



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1575

S.P. 507

In Senate, May 18, 2011

**An Act To Conform the Authority of the Department of  
Environmental Protection to Federal Law**

(EMERGENCY)

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

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by President RAYE of Washington. (GOVERNOR'S BILL)  
Cosponsored by Speaker NUTTING of Oakland and  
Senator: HOBBS of York, Representative: CAIN of Orono.

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

3           **Whereas,** a recent letter from the Attorney General has brought into question the  
4 eligibility of members of the Board of Environmental Protection to legally serve; and

5           **Whereas,** this uncertainty has a negative impact on the work of State Government;  
6 and

7           **Whereas,** the economic health of the State of Maine will suffer if this uncertainty is  
8 not remedied with all due speed; and

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

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

14           **Sec. 1. 38 MRSA §341-A, sub-§3, ¶B,** as amended by PL 1997, c. 794, Pt. A,  
15 §2, is further amended to read:

16           ~~B. When the State receives authority to issue permits under the Federal Water~~  
17 ~~Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended,~~  
18 ~~a person may not serve as commissioner who~~ The commissioner may not participate  
19 in the review of or act on an application for a National Pollutant Discharge  
20 Elimination System permit or the modification, renewal or appeal of a permit under  
21 Section 402 of the Federal Water Pollution Control Act, 33 United States Code,  
22 Section 1342 if the commissioner receives, or during the previous 2 years prior to  
23 ~~appointment~~ has received, a significant portion of income directly or indirectly from  
24 ~~license or National Pollutant Discharge Elimination System permit holders or~~  
25 ~~applicants for a license or permit under the Federal Water Pollution Control Act. If~~  
26 the commissioner's authority is restricted under this paragraph, the commissioner  
27 shall delegate duties related to the restricted matter to employees of the department  
28 who do not receive or have not received during the previous 2 years a significant  
29 portion of income directly or indirectly from National Pollutant Discharge  
30 Elimination System permit holders or applicants. For the purposes of this section, "a  
31 significant portion of income" means 10% or more of gross personal income for a  
32 calendar year, except that it means 50% or more if the recipient is over 60 years of  
33 age and is receiving that portion under retirement, pension or similar arrangement.  
34 Duties that must be delegated include National Pollutant Discharge Elimination  
35 System permitting, enforcement, establishment of waste load allocations and total  
36 maximum daily loads and establishment and implementation of water quality  
37 standards but not other Federal Water Pollution Control Act matters such as water  
38 quality certification. The restriction imposed by this paragraph may not be  
39 interpreted to be more restrictive than federal law or the regulations of the United  
40 States Environmental Protection Agency.

