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**STATE OF MAINE
119TH LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the**

**TASK FORCE TO STUDY
THE OPERATION OF AND SUPPORT FOR
THE BOARD OF ENVIRONMENTAL PROTECTION**

January 2000

Staff:

Amy B. Holland, Legislative Analyst

**Office of Policy & Legal Analysis
13 State House Station
Augusta, Maine 04333
(207)287-1670**

Members:

**Sen. John M. Nutting, Chair
Rep. John L. Martin, Chair
Sen. James D. Libby
Rep. Scott W. Cowger
Rep. David L. Tobin
Rep. Robert A. Daigle**

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EXECUTIVE SUMMARY

The Task Force to Study the Operation of and Support for the Board of Environmental Protection was established by the 119th Maine Legislature to review the structure and operation of the Board of Environmental Protection to determine whether the board is operating as an independent body or as part of the executive branch, whether the board has adequate administrative and technical staff and whether the board's structure and operation provide for credible, fair and responsible public participation in the decision-making process.

The task force, composed of 6 members of the Joint Standing Committee on Natural Resources, was convened on September 29, 1999 and met 5 times over the 1999 interim. In conducting its review of the board, the task force held two public hearings and met with current board members, the Department of Environmental Protection, the Attorney General's Office, representatives of business interests and environmental interests and citizens.

The task force was very impressed with the citizen members of the board, both past and present, including their commitment, their knowledge of the issues and their hard work. However, in reviewing the 3 broad areas specified in the implementing legislation - the independence of the board from the executive branch, the adequacy of the board's staff and the opportunity for public participation in the decision-making process - the task force heard several areas of concerns, which are reflected in the task force's findings and recommendations.

In summary, the task force finds that the Board of Environmental Protection must operate as an independent body in order to fulfill its purpose, but that the board is perceived by the regulated and environmental communities as not sufficiently independent from the department. The task force further finds that the Board of Environmental Protection needs a permanent professional staff of its own in order to serve the people of the State as a strong, informed and independent decision-making body. The task force also finds that public participation in board proceedings is an essential part of the board's decision-making process and that opportunities for the public to address the board, including on the day of final rule adoption, must be strengthened. In addition, the task force finds that board members are overly cautious in their interpretation of the conflict of interest laws as they apply to themselves, thereby unnecessarily denying the full board the benefit of their expertise.

To address these findings, the task force makes the following recommendations.

- **The task force recommends that the Legislature amend the conflict of interest provisions in Title 38 to require the Board to provide a non-binding advisory opinion to a member as to whether that member has a conflict of interest in any particular proceeding.**

- **The task force recommends that the Legislature amend the Administrative Procedure Act as it applies to the Board of Environmental Protection to allow members of the public to comment on final rule adoption day, provided the comment is directly related to comments received during the formal rulemaking comment period or is in response to changes to the proposed rule.**
- **The task force recommends that the Legislature provide the Board of Environmental Protection with a professional, independent and objective Executive Director to assist the board in fulfilling its purpose of providing informed, independent and timely decisions. The Executive Director position should be supported by the Board of Environmental Protection Fund.**
- **The task force recommends that the Legislature transfer the Deputy Commissioner position from the Board of Environmental Protection Fund to the General Fund.**

I. Introduction

The Task Force to Study the Operation of and Support for the Board of Environmental Protection was established by the 119th Maine Legislature through Resolves of 1999, chapter 85.¹ The duties of the task force were to review the structure and operation of the Board of Environmental Protection to determine whether the board is operating as an independent body or as part of the executive branch, whether the board has adequate administrative and technical staff and whether the board's structure and operation provide for credible, fair and responsible public participation in the decision-making process.

