

## Report to the Joint Standing Committee on Environment and Natural Resources



### Board of Environmental Protection State Government Evaluation Act Report

*November 2025*

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## I. Introduction

On April 22, 2025, the Joint Standing Committee on Environment and Natural Resources informed the Board of Environmental Protection (“Board”) of its decision to review the Board pursuant to the State Government Evaluation Act (“GEA”), 3 M.R.S. §§ 955 and 959(1)(L)(2). The Board is required to submit a program evaluation report prepared in accordance with 3 M.R.S. § 956 to the Joint Standing Committee on Environment and Natural Resources no later than November 1, 2025 (“GEA Report”). This GEA Report is submitted in fulfillment of that requirement.

The Legislature has periodically examined and modified the roles and responsibilities of the Board. As discussed in the Board’s November 2017 GEA report to the Legislature (“2017 GEA Report”), the First Regular Session of the 125<sup>th</sup> Legislature, through L.D. 1, *An Act to Ensure Regulatory Fairness and Reform*, P.L. 2011, ch. 304, made several changes to the Board’s responsibilities, including delegating a number of its responsibilities to the Commissioner of Environmental Protection (“Commissioner”). L.D. 1 reduced the number of Board members from ten to seven, modified membership requirements, and made the following changes to the Board’s responsibilities:

- limited Board rulemaking authority to major substantive rules and those routine technical rules pertaining to Board procedures, with all other routine technical rulemaking delegated to the Commissioner;
- modified the criteria for determining whether an application constitutes a project of statewide significance, thereby changing the universe of applications that may come to the Board for original licensing jurisdiction;
- delegated approval of administrative consent agreements for resolution of enforcement matters to the Commissioner;
- delegated actions related to the revocation or suspension of a license to the Commissioner; and
- modified the Board’s role in the modification of a license and/or the issuance of corrective action orders.

Since enactment of L.D. 1 and the subsequent submission of the 2017 GEA Report, the Legislature has made several additional changes to the roles and responsibilities of the Board, notably by the 129<sup>th</sup> Legislature through L.D. 1789, *An Act To Restore the Authority of the Board of Environmental Protection*, P.L. 2019, ch. 315; and the 131<sup>st</sup> Legislature through L.D. 865, *An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection*, P.L. 2024, ch. 512.

*An Act To Restore the Authority of the Board of Environmental Protection* restored the Board’s authority to adopt, amend or repeal all categories of Department of Environmental Protection (“Department”) rules (routine technical and major substantive as categorized in accordance with the Maine Administrative Procedure Act, 5 M.R.S. § 8071(2)) necessary for the interpretation, implementation and enforcement of any provision of law that the Department is charged with administering. L.D. 1789 also restored the Board’s authority to approve administrative consent agreements, which are legally binding agreements initiated by the Commissioner and voluntarily

entered into by a person to resolve one or more violations of any law or rule administered by the Department.

*An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection* amended the criteria by which the Board assumes jurisdiction over a license or permit application, stipulating the specific categories of license and permit applications over which the Board must assume jurisdiction. Additionally, L.D. 865 amended provisions regarding the Board's acceptance and consideration of additional or supplemental evidence submitted by an appellant, respondent or interested party during the appeal of a final license or permit decision of the Commissioner. And L.D. 865 added a provision that, if the Board modifies or reverses a final license or permit decision of the Commissioner, requires the licensee or permittee to implement any changes to the project that is the subject of the license or permit necessary to comply with the decision of the Board, which may include, but are not limited to, deconstruction and site restoration, and specifying that the Department may initiate enforcement actions and impose penalties if the licensee or permittee fails to satisfactorily implement the required changes.

## **II. Required Report Content**

### **A. Enabling Laws and Federal Mandates**

The Government Evaluation Report in § 3 M.R.S. § 956(2)(A) requires the Board to address the enabling or authorizing law or other relevant mandate, including any federal mandates.

