



126th MAINE LEGISLATURE

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Legislative Document

No. 1731

H.P. 1239

House of Representatives, January 16, 2014

**An Act To Ensure Transparency and Accountability in Decisions by
the Department of Environmental Protection**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative GRANT of Gardiner.
Cosponsored by Senator CAIN of Penobscot and
Representatives: COOPER of Yarmouth, GRAHAM of North Yarmouth, HUBBELL of Bar
Harbor, KORNFIELD of Bangor, MASTRACCIO of Sanford, POWERS of Naples,
SCHNECK of Bangor, Senator: GRATWICK of Penobscot.

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

2 **Sec. 1. 38 MRSA §341-B**, as amended by PL 2011, c. 304, Pt. H, §1, is further
3 amended to read:

4 **§341-B. Purpose of the board**

5 The purpose of the Board of Environmental Protection is to provide informed,
6 independent and timely decisions on the interpretation, administration and enforcement of
7 the laws relating to environmental protection and to provide for credible, fair and
8 responsible public participation in department decisions. The board shall fulfill its
9 purpose through ~~major substantive~~ rulemaking, decisions on selected permit applications,
10 review of the commissioner's enforcement actions, decisions on appeals of the
11 commissioner's licensing and enforcement actions and recommending changes in the law
12 to the Legislature.

13 **Sec. 2. 38 MRSA §341-D, sub-§1-C**, as enacted by PL 2011, c. 304, Pt. H, §5, is
14 repealed and the following enacted in its place:

15 **1-C. Rulemaking.** Subject to the Maine Administrative Procedure Act, the board
16 shall adopt, amend or repeal reasonable rules and emergency rules necessary for the
17 interpretation, implementation and enforcement of any provision of law that the
18 department is charged with administering. The board shall also adopt, amend and repeal
19 rules necessary for the conduct of its business.

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

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

29 Notwithstanding Title 5, chapter 375, subchapter 2, the board shall accept and consider
30 additional public comment on a proposed rule following the close of the formal rule-
31 making comment period at a meeting that is not a public hearing only if the additional
32 public comment is directly related to comments received during the formal rule-making
33 comment period or is in response to changes to the proposed rule. Public notice of the
34 meeting must comply with Title 1, section 406 and state that the board will accept
35 additional public comment on the proposed rule at the meeting.

36 **Sec. 3. 38 MRSA §341-D, sub-§6**, as repealed and replaced by PL 2011, c. 304,
37 Pt. H, §11, is repealed.

38 **Sec. 4. 38 MRSA §341-D, sub-§6-A** is enacted to read:

39 **6-A. Enforcement.** The board shall:

- 1 A. Advise the commissioner on enforcement priorities and activities;
2 B. Advise the commissioner on the adequacy of penalties and enforcement activities;
3 C. Approve administrative consent agreements pursuant to section 347-A, subsection
4 1; and
5 D. Hear appeals of emergency orders pursuant to section 347-A, subsection 3.

6 **Sec. 5. 38 MRSA §341-H**, as amended by PL 2011, c. 538, §1, is repealed.

7 **Sec. 6. 38 MRSA §342, sub-§9**, as amended by PL 2011, c. 304, Pt. H, §15, is
8 further amended to read:

9 **9. Rules.** ~~The commissioner may adopt, amend or repeal, in accordance with section~~
10 ~~341-H, routine technical rules under Title 5, chapter 375, subchapter 2-A and shall submit~~
11 ~~to the board new or amended major substantive rules for its adoption~~ submit to the board
12 new or amended rules for its adoption.

13 **Sec. 7. 38 MRSA §342, sub-§11-A**, as amended by PL 2011, c. 304, Pt. H, §16,
14 is further amended to read:

15 **11-A. Recommendations and assistance to board.** The commissioner shall make
16 recommendations to the board regarding proposed ~~major substantive~~ rules; permit and
17 license applications over which the board has jurisdiction; modification or corrective
18 action on licenses; appeals of license and permit decisions; and other matters considered
19 by the board. The commissioner shall also provide the board with the technical services
20 of the department.

21 **Sec. 8. 38 MRSA §490-NN, sub-§1, ¶B**, as enacted by PL 2011, c. 653, §23 and
22 affected by §33, is amended to read:

23 B. In addition to other powers granted to it, the department shall adopt rules to carry
24 out its duties under this article, including, but not limited to, standards for
25 exploration, advanced exploration, construction, operation, closure, post-closure
26 monitoring, reclamation and remediation. Except as otherwise provided, rules
27 adopted under this article are major substantive rules for purposes of Title 5, chapter
28 375, subchapter 2-A ~~and are subject to section 341-H.~~

29 **Sec. 9. 38 MRSA §585-A, last ¶**, as amended by PL 1999, c. 107, §1, is further
30 amended to read:

31 The department shall ~~confer with the joint standing committee of the Legislature~~
32 ~~having jurisdiction over natural resource matters before it proposes any revisions to~~
33 submit to the board for approval any proposal to revise the state implementation plan,
34 required in the federal Clean Air Act, Section 110, 42 United States Code, Section 7410,
35 that would require the State to implement new emissions reduction strategies or programs
36 or substantially revise or terminate existing emissions reduction strategies or programs.
37 Notwithstanding any other parts of this section, rules adopted pursuant to this section
38 relating to motor vehicle fuel standards are major substantive rules as defined in Title 5,
39 chapter 375, subchapter ~~H-A~~ 2-A.

