and legislation being developed concurrently with that of this commission address the environmental permitting process, the structure of the Department of Environmental Protection and the role of the Board of Environmental Protection. The Commission came to the following findings regarding these proposals:

- 1. A number of proposals appear to have merit, but the Commission lacks either time or expertise to deal with them.
- 2. The Commission would like to see the proposals investigated but, because of the budget crisis and the Commission's feeling that there are already enough entities looking at the problems of regulation, does not wish to create a specific body to do so
- 3. There currently exists, by Executive Order 9FY 80/81, March 24, 1981, a Maine Land and Water Resources Council. (Appendix G) The overall purpose of this group is to advise the Governor, the Legislature and state agencies in the formulation of environmental policies. One of the specific purposes is to evaluate Maine's environmental regulatory system and recommend appropriate action to improve service to applicants. The membership is, essentially, agency heads.
- 4. The Commission is aware of concerns of the business lobby that the Land and Water Resources Council is composed solely of "bureaucrats." Four of the top dozen states in environmental policy standards have councils whose objectives are similar to those of Maine's council. Two of them have all public members and two have a combination of public and agency members. However, the directive for the Maine Council requires that any agency or organization be invited to "interact and co-operate" and the specific purpose dealing with regulatory evaluation requires that it be done in consultation with effected interests.

<u>Recommendation 6.</u> The Commission recommends that legislation be enacted requiring the Land and Water Resources Council to make recommendations to the Joint Standing Committees on Energy and Natural Resources and Housing and Economic Development on ways of simplifying the environmental permitting process.

Recommendations 1 - 6 are included in proposed legislation entitled "An Act to Improve the Environmental Permitting Process." (Appendix J-14)

<u>Finding 7.</u>

Current mission statements of both the Department of Environmental Protection and the Board of Environmental

8 State Permitting & Reporting Requirements •

Protection direct them to protect the environment. Consideration of economic factors is not required. (38 MRSA §§341-A, sub-§1 and 341-B.) While the Administrative Procedures Act does, to a certain extent, require economic analysis, the Commission wanted the purpose requirements of the Board and the Department to reflect the necessity to balance environmental and economic considerations.

In determining how to accomplish this, the Commission reviewed purpose statements from Connecticut and Minnesota, which use the phrase "fulfill the social, economic and other requirements," and from New York, which uses the sentence "social, economic and environmental factors shall be considered together in reaching decisions on proposed activities." It also reviewed the language that LD 1372 proposes for 38 MRSA §341-D, sub-§7 which states that "the board shall strive to enhance quality of life, economic climate and the protection of natural resources, while minimizing the impact of environmental regulation whenever possible", the language proposed for 38 MRSA §341-A, sub-§1 which states that the Department shall "balance environmental practices with social and economic growth", and the language proposed for 38 MRSA §341-B which states that the Board shall "balance the goals of protecting the State's natural resources with the need to protect the competitiveness of the State's businesses and industries."

<u>Recommendation 7.</u> The Commission recommends the adoption of a purpose statement for both the board and department which states "they shall strive to enhance quality of life, economic climate and the protection of natural resources, while minimizing the impact of environmental regulation whenever possible."

<u>Finding 8.</u> The Commission finds that the time needed to acquire environmental permits is a deterrent to economic development in Maine and is of particular concern in this time of economic recession.

The Commission initially considered requiring that all environmental permits be issued under the permit by rule provision for the next 2 years. Further investigation developed the facts that (1) adopting the required rules for this approach would be very time consuming and (2) the Legislature would be unlikely to approve such a blanket law. As a result, the Commission decided that the better approach would be to deal with outright permit exemptions rather than permit by rule and to specify in law those activities and rules for which exceptions would be given.

The Commission made the following determination relative to selecting specific activities and laws for exemption:

1. The Site Location Law is considered by many to be a likely area for permit exemption and is in fact under study by a special commission.

- 2. The Natural Resources Protection Act currently requires the adoption of performance standards (38 MRSA §480-H) and the feasibility of such standards would indicate that activities under this Act might be those for which exemptions could be most safely given.
- 3. The Site Location Law and the Natural Resources Protection Act are two environmental statutes which have least interrelationship with the federal law.

The Commission developed a list of five types of activities that members were interested in exempting from Department of Environmental Protection permitting requirements. The Commission was encouraged in developing these recommendations by a similar effort under way by the Executive Office of Environmental Affairs in Massachusetts. (Appendix I)

<u>Recommendation 8.</u> The Commission recommends that the following activities be exempted from the permitting requirements of the Site Location Law and the Natural Resources Protection Act for a period of 2 years.

- A. Gravel pits covering up to 25 acres;
- B. All residential and commercial subdivisions;
- C. Activities that effect no more than 1 acre of Class 3 wetlands; and
- D. Buildings that meet any one of the following criteria:
 - 1. Have a ground area of less than 75,000 square feet;
 - 2. Have a floor area of less than 150,000 square feet; or
 - 3. Have a total project area of less than 5 acres.
- E. Projects of the Department of Transportation designed by licensed state engineers

Recommendations 7 and 8 are included in proposed legislation entitled, "An Act to Revise the Purpose of Environmental Agencies and to Temporarily Exempt Certain Activities from Needing Permits Under Two Environmental Acts." (Appendix J-10)

B. Business Licenses Required by the State of Maine

<u>Finding 9.</u> The commission was charged with studying the feasibility of a single administrative location where all license fees for businesses may be paid. Legislative members of the commission relayed concerns of constituents that the number of licenses required and the present system for processing these licenses was burdensome

and inefficient. The commission examined information available on the number and kinds of business licenses issued by the State of Maine, reviewed actual licenses required for 3 representative enterprises, and compared various states' approaches to the administration of licensing.

The Office of Business Development within the Department of Economic & Community Development publishes " A Guide to Doing Business in Maine" (16.) and provides a toll free phone information service called Business Answers. The Guide provides a listing of permits and licenses required in Maine. This listing, however, is not a comprehensive inventory of permits and licenses required for doing business in Maine. The quality of information in the guide and accessible through the Office of Business Development is not consistent for the various agencies issuing permits and licenses.

<u>Recommendation 9.</u> The Legislature should require the Office of Business Development to develop and maintain an inventory of permits and licenses with uniform information for each permit or license. The Legislature should require each state agency issuing business permits or licenses to provide all requested information in the prescribed form.

Finding 10. Many businesses must renew several licenses each year. They must contact a variety of state agencies to obtain or renew these licenses. Brief case studies were prepared of licenses typically required of a retail grocer, a restaurant and a hardware store.(Appendix K) The number of licenses and agencies involved in licensing suggest inefficiencies for the system. One stop licensing centers have the potential to reduce the paperwork burden on businesses, eliminate obsolete and duplicative licensing requirements, and provide accessible and efficient licensing.

Most states have one-stop information centers, similar to Maine's Business Answers program, which provide an inquiring business with a list of licenses needed and contact information for the appropriate licensing agency. Of the various states contacted, Washington's service appears the closest to a true one-stop licensing center. The State of Washington has a division of Business License Services within the Department of Licensing which operates as a one-stop licensing center. The Business Coordination Act of 1976 allowed grocery stores and grocery-related businesses to acquire all necessary licenses via a single agency, on a single application, and with a single payment, both initially and at renewal time. Legislation has since passed which expands the Master License Service to include many types of businesses and state business licenses.

<u>Recommendation 10.</u> The Legislature should direct the Department of Economic and Community Development to convene a Task Force to study one-stop licensing and make recommendations to the Joint Standing Committee on Housing and Economic Development. These recommendations are to include the permits and licenses appropriate for processing at a one-stop center. • State Permitting & Reporting Requirements 11

<u>Finding 11.</u> Although the Office of Business Development is charged in statute with "resolving problems encountered by business persons with other state agencies", it's role in the permitting process has been somewhat ambiguous. An objective third party can often interact with a permit applicant and the permitting agency to facilitate the process.

<u>Recommendation 11.</u> The Legislature should direct the Office of Business Development to assist applicants in obtaining efficient permit review.

<u>Finding 12.</u> Currently, no one within state government is charged with reviewing laws and regulations for their impact on business and making recommendations to the legislature or regulating agencies.

<u>Recommendation 12.</u> The Legislature should amend the responsibilities of the Director of the Office of Business Development to include an advocacy role.

Recommendations 9 - 12 are included in proposed legislation entitled, "An Act to Provide Regulatory and Permitting Assistance to Businesses." (Appendix J-5)

C. Economic Impact Analysis

<u>Finding 13.</u> Two bills which were being carried over during the time of the Commission's study dealt with the general subject of economic impact analysis.

Currently, the Administrative Procedures Act is somewhat confusing on this subject. It requires an "impact" analysis of all new rules and a cost/benefit analysis of "existing rules" with a <u>fiscal</u> impact of more than \$1,000,000. (Title 5, section 8057-A, subsection 1) LD 1799 (2.) seeks to clear up some of this confusion. It defines "impact" as fiscal and economic impact and extends the rules that require cost/benefit analysis to those with a fiscal or <u>economic</u> impact of over \$1,000,000. However, to some extent it continues the confusion by extending the requirement for cost/benefit to "proposed rules or proposed modifications that would cause existing rules to have an estimated fiscal or economic impact greater than \$1,000,000."

LD 1372 (1.) takes a more aggressive stance by requiring a cost/benefit analysis for all rules and appearing to require that the decision of whether or not to adopt the rule be based on this analysis. LD 1372 applies only to environmental rules.

Dave Davis, Dean of the College of Arts & Sciences at the University of Southern Maine, an expert witness appearing before the Commission, suggested that the Commission look to the federal government's handling of cost/benefit for guidance. He suggested, however, that the Commission take a moderate position regarding cost/benefit, which, interestingly, is what federal studies suggest and what the federal government has done in practice. Federal Executive Order 12291 requires cost/benefit analysis of major rules, a categorization which covered only 2% (or 18) of the rules proposed by the Environmental Protection Agency for the period 1981-1986. The Executive Order requires that the decision on the rules requiring cost/benefit be made on the basis of that analysis.

Under Executive Order 12630, the federal government is required to make special provisions for small businesses in rulemaking, generally called regulatory flexibility. Maine's requirements are less stringent than these, than those recommended by the Small Business Administration, which is the administrative agency, and than those practiced in other states (14.).

Maine currently requires simplified reporting for small business and allows simplified timetables and consideration of simplified compliance. The federal government requires for itself, and recommends for the states, consideration of different compliance requirements, excepting small business from some rules, the use of performance standards and development of a statement of the economic impact of the rule on small business.

<u>Recommendation 13.</u> The Commission recommends that economic impact analysis be required for the effect on small business of all proposed rules and every 10 years for existing rules, that cost/benefit be one factor considered for all rules that have a fiscal or economic impact of over \$1,000,000 or have a major effect on business costs, competition, employment or investment.

<u>Finding 14.</u> There is a lack of objective, scientific data concerning the costs and benefits of environmental regulations and a lack of agreement as to the methodology of analysis. At the State level, there is almost no environmental regulation research and development function. The University of Southern Maine is developing an environmental studies institute to be called the Wolfe Neck Institute. Its purpose is to link science and the policy making and regulatory process. It will offer a baccalaureate degree in environmental science and policy, an applied research function available to the regulatory community and a conferencing and outreach function.

<u>Recommendation 14.</u> The Commission recommends that the Legislature support the concept of an environmental studies institute and its priority funding when the budget situation is such as to make that feasible. The Commission recommends that the State's Congressional Delegation be called on to assist in obtaining Environmental Protection Agency funding to assist in the creation of the institute.

Recommendation 13 is found in proposed legislation entitled "An Act Concerning Economic Impact Analysis in Agency Rulemaking." (Appendix J-1) • State Permitting & Reporting Requirements 13

Recommendation 14 is proposed in a resolve, "Joint Resolution Supporting Creation of the Wolfe Neck Institute." (Appendix J-24)

14 State Permitting & Reporting Requirements •

III. Minority Report

The Commission heard a number of complaints from advocates for Maine business and industry about the State's regulatory processes, particularly the environmental permitting process. Issues and concerns were raised regarding the speed and efficiency with which regulatory agencies process permit applications and regarding the consistency in decision making on those applications.

Resolution of many of these issues and concerns touches on a broad range of public policy interests related to maintenance and enhancement of public health and the State's ecological integrity as well as the health of its business environment. These issues and concerns merit a level of review and degree of public participation that exceeded the time available to the commission.

Therefore, a minority of the Commission recommends that issues related to the Department of Environmental Protection and the DEP permitting process be referred to the Joint Standing Committee on Energy and Natural Resources, and other issues similarly be referred to the appropriate legislative committees for public hearings and full consideration of their merits.

The minority supports, in concept, several of the recommendations contained in the majority report. The minority offers the following comments on each of the majority recommendations in order to help focus the discussion in committee and before the legislature.

Majority Recommendation 1. The Department of Environmental Protection and the Land Use Regulation Commission should develop annual reports categorizing permit decisions, submit these reports to the Joint Standing Committee on Energy and Natural Resources and make these reports available to the public.

Minority Comment 1. The minority supports this recommendation.

Majority Recommendation 2. The Legislature should amend the site law to eliminate duplicate review of projects under site law when the municipality reviewing the project has a comprehensive plan certified by the Office of Comprehensive Planning and the Department of Environmental Protection does not act to exert state jurisdiction.

Minority Comment 2. A separate committee is currently studying site location law and its relationship to municipal land use permitting. The site law committee has been meeting since the end of the last legislative session and is developing detailed recommendations to coordinate state and local permitting. The minority recommends that this issue be examined by the Energy and Natural Resources Committee in the context of the site law committee proposals. **Majority Recommendation 3.** The Legislature should amend the NRPA to exempt activities reviewed by the Land Use Regulation Commission from permitting requirements under the Natural Resources Protection Act.

Minority Comment 3. The minority supports this recommendation provided that LURC's review is consistent with that of DEP and to the extent that the necessary resource mapping has been done. We strongly encourage the continuing efforts to identify and map significant resource areas.

Majority Recommendation 4. The Department of Environmental Protection and the Land Use Regulation Commission should act upon a permit application without input from other agencies if those agencies have failed to respond to a written request for review within the time designated by the requesting agency.

Minority Comment 4. The minority does not concur with this recommendation. The intent of Recommendation 4 can be better addressed as part of broader efforts to promote interagency cooperation and coordination and to establish realistically workable time tables. (see minority comments under Recommendations 5 and 6) It is the intent of the minority to closely monitor these efforts. Legislation to impose time limits for review can be initiated should these efforts fail.

Majority Recommendation 5. The Commission recommends that the Department of Environmental Protection be required to adopt rules which set specific time periods for the various steps in permit processing. Earlier completion dates are provided to those who wish to pay the additional fee required for the Department to meet that date. The Department is to complete processing in no more than 90 days if the respondent is willing to pay the required extra fee. While the Department is to be allowed to develop its own time schedule, the Commission recommends an attempt to attain the following objectives:

<u>% of Applicants</u>	Lapsed Time (Days)
60	90
75	120
85	150
97	220

The Department is required to set up an Advisory Board consisting of business, municipal and environmental interests.