Pursuant to 38 M.R.S. § 341-A(2), the Department consists of the Board of Environmental Protection and the Commissioner of Environmental Protection. Pursuant to 38 M.R.S. § 341-B, “[t]he purpose of the Board [] 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 [D]epartment decisions. The [B]oard shall fulfill its purpose through rulemaking, decisions on selected permit applications, decisions on appeals of the [C]ommissioner’s licensing actions, review of the [C]ommissioner’s enforcement actions and recommending changes in the law to the Legislature.” The Legislature has charged the Board with specific responsibilities and duties as set forth in 38 M.R.S. § 341-D, which include:

- deciding license applications for the specific categories of activities listed in 38 M.R.S. § 341-D(2)(I) through (N);
- all Departmental rulemaking;
- the issuance of orders to modify existing licenses or to prescribe necessary corrective actions;
- deciding administrative appeals of: 1) final license decisions made by the Commissioner; 2) insurance claims-related decisions made by either the Commissioner or State Fire Marshal pursuant to the Oil Storage Facilities and Ground Water Protection law, 38 M.R.S. § 568-A; and 3) emergency orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3); and

- certain enforcement-related matters including approval of administrative consent agreements, and advising the Commissioner on enforcement priorities and activities and on the adequacy of penalties and enforcement activities.

Several other provisions in statute provide that certain orders of the Commissioner may be appealed to the Board. These include:

- 38 M.R.S. § 413(11)(F) regarding the discharge of mercury and mercury containing compounds to the waters of the State;
- 38 M.R.S. § 490-RR(5) regarding suspension of metallic mineral mining operations for failure to provide financial assurance;
- 38 M.R.S. § 490-TT authorizing action to abate or eliminate imminent endangerment from metallic mineral mining operations;
- 38 M.R.S. § 548 regarding an oil discharge clean-up order;
- 38 M.R.S. § 565-A regarding authority to prohibit product delivery to an underground oil storage facility;
- 38 M.R.S. § 568 governing cleanup and removal of a prohibited discharge of oil to ground water from oil storage facilities;
- 38 M.R.S. § 610-B(4) regarding nuisance conditions and dangers to public health and safety from outdoor wood boilers;
- 38 M.R.S. § 1296 regarding lead abatement;
- 38 M.R.S. § 1304(12)(D) regarding the discharge of hazardous waste or waste oil, or a violation of any requirements relating to hazardous waste or waste oil activities;
- 38 M.R.S. § 1310 pertaining to solid waste management and waste handling;
- 38 M.R.S. § 1316-A pertaining to tire stockpile abatement;
- 38 M.R.S. § 1365 regarding the designation of uncontrolled hazardous substance site and/or related orders; and
- 38 M.R.S. § 1397(2) wellhead protection order.

The only federal mandate applicable to the Board is a conflict-of-interest provision originating in the federal Water Pollution Control Act, 33 United States Code, Section 1342 (“the Clean Water Act”) and the Clean Air Act, 42 United States Code, Section 7401, *et seq.* The State of Maine, through the Department, is authorized by the U.S. Environmental Protection Agency to administer and enforce certain sections of the Clean Water Act and Clean Air Act. To ensure



Maine's delegated programs are at least as stringent as and include all required components of the federal regulations, Maine law in 38 M.R.S. § 341-C(8) establishes limitations on the participation of Board members who earn a significant portion of their income directly or indirectly from applicants for or licensees having a National Pollutant Discharge Elimination System permit or from persons subject to permits or enforcement orders under the Clean Air Act. In practice, any Board member who is conflicted from participating in a matter before the Board due to the Clean Water Act or Clean Air Act conflict provisions will recuse themselves from all aspects of that matter before the Board.

Board membership is governed by 38 M.R.S § 341-C. The Board consists of seven members appointed by the Governor and approved by the Legislature, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature. As set forth in 38 M.R.S § 341-C, Board members are chosen to "represent the broadest possible public interest and experience that can be brought to bear on the administration and implementation of [Title 38] and all other laws the [B]oard is charged with administering. At least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district." Biographical information for the current Board members is included as Attachment A of this GEA Report.

## **B. Description of Programs Administered by the Board**

The Government Evaluation Report in 3 M.R.S. § 956(2)(B) requires the Board to provide a description of each program administered by the Board, including the following for each program:

- Established priorities, including the goals and objectives in meeting each priority;
- Performance measures or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
- An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance measures.

The Board does not directly implement environmental protection programs. Rather, the Board is charged with the specific responsibilities and duties set forth in 38 M.R.S. § 341-D, which consist of rulemaking, deciding specific types of permit applications, deciding appeals of the Commissioner's licensing actions, review of the Commissioner's enforcement actions, and recommending changes in the law to the Legislature.