The task force, composed of 6 legislators who are all members of the Joint Standing Committee on Natural Resources, was convened on September 29, 1999 and met 5 times over the 1999 interim. Two of the meetings were public hearings, held in Portland and Orono, at which the public and former board members were invited to comment on the structure and operation of the board. The task force received comments, including both testimony at the hearings and written comments, from current and former board members, representatives of business interests having frequent contact with the board, a representative of environmental interests and citizens. In addition, the task force invited the board, the Department of Environmental Protection and the Attorney General's Office to participate in discussions on the issues raised at the hearings. Current board members showed a keen interest in the work of the task force, and at the fourth task force meeting all 8 current members² of the board attended and participated in the discussion.

The task force is very impressed with the citizen members of the board, both past and present, including their commitment, their knowledge of the issues and their hard work. Task force members do not in any way want their recommendations in this report to suggest that the board is not doing its job or serving the State of Maine in a credible manner. However, the task force did hear some frustrations from board members in the areas of what their duties are, procedures related to final rule adoption, and receiving public comment. The task force attempts to address these concerns in its recommendations.

As part of its study, the task force reviewed a 1989 report by a legislative subcommittee that evaluated the board.³ The task force notes that several of its findings are similar to the findings of that subcommittee, including that the opportunity for public input into environmental decisions should be improved and that the board should be provided with a small professional staff independent of the department. Although several

¹ LD 1256. See Appendix A for the Resolve.

² At the time of this study, 2 positions on the Board were vacant, so there were 8 members on the Board.

³ *Final Report of the Subcommittee to Evaluate the Board of Environmental Protection*. Office of Policy and Legal Analysis. December 1989.

changes were made to the statutes governing the board as a result of that report, the board was never provided with its own permanent professional staff and thus several of the issues highlighted in that report remain issues today.

The task force is required to report its findings to the Joint Standing Committee on Natural Resources. The task force is recommending certain statutory changes to the full committee, which has authority to report out legislation to the Second Regular Session of the 119th Legislature concerning the findings of the task force.

II. Current Structure and Operation of the Board of Environmental Protection

Membership

The Board of Environmental Protection is composed of 10 members appointed by the Governor and confirmed by the Legislature.⁴ Members are chosen “to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation” of the environmental laws. To ensure broad geographic representation, at least 4 members must be residents of the First Congressional District and at least 4 members must be residents of the Second Congressional District. The statute does not require members to have specific technical expertise. One member of the board is appointed by the Governor to serve as chair. Members of the board receive compensation at the rate of \$55 per day for attendance at authorized meetings of the board, plus expenses.

Purpose and Duties

The board’s statutory purpose 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.”⁵ The duties of the board fall into 3 broad areas: rulemaking, licensing and enforcement.

Rulemaking: The board’s rulemaking responsibilities include adopting, amending or repealing reasonable rules necessary for the interpretation, implementation and enforcement of the laws administered by the Department of Environmental Protection and rules necessary for the conduct of its business. Rulemaking by the board is subject to the Maine Administrative Procedure Act.

Licensing: The board’s licensing responsibilities include making decisions on certain permit and license applications, deciding appeals of final license or permit decisions made by the Commissioner and modifying, revoking or suspending a license when the licensee has violated a condition of the license, the licensed activity poses a threat to human health or the environment, or in certain other situations. The board may vote to assume jurisdiction of an application for a permit or license when it finds that the application involves a policy, rule or law that the board has not previously interpreted; involves important policy questions that the board has not resolved; involves important policy questions or interpretations of a rule or law that require reexamination; or has generated substantial public interest.

⁴ At the time of this study, 2 positions on the Board were vacant, so there were 8 members on the Board.

⁵ 38 MRSA §341-B.

Enforcement: The board's enforcement responsibilities include advising the commissioner on enforcement priorities and activities, advising the commissioner on the adequacy of penalties and enforcement activities and approving administrative consent agreements.