Should the Department fail to meet the time schedule or agreed upon time, the Department must return the applicant's fee plus \$100 for each day that the application decision is delayed. **Minority Comment 5.** The minority supports the following concepts that underlie this recommendation .

1.) DEP should establish and adhere to realistically workable time tables for decisions on regulatory permits.

2.) Applicants desiring a prompter permit decision should pay a fee that reflects that additional level of service. An elevated fee would cover the cost of contracting outside reviewers to review the application or portions of the application. Legislation passed last session (PL1991, c. 471) established standards for outside review. Requirements for outside review include agreement by the applicant to pay all costs associated with outside review and determination that the application can not be reviewed by existing departmental personnel in "a reasonable period of time".

3.) The time tables should be designed to assure that permit decisions on relatively small projects are not delayed to accommodate faster decisions for applicants willing and able to pay a higher fee.

However, the minority is concerned by the legal implications of fining DEP for failure to adhere to the established permitting time tables. The minority also has concerns with the specific language in the legislation implementing recommendation 5.

Majority Recommendation 6. The Commission recommends that legislation be enacted requiring the Land and Water Resources Council to make recommendations to the Joint Standing Committees on Energy and Natural Resources and Housing and Economic Development on ways of simplifying the environmental permitting process.

Minority Comment 6. The minority does not believe that the Land and Water Resources Council (LWRC) should focus on the internal permitting process at DEP. The department has implemented many of the recommendations from the 1988 management study and has significantly improved the efficiency of its internal operations. The minority does emphasize that the LWRC, focusing on the interagency aspect of environmental permitting, should develop specific recommendations for simplifying and coordinating the review process and submit those recommendations to the energy committee.

Majority Recommendation 7. The Commission recommends the adoption of a purpose statement for both the board and department which states "they shall strive to enhance quality of life, economic climate and the protection of natural resources, while minimizing the impact of environmental regulation whenever possible."

Minority Comment 7. The minority does not concur with and has concerns with this recommendation. Although on the surface the idea is laudable, such a change might be misinterpreted. It has the long range, potential impact of tying environmental decisions to economic climate. The Department of Environmental Protection's proper mission is defined in its name. Economic development is central to the mission of a number of other agencies in state government. Although we encourage the Commissioner to be solicitous of all points of view on environmental regulation, certainly including business and industry's estimations of economic impact, we do not feel that a redefinition of the department's mission statement is merited.

Majority Recommendation 8. The Commission recommends that the following activities be exempted from the permitting requirements of the Site Location Law and the Natural Resources Protection Act for a period of 2 years.

- A. Gravel pits covering up to 25 acres;
- B. All residential and commercial subdivisions:
- C. Activities that effect no more than 1 acre of Class 3 wetlands; and
- D. Buildings that meet any one of the following criteria:
 - 1. Have a ground area of less than 75,000 square feet;
 - 2. Have a floor area of less than 150,000 square feet; or
 - <u>B. Have a total project area of less than 5 acres.</u>
- E. Projects of the Department of Transportation designed by licensed state engineers.

Minority Comment 8. The minority opposes this proposal. There are many questions and concerns raised by this proposal— not to mention some basic legal issues. A person undertaking one of the activities that are included in this proposal, would be at their own peril to decide if they were adequately meeting the environmental standards of the law. This is not a true permit-by-rule, as there is no rule specifying what the minimum guidelines must be. The end result is that specificity and security obtained through a permit system would be lost.

Majority Recommendations 9-12. The minority supports recommendations 9-12 with several caveats.

Majority Recommendation 9. The Legislature should require the Office of Business Development to develop and maintain an inventory of permits and licenses with uniform information for each permit or license. The Legislature should require each state agency issuing business permits or licenses to provide all requested information in the prescribed form.

18 State Permitting & Reporting Requirements •

Minority Comment 9. The minority supports this recommendation.

Majority Recommendation 10. The Legislature should direct the Department of Economic and Community Development to convene a Task Force to study one-top licensing and make recommendations to the Joint Standing Committee on Housing and Economic Development. These recommendations are to include the permits and licenses appropriate for processing at a one-stop center.

Minority Comment 10. The minority endorses this recommendation cautioning that careful consideration be given to whether environmental permitting, given the complexity of the issues involved, is appropriate at a one-stop permitting center.

Majority Recommendation 11. The Legislature should direct the Office of Business Development to assist applicants in obtaining efficient permit review.

Minority Comment 11. The minority recommends that when this bill is before the legislature, careful consideration be given to coordinating the permit assistance called for with that provided under other state programs. For example, federal law requires that Maine establish an ombudsman's office to provide information and render technical assistance to small businesses coming into compliance with the new Clean Air Act. DEP is currently considering coordinating this technical assistance effort with its toxics use reduction program and making the ombudsman's services available to Maine businesses generally.

Majority Recommendation 12. The Legislature should amend the responsibilities of the Director of the Office of Business Development to include an advocacy role.

Minority Comment 12. While the minority recognizes the value of a liaison between the legislature and the state agency charged with assisting the regulated community, the minority does not support an advocacy role as such for the Director of Business Development. The minority recommends that the committee of reference clarify the language of the bill to insure that the director will act in the public interest as a liaison, objectively presenting the concerns of the business community.

Majority Recommendation 13. The Commission recommends that economic impact analysis be required for the effect on small business of all proposed rules and every 10 years for existing rules, that cost/benefit be one factor considered for all rules that have a fiscal or economic impact of over \$1,000,000 or have a major effect on business costs, competition, employment or investment. **Minority Comment 13.** The minority opposes this recommendation. Underlying this recommendation is the notion that the state can in fact, evaluate costs and benefits of regulation. The state simply lacks the financial and personnel resources to undertake the necessary analyses. In the field of environmental regulation, the difficulty of accounting accurately for costs and benefits is widely acknowledged. Although not the commission's intent, enactment of these requirements could result in increased delays and uncertainty in rulemaking.

Three carryover bills from last session relate to economic impact analysis. LD 1799, "An Act to Clarify the Economic Impact Analysis in Administrative Rule-making Procedures", a carry over bill referred to the State and Local Government Committee, is very similar to legislation proposed by the majority. LD 1051, "An Act to Require the Department of Environmental Protection to perform Cost and Benefit Analysis of Permit Applications" has been carried over in the Energy and Natural Resources Committee. LD 1372, "An Act to Establish an Environmental Appeals Board and to Amend Licensing and Permitting Procedures within the Department of Environmental Protection" is also before the Energy and Natural Resources Committee and proposes economic impact considerations for DEP rulemaking.

The issue of regulatory impact analysis will be discussed in the respective committees of jurisdiction. The committee process will provide the opportunity for more public input and illumination of the issue than could be afforded within the context of this study.

Majority Recommendation 14. The Commission recommends that the Legislature support the concept of an environmental studies institute and its priority funding when the budget situation is such as to make that feasible. The Commission recommends that the State's Congressional Delegation be called on to assist in obtaining Environmental Protection Agency funding to assist in the creation of the institute.

Minority Comment 14. The minority supports this recommendation.

The Minority Report is issued by Senator Bonnie Titcomb, Representative Rita B. Melendy and Representative Marge L. Kilkelly.

20 State Permitting & Reporting Requirements •

BIBLIOGRAPHY

- 1. "An Act to Establish the Environmental Appeals Board and to Amend Licensing and Permitting Procedures within the Department of Environmental Protection", LD 1372, 1991
- 2. "An Act to Clarify the Economic Impact Analysis in Administrative Rulemaking Procedures", LD 1799, 1991
- 3. "An Advisory Study on Environmental Permits" prepared for the South Carolina Department of Health & Environmental Control by the State Budget & Control Board, June, 1990
- 4. "Citizens Commission to Evaluate the Maine Department of Environmental Protection", June 15, 1982
- 5. "Cost-Benefit Analysis Can Be Useful In Assessing Environmental Regulations, Despite Limitations". Report to the Congress by the Comptroller General of the United States, April 6, 1984
- 6. "Cost-Benefit Analysis: Wonder Tool or Mirage?" Report by the Subcommittee on Oversight & Investigations of the Committee on Interstate & Foreign Commerce, United States House of Representatives, December 1980
- 7. "Departmental Regulations", 310 CMR 4.00 Executive Office of Environmental Affairs, Commonwealth of Massachusetts
- 8. "The 1991 Development Report Card for the States", Center for State & Local Development, Corporation for Enterprise Development, April 1991
- 9. "Environmental Investments: The Cost of a Clean Environment", Office of Policy Planning & Evaluation, U.S. Environmental Protection Agency, Dec. 1990, PM-221
- 10. "EPA's Use of Benefit-Cost Analysis 1981-1986", Office of Policy Planning & Evaluation; United States Environmental Protection Agency, August 1987, EPA-230-05-87-028
- 11. "Environmental Policy Under Reagan's Executive Order", V. Kerry Smith, The University of North Carolina Press, 1984
- 12. "Federal Regulation Requirements", Executive Order Number 12291, Feb. 17, 1981 46 F.R. 13193
- 13. "Green Index 1991-1992", Bob Hall and Mary Lee Kerr, The Institute for Southern Studies, 1991
- 14. "Government Actions and Interference with Constitutionally Protected Property Rights" (Regulatory Flexibility), Executive Order No. 12630, Mar. 15, 1988, 53 F.R. 8859

- 15. "Governor's Business Task Force on the Maine Economy" Oct., 1990
- 16. "A Guide to Doing Business in Maine", Department of Economic and Community Development, 1989
- 17. "Guide to State Environmental Programs", Deborah Jessup, Bureau of National Affairs, 1990
- 18. "Guidelines for Performing Regulatory Impact Analysis", Office of Policy Planning & Evaluation; U.S. Environmental Protection Agency, Dec., 1983
- "Impacts of Environmental Regulations on Small Business", Office of Policy Planning & Evaluation; U.S. Environmental Protection Agency, Sept., 1988, EPA 230-09/88-039
- 20. "Maine Department of Environmental Protection Management Study", Peat Marwick Main & Co., Feb., 1988
- 21. "Negotiated Rulemaking Act of 1989", Report of the Committee on Governmental Affairs, United States Senate, Aug. 1, 1989, Report 101-97
- 22. "Program Improvements & Fees Study", Executive Office of Environmental Affairs, The Commonwealth of Massachusetts, April 15, 1990
- 23. "Interim Regulatory Impact Analysis Guidance", Office of Management and Budget, Executive Office of the President, June, 1981
- 24. "Regulatory Reform Initiatives", Committee on Governmental Affairs, United States Senate, May-Oct., 1988
- 25. "Report on the Environmental Regulatory Process", The Maine Development Foundation, Jan. 17, 1983
- 26. "The States and Small Business", Office of Advocacy, U.S. Small Business Administration, 1989
- 27. "State Regulations & Economic Competitiveness", Center for Economic Competitiveness, SRI International, Aug. 1989
- "Study Commission on Regulatory Efficiency", State of New Jersey, Sept., 1988
- 29. "Summary of State Responses: Environmental Permitting Procedures & Issues", Council of State Governments, Aug. 13, 1990
- 30. "A Technical Guide to Assessing & Preparing Economic Impact Analysis of Regulatory Legislation", U.S. General Accounting Office, 1980 PAD-81-03

WPPSTUDY #161

e

APPENDIX A

APPROVED	CHAPTER
JIL 30 '91	606

BY GOVERNOR || PUBLIC LAW

STATE OF MAINE

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

H.P. 1211 - L.D. 1769

An Act to Encourage Business Investments

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

Whereas, this Act establishes the Commission to Study State Permitting and Reporting Requirements; and

Whereas, to begin its work in a timely fashion, this commission must hold its first meeting no later than July 15, 1991; and

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

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

PART A

Sec. A-1. 30-A MRSA §5251, sub-§2-A is enacted to read:

2-A. State participation. Recognizing that the State, as well as municipalities, shares in the benefits of responsible new development, the State may also participate in the local program for improving a district:

A. To enhance local efforts for economic or commercial development, or both; and

Sec. D-1. Commission established. The Commission to Study State Permitting and Reporting Requirements is established to study the state permitting and reporting requirements for businesses and to improve the regulatory process.

Sec. D-2. Commission membership. The commission consists of the following 9 members:

1. Six members representing private industry to be appointed jointly by the President of the Senate and the Speaker of the House of Representatives. The members must be chosen to provide statewide representation and equal representation from small and large businesses;

2. One member of the Senate to be appointed by the President of the Senate; and

3. Two members of the House of Representatives to be appointed by the Speaker of the House.

Sec. D-3. Appointments; meetings. All appointments must be made no later than 30 days following the effective date of this Act. The Executive Director of the Legislative Council must be notified by all appointing authorities once the selections have been made. When the appointment of all members has been completed, the Chair of the Legislative Council shall call and convene the first meeting of the commission no later than July 15, 1991. The commission shall select a chair from among its members.

Sec. D-4. Duties. The commission shall study current state permitting and reporting requirements and determine ways to reduce the time and expense associated with filing permits and reports required by statute or rule. The commission may establish subcommittees and appoint persons to serve on those subcommittees to assist in the performance of its duties. Subcommittee members are not eligible for compensation and serve in an advisory capacity to the commission. The commission shall study the following:

1. The cost to business and citizens of this State of regulatory permits and reporting requirements both in terms of time delays and money;

2. The effect on the competitive position of businesses of this State as a result of the regulatory environment in this State;

3. The process of enacting new regulatory requirements and the recognition of the economic effects in this process;

4. The effect of local ordinances and the interaction of municipalities with state agencies on the regulatory process;

5. The effect of budget reductions on the regulatory process;

6. The accountability of state agency staff decisions within regulatory agencies;

7. The feasibility of a single administrative location where all license fees for businesses may be paid;

8. The feasibility of a generic form or forms to be used in permitting, reporting and licensing; and

9. Any other subject that the commission decides to be relevant to regulatory permitting and reporting requirements in this State.

Sec. D-5. Staff assistance. The commission shall request staffing assistance from the Legislative Council.

Sec. D-6. Reimbursement. The members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at commission meetings. Legislative members of the commission are entitled to expenses, as defined in Title 5, section 12002, upon application to the Executive Director of the Legislative Council for those expenses. Business community members are not entitled to expenses.

Sec. D-7. Report. The commission shall submit its report, together with any necessary implementing legislation, to the Second Regular Session of the 115th Legislature no later than November 1, 1991.