Proceedings before the Board are governed by the Maine Administrative Procedure Act and the statutes and procedural rules governing the various types of proceedings (e.g., rulemaking, appeal proceedings, adjudicatory hearings), including program-specific statutes and rules. The Board typically convenes meetings twice per month. Notice of each Board meeting is made in accordance with the Freedom of Access Act, 1 M.R.S. § 406 and, except as otherwise provided by law, all public proceedings of the Board are open to the public and members of the public are permitted to attend. All meetings of the Board are held in-person, unless otherwise specified on the Board meeting notice and agenda. As a convenience, the Board generally provides a live video stream of its meetings for those who wish to watch the proceeding from a remote location.

The link for a live stream of each Board meeting is provided on the Board meeting notice and agenda. Audio recordings of each Board meeting are made and an electronic link to the recording is available upon request made to the Board Clerk. The Board's webpage (<https://www.maine.gov/dep/bep/index.html>) provides member biographies, meeting materials, information on pending matters of broad public interest, and guidance to facilitate public participation in matters pending before the Board.

The Maine Administrative Procedure Act in 5 M.R.S. § 9055 prohibits Board members from engaging in ex parte communications. The law provides that “[i]n any adjudicatory proceeding, no agency members authorized to take final action or presiding officers designated by the agency to make findings of fact and conclusions of law may communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.” This provision applies to all adjudicatory proceedings before the Board, including licensing proceedings, and certain types of appeals to the Board. Board members, however, are advised to refrain from communicating about all types of Board proceedings outside of the regular public Board meeting context. Information intended for the Board's consideration is routed through the Board Executive Analyst and Board Clerk to ensure that all Board members receive the same information in accordance with applicable laws and rules. Board members do not discuss pending matters with one another or participants in a Board proceeding outside of a Board meeting that is open to the public.

The Board's priorities are established based on the current needs of the Department with respect to rulemaking, original jurisdiction over specific types of permit applications, appeals of the Commissioner's licensing actions, appeals of insurance claim-related decisions made pursuant to 38 M.R.S. § 568-A, and consideration of proposed administrative consent agreements to resolve violations of environmental laws and rules administered by the Department. Generally, Department staff coordinate with the Board Executive Analyst to prioritize the scheduling of matters for the Board's consideration or decision to comply with relevant statutory deadlines, such as initiating agency rulemaking and holding hearings within time limits established by statute. The goals and objectives in meeting the Board's priorities are 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.

**(1) Rulemaking.** Pursuant to 38 M.R.S. § 341-H, the Board may 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 must also adopt, amend and repeal rules as necessary for the conduct of the Department's business, including the processing of applications, the conduct of hearings and other administrative matters.

Priority: Priority for rulemaking is established by the Commissioner or Board in response to statutory changes and program-specific needs. Additionally, the Maine Administrative Procedure Act in 5 M.R.S. § 8055 provides that any person may petition the Department for the adoption or modification of any rule it administers. Within 60 days after receipt of a petition, the Board must either notify the petitioner in writing of its denial or initiate

appropriate rulemaking proceedings. Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the Board must initiate appropriate rulemaking proceedings within 60 days after receipt of the petition. Rulemaking priority is set by the needs of the Department and to comply with applicable statutory time limits.

Goals and objectives: The Board's goal with respect to rulemaking is to conduct rulemaking proceedings in accordance with the requirements of the Maine Administrative Procedure Act and to afford members of the public with a meaningful opportunity to comment or testify on proposed rules before they are adopted.

Performance measures: The performance measure for rulemaking is adoption of a new or modified rule that complies with all rulemaking requirements – including public participation – or, if not adopted, is supported by a legally defensible, articulated basis.

Assessment: During this review period, the Board has successfully adopted dozens of new or modified rules in accordance with the Maine Administrative Procedure Act, including approval as to form and legality by the Attorney General and proper filing with the Secretary of State pursuant to 5 M.R.S. § 8056. The reasonability and effectiveness of the Department's rules is assessed on a continuous basis by Department staff and the regulated community. The Board also assesses the reasonability and effectiveness of Departmental rules through its application of the rules in matters that come before the Board. If appropriate, the Board may recommend to the Commissioner changes to clarify or improve a rule and may recommend statutory changes to the Legislature.