Conflict of Interest

Members of the board are governed by the conflict of interest provisions applicable to executive employees. Under these provisions, it is a civil violation subject to a penalty of not more than \$1,000 if a member "personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest: A. Himself, his spouse or his dependent children; B. His partners; C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment; D. An organization in which he has a direct and substantial financial interest; or E. Any person with whom he has been associated as a partner or a fellow shareholder in a professional service corporation... during the preceding year."⁶

Staffing

In 1990 the Legislature gave the board the statutory authority to hire an executive director, allocated funds for an Executive Director position and transferred a Clerk Typist III position to the board.⁷ The statute provides that the staff of the board "must be hired by the chair with the consent of the board."⁸

Although the chair of the board selected a person to fill the position of Executive Director and offered her the position, the position was never filled because the Governor directed that the position not be funded because of a budget crisis. Eventually the position was removed from the budget and in 1996 the law establishing the Executive Director's salary within Range 88 was repealed.⁹

References to the board's staff remain in statute, including a provision defining the position of Executive Director of the Board of Environmental Protection as a major policy-influencing position subject to the laws relating to unclassified service¹⁰ and the provision that staff must be hired by the chair with the consent of the board. Current law also specifies that the executive director directs the daily operations of the board staff and that professional staff of the board are unclassified and may be removed, only for cause, by the chair with consent of the board.¹¹

⁶ 5 MRSA §18.

⁷ P.L. 1989, c. 890.

⁸ 38 MRSA §341-F, sub-§10.

⁹ P.L. 1995, c. 665, §K-1.

¹⁰ 5 MRSA §938-A.

¹¹ 38 MRSA §341-F.

Currently, 2 positions within the Department of Environmental Protection are funded through the Board of Environmental Protection Fund: the Deputy Commissioner and an Administrative Secretary. The Administrative Secretary operates as the principal liaison and administrative support to the board. According to the current Deputy Commissioner, approximately 15-20% of his time is spent on work related to the Board and according to the Administrative Secretary, approximately 95% of her time is spent on work for the Board.

Board of Environmental Protection Fund

The Board of Environmental Protection Fund was established in 1990 to be used by the board to carry out its duties. The fund currently pays for the per diem of board members, expenses of the board, and the full salary and benefits for the Deputy Commissioner position and the Administrative Secretary position.

Revenue to the fund comes from transfers from 4 other dedicated funds within the department: the Maine Environmental Protection Fund, the Maine Coastal and Inland Surface Oil Clean-up Fund, the Ground Water Oil Clean-up Fund and the Maine Hazardous Waste Fund. The amount transferred from each fund is proportional to that fund's contribution to the total special revenues received by those funds and the total amount transferred is capped at \$250,000 annually. In fiscal year 1999, the largest portion of the fund's revenues, approximately 60%, were transferred from the Ground Water Oil Clean-up Fund.

III. Issues and Findings

The resolve that created the task force specified 3 issues for the task force to review: the independence of the board from the executive branch, the adequacy of the board's staff and the opportunity for public participation in the decision-making process. As the work of the task force progressed, it became clear that these issues are intertwined and that public perception of these issues is at least as important as the issues themselves.

In addition to the 3 primary areas addressed in the task force legislation, several other points were discussed during the meetings of the task force, including the purpose of the board, conflicts of interest, administrative consent agreements, the role of the Attorney General's Office in advising the board on legal matters and perceived attempts by the Department of Environmental Protection to expand its authority through the board rather than through the Legislature.

Independence

The task force finds that the Board of Environmental Protection must operate as an independent body in order to fulfill its purpose, but that the board is perceived by the regulated and environmental communities as not sufficiently independent from the department.

The statutes establishing the Department of Environmental Protection specify that the department consists of the Board of Environmental Protection and a Commissioner of Environmental Protection.¹² The Board of Environmental Protection is a part-time citizen board with responsibility for providing decisions on the environmental laws *independent of the department* and for providing for public participation in department decisions.

The current structure of the board as a citizen board without its own staff does not effectively facilitate independent decision-making and the public, specifically the regulated and environmental communities, does not perceive the Board of Environmental Protection as operating independently from the Department of Environmental Protection. The board's perceived lack of independence is a direct result of the board's sole reliance on the department for staff support because the board does not have its own dedicated staff and does not bring in outside consultants. The resulting close relationship between board members and department staff has created the public perception that the board is not independent, and this perception has in turn interfered with the board's ability to serve the public. Particularly since the number of license and permit decisions made by the department was expanded in the 1980s, in proceedings such as appeals of final license or permit decisions department staff may find themselves in two conflicting capacities - that

¹² 38 MRSA §341-A, sub-§2.

of advocate and defender of commissioner decisions *and* that of staff to the board. These potentially conflicting roles suggest a need for independent BEP staff to support the board in making independent decisions.