Sec. D-8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

1991-92

LEGISLATURE

Commission to Study State Permitting and Reporting Requirements

Personal Services	\$660
All Other	1,000
Provides funds to the Commission to Study State Permitting and Reporting Requirements	

APPENDIX B

COMMISSION TO STUDY STATE PERMITTING

AND REPORTING REQUIREMENTS

Chapter 606, P.L. 1991

Membership List

Appointed by Senate President

Senator Bonnie Titcomb (D) Casco, Maine District 25 Committee on Energy & Natural Resources, Chair Agriculture Committee

Appointed by Speaker of the House

Representative Rita B. Melendy (D) Rockland, Maine Committee on Housing and Economic Development, Chair

Representative Marge L. Kilkelly (D) Wiscasset, Maine Committee on Housing and Economic Development

Appointed by the President and Speaker

Dean Beaupain Millinocket, Maine Lawyer

Alton Cianchette Cianbro Corporation Pittsfield, Maine

Danny Levesque J. Paul Levesque & Sons, Inc. (Saw Mill) Ashland, Maine

Luke Muzzy Greenville, Maine Realtor, Various Small Business Interests

Gary Patzlaff Bath Iron Works Bath, Maine

Lynn Ricker Oscar & Rueben Lumbra, Inc. (Saw Mill) Milo, Maine

APPENDIX C

、

State Permitting Study Commission

AGENDA

October 16, 1991

1:00	pm	•	Vice-Chair, Legislative Council Members & staff introduce selves Discussion with Rep. Gwadosky concerning November 1st report deadline
1:30	pm	•	 What are the problems? What are some solutions? Lynn Wachtel - Commissioner, Department of Economic and Community Development
		1:45	 Deidre O'Callahan - Environmental & Economic Council of Maine
		2:00	 Rep. Jack Cashman - Sponsor of Study Legislation
		2:15	 Christopher Hall - Maine Chamber of Commerce
2:30	pm	•	Status of Committee to Restructure State Government • Tim Glidden - Office of Policy & Legal Analysis
2:45	pm	• • •	Committee members prioritize problems and solutions for future study Discussion of timetable and format for future commission activity Desired speakers Possibility of subcommittees
3:30	pm	•	percention of permanent email (and vide email)
4:00	pm	AD	JOURN

COMMISSION TO STUDY STATE PERMITTING AND REPORTING REQUIREMENTS

TENTATIVE AGENDA

October 30, 1991

- 10:00 am Commission convened by Chair, Dean Beaupain
- 10:15 am Chris Hall, Maine Chamber of Commerce and Industry
- 11:00 am Dean Marriott, Commissioner, DEP
- 11:30 am Panel discussion, current & former members of BEP
- 12:00 noon LUNCH
- 12:30 pm David Boulter, Director, LURC
- 1:00 pm Karin Tilberg, representing Natural Resources Council of Maine
- 1:30 pm Todd Burrowes, Maine Audubon
- 2:00 pm Ken Young, Maine Municipal Association
- 2:30 pm Mark Dawson, Environmental Code Administrator, Town of Jay
- 2:45 pm Discussion of Carryover bills; recommendations
- 3:30 pm Discuss future meetings: topics, speakers, dates
- 4:00 pm ADJOURN

2546NRG

State Permitting Study Commission

AGENDA

November 19, 1991

Room 436, State House

10:00 am	• Commission convened by Chair, Dean Beaupain
	 Staff response to request for information
10:15 am	 Dave Davis, Dean of the College of Arts & Sciences, USM, speaking on "Determining Cost of Regulation"
10:45 am	 Presentation & Discussion of Options Paper
12:00 noon	Lunch
12:30 pm	• Resume Discussion of Option Paper
2:30 pm	 Kay Rand, Deputy Director, Office of Comprehensive Planning, speaking on #4 of Commission's charge "The effect of local ordinances and the interaction of municipalities with state agencies on the regulatory process"
3:00 pm	• Discussion
4:00	 Decide on Date for Next Meeting
	• Adjourn

3061LHS-2

* The Commission also met on December 2, 1991 and December 9, 1991. These meetings were devoted to discussion of and voting on proposed recommendations.

..

APPENDIX D

••

BILL SUMMARIES FOR CARRYOVER BILLS RELATING TO PERMITTING AND REGULATORY REQUIREMENTS First Regular Session 115th Legislature

CARRYOVERS

An Act to Require the Department of Environmental Protection CARRIED OVER LD 1051 to Perform a Cost and Benefit Analysis of Permit **Applications**

SPONSOR(S) LORD ANDERSON GOULD R A

COMMITTEE ENERGY & NATURAL RESOURCES

AMENDMENTS ADOPTED

SUMMARY

This bill would require the Department of Environmental Protection to consider economic factors in environmental permitting decisions.

LD 1289 An Act to Promote Comprehensive and Consistent Statewide CARRIED OVER **Environmental Policy and Regulation**

SPONSOR(S) COMMITTEE AMENDMENTS ADOPTED GOULD R A ENERGY & NATURAL TARDY RESOURCES

SUMMARY

This bill would establish uniform statewide policies and rules in the areas of forest practices and pesticide control by prohibiting municipalities from adopting or enforcing ordinances that address forest practices or pesticide control. The bill also specified that state law preempts municipal ordinances unless municipalities are expressly granted the power to regulate.

LD 1372 An Act to Establish the Environmental Appeals Board and to CARRIED OVER Amend Licensing and Permitting Procedures within the Department of Environmental Protection

SPONSOR(S)	COMMITTEE	AMENDMENTS ADOPTED
GWADOSKY	ENERGY & NATURAL	
CAHILL P	RESOURCES	
PRAY		
WHITCOMB		

SUMMARY

This bill would change the structure of the Department of Environmental Protection in several important ways. It would establish the Environmental Appeals Board to hear all appeals of departmental licensing and permitting decisions as well as enforcement proceedings.

The Board of Environmental Protection's role would be modified to consist of rulemaking, development of comprehensive environmental strategies and goals, and definition of certain policies.

D-2

The duties of the Commissioner of Environmental Protection would be expanded to include: deciding all licenses and permits; revoking, modifying and suspending permits; reviewing licensing categories to recommend additional permit by rule categories; and resolving disputes between staff and applicants.

In addition, this bill would change procedures for rulemaking and application processing. These changes include:

- 1. Increasing economic impact information requirements for departmental rulemaking;
- 2. Specifying appeals procedures with time limitations;
- 3. Imposing time limits for application processing;
- 4. Specifying the information that is required early in the application process to process an accepted application;
- 5. Imposing additional requirements on parties who are suggesting alternative proposals; and
- 6. Defining explicit intervenor procedures and requirements.

LD 1540 An Act to Improve Coordination of Municipal and State Review CARRIED OVER of Environmental Permits

SPONSOR(S)	COMMITTEE	AMENDMENTS ADOPTED
LUDWIG.	ENERGY & NATURAL	
GOULD R A	RESOURCES	

SUMMARY

The purpose of this bill is to reduce duplicative review by state and municipal reviewing authorities for projects regulated under the natural resource protection laws and the site location of development laws. This bill proposes to allow the Commissioner of Environmental Protection to review municipal comprehensive plans and land use regulations to determine if they offer protection consistent with the standards of the natural resource protection laws and the site location of development laws. If so, the commissioner may substitute the municipal review and permit for Department of Environmental Protection review.

LD 1799	An Act to Clarify the Economic Impact Analysis in	CARRIED OVER
	Administrative Rule-making Procedures	

SPONSOR(S)	COMMITTEE	AMENDMENTS ADOPTED
CARROLL D	STATE & LOCAL	
HOGLUND	GOVERNMENT	

SUMMARY

The bill proposed to strengthen the economic impact analysis portion of the rule-making provisions of the Maine Administrative Procedure Act by requiring agencies to solicit and respond to public comment on the economic and fiscal impact of proposed rules. It also required that the economic as well as fiscal impact of proposed rules must be analyzed.

D-3

APPENDIX E

LEGISLATION THAT FAILED TO PASS

I. Rulemaking-General

- LD 211 February 1, 1977. An Act to Provide for Legislative Review and Automatic Termination of State Agency Rules (This was sort of a sunset law for rules.)
- LD 1779 May 11, 1977. An Act to Require a Cost-Benefit Evaluation of Government Regulation
- LD 1322 April 16, 1985. An Act Concerning Governmental Oversight (Provided that Complaints Concerning Agency Rules could be made to the Committee on Audit & Program Review.)
- LD 161 February 3, 1987. An Act to Improve Legislative and Public Access to the Agency Rule-making Process (This bill required that the Secretary of State monitor compliance of rules with rule-making requirements. This bill was a result of "A Report of the Joint Standing Committee on State Government on Legislative Veto of Rules", Nov., 1986)
- LD 344 February 22, 1989. An Act to Provide More Legislative Oversight of Agency Rulemaking (This bill set up a legislative office to review rules.)

II, Environmental Rules

- LD 1512 April 12, 1977. An Act to Create an Advisory Board to the Department of Environmental Protection and the State Development Office
- LD 1558 April 5, 1979. An Act to Redistribute the Powers of the Department of Environmental Protection to Localities to the Maximum Extent Possible
- LD 1245 March 11, 1981. An Act to Facilitate and Improve Decision Making by the Board of Environmental Protection (Called for subboards with technical expertise to act as mediators between the staff and interested parties.)
- LD 2066 March 12, 1981. An Act Implementing Certain Recommendations of the Citizens' Commission to Evaluate the Department of Environmental Protection (Created an Advisory Committee, tightened time limits for acting on applications, and gave the Commissioner authority over most applications.)
- LD 1549 April 16, 1981. An Act to Establish an Environmental Licensing Fund in Order to Expedite the Processing of Applications Filed with the Department of Environmental Protection (The fund was to come from applicant fees.)
- LD 2326 February 16, 1990. Resolve, to Create the Maine Commission on Environmental Policy (Was to study existing policy with goal of consolidation and updating into a comprehensive policy that reflects the cumulative effects of changes to the environment and defines minimum standards for responsible activity. Was to unify policy & planning within agencies and separate those from regulation and enforcement, develop facilities for separate planning and permit review functions at the local level, and integrate the values of the people into environmental policy.)

Prepared by the Office of Policy and Legal Analysis October 2, 1991

-2-

APPENDIX F-1

•

REPORT TO JOHN R. MCKERNAN JR. GOVERNOR OF THE STATE OF MAINE

BUSINESS TASK FORCE ON THE MAINE ECONOMY SITUATION ANALYSIS AND RECOMMENDATIONS

OCTOBER 1990

Long-term Key Issue #4 Regulatory Impacts/Infrastructure (Chairman: Les Otten)

Regulatory Impacts/Infrastructure

Regulatory processes in Maine are overly burdensome--working against the economy. How do we change that situation so that there is a balance between needed regulation and our need to stimulate the economy? Also, what can be done to address the State's infrastructure from a long-term point of view?

Recommendations:

- 1.) Statutes should provide the opportunity for a "balanced" review of development projects. DEP/BEP should be required to assess the economic and social consequences of a project and determine whether or not those factors outweigh any unmitigated environmental damage. A model in this regard is the Maine Waterway Development and Conservation Act which requires a balancing of the public benefits and costs associated with placing dams on rivers.
- 2.) The Appeals Board should be a legally constituted board with judicial type powers and should make its decisions based on a finding of facts. The review shall be limited to the record.
- 3.) Traffic impacts should be a factor in the permitting process of development which comes under state review. However, these impacts and their related corrections and mitigation should be agreed upon with D.O.T. Further, the impacts shall be limited to close in on immediate adjacent road impacts.
- 4.) One-stop Permitting should be instituted to assist the applicant and improve the timeliness and appropriateness of regulatory review. There should be one place where any applicant for any regulatory permit ought to be able to go to get the necessary forms, policies, and procedures to initiate development in Maine.
- 5.) DEP and/or D.O.T. Procedures:
 - a. Ensure consistency with Permit-by-Rule across state agencies and within DEP. We should also try to expand the use of Permits-by-Rule to as wide a range of development activities as possible.
 - b. A 30-60 day timetable should be established during which time an applicant should be informed of the extent of the information necessary to be provided, corrective actions he must make to his plans, actions

Long Term Key Issue #4 Regulatory Impact/Infrastructure page 2

he may take to speed the review process, and a reasonable estimate of the time necessary for review.

c. All rules, regulations, and standards should be standardized so that they have the same interpretation by all staff at DEP and other agencies. Included in this would be workable definitions of "unreasonable impacts" for each activity or standard in the regulations.

6.) Certain Clean projects ("clean" as defined by DEP_ should be exempt from the DEP process and be assigned for approval to local Municipalities, assuming they have a Comprehensive Plan, Planning Board, Zoning Ordinances and a Code Enforcement Officer.

7.) DEP staff deployment should be reviewed so that additional staff are deployed on the larger scale projects. Just because a project is larger and perhaps a little more complicated is no reason why it should take longer to review.

8.) Rules and regulations regarding mining should be adopted as soon as possible so that any economic benefits associated with the development of that industry can be realized. APPENDIX F-2

••

REPORT ON THE ENVIRONMENTAL REGULATORY PROCESS

· · ·

by the

Maine Development Foundation

Environmental Regulatory Task Force

:

January 17, 1983

Augusta, Maine

applications was undertaken to identify elements of "difficult" permits as well as those processed more successfully. In addition, comparisons were made with ten carefully selected states to suggest procedures that have worked well in other circumstances. Previous reports and recent changes in the Department of Environmental Protection also become a part of the background effort of the Task Force. The important findings of each of these efforts is summarized in the body of the report.

CONCLUSIONS AND RECOMMENDATIONS

The Task Force, by consensus, developed the following recommendations, which can be grouped into two catagories - communications/procedural and decision-making.

Communications/Procedural

- There is a need to continue the activities of an informal advisory task force, generally under the same concept as the present one.
- Additional joint technical reviews should be implemented to develop improved methods for defining information needs for individual permit types.
- 3. Communication forums should be initiated for discussion of technical and regulatory issues outside the formal application/regulation process.

F2-2

- 2 -

- Joint evaluations should be encouraged to determine additional opportunities for permits by standard, general permits and/or simplified procedures.
- 5. The variations between Maine and federal procedures should be specifically identified.
- 6. There should be a continuing external capability to urge improvements in the environmental regulatory process.
- 7. Improved exit communications and understanding for permit conditions should be developed.
- 8. The method of involvement of third parties in the environmental regulatory process needs to be clarified.
- 9. There should be a continuation of the strengthening of the definition of staff responsibility in permit processing.
- 10. Assistance programs for small business applicants should be improved within the permitting agency.
- 11. Other state systems that seem to work particularly well, such as Georgia, should continue to be evaluated.

Decision-Making

ſ,

<u>^</u>,

`

,

 There is a clear and compelling need to create a complete, well-defined, timely, fair <u>departmental</u> decision-making process in DEP -

- 3 -

F2-3

- a) Affirm by statute and remove any legal doubt as to the Commissioner's primary responsibility for permit preparation and recommendations by the Department, with his non-voting Board Chairmanship a secondary and non-conflicting responsibility.
- b) Develop a written, internal decision-making conflict resolution procedure for the guidance of all personnel.
- c) Perform administrative functions within the Department, with regulatory policy decisions handled by the Board.
- d) Conduct management training and reviews of the decision process as an important and continuing departmental activity.
- There should be a separation of activities with the Commissioner clearly responsible for administration and the Board responsible for regulatory policy.
 - a) A revision in the permit procedure should be completed which would:
 - Delegate routine permit application approvals to the Commissioner.
 - Require the Commissioner to <u>issue</u> a Draft
 Order for all other permits to be sent for
 review and comment to the BEP, Applicant, and
 interested parties.

F2-4

- 3. Allow the Board to make its own determination by majority vote as to which individual permits are of such a policy or precedent-setting nature that the Board should assume jurisdiction.
- 4. For those permits not assumed by the Board, the Commissioner would issue a final order, appealable to the Board.
- The Board would then, if necessary, affirm, modify, or issue an order.
- 6. Traditional reconsideration and court appeal procedures would remain available.
- b) The responsibility for Departmental organizational matters should rest with the Comissioner without Board approval.