- (2) **Appeals of Commissioner license decisions.** Pursuant to 38 M.R.S. § 341-D(4), the Board will review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the Commissioner for further proceedings final license or permit decisions made by the Commissioner when a person aggrieved by a decision of the Commissioner appeals that decision to the Board within 30 days of the date of the decision. Alternatively, an aggrieved person may appeal to Superior Court (or the Maine Supreme Judicial Court in the case of an expedited wind energy development, general permit for an offshore wind demonstration project, or a general permit for a tidal energy demonstration project) final license or permit decisions made by the Commissioner. Although many appellants seek relief from the Board on appeal, 38 M.R.S. § 344(2-A) specifies that the filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal.

Priority: Appeals of Commissioner license decisions are processed as they are received. Statute and rule specify the time limits for the filing of an appeal and various submissions, such as proposed supplemental evidence by other appeal participants.

Goal and objectives: Department rule Chapter 2, *Processing of Applications and Other Administrative Matters* ("Chapter 2"), establishes that the Board will decide appeals as expeditiously as possible. The Board's goal in processing appeals is to fulfill its obligation to decide the appeal as expeditiously as possible while complying with applicable requirements of the Maine Administrative Procedure Act and program-specific statutes and rules.

Performance measures. The performance measure for appeals is achieving a legally defensible Board decision on appeal as expeditiously as possible and that withstands challenge on judicial review.

Assessment: Since submission of the 2017 GEA Report, the Board has processed approximately 60 appeals. Only a small fraction of Board Orders on appeal have been appealed to Superior Court, and none of the Board Orders was reversed following judicial review. In summary, the Board is meeting its goals with respect to its responsibility to expeditiously decide appeals of Commissioner licensing decisions.

- (3) **Appeals of insurance claims-related decisions made by either the Commissioner or State Fire Marshal.** Pursuant to 38 M.R.S. § 341-D(4)(E), the Board will review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the Commissioner for further proceedings insurance claims-related decisions made by either the Commissioner or State Fire Marshal pursuant to the Oil Storage Facilities and Ground Water Protection law when a person aggrieved by that decision appeals that decision to the Board within 30 days of the date of the decision. This responsibility was assigned to the Board in 2023 through *An Act to Update the Responsibilities of the Clean-up and Response Fund Review Board*, P.L. 2023, ch. 61.

Priority: Appeals of insurance claims-related decisions are processed as they are received. Statute and rule specify the time limits for the filing of an appeal and various submissions, such as proposed supplemental evidence by other appeal participants.

Goal and objectives: Chapter 2 establishes that the Board will decide appeals as expeditiously as possible. The Board's goal in processing appeals is to fulfill its obligation to decide the appeal as expeditiously as possible while complying with applicable requirements of the Maine Administrative Procedure Act and program-specific statutes and rules.

Performance measures. The performance measure for appeals is achieving a legally defensible Board decision on appeal as expeditiously as possible and that withstands challenge on judicial review.

Assessment: Since enactment of P.L. 2023, ch. 61 in 2023, the Board has processed three appeals of insurance claims-related decisions. One such appeal is pending before the Board, one was withdrawn by the appellant, and the other was decided by the Board and not appealed to Superior Court. In summary, the Board is meeting its goals with respect to its responsibility to expeditiously decide appeals of insurance claims-related decisions made by either the Commissioner or State Fire Marshal.

- (4) **Original jurisdiction over license applications.** The Board must assume original jurisdiction over the specific types of permit applications specified in 38 M.R.S. § 341-D(2)(I) through (N) and also of applications that are referred to it jointly by the Commissioner and the applicant. In addition, Maine statute requires the Board to decide specific application types, such as applications for commercial hazardous waste facilities pursuant to 38 M.R.S. § 1319-R(3). Pursuant to 38 M.R.S. § 341-D(2), the Board may not assume jurisdiction over an application for an expedited wind energy development, a general



permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project.

Priority: Applications over which the Board has jurisdiction are high priority projects and are processed as expeditiously as possible while ensuring due process to all entities involved and compliance with applicable requirements set forth in statute and rule. Pursuant to 38 M.R.S. § 344-B(3)(A)(2), the Board establishes a timetable for the processing of an application over which it has jurisdiction and is not bound by timetables published by the Commissioner pursuant to 38 M.R.S. § 344-B(1).

Goal and objectives: The goal of the Board when processing an application is to provide a robust and meaningful public process and to decide each application as expeditiously as possible based on a fulsome administrative record.

Performance measures: The performance measure is issuance of a license decision that is supported by the evidence, complies with applicable laws and rules, and withstands challenge on judicial review.