The task force considered restructuring the board entirely and establishing a professional board similar to the Public Utilities Commission with fewer, professional members. Task force members feel, however, that such a structure would be over-regulatory and too distant from the public. The task force finds that a citizen board is the most effective way to fulfill the board's purpose, but that permanent professional staff is a way to improve the overall work of the board and to increase its independence.

Staffing

The task force finds that the Board of Environmental Protection needs a permanent professional staff of its own in order to serve the people of the State as a strong, informed and independent decision-making body.

The Board of Environmental Protection does not currently have professional staff of its own. Over the years the issues over which the board has jurisdiction have become increasingly complex and technical, while the board changed from a technical board to a citizen board in the 1970s. This has increased the need for the board to have professional staff to assist the board in its work and to ensure that the board has all the information it needs to make informed decisions.

The task force finds that there are numerous advantages to providing the board with a professional staff of its own. The advantages include the following:

- All parties will have equal, appropriate access to the board.
- The Department of Environmental Protection will be able to more fully act in its role as an advocate for the natural environment of the State in front of the board, as it will no longer be coordinating the input of all parties.
- The Department of Environmental Protection will no longer have to staff an appeals hearing while at the same time defending its own decision in the hearing in front of the board.
- The Executive Director will ensure that board members are fully aware of their powers and duties.
- The Executive Director will summarize comments received so that department staff will no longer be in the position of summarizing the testimony of other parties.
- The Executive Director will be able to maintain an Internet site and an e-mail address for the board as a whole, thus facilitating public input to all members of the board from citizens who are unable to attend board meetings.
- There will be more consistency in board proceedings as board staff coordinates the presentation of information by the different bureaus and department staff who appear before the board in various proceedings.

Public Participation

The task force finds that public participation in board proceedings is an essential part of the board's decision-making process and that opportunities for the public to address the board, including on the day of final rule adoption, must be strengthened.

One of the primary functions of the board is to provide for public participation in department decisions. This is accomplished primarily through the provisions of the Administrative Procedure Act,¹³ which governs rulemaking proceedings and adjudicatory proceedings (licensing and enforcement). The board has also adopted a guidance document stating the board's general guidelines on the process of receiving public comment.

Because the board does not have its own staff, department staff is assigned to each proceeding before the board. Although the board operates under rules governing public notice and public participation, there is a perception that department staff has undue access to and influence on board members. The task force finds that the public is at a distinct disadvantage compared to department staff when it comes to providing input to the board.

The majority of the comments received by the task force on this issue were related to concerns arising in the context of the board's rulemaking duties rather than licensing or enforcement duties. During the rulemaking process, the public has an opportunity to comment on proposed rules through testimony at a public hearing or through written comments submitted during the public comment period. However, the task force finds that there is not sufficient opportunity for public participation in the rulemaking process once the public comment period is closed, although department staff continues to provide the board with information on final proposed rules and other issues related to adoption of a rule.

The department staff also has access to the board during information sessions and deliberative sessions. The department holds these sessions with the board to educate the board about issues of interest or about issues in front of the board as part of a formal proceeding. These meetings are public, but the public is not allowed to participate. While these sessions are important, they have furthered the perception that the board is not independent from the department. The task force finds that these sessions should be coordinated by independent staff to the board to provide appropriate access by interested persons and intervenors and ensure that the board receives information it believes necessary to make an informed decision.

¹³ 5 MRSA Chapter 375.

Conflicts of Interest

The task force finds that board members are overly cautious in their interpretation of the conflict of interest laws as they apply to themselves, thereby unnecessarily denying the full board the benefit of their expertise.