5

- Additional mechanisms should be initiated to assist in dispute resolution over technical and peripheral issues.
 - a) The Department should initiate, on a trial basis, a voluntary mediation process to resolve technical disputes and issues of fact.
 - b) Additional use should be made of independent, outside analysts for factual evaluations that are repetitive for many permits.

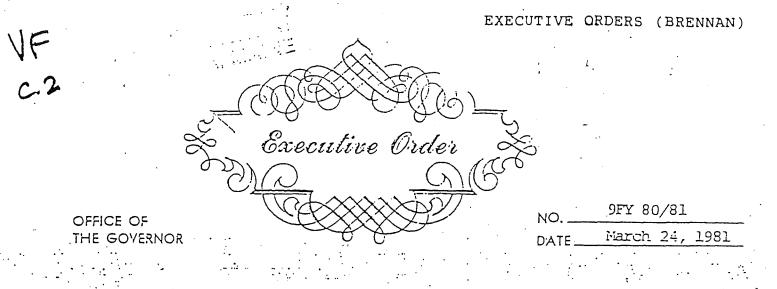
F2-5

- 5 -

- 4. The DEP should implement a department-wide management information system tracking application schedules.
- 5. The time period for air emission license renewals for large boilers should be extended for up to five years, similar to smaller boilers.

أ

ر: بر APPENDIX G



PROVIDING FOR THE ESTABLISHMENT OF A MAINE LAND AND WATER RESOURCES COUNCIL

WHEREAS, there are many State and regional agencies with planning and management authorities and responsibilities for Maine's land and water resources, and

WHEREAS, there is great need for coordination and integration of these agency programs in order to implement effective State policies for the management of Maine's land and water resources, and

WHEREAS, cooperation among these agencies is strongly encouraged under provisions of the State Planning Act, as well as Federal law, and

WHEREAS, regional and local levels of government and the private sector need access to, and guidance from, a natural resources policymaking body, and

WHEREAS, coordination among the several State land and water resource programs will help assure efficiency in the use of public funds,

THEREFORE, I, Joseph E. Brennan, Governor of the State of Maine, do hereby order that a Maine Land and Water Resources Council be created as follows:

Membership

The Chairman of the Council shall be appointed by the Governor and serve at the pleasure of the Governor.

The membership of the Council shall include the following:

	1.	The	Commissioner	of	the	Department	of	Agricu	lture
--	----	-----	--------------	----	-----	------------	----	--------	-------

- 2. The Commissioner of the Department of Conservation
- 3. The Commissioner of the Department of Environmental Protection
- 4. The Commissioner of the Department of Human Services
- 5. The Commissioner of the Department of Inland Fisheries and Wildlife
- 6. The Commissioner of the Department of Marine Resources
- 7. The Commissioner of the Department of Transportation
- 8. The Director of the State Development Office
- 9. The Director of the State Planning Office
- The Vice President for Research and Public Services University of Maine at Orono
- 11. The Chairman of the Regional Planning Commission's Director's Association

Purposes

The fundamental task of the Council shall be to advise the Governor, the Legislature, and State agencies in the formulation of policies for management of Maine's land and water resources to achieve State environmental, economic, and social goals. Any State, Federal, regional, or local agency, or private organization, is invited to interact and cooperate with the Council in fulfilling this mission.

Specifically, the Council shall:
1. Recommend coordinated State policy regarding major programs or proposals which both affect the natural environment of the State and involve the concerns of more than one State agency.

2. Initiate the development of an integrated program to provide a substantially improved land and water resources information base for planning purposes. The Council shall define information needs, standards, and relative priorities for data collection, and investigate the increased use of data processing systems to expedite information storage and retrieval.

3. Establish a standing subcommittee, known as the Mapping Advisory Committee. The subcommittee will be composed of members from Council agencies and other interested groups, as appropriate. It will be charged with responsibility for reviewing and recommending to the Council actions to be taken regarding coordination of agency mapping programs, and with establishing priorities for the U.S. Geological Survey mapping program in Maine.

4. Provide direction to the State's land and water use planning and management programs and encourage coordination of these efforts through review and comment on agency program plans, specific projects, and legislative proposals that involve. interagency concerns.

5. Periodically evaluate, in consultation with affected interests, Maine's environmental regulatory system, including legislation, regulations and procedures, and recommend appropriate action, if any is needed to improve service to applicants.

6. Study specific land and water resource management issues and problems of State level significance in order to develop sound, coordinated policies.

7. Seek cooperation from Federal agencies with responsibilities for land and water - resources management to ensure that their programs and projects serve the best interests of the State of Maine. · · · · · · · · ·

Procedures

The Council shall meet at least quarterly. In addition, the Council shall prepare a work program for each year establishing priorities among its efforts. The Council shall prepare and submit to the Governor an Annual Report describing its activities during the previous calendar year. The State Planning Office or Council member agenices shall provide funding for activities of the council, including support for the Executive Secretary, who shall serve as the Council's principal staff. Additional staff support may be provided by member agencies and other affected organizations as appropriate.

EPHVE. BREMMAN G-2

APPENDIX H

Text of Remarks to Commission on Regulation and Permits

November 19, 1991

<u>Dave Davis, Dean</u> <u>College of Arts and Sciences</u> <u>University of Southern Maine</u>

Introductory Remarks

Let me first tell you that I am not an expert on the environmental regulatory and permitting process in Maine. I'm appearing primarily as a representative of the University of Southern Maine, to tell you about some initiatives at USM that have a bearing on the issues that you're considering. However, I won't be speaking entirely from ignorance: I have worked as a consultant with federal environmental permitting, and with state environmental permitting outside Maine.

With your forbearance, I'd like to take a few minutes to outline for you a broad initiative that we have developed in an effort to use the University's resources to improve the quality and efficiency of environmental regulation in Maine. Then, after describing the several components of this effort, I'd like to offer a few comments about the creation and implementation of environmental regulation.

Before I proceed, I need to make two things clear. First, what I'm about to describe is a <u>plan</u>. In order to become a <u>reality</u>, it requires the approval of the Chancellor and of the University of Maine System Board of Trustees. Because the Trustees are properly jealous of their right to approve new programs of this sort, please remember that everything I'm about to describe is subject to Board approval. Second, the plan has been in development for the last two years, and by now has been worked out in considerable detail. Until a few weeks ago, we had every intention of bringing it to the Board this Fall, and of implementing it next summer. The recent budget news has cast all that into doubt.

Background to the Wolfe Neck Institute

The plan centers around a new unit of the University that will be called the Wolfe Neck Institute. It will occupy quarters both on the Portland campus and at USM's facility at Wolfe Neck, on Harraseekett Bay outside Freeport. The Wolfe Neck Institute is somewhat unusual in its organization, in that it will integrate a new degree program with applied research functions and with public education and conferences. The Institute. and all of its functions, have one overarching goal: to improve the quality, reliability, and efficiency of environmental policy and regulation. There is no political agenda. But there is a politically meaningful premise, namely, that we can become much more sephisticated and much more efficient about environmental regulation than we have been up till now.

As I said, the Wolfe Neck Institute will have three closely integrated components. Let me briefly tell you about each of them.

The Environmental Science and Policy Degree

USM employs a number of highly trained faculty who teach and conduct primary research on one or more aspects of environmental science and policy. For a long time, many of these faculty members have suggested that we need to have some kind of environmental degree program on our campus. However, the faculty in question are scattered among a number of departments -- Biology, Chemistry, Geography/Anthropology, Geosciences, Political Science, and Public Policy and Management, to name a few -- and there was little consensus about just what form such a program should take.

One thing we clearly <u>didn't</u> need was another loosely structured Environmental Studies program. Programs like this have been around for years, and they typically give students a smattering of low-level science, a bit of canned political science and philosophy (usually ethics), and not much more. Students graduated from such programs are too poorly trained in science to land good technical jobs, and too poorly trained in policy and politics to contribute much to improving the policymaking process.

In my own experience, one of the weakest components of environmental policy and regulation has been the link between science -- which provides the data and predictive models about the natural environment -- and the policymaking and regulatory processes. In short, regulators (and those developing environmental policy) often don't know enough science to critically evaluate the methods and models that generate environmental information; and few scientists working in the environmental area have a firm appreciation of the economic, political, and social dimensions of the process.

After a year's work with representatives of our various relevant academic departments, we managed to design a bacchalaureate degree program that, in my judgment, bridges that gap. The degree is called Environmental Science and Policy. It is interdisciplinary, but in a tightly structured way. The program begins with a core that consist of three elements: specially designed courses in environmental science; special courses in the environmental regulatory process; and a complement of introductory courses in biology, chemistry, economics, geosciences and physical geography, and statistics. After completing all of this core, a student in the program will be able to select one of four concentrations: community planning; hydrology and water management; environmental policy analysis; and ecology. Each of these concentrations will carry its own **suite** of advanced science and policy courses. The program will have a small core faculty of its own, along with a number of affiliated faculty from other departments and programs at USM. It will require considerably more credit hours than many of our other majors at USM, but it was our sense that there was no other way to do the job well.

The Applied Research Function

The second major function of the Wolfe Neck Institute will be to serve as a focus for interdisciplinary applied research on environmental issues. <u>One</u> goal would be to bring together scientific expertise from the University to provide something close to one-stop consulting on technical aspects of environmental impact assessment. These services would not be free, but they would be very competitively priced, and would draw on expertise throughout the University of Maine System.

However, our main applied research purpose would not be to compete with private sector consultants, but rather to take on issues and research problems that have overarching significance for many projects. At the state level, the environmental regulatory process has almost no research and development function. Research methods are often borrowed directly from academic practice, rather than being developed to meet the real aims of the regulatory process. Here is an example: Paper and hydroelectric companies have to undergo periodic FERC relicensing for dams. In that context, they fall under a body of federal regulation designed to protect significant historical and archaeological resources. Although the regulations were promulgated at the federal level, they require each state to designate and fund a State Historic Preservation Officer, whose staff then effectively becomes the regulatory review authority for the project. Now, even though most of these projects are already in existence, FERC expects them to go through the full environmental assessment process. As part of that process, they must fund field surveys for archaeological and historic sites, and must then test any sites located within the project area to determine their potential significance. Sites which are found to be significant must, in many cases, be excavated as a means of mitigating project impact.

Now, there is nothing wrong with the intentions of this body of regulation. But in the <u>implementation</u> (both in Maine and elsewhere), we find field survey designs that have never been tested for efficacy; we find excavation methods unchanged from their academic origins; and we often find excavation preferred over avoidance or protection of the resource. And this is significant, since excavation as a means of mitigation may cost hundreds of thousands of dollars -- and it still results in the destruction of the resource. Now, this process is not <u>fundamentally</u> flawed -- but it is relatively inefficient. Either the State or those in the private sector who regulate or are subject to this process would do well to fund a rigorous comparative study of the methods and results of cultural resources surveys with a view to making this process work more efficiently.

We also often find significant environmental issues being hotly debated without the benefit of adequate objective scientific data. The absence of such data makes it tempting and easy for all sides to overuse the information that is available. The public becomes confused. Project sponsors become infuriated. There is a crying need for more scientific studies that are specifically tailored to the environmental regulatory area. Examples include the need for a statewide water quality data base; comparative studies of shoreline erosion resulting from dredging in different kinds of depositional environments; and efforts to model the cumulative impacts of development on such variables as non-point-source pollution. However, I should note that better scientific methods don't always make it easier to do business. For example, chemists and geohydrologists, who used to measure groundwater pollution by analyzing the chemistry of runoff, now know that large amounts of harmful chemicals can bond to clay particles, where they can remain in large quantitiies only to be released in ever-larger levels over a period of years.

The Conferencing and Outreach Function

The third major function of the Wolfe Neck Institute is in the area of conferencing and public outreach. In the conferencing area, the Institute will sponsor three kinds of events: (1) conferences and workshops aimed at achieving greater cooperatio among and environmentalists; (2)regulators, business interests, conferences that bring Maine business and government leaders together with leading figures in environmental science and regulation from other states that experience challenges similar to ours; and (3) summer programs and other educational outreach activities that aim to increase genuine understanding of among Maine people, and to improve environmental issues environmental literacy at the primary and secondary school levels.

<u>Comments</u>

I said that I am not specifically expert on the environmental regulatory process in Maine. Let me now add that I'm also not an expert on cost-benefit analysis. However, I do know what it is, and I suppose that one of the reasons that I haven't tried to become an expert on that topic is because I know enough to be aware of its very serious limits.

There is a move afoot to require cost-benefit analysis as a central part of the environmental permitting process. As you think about this, I hope you'll be mindful of the fact that cost-benefit analysis, <u>especially</u> as it applies to environmental regulation, is not a specific method of analysis. In its simplest form, it is nothing more than a restatement of basic principle of market economics. The estimation of costs and benefits can be done many different ways -- and <u>is</u> done many different ways. And the results vary accordingly. Thus, there are cases in which environmental

issues have gotten tied up in the courts precisely because the project sponsor, the regulators, and environmental interest groups couldn't agree on what method of cost-benefit analysis to apply in the particular case.

Moreover, the methodologies are sloppy. For example, benefits of an environmental regulation or decision are commonly determined by asking people how much they would value the results. This approach makes the fate of regulation and projects directly dependent upon the shifting winds of public opinion, and upon cultural trends which may vary greatly from region to region, and from year to year.

But the bottom-line limitation with cost-benefit analysis is really more serious than that. Ultimately, the application of costbenefit techniques to environmental issues almost always winds up dealing with apples and oranges. It assumes that we can reduce to common denominator things that actually have no common а denominator. The costs of environmental regulation -- or the benefits of a particular project -- can often be gauged in dollars. However, the benefits of regulation -- the environmental costs of projects -- cannot be realistically gauged in this way. The costs are often long-term, often cumulative, and sometimes involve human health and welfare. I do not think we can reduce these to dollars. Ultimately, we cannot escape making choices about our values. And even if we were willing to try reducing everything to dollars, the long-term costs of many projects really can't be known with much certainty. Twenty-five years ago, construction of an asbestos factory in downtown Portland would have received a favorable costbenefit analysis.

So what does one do? In my own thinking, I begin with a few basic principles. First, we share a common interest in preserving the health and well-being of ourselves and future generations, and i keeping Maine a pleasant place to live. Second, we acknowledge that Maine is not a very pleasant place to live if people are unemployed. Third, we recognize that some industries, given the state of technology today, are really not environmentally good -they have bad consequences and should be rejected even though they might provide jobs. This leads us to want to do everything possible to make Maine attractive to companies that <u>don't</u> harm the environment, and to make make environmental compliance as reasonable a process as possible. Finally, I think that we recognize that environmental science and regulation are imperfect efforts that can and should be be honed and improved all the time. And we try to create a structure that insures that that will happen.

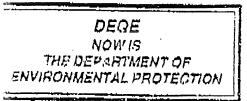
.