Assessment: Since submission of the 2017 GEA Report, the Board has successfully processed applications for permits for Nordic Aquafarms Inc. (three separate licenses: a Maine Pollutant Discharge Elimination System permit; Site Location of Development Law and Natural Resources Protection Act permit; and an Air Emission License) and the Portsmouth Naval Shipyard (renewal of a commercial hazardous waste license). In summary, the Board is meeting its goals with respect to its license application review and decision-making responsibilities.

**(5) Modify a license or issue an order prescribing corrective action.** Pursuant to 38 M.R.S. § 341-D(4), at the request of the Commissioner and after written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, the Board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the Board finds that any of the following criteria are met:

- The licensee has violated any condition of the license;
- The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- The licensed discharge or activity poses a threat to human health or the environment;
- The license fails to include any standard or limitation legally required on the date of issuance;
- There has been a change in any condition or circumstance that requires revocation or suspension of a license;
- There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license;
- The licensee has violated any law administered by the department; or
- The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

Priority: Requests by the Commissioner to modify a license or to issue a corrective order are unusual and generally considered to be a high priority given the need for such action by the Department.

Goal and objectives: Chapter 2 establishes the procedure for the Board's consideration of a request by the Commissioner to modify a license or issue a corrective order. The Board's goal is to ensure due process to the affected person, i.e., the licensee or person to whom a corrective order would be issued, and to act on the Commissioner's request as expeditiously as possible.

Performance measures: The performance measure for Board decisions regarding modification of a license or the issuance of a corrective order is achieving a legally defensible Board decision that withstands challenge on judicial review.

Assessment: Since submission of the 2017 GEA Report, the Board has not received any requests to modify a license or issue a corrective order pursuant to 38 M.R.S. § 341-D(4). In summary, the Board is meeting its goals with respect to its responsibility to process requests by the Commissioner to modify a license or to issue a corrective order.

- (6) **Enforcement.** The Board's responsibilities with respect to enforcement are set forth in 38 M.R.S. § 341-D(6) and primarily concern approval of administrative consent agreements and deciding appeals of emergency orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3).

Administrative consent agreements are voluntary, and the terms and conditions of such agreements are the product of a negotiation process between the alleged violator, the Department, and the Office of the Maine Attorney General. The Department calculates civil monetary penalties through the evaluation of the environmental aspects of a case (such as the sensitivity of the environmental resource, size of the affected area, and potential effect to human health), the circumstances in which the alleged violation occurred (such as the alleged violator's knowledge of the laws, the cause of the alleged violation, the alleged violator's response and level of cooperation, and the compliance history of the alleged violator), and whether civil monetary penalty is substantial enough to deter others from similar violations. Pursuant to 38 M.R.S. § 349(2-A), the Department may include supplemental environmental projects, "an environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform," as part of an administrative consent agreement. Whether or not a supplemental environmental project is included as a component of an administrative consent agreement, mitigation of environmental impacts created by the alleged violation(s) is typically completed during negotiation of the administrative consent agreement or may be established as a binding condition of the administrative consent agreement.

Pursuant to 38 M.R.S. § 347-A(3), whenever it appears to the Commissioner that there is a violation of the laws or regulations the Department administers or of the terms or conditions of any of the Department's orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the Commissioner may order the person or persons causing or contributing to the hazard to immediately take such

actions as are necessary to reduce or alleviate the danger. A person to whom an enforcement order was issued to appeal that decision to the Board pursuant to 38 M.R.S. § 341-D(6)(H).

Priority: Appeals of enforcement orders are processed as they are received and are treated as a high priority given the potentially high environmental or public health threat the order seeks to correct.

The scheduling of proposed administrative consent agreements for the Board's consideration is a medium-level priority. Negotiations between the Department and an alleged violator often take months to complete, during which the Department seeks to resolve environmental impacts created by the violation through corrective actions, after-the-fact permitting, and other mechanisms. Although administrative consent agreements may stipulate additional corrective actions and conditions to mitigate or resolve on-going environmental violations, in many cases, the environmental impacts have been resolved by the time a proposed administrative consent agreement is presented to the Board for approval. Thus, the Board typically is reviewing proposed administrative consent agreements to determine whether the completed corrective actions and civil penalty assessment are appropriate. Consequently, rarely is there an urgency requiring the Board to schedule its consideration of a proposed administrative consent agreement as a high priority matter.