The question was raised whether the conflict of interest provisions that govern board members are overly restrictive and result in board members unnecessarily abstaining from participation and the board thereby going without the expertise of certain members during particular proceedings.

Under current practice, a board member decides if he or she has a conflict of interest and whether to abstain from participating in a proceeding. According to the Attorney General's Office, members are advised that they are required to recuse themselves from a proceeding when the member or a family member has a financial interest in the outcome and that recusal is otherwise at the member's discretion.¹⁴

In recent proceedings, members who have abstained from participating in a proceeding because of a conflict of interest have nevertheless attended meetings and been counted for purposes of a quorum. The task force discussed whether a quorum should include members who have abstained from the proceeding, but decided not to recommend any changes to the current practice.

Because board members have perhaps on occasion been more cautious than necessary in applying the conflict of interest laws to themselves, the task force finds that the board would be better served if the full board provided a non-binding advisory opinion on whether a member has a conflict of interest in a particular proceeding.

Administrative Consent Agreements

Statutory law authorizes the Commissioner of Environmental Protection to resolve a violation of environmental laws, rules or licenses through an administrative consent agreement signed by the violator and approved by the Attorney General and the board.¹⁵

A board member expressed to the task force concern that the board does not have a genuine opportunity for input in administrative consent agreements. The board's policy on administrative consent agreements states that the board "will ordinarily accept and enter into consent agreements presented to it by the staff when the consent agreement

¹⁴ See 5 MRSA §18 for conflict of interest law.

¹⁵ 38 MRSA §347-A, sub-§1.

contains terms based on this Policy.”¹⁶ The board’s policy provides guidance for the department on establishing monetary penalties within the statutory ranges according to the seriousness and circumstances of the violation. Proposed administrative consent agreements are printed in the board’s packet of materials prior to the meeting at which they are to be considered, and occasionally the media reports on a proposed agreement at that point, resulting in the impression that the agreement is “a done deal” prior to the board’s vote.

The task force felt that this is an issue of perception and recommends that the Joint Standing Committee on Natural Resources send a letter to the Department of Environmental Protection suggesting that department staff make it very clear on proposed administrative consent agreements that they are draft and have not yet been acted upon by the board.

Attorney General’s Office

The Attorney General’s Office is legal counsel to the board and provides independent legal advice and interpretations to the board, and at each board meeting an Assistant Attorney General sits near the chair of the board. The question was raised whether an Assistant Attorney General should be assigned directly to the board on a more permanent basis rather than rotating among the environmental attorneys in the office, in order to provide continuity. The task force finds, however, that the current procedure used by the Attorney General’s Office is satisfactory and no changes to the practice are needed at this time.

¹⁶ *Enforcement Guidance Document: Administrative Consent Agreement Policy*, signed by the former Commissioner of Environmental Protection, the former Chair of the Board of Environmental Protection and the former Deputy Attorney General.

IV. Recommendations

The Task Force to Study the Operation of and Support for the Board of Environmental Protection makes the following recommendations.

1. The task force recommends that the Legislature amend the conflict of interest provisions in Title 38 to require the Board to provide a non-binding advisory opinion to a member as to whether that member has a conflict of interest in any particular proceeding.

The task force recommends amending Title 38, section 341-C to require that unless the member in question objects, the board take a non-binding vote on whether a member has a conflict of interest sufficient to require that member to abstain from a particular proceeding. This will provide the member with an advisory opinion on which to base their decision whether to participate.

2. The task force recommends that the Legislature amend the Administrative Procedure Act as it applies to the Board of Environmental Protection to allow members of the public to comment on final rule adoption day, provided the comment is directly related to comments received during the formal rulemaking comment period or is in response to changes to the proposed rule.