APPENDIX I



The Commonwealth of Massachusetts Executive Office of Environmental Affairs Department of Environmental Quality Engineering One Winter Street, Boston, Mass. 02108

Daniel S. Greenbaum Commissioner



FACSIMILE TRANSMITTAL SHEET

I-1

Sec. EOEA Dept DEP Program DEP

Critical Committment 3: Streamline Regulatory Process

Description: A major part of DEP's management challange is to obtain maximum environmental protection from each and every budget dollar that has been allocated to it. Regulatory reform is a major component of the strategy to meet this challange. Achieving the regulatory reforms identified below as well as additional reforms to be identified in the future will improve agency effectiveness in several ways. They will contribute to more streamlined DEP operation by privatizing operations where appropriate, raising regulatory thresholds in areas where environmental protection will not be compromised and seeking to repeal duplicative or unnecessary statutory requirements. These changes will streamline and improve the internal operation of the department as well as make compliance with environmental regulations easier for the regulated community.

Legislation required: in some cases, as noted

Action Steps:

¥

-Propose statutory changes to the 21E hazardous waste site cleanup ^{*} program to privatize many functions, speed the pace of both publicly and privately funded cleanups, permit more rapid discovery of currently unknown waste sites and identify a stable, long-term funding source.

Dates: propose legislation: completed secure passage; 10-91

-Initiate a process to adopt regulations governing the beneficial re-use of sludge consistent with new federal standards. This will significantly extend landfill capacity and reduce the need to incinerate sludge. Date: 12-91

-Propose statutory or regulatory changes to consolidate into a single filing the large number of permit applications now required for asbestos removal Date: 10-91

-Adopt revised regulations for domestic sewer connection permits, raising the threshold from 2,000 gallons per day to 15,000 gallons per day, thereby removing entirely from regulation a broad spectrum of projects. Date 9-91

-Make a clear statement of intent that Massachusetts will use EPAapproved federal air toxics standards as they are promulgated and replace the state's Allowable Ambient Limit Standards. This will streamline the process of compliance with air pollution regulatory requirements

Date: Pending Governor's approval

-Propose statutory repeal of the state's Community Right to Know requirements for industry. This program has been superseded by federal SARA Title III requirements and is no longer being implemeted by the department due to budget cuts. This change would relieve industry of duplicative regulatory requirements. Date: Pending Governor's approval

-Ensure expedited and coordinated review and processing of all activities/actions needed by "MegaProject" applicants (Central Artery/Third Harbor Tunnel & Boston Harbor Cleanup). This will be accomplished through the development of a holistic approach to these activities at DEP, in particular the development of a special "Boston Harbor" unit to oversee and coordinate these activities. Date: Ongoing

-Develop Generic Water Quality Certifications (necessary for dredging and filling in Massachusetts waters and wetlands) rather than individual certifications in cases where sites meet established criteria and environmental impact is minor. This reform eliminated a duplicative review that was being conducted and freed staff to work on more complex projects. Date: Completed

-Revise Cross Connection regulations to establish additional categories of regulation such that retrofitting of some existing fire prevention sprinkler systems with backflow prevention devices is no longer necessary. This change will save Massachusetts business approx. \$100,000 per year. New or substantially modified systems will have to comply with existing regulations. Date: Regulations finalized 11\91

Fiscal Effect: Implementation of these and additional regulatory reforms will enable DEP to increase its efficiency and obtain the most environmental protection from the funds appropriated to the agency.

Key Fiscal Assumptions and Projections: -Appropriations not reduced from current levels -Revenue projections are realized

Service Impacts: Service impacts described in each action step. In general terms the level of environmental protection provided after implementation of a regulatory reform will be equal to or greater than that which existed prior to the reform.

APPENDIX J

LR #3643 Sponsor: Drafted by: JBK Date: 12/16/91 Doc. #3191LHS

SECOND REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

"Submitted pursuant to Public Law 1991, Chapter 606"

STATE OF MAINE

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

AN ACT Concerning Economic Impact Analysis in Agency Rulemaking.

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

5 MRSA §8052, sub-§5, 1st ¶ is amended to read:

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule. The agency shall also address any comments and concerns regarding the fiscal or economic impact of the proposed rule that were raised during the public comment period and shall state its rationale for accepting or rejecting those comments in formulating its final fiscal and economic impact analysis.

Office of Policy and Legal Analysis DraftPage 1 J-1

5 MRSA §8052, sub-§5-A is amended to read:

Impact on small business. In adopting rules, the 5-A. agencies shall seek to reduce any economic burdens through flexible or simplified reporting requirements and may shall seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses. The agency may shall consider clarification, consolidation, or simplification of <u>, or</u> difference in, compliance or reporting requirements, excepting small businesses from certain types of rules and the use of performance rather than design standards. The agency shall determine the economic impact of the rule on small businesses and every ten years shall review each rule to determine the continuing need for its existence and to determine how that bill effects the cumulative economic impact of all rules on small businesses at that time. For the purposes of this subsection, "small business" means businesses that have 20 or fewer employees and gross annual sales not exceeding \$2,500,000.

5 MRSA §8057-A, sub-§§1&2 are amended as follows:

§8057-A. Preparation and adoption of rules

1. Preparation of rules. At the time that an agency is preparing a rule, the agency shall consider the goals and objectives for which the rule is being proposed, possible alternatives to achieve the goals and objectives and the estimated impact of the rule <u>as described in this subsection</u> and in subsection 2 and in section 8052, sub-§5-A. The agency's estimation of the impact of the rule shall <u>must</u> be based on the information available to the agency and any analyses conducted by the agency or at the request of the agency. The agency shall establish a fact sheet that provides the citation of the statutory authority of the rule. In addition, the agency, to the best of its ability, shall also include in the fact sheet the following:

A. The principal reasons for the rule;

B. A comprehensive but concise description of the rule that accurately reflects the purpose and operation of the rule;

C. An estimate of the fiscal impact of the rule; and

D. An analysis of the rule, including a description of how the agency considers whether the rule would impose an economic burden on small business as described in section 8052, subsection 5-A.

2. Additional information for existing rules. For existing rules having an estimated fiscal or economic impact greater than \$1,000,000 or that would cause a major increase in costs or prices or significantly adversely effect competition, employment, investment, productivity or innovation, the fact sheet shall must also include the following:

A. A description of the potential costs of the rule including effects that cannot be quantified in monetary terms;

B. A description and examples of individuals, major interest groups and types of businesses that will be affected by the rule and how they will be affected;

C. A description of the benefits of the rule including those that cannot be quantified; and

D. A determination of the net benefits of the rule.

5 MRSA §8065 is enacted to read:

§8065, Negotiated rulemaking

If the head of the agency determines that the use of a committee to negotiate rulemaking is in the public interest, an agency may establish a committee to negotiate and develop a proposed rule. The committee must consist of persons significantly affected by the rule and persons representing the proposing agency.

STATEMENT OF FACT

This bill represents a majority recommendation of the Commission to Study State Permitting and Reporting Requirements. It is one of 4 bills and 1 resolution being submitted by this Commission.

Current law requires a benefit/cost analysis of existing rules with a fiscal impact of over \$1,000,000. This bill requires such an analysis of all rules having a fiscal or economic impact over \$1,000,000 or that would cause a major increase in costs or adversely affect competition, employment or investment.

Current law requires that during rule preparation the preparing agency estimate the impact of the rule. This bill defines the word impact as meaning fiscal impact in the case of all rules, and economic impact in the case of small business and benefit/cost analysis in the case of rules with a major fiscal or economic impact.

Current law requires that an agency seek to reduce the burden of a rule on small business through simplified reporting and allows the agency to reduce it through simplified timetables and consideration of simplified compliance requirements. This bill requires that the agency reduce the burden by the use of simplified timetables and by the consideration of simplified compliance requirements and, additionally, requires consideration of different compliance requirements, excepting small business from certain rules, and the use of performance standards. It requires that an agency determine the economic impact of a proposed rule on small business and review every 10 years each existing rule as it effects small business to determine its continuing need and its contribution to the total economic impact of regulation on small business.

This bill allows an agency to establish a committee to negotiate the making of a rule.

LR #3642 Sponsor: Drafted by: JBK Date: 12/16/91 Doc. #3210

(EMERGENCY)

SECOND REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

"Submitted pursuant to Public Law 1991, Chapter 606"

STATE OF MAINE

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

AN ACT to Provide Regulatory & Permitting Assistance to Businesses

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

Whereas, Maine is suffering a severe recession that impacts the business community; and

Whereas, the process of obtaining permits and licenses is seen by business as costly and time consuming; and

Whereas, many other states have found various regulatory and permitting information, assistance, advocacy and 1-stop centers to be of assistance to the business community; and

Whereas, under its broad general mandate the Department of Economic & Community Development currently performs some information and assistance functions which might well be eliminated by the budget crisis since they are not currently explicitly required by law; and

Office of Policy and Legal Analysis DraftPage 1

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

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

Sec. 1. 5 MRSA §13062, sub-§4 is enacted to read:

4. Advocacy. The director shall advocate for business before the Legislature and the various state agencies with regard to proposed new laws and rules and rescinding existing laws and rules.

Sec. 2. 5 MRSA §13063, sub-§§3 & 4 are enacted to read:

3. Comprehensive Permit Information. The director shall develop and maintain a program to provide comprehensive information on permits required for business undertakings, projects and activities and to make that information available to any person. This program must function as follows:

A. Not later than 90 days from the effective date of this section each state agency required to review, approve or grant permits for business undertakings, projects, and activities shall report to the office in a form prescribed by the office on each type of review, approval and permit administered by the state agency. Application forms, applicable agency rules and the estimated time period necessary for permit application consideration based on experience and statutory or regulatory requirements must accompany each state agency report.

B. Each state agency required to review, approve or grant permits for business undertakings, projects and activities shall, subsequent to its report pursuant to paragraph A of this subsection, provide the office, for information purposes only, a report of any new permit or modification of any existing permit, together with applicable forms, rules, and information required under subsection 1 and 2 of this section regarding the new or modified permit. In order that the department's information may be current, no new or modified permit may become effective until 30 days after the office has been provided with the report, provided, however, that the 30 day period may be dispensed with for any new or modified permit adopted as an emergency measure in accordance with the provisions of the Administrative Procedure Act. When any new or modified

Office of Policy and Legal Analysis DraftPage 2

J-6

permit is adopted as an emergency action in accordance with the provisions of the Administrative Procedure Act, the office must be notified of such action by the adopting state agency within five days after the effective date of such action.

<u>C.</u> The office shall prepare an information file on state agency permit requirements upon receipt of the state agency reports and shall develop methods for its maintenance, revision, updating, and ready access.

D. The office shall provide comprehensive permit information on the basis of the information provided to it under this subsection. The office may prepare and distribute publications, guides, and other materials based upon the state agency reports and the information file, which will serve the convenience of permit applicants and which will explain permit requirements affecting business, including requirements involving multiple permit or multiple state agencies.

4. Permit Assistance. Within 90 days of the effective date of this act the director shall set up procedures to assist applicants in obtaining timely and efficient permit review and the resolution of issues arising therefrom. These procedures must include the following:

A. Any applicant for permits required for a business undertaking, project or activity must be allowed to confer with the office to obtain assistance in the prompt and efficient processing and review of applications.

B. The office shall, so far as possible, give assistance; and the director may designate an officer or employee of the office to act as an expediter with the purpose of:

(1) facilitating contacts for the applicant with state agencies responsible for processing and reviewing permit applications;

(2) arranging conferences to clarify the interest and requirements of any state agency with respect to permit applications;

(3) considering with state agencies the feasibility of consolidating hearings and data required of the applicant;

(4) assisting the applicant in the resolution of outstanding issues identified by state agencies, including delays experienced in permit review;

(5) coordinating federal, state, and local permit review actions to the extent practicable; and

(6) assigning processing priorities to applications based on their impact on the State's economy and conveying that prioritization to the appropriate department.

Sec. 3. Business License Center Study

The Department of Economic & Community Development shall convene a task force to study the feasibility of establishing a business license center. The Department shall invite all agencies that issue business licenses to appoint a representative to serve on the task force.

The purpose of the center would be to provide an accessible, and efficient one-stop system for the business community to acquire and maintain the state licenses necessary to conduct business. Objectives of a one-stop licensing system include reduction of the paperwork burden on business, and elimination of obsolete and duplicative licensing requirements.

The task force shall address and make recommendations on the types of licenses appropriate for processing at a one-stop licensing center, and on the delegation of legal authority to issue licenses. The task force shall make a progress report to the Committee on Housing and Economic Development within 60 days of the effective date of this Act with a copy to the Executive Director of the Legislative Council. The task force shall present its final report to these parties no later than January 30, 1993. The final report must include cost estimates for establishing and operating a business license center, and an implementation plan.

Sec. 4. Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.

STATEMENT OF FACT

This bill represents a majority recommendation of the Commission to Study State Permitting and Reporting Requirements. It is one of 4 bills and 1 resolution being submitted by this Commission.

This bill requires that the Department of Economic and Community Development act as an advocate and ombudsman for the business community relative to State laws and rules. It also

requires that the Department have a central clearing house for information on permitting. Lastly, it requires the Department to convene a task force to make recommendations relative to the establishment of a 1-stop permitting center.

Office of Policy and Legal Analysis DraftPage 5

LR #3641 Sponsor: Drafted by: JBK Date: 12/16/91 Doc. #3201LHS

(EMERGENCY)

SECOND REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

"Submitted pursuant to Public Law 1991, Chapter 606"

STATE OF MAINE

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

AN ACT to Revise the Purpose of the Board and Department of Environmental Protection and to Temporarily Exempt Certain Activities from Needing Permits Under Two Environmental Acts

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

Whereas, the Maine economy is experiencing a major recession which seriously impacts the creation of employment opportunities; and

Whereas, the time required to obtain an environmental permit is on occasion a detriment to the efficient conduct of business in Maine; and

Whereas, it is felt that temporarily exempting certain activities from the necessity of obtaining a permit under the Natural Resources Protection Act and the Site Location Act would provide a needed incentive for job creation; and Whereas, it is difficult for environmental protection agencies to give consideration to the impact on business in rulemaking under their present legislative mandate; and

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

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

Sec. 1. 38 MRSA §341-A, sub-§1 is amended to read:

1. Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State in a manner that enhances guality of life, economic climate and the protection of natural resources, while minimizing the impact of environmental regulations whenever possible. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

Sec. 2. 38 MRSA §341-B is amended to read:

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. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, review of the commissioner's licensing and enforcement actions and recommending changes in the law to the Legislature. The board shall perform its duties in a manner that enhances quality of life, economic climate and the protection of natural resources, while minimizing the impact of environmental regulations whenever possible.

Sec. 3. 38 MRSA §480-V is enacted to read:

§480-V. Temporary exemptions

A permit is not required for the following activities:

1. Gravel pits. Gravel pits covering up to 25 acres;

2. Subdivisions. All residential and commercial subdivisions;

J-11

3. Wetlands. Activities that effect no more than 1 acre of Class 3 wetlands;

4. Buildings. Buildings that meet any one of the following criteria:

A. Have a ground area of less than 75,000 square feet;
B. Have a floor area of less than 150,000 square feet; or
C. Have a total project area of less than 5 acres; and

5. Department of Transportation. Projects of the Department of Transportation which have been designed by licensed State engineers.

<u>Persons conducting these activities must abide by all</u> <u>applicable laws and rules and are subject to all enforcement</u> <u>action and penalties provided by law and rule.</u>

A person planning any activity listed in this subsection shall notify the department prior to its initiation, provide information required by the board, and notify the department on completion of the activity and on any variance in information concerning the activity from that reported to the department at the activity's inception.