The task force learned that current board practice is not to permit the public to speak at final rule adoption day - the day when department staff presents the final proposed rule to the board for adoption. It was explained that the reason for this is that the Administrative Procedure Act specifies that a meeting that includes receiving public comment on a proposed rule is a public hearing and subject to all the notice requirements for public hearings. The task force recommends amending the law only as it applies to the board to require the board to accept and consider public comment on final rule adoption day, provided the comment is directly related to comments received during the formal rulemaking comment period or is in response to changes to the proposed rule. The task force does not intend that such a procedure would reopen a public hearing or replace the current requirement that the board request additional comments from the public if the board is considering adopting a rule that is substantially different from the proposed rule.

3. The task force recommends that the Legislature provide the Board of Environmental Protection with a professional, independent and objective Executive Director to assist the board in fulfilling its purpose of providing informed, independent and timely decisions. The Executive Director position should be supported by the Board of Environmental Protection Fund.

The Executive Director would provide professional assistance to the board and direct the daily administrative and operational functions of the Board, reporting to the

chair of the Board. It is the task force's intent that the Executive Director would provide staff assistance to the board similar to the assistance provided to legislative committees by the Legislature's own Office of Policy and Legal Analysis. The Executive Director would be a non-political employee and would be prohibited from participating in any activity that would substantially compromise the Executive Director's ability to discharge effectively and impartially his or her duties.

The Executive Director would coordinate the gathering of information for the board, identify issues for the board and assist the board in reviewing department recommendations and decisions. The Executive Director would staff board meetings and public hearings.

The Executive Director would not supplant the department's technical staff, but would coordinate with department staff and others to ensure the board had the balanced information necessary to make informed decisions. The Executive Director would not prepare the initial draft of rules but would assist the board in reviewing and modifying draft rules for content and consistency. The board would continue to use the technical staff of the department as needed. See Appendix B for a proposed position description for the Executive Director.

It is the intent of the task force that the Executive Director would provide the board with more independence from the department by equalizing access to the board by department staff and members of the public, including intervenors, as the board deems beneficial to it.

The Executive Director should be hired at a salary level similar to the Executive Director of the Maine Land Use Regulation Commission and could have offices in the Department of Environmental Protection to provide administrative efficiencies. The Executive Director would be hired by the chair with the consent of the board and subject to removal at the pleasure of the board.

The task force recommends that the Administrative Secretary position remain on the Board of Environmental Protection Fund and report to the Executive Director of the board.

4. The task force recommends that the Legislature transfer the Deputy Commissioner position from the Board of Environmental Protection Fund to the General Fund.

It is the intent of the task force that the transfer of the Deputy Commissioner's position and the establishment of an Executive Director position as recommended above not require an increased appropriation or allocation to the Board, but that adjustments in funding sources will more accurately reflect the duties of these positions. The task force strongly supports continuation of the Deputy Commissioner position, but recommends that it be funded through the General Fund.

Appendix A

Resolves of 1999, Chapter 85

CHAPTER 85

H.P. 899 - L.D. 1256

Resolve, to Establish a Task Force to Study the Operation of and Support for the Board of Environmental Protection

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

Whereas, there is an immediate need to review the structure and operation of the Board of Environmental Protection to determine whether the board's decision-making process is fair and responsible; 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

Sec. 1. The Task Force to Study the Operation of and Support for the Board of Environmental Protection established. Resolved: That the Task Force to Study the Operation of and Support for the Board of Environmental Protection, referred to in this resolve as the "task force," is established; and be it further

Sec. 2. Membership; chair. Resolved: That the task force consists of no more than 6 members of the Joint Standing Committee on Natural Resources, appointed as follows:

1. No more than 2 members of the Senate, appointed by the President of the Senate; and
2. No more than 4 members of the House of Representatives, appointed by the Speaker of the House.

The first named Senate member is the Senate chair of the task force and the first named House member is the House chair.

Sec. 3. Appointments; convening of task force. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. Within 15 days after appointment of all members, the chair shall call and convene the first meeting of the task force; and be it further

Sec. 4. Duties. Resolved: That the task force shall review the structure and operation of the Board

of Environmental Protection to determine whether the board is operating as an independent body or as part of the executive branch of government, whether the board has adequate administrative and technical staff and whether the board's structure and operation provide for credible, fair and responsible public participation in the decision-making process. In reviewing the board, the task force shall invite the participation of interested parties, including representatives of environmental groups, representatives of business interests and property owners; and be it further

Sec. 5. Meetings. Resolved: That the task force may hold 5 meetings, and one of the meetings may be a public hearing; and be it further

Sec. 6. Compensation. Resolved: That the members of the task force are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses for attendance at authorized meetings of the task force; and be it further

Sec. 7. Staff assistance. Resolved: That upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the task force; and be it further

Sec. 8. Task force budget. Resolved: That the chair of the task force, with assistance from the task force staff, shall administer the task force's budget. Within 10 days after its first meeting, the task force shall present a work plan and proposed budget to the Legislative Council for approval. The task force may not incur expenses that would result in the task force exceeding its approved budget; and be it further

Sec. 9. Report. Resolved: That by December 1, 1999 the task force shall submit a report with its findings to the Joint Standing Committee on Natural Resources. The Joint Standing Committee on Natural Resources shall report out a bill to the Second Regular Session of the 119th Legislature concerning findings of the task force. If the task force requires a limited extension of time to conclude its study and make its report, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 10. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1999-00

LEGISLATURE

**Task Force to Study the
Operation of and Support for
the Board of Environmental
Protection**

Personal Services	\$1,650
All Other	3,000

Provides funds for the per diem and expenses of legislative members of the Task Force to Study the Operation of and Support for the Board of Environmental Protection, one public hearing and printing costs for the required report.

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TOTAL	<u>\$4,650</u>
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Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective June 17, 1999.

Appendix B

Proposed Position Description Executive Director of the Board of Environmental Protection

Position Characteristics:

The Executive Director provides professional assistance to the Board and directs the daily administrative and operational functions of the Board. The Executive Director reports to the chairperson of the Board.

Administration:

- Coordinates the work of the Board's administrative staff and is responsible to the Board for staff functions
- Coordinates, in consultation with the board chair, the operations of the Board and organizes meeting agendas and hearings
- Manages the information flow and work schedule of the Board
- Reviews Board products for content and consistency
- Maintains a docket of all applications and other matters before the Board, including all documents filed
- Prepares orientation materials for new members and assists members in understanding their powers and duties
- Serves as a liaison to the Department of Environmental Protection and the Attorney General's Office
- Communicates with the Legislature on behalf of the Board
- Maintains a Board web site and e-mail address to facilitate public communication with the Board
- Assists the Board in reviewing the enforcement activities of the department
- Develops appropriate policies and procedures for staff, Board meetings, and hearings
- Provides all relevant information on applications to the Board
- Assists the Board in reviewing the implementation of Board and department rules and policy directives
- Assists the Board in preparing required reports to the Legislature
- Attends and provides staff assistance at board meetings

Information and Issues:

- Coordinates gathering of policy, technical, scientific, and legal information for the Board
- Coordinates balanced presentations of policy, technical, scientific and legal issues for the Board
- Identifies, researches and summarizes important environmental issues of interest to the Board
- Assists Board in understanding legal requirements, formulating rules, and evaluating facts
- Assists the Board in reviewing past department and Board policies for consistency
- Assists the Board in reviewing department applications and licensing decisions for policy-making, precedent-setting, and controversial applications
- Assists the Board in assessing the department's recommendations on specific applications (will not make recommendations, but will highlight issues)

Public Hearings:

- Staffs public hearings, as directed by the board
- Facilitates public participation by educating the public on hearing procedures
- Assists the Board in determining if proposed rules are ready for public hearing
- Ensures that Board members receive all comments submitted during the public comment period on proposed rules
- Serves as a liaison between the Board and the general public, the Secretary of State, the Department of Environmental Protection, the Attorney General's Office and others with respect to rulemaking

Performs any other tasks assigned by the Board.