The Commissioner shall adopt by rule activity fees sufficient to cover the cost of monitoring and inspecting activities covered by this subsection. A person may not initiate activities described in this subsection until these fees are paid.

This subsection is repealed April 1, 1994.

Sec. 4. 38 MRSA §488, sub-§8 is enacted to read:

8. Temporary exemptions. A permit is not required under this article for the following activities:

A. Gravel pits covering up to 25 acres;

B. All residential and commercial subdivisions;

<u>C. Activities that effect no more than 1 acre of Class 3</u> wetlands; and

D. Buildings that meet any one of the following criteria:

1. Have a ground area of less than 75,000 square feet; 2. Have a floor area of less than 150,000 square feet; or

3. Have a total project area of less than 5 acres.

Office of Policy and Legal Analysis DraftPage 3

E. Projects of the Department of Transportation which have been designed by licensed State engineers.

A person planning any activity listed in this subsection shall notify the department prior to its initiation, provide information required by the board, and notify the department on completion of the activity and on any variance in information concerning the activity from that reported to the department at the activity's inception.

Persons conducting these activities must abide by all applicable laws and rules and are subject to all monitoring and enforcement proceedings.

The Commission shall adopt by rule activity fees sufficient to cover the cost of monitoring and inspecting activities covered by this subsection. A person may not initiate such activities until these fees are paid.

This subsection is repealed April 1, 1994.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

STATEMENT OF FACT

This bill represents a majority recommendation of the Commission to Study State Permitting and Reporting Requirements. It is one of 4 bills and 1 resolution being submitted by this Commission.

This resolution indicates the Legislature's support for an institute for environmental studies which the University of Southern Maine proposes to establish.

This bill requires the Board and Department of Environmental Protection to perform their duties in a manner that includes the enhancement of the State's economic climate and that minimizes the impact of environmental regulations.

For a 2-year period, the bill exempts four types of activities from the necessity of obtaining permits under the Natural Resources Protection Act and the Site Location Law.

LR #3644 Sponsor: Drafted by: JBK Date: 12/16/91 Doc. #2661NRG

SECOND REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

"Submitted pursuant to Public Law 1991, Chapter 606"

STATE OF MAINE

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

AN ACT to Improve the Environmental Permitting Process

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

Sec. 1. 12 MRSA §685-B, sub-§1, ¶C is amended to read:

C. No person may commence any construction or operation of any development without a permit issued by the commission.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Development Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards and rules adopted by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the development meets the requirements of the Site Location of Development

Office of Policy and Legal Analysis DraftPage 1

Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; or the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet the requirements of the Site Location of Development Law, Title 38, sections 481 to 488; the Minimum Lot Size Law, sections 4807 to 4807-G; or the natural resource protection laws, Title 38, chapter 3, subchapter I, article 5-A; and the rules adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply.

The commission may establish standards within which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted hereunder. Any person aggrieved by a decision of the staff shall have the right to a review of that decision by the commission members.

The commission shall establish coordination and assistance procedures for all land use permits issued by agencies of the State for proposed development within the unorganized townships and plantations. Those procedures shall, to the extent practicable, ensure: the availability to the public of necessary information concerning those land use permits; the provision of assistance to applicants in obtaining those permits from state agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by applicants and the issuing agencies. State permit issuing agencies shall cooperate with the commission in the development and effectuation of coordination and assistance procedures.

When requesting review of an application by another state agency, the commission or staff with delegated authority to approve or deny applications shall indicate in writing the information requested and the amount of time allowed for the agency to respond. When an agency fails to respond to a request in the allotted time, the commission or staff shall decide upon the application without input from that agency unless the input is required for compliance with federal law or regulation.

Approval by the Board of Environmental Protection of a proposed development under Title 38, chapter 13, article 3, shall be a sufficient basis to support, but shall not require, a finding by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards and rules adopted by the commission. Disapproval by the Board of Environmental Protection of a proposed development under Title 38, chapter 13, article 3, shall be a sufficient basis to support, but shall not require, a finding by the commission that the proposed development does not meet the requirements of subsection 4, and of the land use standards and rules adopted by the commission.

Sec. 2. 12 MRSA §685-B, sub-§6-A is enacted to read:

6-A. Reports on final actions. The director shall develop reports that categorize final actions on all permit applications. The reports must clearly present in tabular form the number of applications receiving final action, by time period, by type of permit sought, by final action. Final action information must distinguish between decisions made by staff and made by the commission.

The first report generated must present information for all applications receiving final action between January 1, 1990 and December 31, 1991. The director may choose time intervals within this period most appropriate for consistent data presentation. The director shall submit this report to the joint standing committee of the Legislature with jurisdiction in energy and natural resources matters by January 1, 1993 and shall make copies of this report available to the public upon request.

Subsequent reports must be developed for all final actions in a calendar year beginning with 1992. The director shall submit a report of the previous year's final action activity to the joint standing committee of the Legislature with jurisdiction in energy and natural resources matters by March 1st of each year and shall make copies of this report available to the public upon request.

Sec. 3. 38 MRSA §341-A, sub-§5 is enacted to read:

5. Permit applications. The department shall provide the applicant, at time of application, an opportunity to state when a decision on the application is desired.

Sec. 4. 38 MRSA §342, sub-§ 8-A is enacted to read as follows:

8-A. Reports on final actions. The commissioner shall develop reports that categorize final actions on all license

Office of Policy and Legal Analysis DraftPage 3

J-16

and permit applications. The reports must clearly present in tabular form the number of applications receiving final action, by time period, by type of permit or license sought, by final action. Final action information must distinguish between action by the board and action by the commissioner.

The first report generated must present information for all applications receiving final action between January 1, 1990 and December 31, 1991. The department may choose time intervals within this period most appropriate for consistent data presentation. The commissioner shall submit this report to the joint standing committee of the Legislature with jurisdiction in energy and natural resources matters by January 1, 1993 and shall make copies of this report available to the public upon request.

Subsequent reports must be developed for all final actions in a calendar year beginning with 1992. The commissioner shall submit a report of the previous year's final action activity to the joint standing committee of the Legislature with jurisdiction in energy and natural resources matters by March 1st of each year and shall make copies of this report available to the public upon request.

Sec. 5. 38 MRSA §344, sub-§2-A, ¶¶A, B & C are repealed and replaced as follows:

A. For each permit for which a fee is charged the department shall establish a time schedule for action by the department on those permits. The schedules may be based on the lengths of time appropriate for different categories of permit applications. When the department determines, based on size, novelty, complexity or technical difficulty, that the amount of work required by the department in processing a permit application will exceed by a factor of two or more the amount of work assumed as the basis in establishing a permit application fee and can not be completed within the schedule for timely action applicable to that permit application, the department may establish alternate fee and time schedules. In setting up the time schedules, the Department shall consider as a desirable goal, but is not required to adopt, the processing of 60% of applications within 90 days, 75% within 120 days, 85% within 150, and 97% within 220 days.

B. Within 14 working days from receipt of an application, the Commissioner shall inform the applicant whether the permit meets the permit by rule provisions under subsection 7 and within 30 days from receipt of the application shall inform the applicant whether the application gualifies for the department's established fee and time schedule. If the

Office of Policy and Legal Analysis DraftPage 4

J-17

application does not qualify for either program, within an additional 30 days the department shall inform the applicant what the application fees and scheduled decision date are for the applicant's project.

C. If the applicant has provided a desired decision date, the department shall inform the applicant of the additional fees that would be required to meet the desired date or, if the date is less than 90 days from acceptance of the application and can not be met, the fees required to meet the earliest possible decision date. Notwithstanding section 352, if the applicant wishes a date earlier than the schedule for timely action, the Commissioner and the applicant shall agree on a fee and a time schedule. The Commissioner may not achieve such accelerated processing by delaying the processing of applications for which accelerated processing was not requested but shall utilize additional resources, if necessary, to meet the accelerated dates. Persons who feel that their petitions have been delayed may appeal under the provisions of section 346.

If the Commissioner does not respond within the time periods specified in paragraphs B and C, the applicant may appeal to the Fee and Time Schedule Advisory Committee which shall investigate and mediate the appeal.

Sec. 6. 38 MRSA 344, sub-§2-A, ¶¶D, E and F are enacted to read:

D. If the Commissioner fails to meet a time schedule in rule or agreed to with the applicant, the Commissioner shall return the applicant's fee and continue to work on the application. The Commissioner shall pay the applicant \$100 a day for each day that the decision on the application fails to meet the agreed upon date. The Commissioner may not disapprove an application solely to avoid the provisions of this paragraph. A person who feels that the Commissioner has violated this provision may appeal under the provisions of section 346.

E. The Commissioner shall appoint a Fee and Time Schedule Advisory Committee and shall consult with the committee on proposed fees and time schedules. The Committee must consist of representatives of industrial, commercial and small business organizations, municipalities and environmental organizations. The members shall serve without compensation.

F. When requesting review of an application by another state agency, the board or the commissioner shall indicate in writing the information requested and the amount of time allowed for the agency to respond. When an agency fails to respond to a request in the allotted time, the commissioner or board shall decide upon the application without input from that agency unless the input is required for compliance with federal law or regulation.

Sec. 7 38 MRSA §480-Q, sub-§13 is enacted to read:

13. Land Use Regulation Commission jurisdiction. Any activity subject to review by the Land Use Regulation Commission.

Sec. 8. 38 MRSA §352, sub-§1 is amended as follows:

1. Fees established. The commissioner shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications. For the purposes of this subchapter, costs are those necessary to carry out the purposes of this chapter and may include, but are not limited to, personnel costs, travel, supplies, legal and computer services.

Sec. 9. 38 MRSA §352, sub-§2, ¶A is amended as follows:

A. Processing fees must be assessed for costs incurred in determining the acceptability of an application for processing and in processing an application to determine whether it meets statutory and regulatory criteria. These costs include performing and analyzing any environmental monitoring necessary to act on the application.

Sec. 10. 38 MRSA §489-A is repealed and the following enacted in its place.

§489-A. Municipal Authority

Projects are exempt from permitting requirements under section 485-A if the conditions of this section are met.

1. Municipal Decision. The project is reviewed and issued a permit by a municipal reviewing authority pursuant to Title 30-A, chapter 185, subchapter I or chapter 187, subchapter IV and the following criteria are met.

A. The municipality issuing the permit possesses a certificate of consistency in accordance with Title 30-A, Chapter 187, subchapter II at the time the permit is issued.

J-19

B. The proposed development is not a mining activity or hazardous activity as defined in section 482.

C. The department does not exert state jurisdiction pursuant to subsection 3.

2. Review by the department. Upon acceptance as complete by the municipal reviewing authority of an application under this section:

A. The municipality shall submit to the commissioner within 14 days of acceptance by the municipal reviewing authority, one copy of the project application and one copy of the notification form provided by the commissioner;

B. The commissioner shall review the application and, within 45 days of application acceptance by the municipal reviewing authority, notify the municipality if the department intends to exercise jurisdiction; and

C. If the department does not act within the 45-day period, this inaction constitutes approval by the department and the municipal permits shall be effective upon issuance

3. State jurisdiction. The department shall review projects for municipalities certified under Title 30-A, c. 187 and may exert state jurisdiction if:

A. The local reviewing authority in which the project is located petitions the commissioner in writing;

B. The local reviewing authority, in a municipality adjoining the municipality in which a project is located, petitions the commissioner in writing; or

C. The proposed project is located in more than one municipality.

State jurisdiction must be exerted within 45 days of the application being accepted as complete by the municipal reviewing authority. The Commissioner exerts jurisdiction by notifying the municipal reviewing authority in writing of the department's decision to review the application under this subsection.

4. Appeal of decision by commissioner to review. 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 4 and 5.

Office of Policy and Legal Analysis DraftPage 7

5. Joint enforcement. Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may impose. Any permits issued or conditions imposed by a local authority must be enforced by the commissioner and the municipality that issued the permit.

Sec. 11. Land & Water Resources Council Study

1. Purpose. In keeping with its responsibility of evaluating Maine's environmental regulatory system, the Maine Land & Water Resources Council, as established by Executive Order 9 FY 80/81, shall report to the Joint Standing Committees on Energy and Natural Resources and Housing and Economic Development by January 1, 1993 concerning methods of simplifying the environmental permitting process in order to make it less time consuming for the applicant.

2. Prior research. In preparation of this report the Council shall review pertinent portions of the following documents:

- A. The Report of the Special Commission on Governmental Restructuring, 1991
- B. Report of the Governor's Business Task Force, Oct. 1990
- C. Maine Department of Environmental Protection Management Study, Peat, Marwick, Main, February 1988
- D. Report on the Environmental Regulation Process by the Maine Development Foundation, Jan. 1983
- E. Report to the Governor by the Citizens Commission to Evaluate the Department of Environmental Protection, Jan. 1982

3. Affected Interests. The Council shall consult with the following agencies or organizations:

- A. The Maine Business Advisory Council;
- B. The Maine Chamber of Commerce;
- C. The Maine Audubon Society;
- D. The Natural Resources Council of Maine;
- E. The Maine Development Foundation;
- F. The Ecology and Economics Forum (Eco-Eco); and
- G. The Environmental & Economic Council of Maine.

4. Specific Issues. The Council shall include, but not be limited to, the following in its study.

- A. Extending permit by rule;
- B. Extending the use of performance standards rather than design standards;
- C. Whether specificity & clarity in environmental laws and regulations should be increased and the issue of permit flexibility in this regard; and
- D. Requiring agencies to adhere to specific deadlines for permit processing, including the following issues:
 - (1) Whether deadlines should be set by the Legislature, the commissioner, or an advisory committee
 - (2) Whether these deadlines should vary by type of permit
 - (3) Whether these deadlines should be for all permits or a certain percent of permits, e.g. 85% in 90 days
 - (4) How to prevent the rejection of permits in order to meet deadline requirements
 - (5) What should be the penalties for failure to meet deadlines; e.g.
 - fines,
 - refunded fees,
 - approval without permit,
 - approval under permit by rule,
- E. Increasing cross-media regulation and enforcement.
- F. Utilizing economic incentives.

STATEMENT OF FACT

This bill represents a majority recommendation of the Commission to Study State Permitting and Reporting Requirements. It is one of 4 bills and 1 resolution being submitted by this Commission.

This bill requires the Department of Environmental Protection and the Land Use Regulation Commission to develop annual reports categorizing final permit actions. This bill directs the Department of Environmental Protection and the Land & Water Resources Council to act upon a permit application without input from other agencies if those agencies have failed to respond to a written request for review within the designated time.

J-22

Sections 4 and 5 of this bill require that the Department of Environmental Protection develop a time schedule for the various steps required in processing a permit. The bill requires the department to appoint a Fee and Schedule Advisory Committee to advise in the setting of these schedules. It provides guidelines on the percentage of permits that should be processed within various time periods. The bill requires that the department provide to applicants that wish an earlier completion date an indication of the additional fee that this would require. It requires that any application be processed within 90 days if a special fee is paid.

If the department fails to meet a scheduled or agreed upon time for completion, the department is required to refund the application fee, continue to process the permit and pay the applicant a \$100 a day fine for each day that processing exceeds the agreed completion date.

Section 6 of this bill exempts activities reviewed by the Land Use Regulation Commission from permitting under the Natural Resources Protection Act.

8

Section 7 abolishes duplicate review of projects under site law when the municipality reviewing the project has a comprehensive plan certified by the Office of Comprehensive Planning and the Department of Environmental Protection does not act to exert state jurisdiction.

Section 8 and 9 of the bill reasserts the authority of the Commissioner of the Department of Environmental Protection to charge application fees sufficient to cover all cost of processing permit applications.

Section 10 requires the Maine Land Use Regulation Commission to develop recommendations for the Joint Standing Committee on Energy and Natural Resources concerning methods of simplifying the environmental permitting process in order to make it less time consuming for the applicant. This Council was established by Executive Order 9FY 80/81, March 24, 1981.

Office of Policy and Legal Analysis DraftPage 10

J-23

LR #3645 Sponsor: Drafted by: JBK Date: 12/16/91 Doc. #3205LHS

SECOND REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

"Submitted pursuant to Public Law 1991, Chapter 606"

STATE OF MAINE

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

JOINT RESOLUTION SUPPORTING CREATION OF THE WOLFE NECK INSTITUTE

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

Whereas, one of the most difficult decisions facing the State is the balance between environmental protection and economic development; and

Whereas, one of the weakest components of environmental policy and regulation is the link between science and the policy making and regulatory process; and

Whereas, there is a lack of objective scientific data concerning many of the benefits and costs of environmental regulation and a lack of understanding of the methodologies for evaluating this data; and

Whereas, at the State level the environmental regulatory process has almost no research and development function; and

Whereas, it is very important and appropriate for a State such as Maine to have an institute for environmental studies; and

Whereas, the Environmental Protection Agency, through its new Office of Environmental Education and its Office of Technology Transfer and Regulatory Support, has recognized the importance of many of the things proposed by the University of Southern Maine and has funds available to help support such activities; and

Whereas, the University of Southern Maine has proposed an institute for environmental studies to be called the Wolfe Neck Institute which addresses these issues and problems, and which will include a baccalaureate degree in environmental science and policy, and applied research function available to the regulatory community and a conferencing and outreach function; now, therefore be it

Resolved: That we, the members of the 115th Legislature now assembled in the 2nd Regular Session, support the concept of an environmental study institute as proposed by the University of Southern Maine and support priority being given to its funding at such time when the State's budgetary situation allows such funding; and be it further

Resolved: That we respectfully request that the members of the Maine Congressional Delegation support efforts of the University of Southern Maine to obtain funding for their institute from the Office of Technology Transfer and Regulatory Support and the Environmental Education Grants Program of the Office of Environmental Education of the Environmental Protection Agency and assist the University in identifying other funding sources with that agency; and be it further

Resolved: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Chancellor and Chairman of the Board of the University of Maine System, to the President of the University of Southern Maine, and to each member of the Maine Congressional Delegation.

STATEMENT OF FACT

This bill represents a majority recommendation of the Commission to Study State Permitting and Reporting Requirements. It is one of 4 bills and 1 resolution being submitted by this Commission.

This resolution indicates the Legislature's support for an institute for environmental studies which the University of Southern Maine proposes to establish.

Office of Policy and Legal Analysis DraftPage 2

APPENDIX K

· ·

жарду (1770) 1912 - 2001 2014 - 2015 2014 - 2015 PATRICK + DATE MARGARETD, 27 + 1 PAULO 34 - 2 - 2 MILA M. OWELLEY Has ROY M. LEILIF 100 BRET V. MERCIN

STATE OF MAINE OFFICE OF POLICY AND LEGAL ANALYSIS ROOM 101/107/135 STATE HOUSE STATION 13 AUGUSTA, MAINE 04333 TEL.: (207) 289-1670

November 19, 1991

TO: Commission to Study State Permitting & Reporting Requirements

FROM: John B. Knox, Legislative Analyst

SUBJ: Case Studies

ATHA E. FREEMAN, DIRECTOR

NTAH OLFRIEDMAN LEL D. HIGGINS

OLARK N. N. DYTTMER

ED FLATEBO

JANE ORBETON

LLAMIT, BLIDDEN, URI, PRINCIPAL ANALYST DE 9. JONES: PRINCIPAL ANALYST

D. O. ELLIOTT, PRINCIPAL ANALYST

At its last meeting the commission asked for case studies of licensing requirements facing a typical grocery store, restaurant and hardware store. The results are attached. The first two were provided for the trade association for those businesses, while the third was provided by a store suggested by a commission member.

· · ·

.

.

RETAIL GROCERY STORES

LICENSE/PERMITS	AGENCY FREQU	ENCY		
(STATE OF MA	AINE)			
LOBSTER MEAT PERMIT	MARINE RESOURCES	ANNUAL		
RETAIL SEAFOOD DEALERS LICENSE	MARINE RESOURCES	ANNUAL		
INLAND FISH & WILDLIFE LICENSE	INLAND FISH & WILDLIFE	ANNUAL		
RETAIL SEED DEALERS LICENSE	DEPT. AGRICULTURE	ANNUAL		
FOOD ESTABLISHMENT LICENSE	DEPT. AGRICULTURE	ANNUAL		
NURSERY LICENSE	DEPT. AGRICULTURE	ANNUAL		
WIC AUTHORIZATION	HUMAN SERVICES	BI-ANNUAL		
BEER & WINE LICENSE	BUREAU OF ALCOHOL	ANNUAL		
LIQUOR LICENSE (AGENCY STORES)	BUREAU OF ALCOHOL	ANNUAL		
LOTTERY AGENT LICENSE	LOTTERY COMMISSION	ANNUAL		
ELEVATOR INSPECTION CERTIFICATE	BUREAU OF LABOR STANDARDS	ANNUAL		
MONEY ORDER AGENTS LICENSE	BUREAU OF BAKING	ANNUAL		
SALES TAX CERTIFICATE	TAXATION	ONE TIME		
(CITY)				
VICTUALERS PERMIT	CITY OF AUGUSTA	ANNUAL		
(FEDERAL)				
FEDERAL AGRICULTURE COMMODITIES AGENT LICENSE	USDA	ONE TIME		
FEDERAL FOOD STAMP PROGRAM	USDA	ONE TIME		

US TREASURY

US TREASURY

FEDERAL EXCISE TAX

.

B.I.T.F. (ALCOHOL)

K-2

ONE TIME

ANNUAL

The following is a partial list of requirements for permits, licenses, posters and forms that must be kept by persons operating restaurants and hotels in the State of Maine. These may include federal as well as state. We would suggest you contact the agency involved to see if the rule applies to you.

. . -

Wage and Hour Poster Maine Dept. of Manpower Affairs Notice relative to the regulations Employment Security Commission of employment of men, women and Unemployment Compensation Div. children (required) 20 Union Street State unemployment number issued Augusta, ME 04333 Child Labor law work permit Superintendent of School where (under 16) restaurant is located Wage and Hour poster (required) U.S. Department of Labor Employment Standards Admin. Wage and Hour Division Augusta, ME 04333 289-3331 Poster (optional) Maine Human Rights Commission 31 Western Ave. Augusta, ME 04333 289-2326 Poster & Forms (required) Industrial Accident Commission Capitol Shopping Center Augusta, ME 04333 289-2259 OSHA Poster and three forms Department of Human Services (required) State House Augusta, ME 04333 289-2226 Eating License Department of Health & Welfare (based on seating capacity Division of Health & Engineering \$3 per seat/ min 45 Augusta, ME 04333 max \$125) 289-5671 Victualers License Municipal office (local) Liquor License Maine Bureau of Alcoholic Bev. Entertainment License Augusta, ME 04333 289-3720 or 289-3721 Retail Seafood Dealers License Dept. of Marine Resources \$85 State House Augusta, ME 04333 289-6550 Bureau of Alcohol & Tobacco and Firearms Special Tax, Liquor, Beer & Wine due June 30-each year (212) 264-4651 \$250

K-3

Inland Commercial Fish License Inland Fisheries & Wildlife (Importing & Selling State House (Importing & Selling fresh water fish - \$21) Augusta, ME 04333 289-2571 Beano License - Resort Hotels only Maine State Police 36 Hospital Street Augusta, ME 04330 289-3028 Dance License - \$15 State Fire Marshall Office Dept. of Public Safety State Street Augusta, ME 04330 Life Safety Code State Sprinkler Code Electric Code Oil Burners Code 289-3473 NETA Cooking Ventilation Code *Title 25 Sec. 2448 (building permit * Laws require professional for any new or reconstruction) architectural plans be reviewed by Fire Marshall for any new construction or renovations over \$500 Internal Revenue Service Federal Employers I.D. Number P.O. Box 1040 Maine 800-424-1040 Sellers Certificate Dept. of Finance & Admin. Bureau of Taxation Sales Tax Division State House Augusta, ME 04333 289-2336 Withholding System Dept of Finance & Admin. (Withholding Income Tax Number) Bureau of Taxation Maine Income Tax Division State House Augusta, ME 04333 289-3695 Dance License Local Municipal Clerk Exit Signs Local Fire Department Local Fire Department Seating Capacity Sign We recommend: Doing Business in Maine (\$4.00) A Guide to Maine Business Regulations and Assistance Programs Available from: Business Answers Office of Business Development State House Station #59 Augusta, ME 04333 This information compiled and distributed by the Maine Restaurant

Association as another service to our members.

RETAIL HARDWARE STORE: REQUIRED LICENSES *

- .

License	Agency Issuing License	<u> Cost</u> <u>Annually</u>
Pet Shop License	Animal Welfare Board	\$ 50
Pesticides License	Dept. of Agriculture	\$20
Seed License	Dept. of Agriculture	\$ 5
Nurserymen's License	Dept. of Agriculture	\$5
Live Bail Retail License	Dept. of Inland Fisheries & Wildlife	\$ 10
Supplemental Marine Bait License	Dept. Marine Resources	\$ 13
Oil & Solid Fuel License	Oil & Solid Fuel Board	\$150
Master Plumber's License	Dept. of Professional & Financial Regulation	\$100
	Total	\$353

* This list is specific to a particular family-owned hardware store. Licenses required will vary somewhat with the products sold and services offered by a store.

-

2643 NRG

K-5

•

APPENDIX L

•

••

 Z_{∞}

N

St ENVIRONAIEN A STATE OF MAINE Department of Environmental Protection ATE OF MANY MAIN OFFICE: RAY BUILDING HOSPITAL STREET, AUGUSTA

MAIL ADDRESS: State House Stat or. 17, Augusta 04200 207-289-7588

JOHN R. MCKERNAN, JR. GOVERNOR

DEAN C. MARRIOTT COMMISSIONER

TOT Jill Inpoliti, Legislative Analyst

FROM: Dean 🔫 Marriott, Commissioner

SUBJ: Your Request for Information

DATE: November 27, 1991

I have received your request for information dated November 25, 1991 on behalf of the Commission to Study State Permitting and Reporting Requirements. Unfortunately, our computer system does not allow us to query the data base, so we have to manually calculate some information from the printouts.

Number of Pending Applications as of 9/30/91

Air Emissions License	134
Water Discharge License (including	
Overboard Discharge)	475
Site Location Permit	198
Natural Resources Protection Act Permit	174
Oil/Hazardous Materials License	34
Solid Waste License	331
Other	30
TOTAL	1376

It is important to remember that many of these applications are for renewals that do not interfere with the operation of the project while their renewal is pending action.

Unfortunately, our automated system has not matured enough yet to compare this to previous years. I was able to look back through some previous Land Bureau Annual Reports to gather some numbers for comparison. The Land Bureau caseload at the end of this September was 372. Comparable numbers from previous years are:

1988	818
1989	670
1990	615
1991	372
	1989 1990

To estimate review times for all types of permits is not possible through an automated system. Attached is a chart from the Land Bureau's 1990 Annual Report that could be helpful. L-1

BUREAU OF LAND QUALITY CONTROL 1990 PROCESSING TIMES

ACCEPT	ED	TO	SIGNED

HYDRO/DAMS

62X < 3 MOS.

NRPA

->> New (404)

Transfer (5)

Cond. Comp. (3)

SITE

→ New (95)

Amend (16)

→ Mod. (146)

Cond. Comp. (45)

Trans. (15)

497 < 5 MOS.
87% < 9 MOS.
100Z < 3 MOS.
807 < 1 Mos.
677 < 2 MOS.
1007 < 3 MOS.
53% < 7 MOS.
851 < 12 MOS.
50% < 6 MOS.
75% < 8 MOS.
537 < 2 MOS.
807 < 5 MOS.

60Z < 2 MOS. 80Z < 3 MOS. 53Z < 1 MOS.

801 < 2 MOS.

APPENDIX M

.

•

••

·

.

State Regulations & Economic Competitiveness

As is the case with many legislative studies, the Commission was faced with a very politically charged subject, one for which it was difficult to get impartial testimony. The Commission did find the publication <u>State</u> <u>Regulations & Economic Competitiveness</u> by SRI International (Bib. 27) to be of some assistance in putting the subject of regulation and permitting in Maine into some perspective. Below are some of the observations from that publication:

- Α. Cost-benefit analyses might be broadened to include the costs and benefits of a regulatory change in terms of economic competitiveness. Or, regulatory impact analyses might begin to consider the impacts on competitiveness as well as on business and government expenditures. One set of criteria would look at the impact of reform on the performance of the overall economy, particularly in terms of measures that reflect a state's ability to compete in the global economy. Second, states might also examine the impact of regulation on the availability of the inputs or factors that are critical to the state's ability to maintain its competitiveness. However, the process of introducing competitiveness into state administrative processes regarding regulation is not an easy one. Few states conduct complete cost-benefit analyses of proposed reforms. These calculations are difficult and complex even before economic competitiveness issues are included. Estimating the economic competitiveness impacts of regulation is much more difficult, because projecting the future benefits is a highly speculative endeavor.
- B. Research has show that the costs of environmental regulations in general have not yet resulted in the movement of industry. This is largely because at present the difference in cost resulting from environmental regulations is far less important to firms than factors such as access to markets, quality and availability of labor, and transportation costs. While regulations may reduce innovation and in some cases may create enough uncertainty to cause individual firms to choose not to open a branch plan or new facility, the primary result of these costs is not the closure of facilities or the loss of jobs, but the choice of many firms not to comply with regulations, and therefore the worsening of the toxics problem.
- C. It appears that regulations governing hazardous waste have a disproportionate impact on small businesses that generate small quantities of waste. This is so for two reasons. First, there is a high fixed cost for complying with regulations. In addition, waste-disposal companies typically charge cheaper rates

for hauling or treating large quantities of waste. Costs of compliance have a major impact on the prices these small businesses charge to their customers.