Appendix C

Proposed Legislation

Title: An Act to Implement the Recommendations of the Task Force to Study the Operation of and Support for the Board of Environmental Protection

Sec. 1. 2 MRSA §6, sub-§5 is amended to read:

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

Director of Labor Standards;

Deputy Chief of the State Police;

State Archivist;

Director of Natural Resources Information and Mapping Center;

Executive Director, Maine Land Use Regulation Commission;

Chair, Maine Unemployment Insurance Commission;

Child Welfare Services Ombudsman; ~~and~~

Director of the Maine Drug Enforcement Agency; ~~;~~ and

Executive Director, Board of Environmental Protection.

Sec. 2. 38 MRSA §341-C, sub-§7 is amended to read:

7. **Conflict of interest.** Members are governed by the conflict of interest provisions of Title 5, section 18. If a member believes that a conflict of interest may require his or her abstention in a proceeding, unless the member in question objects the question must be submitted to a non-binding advisory vote of the members present, excluding the member in question.

Sec. 3. 38 MRSA §341-D, sub-§1-B is amended to read:

1-B. **Rulemaking.** Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The

board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

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

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

Notwithstanding Title 5, chapter 375, subchapter II, the board shall accept and consider additional public comment on a proposed rule following the close of the formal rulemaking comment period at a meeting that is not a public hearing, provided the additional public comment is directly related to comments received during the formal rulemaking comment period or is in response to changes to the proposed rule and provided that public notice of the meeting states that the board will accept additional public comment on the proposed rule at that meeting.

This subsection takes effect January 1, 1998.

Sec. 4. 38 MRSA §341-F, sub-§§1 and 2 are amended to read:

1. Staff. Staff of the board must be hired by the chair with the consent of the board. The executive director shall direct the daily ~~operations~~ administrative and operational functions of the board staff. The chair, after consultation with the board, shall prescribe the duties of the Executive Director.

2. Unclassified employees. ~~Professional staff~~ The Executive Director of the board are is unclassified and may be removed, ~~only for cause, by the chair with consent~~ majority vote of the board.

Sec. 5. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

**ENVIRONMENTAL PROTECTION,
DEPARTMENT OF**

Administration - Environmental Protection

Positions - Legislative Count	(1.000)
Personal Services	\$
TOTAL	\$

Provides for the transfer of one Deputy Commissioner, Department of Environmental Protection position from the Board of Environmental Protection Fund, Other Special Revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TOTAL

\$

Sec. 6. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2000-01

**ENVIRONMENTAL PROTECTION,
DEPARTMENT OF**

**Board of Environmental
Protection Fund**

Positions - Legislative Count	(-1.000)
Personal Services	(\$)
TOTAL	(\$)

Provides for the deallocation of funds through the transfer of one Deputy Commissioner, Department of Environmental Protection position to the Administration - Environmental Protection program, General Fund.

**Board of Environmental
Protection Fund**

Positions - Legislative Count	(1,000)
Personal Services	\$
All Other	\$
Capital Expenditures	\$
 TOTAL	 \$

Provides for an Executive Director and general operating funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TOTAL

 \$

SUMMARY

This bill implements the recommendations of the Task Force to Study the Operation of and Support for the Board of Environmental Protection. The bill allocates funds for an Executive Director of the Board of Environmental Protection position and sets the salary level of the executive director within salary range 86, which is the range of the Executive Director of the Maine Land Use Regulation Commission's salary. The bill also specifies that the executive director directs the daily administrative and operational functions of the board and may be removed by majority vote of the board.

The bill amends the conflict of interest provision as it applies to the board to require the board to provide a non-binding advisory opinion as to whether a member has a conflict of interest that may require abstention from a proceeding, unless the member in question objects to the vote.

The bill amends the rulemaking procedures as they apply to the board to require the board to accept and consider additional public comment on a proposed rule following the close of the formal rulemaking comment period provided the additional public comment is directly related to comments received during the formal rulemaking comment period or is in response to changes to the proposed rule.

The bill also provides for the transfer of the Deputy Commissioner of the Department of Environmental Protection from the Board of Environmental Protection Fund to the General Fund.