- D. Louisiana enacted a series of laws that provided new incentives for industry to take a more proactive stand in addressing the toxics issue. These laws included one promoting waste reduction as an alternative to disposal, and a law that established an Alternative Technologies Research and Development Trust Fund, funded by permit fees, that makes grants to develop new methods for destroying, reducing, recycling, and disposing of hazardous wastes.
- E. These contrasting cases suggest that while competitiveness is a key part of the debate over toxics regulation in many states, a clear consensus on the kinds of reforms that are necessary to promote competitiveness has not emerged.
- F. The economic competitiveness connection is increasingly an important part of the regulatory development process because regulators and environmentalists alike are realizing that regulations must be structured to facilitate industry compliance.
- G. Some states have used more participatory mediation processes as an alternative to the traditional regulatory process. These collaborative approaches have not always been fully successful, however.
- H. The newest approach is one that allows local governments more flexibility and control in developing site-specific programs.
- I. An even more advanced approach is being applied in the EPA's Integrated Environmental Management Projects, which involves an attempt to look simultaneously across different media.
- J. States have also been active throughout this decade in designing regulatory alternatives that provide industry with more positive incentives, incentives for industry to be more proactive in complying with existing regulations, and developing new technologies and methods for more effective toxics management.
- K. In another approach to more effective toxics management, many states have recognized that the current process that firms must go through to comply with regulations in itself often imposes high costs. Many states have created new programs or

administrative processes aimed at speeding up the permitting process. However, the majority of the states have had difficulty addressing the issue of how to simplify a process that involves so many jurisdictions.

- L. States have also taken steps to give industry positive incentives to consider and use a broader range of alternatives for waste management, including waste treatment, waste minimization, and recycling. The focus here has been to provide financial incentives or, in some cases, subsidies.
- M. Competitiveness concerns may also have been less of an issue in the debates over toxics because the implications of these regulations for competitiveness are much less clear. The regulations of toxic substances have complex implications for competitiveness - some of which are positive, some negative. These implications are also difficult to quantify, and therefore difficult to understand and to deal with on a policy level. Thus, the complexity of the competitiveness aspects of these regulations may also inhibit the extent to which they are included in discussions over reform.

In sum, the debate over regulatory reform has clearly broadened to include competitiveness factors in those issues in which the regulatory system and its goals are clearly established. The next step will be to move to further broaden the debate over those issues where both the regulatory issues and goals and the competitiveness implications of regulation are more complex. this will likely occur as the issue of competitiveness continues to emerge as a key state priority. However, to be effective in moving toward a better balancing of competitiveness and social concerns, the broader debate must move beyond discussions over the obvious costs of compliance, or the benefits of deregulation, to consider the more varied impacts that regulation can have on economic competitiveness.

N. Some states have begun to modify the administrative processes for regulatory reform in order to consider the economic competitiveness implications of regulations. This has resulted in efforts to expand the range of agencies or organizations that provide input into the regulatory process.

- O. States that have tried to foster more consideration of competitiveness issues by fostering greater communication and sensitivity between state agencies have found that this, too, can be difficult. Issues of economic development and regulation have traditionally been handled in different departments that have relatively little contact with each other. Many states that have attempted to do so often find that a period of information-sharing and education must take place before these new cooperative efforts actually result in new policy approaches. Therefore, new regulatory processes are required that make the link clearer between regulations and economic competitiveness. These processes are essential for institutionalizing this new perspective and, hence, moving beyond the ad hoc.
- P. The first lesson of this report is that policy makers must begin with a deeper understanding of how regulations can affect economic competitiveness. While current debates cover the impacts of regulation on competitiveness in a broad way, these debates often solely address the issue of the direct costs of the regulation, or fail to incorporate the broad range of competitiveness implications that may exist. For example, in today's global economy, many states must seek to compete on the basis of value-added as well as cost in order to preserve their standard of living.

APPENDIX N

٠

_

Manager State Reaction in Manager

OF ENVIRONMENTAL STATE OF MAINE Department of Environmental Protection

> MAIN OFFICE: BAY BUILDING, HOSPITAL STREET, AUGUSTA MAIL ADDRESS: State House Station 17, Augusta, 04333 207-289-7688

JOHN R. MCKERNAN, JR. GOVERNOR

STATE OF MAIN

DEAN C. MARRIOTT COMMISSIONER

TO: Members of the Commission to Study State Permitting and Reporting Requirements

FROM: Dean C. Marriott, Commissioner

DATE: October 30, 1991

INTRODUCTION

Some of you no doubt believe that Maine is overly restrictive when it comes to environmental protection. Many of you would agree with the following statement:

"We don't begrudge being made to spend money to solve a problem, but there is a point when the regulations get so burdensome that you're fixing problems that don't exist."

What's interesting is that this statement was recently made by the President of the Louisiana Chemical Association, and that Louisiana was ranked 49th by the same study that ranked Maine 2nd in the country for overall environmental quality. It seems some people argue about environmental protection even where programs are evaluated as ineffective.

Recognizing this, I offer the following observations on both the value and the costs of environmental protection.

printed on recycled paper

DEGIONIAL OFFICES

The Importance of Environmental Protection

In 1989, the Commission on Maine's Future found:

"Four Mainers in five agree that the natural beauty of Maine should be preserved, even if it means spending more public money on interfering with private investment decisions."

"By a two-to-one margin, Mainers disagree with the statement that our first priority should be to get quality jobs, not to preserve natural resources."

Given these findings, it may be tempting to place the notion of environmental protection on some kind of higher ground--as a "feel good" kind of "cause." I submit that it is, but that it is also much more: it is good for public health and good for the economy.

Consider public health: its protection is the reference point for every environmental standard we have. Despite this, we don't always look at program "worth" in public health terms .

8

Let me give an example. There has been a great deal of attention paid to estimates that it will cost \$30 billion a year to comply with the recent amendments to the Clean Air Act. That figure is rarely put in the context of the \$660 billion we pay annually for health care. Yet when we acknowledge that air pollution is this country's number one threat to public health, it clearly should be.

Context is also important when we talk of the impact environmental protection has on the growth of business and industry. I have not seen much made of the fact that, in Europe, the business of controlling pollution is now a \$35 billion dollar industry and it is growing. Here in the United States, a 1989 study reported that spending by business for air pollution cleanup alone <u>created</u> 85,000 jobs and generated \$1.3 billion in corporate profits-a finding that corroborates a 1990 national survey in which 82% of the respondents said that cleaning the environment means more jobs and higher income levels.

In Maine, this is certainly true. In the past decade, the fastest growing segment of our economy has been the service industry, and environmental services from consulting to cleanup have been a major factor in this growth. As significant as this is, perhaps more so is the fact that a clean, healthy environment supports the continued viability of several mainstays of Maine's economy:

-2-

Forestry - \$5 billion industry/employs 30,000 Tourism - \$2 billion industry/employs 66,000 Fish & Wildlife - \$1 billion industry Commercial Fishing - \$450 million industry/employs 12,000 Agriculture - \$500 million industry/employs 35,000 Permitting/Reporting Requirements October 30, 1991 Page three

The bottom line is that when we talk about the importance of environmental protection, we are talking about more than just a good idea. We are also talking about real, measurable health and economic benefits that are too often overlooked when numbers are the focus of our attention.

Environmental Protection in Maine

1992 marks the 20th anniversary of the creation of the Department of Environmental Protection. Our environment is dramatically cleaner than when we were created and that has come through the growth and development of mandated programs and staff expertise. Today we have 370 staff dealing with air quality, water quality, hazardous waste, solid waste, oil spills, asbestos management, hydro-electric development, land development likely to impact the environment, and protection of natural resources such as: sand dunes, great ponds, wetlands and significant wildlife habitat,

Clearly our plate is full, but our program is not overzealous. In fact, a recent study of all fifty states' environmental programs reported that Maine taxpayer support of environmental programs falls right in the middle of the pack when compared with the other states. With this "average" level of financial support, it is interesting to note that Maine ranks second best in the country in terms of environmental quality and accomplishments.

This is not to say that Maine has the second most stringent environmental program in the country. It says, in fact, that we have the second <u>best</u>. It is something to be extremely proud of -- it demonstrates that Maine gets a tremendous amount of value for the amount of funding it provides to the program.

This is especially important to recognize as we assess our current financial situation. Chart 1 illustrates the number and type of licensing activities conducted during 1990. Our General Fund support is depicted on Chart 2. Following the budget cuts expected this fall, our support will dip below that for FY89, DEP staff paid out of the General Fund will drop to FY86 levels. (See Chart 3.) That we have a track record of effectively using the resources we receive is highly relevant under these kinds of conditions. Permitting/Reporting Requirements October 30, 1991 Page four

Improving the Environmental Protection Process in Maine

Facing the current challenges of diminishing resources, we acknowledge the need to do our job even better. In fact, over the past few years the Department has succeeded in improving the efficiency of how we conduct our affairs.

- The Department has reduced processing time for applicants awaiting a decision on their application. The number of pending applications in the Land Bureau has been cut by 68% since the Summer of 1988. The average time a permit is in the system has also been cut by one-third.
- We have expedited permitting decisions through the adoption of innovative programs. The DEP established, and recently expanded, the Permit-By-Rule program for certain applications filed under the Natural Resources Protection Act. Last year over 2500 people took advantage of this innovation. We developed a program so that some projects can be reviewed and certified at the municipal level. This eliminates the duplication of state and municipal review for some projects. Last session we proposed LD 1540 which would expand this to even more towns. It was carried over to the upcoming session.
- Through the provisions of LD 1283, enacted during the last legislative session, the Department is able to contract with private firms for full or partial application review. We expect that this will be extremely helpful as we continue to stress delivery of service with limited staff resources.
- The DEP has invested in regionalization to place more staff in the field closer to where development activities are occurring. Licensing is now being done in our offices located in Portland, Bangor and Presque Isle. We are committed to continuing this effort to put our staff in closer touch with the public and the regulated community.

DEP has recognized the need to make improvements and have made them as shown in these few examples. There are many more available and more are in the works.

What the Future Holds

Looking ahead, increased automation could further improve productivity by up to twenty percent. We are committed to continue with investments in providing staff with the tools needed to efficiently conduct their business even during these difficult times. We will expand our permit-by-rule program, press for more municipal delegation to eliminate duplication, and work with applicants to improve the process.

Having said this, I would like to address my own concerns with the proceedings we are involved in today.

-4-

Permitting/Reporting Requirements October 30, 1991 Page five

The Statutory Charge of This Commission

There is no reason for this Commission to focus on environmental programs of Maine. Environmental regulation is only a fraction of the red tape business must deal with in this state. To operate almost any place of business, one must deal with multiple federal, state and local requirements, each of which takes time and costs money. I suggest it would be appropriate to focus on the full range of government oversight - not just environmental protection.

I am dismayed that this Commission was formed as a hidden part of a bill heard late in the last session and without reference to the appropriate committee of the Legislature. I am also concerned that you plan to use LD 1372, the Chamber Bill, as the major focus of your attention. That bill was held over for consideration by the Energy and Natural Resources Committee. That is where the Chamber's Bill should be, and will be, debated fully.

- - -

N-5

CHART 1

Department of Environmental Protection Licensing Activities-Fiscal Year 1991

Air Bureau

- emission source licenses processed
 - 261 compliance inspections
- 343 investigation of alleged violations

Land Bureau

3,282	total applications processed including:
333	Site Location
203	Coastal Wetlands
2,348	permit by rule

1,484 investigation of alleged violations

Hazardous Materials & Solid Waste Control

1 721	memory to surface and successful states of the states of t
1,731	response to surface and ground water oil spills

Hazardous waste facilities applications processed:

22 treatment	
--------------	--

16	closure plans	

3 storage facilities

- 135 hazardous waste, waste oil and biomedical waste transporters licensed
- 35,000 hazardous waste manifests processed

Solid waste applications processed:

- 188 residual landspreading sites
- 79 septage sites
- 23 transfer stations
- 13 compost sites

Water Bureau

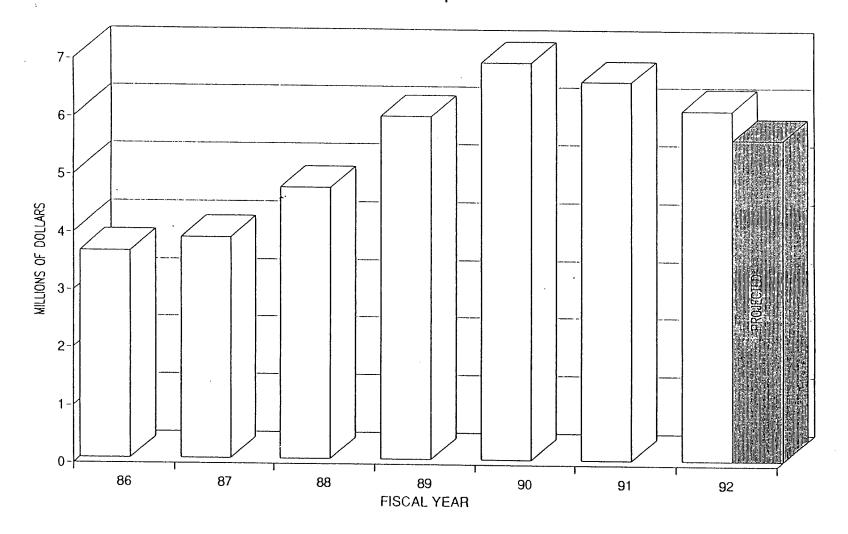
Waste discharge licenses processed:

- 37 municipal
- 35 industrial
- 170 commercial
- 373 residential

Inspections of wastewater treatment facilities:

- 336 municipal
- 134 industrial
- 3,614 residential/commercial
- 205 investigation of alleged violations

CHART 2 .



Department of Environmental Protection General Fund Expenditures

October 30, 1991

:

ι.

7-7

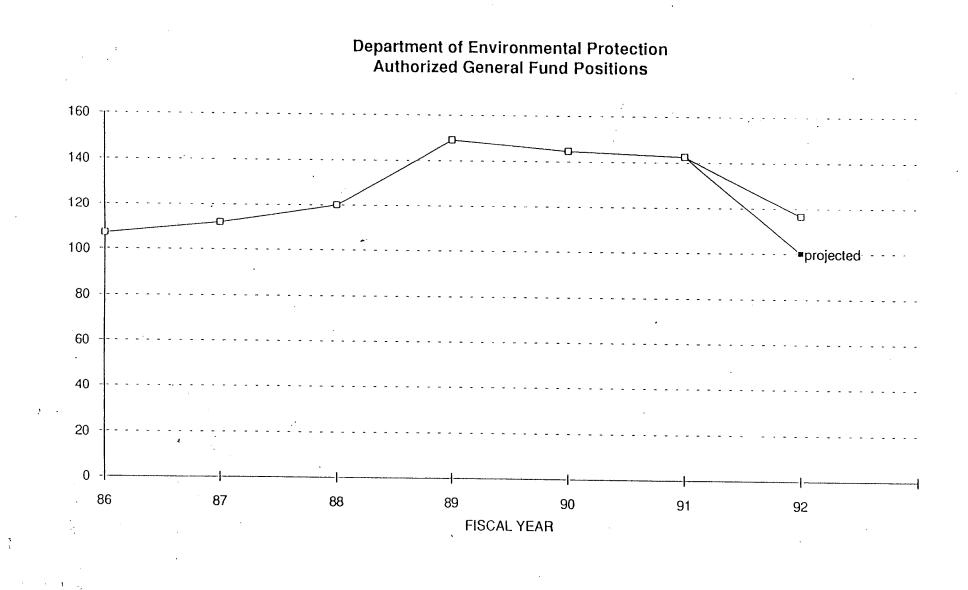


CHART 3

N-8

٩