Goal and objectives: Department rule Chapter 4, *Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders*, governs appeals to the Board of orders issued pursuant to 38 M.R.S. § 347-A(3). The Board's goal with respect to this type of appeal proceeding is to provide due process to the affected entity and the public through an adjudicatory proceeding that is held in a meeting that is open to the public.

In 2024, the Department revised Chapter 2 to include a new section 29 that governs the Board's proceedings regarding proposed administrative consent agreements. The Board's goal in reviewing proposed administrative consent agreements is to ensure the Department has adequately and reasonably negotiated a resolution of the violations, including mitigation of any environmental impacts and appropriate assessment of civil monetary penalties.

Performance measures. The performance measure for appeals of emergency orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3) is achieving a legally defensible Board decision on appeal as expeditiously as possible and that withstands challenge on judicial review.

The performance measure for the Board's responsibilities with respect to enforcement is to achieve a majority vote of the Board to approve administrative consent agreements and to advise the Commissioner on the adequacy of the proposed penalties and corrective actions.

Assessment: Since submission of the 2017 GEA Report, the Board has successfully processed three appeals of emergency orders issued by the Commissioner and approved several dozen administrative consent agreements. In summary, the Board is meeting its goals with respect to its enforcement oversight responsibilities.

(7) **Other matters.** In addition to the responsibilities discussed above, 38 M.R.S. § 341-D(8) requires that the Board carry out other duties as required by law. For example, the state's water classification program in 38 M.R.S. § 464 requires that the Board make recommendations to the Legislature on changes to the classification of Maine waters including any use attainability analysis for a waterbody failing to meet its water quality classification. These matters are addressed as they are brought forward by the Commissioner.

## **C. Organizational Structure**

The Government Evaluation Report in 3 M.R.S. § 956(2)(C) requires the Board to provide information regarding the organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility.

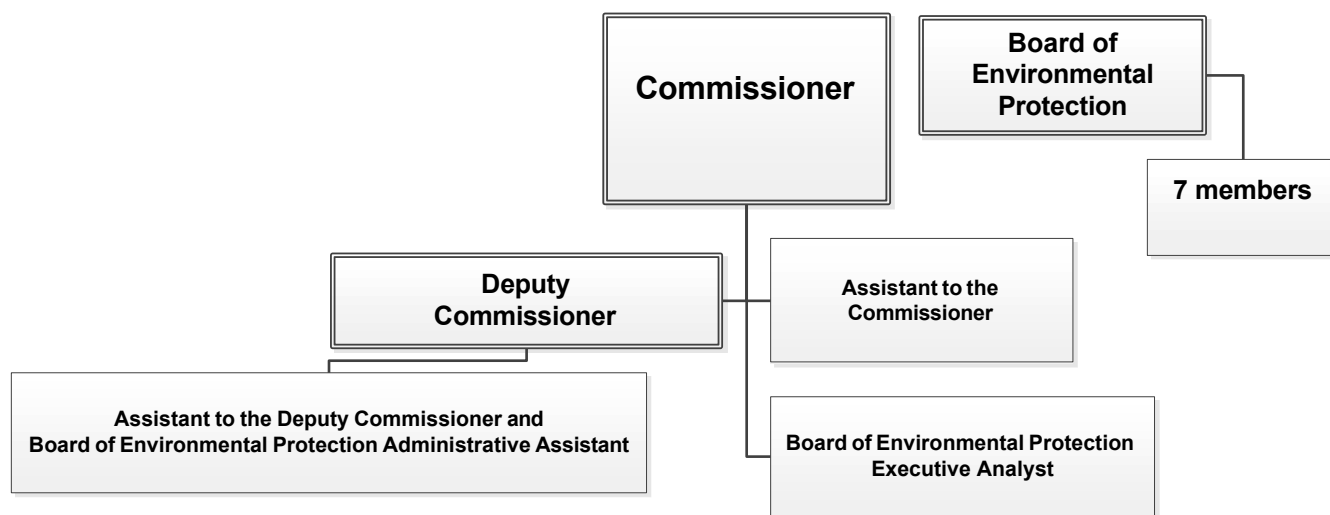
The Board is composed of volunteer members who are appointed by the Governor and confirmed by the Legislature. Pursuant to 38 M.R.S. § 341-F(1), the Board is staffed by one full-time Executive Analyst, who is hired by the Board Chair with the consent of the Board. The Executive Analyst directs the daily administrative and operational functions of the Board and Board staff in an impartial and objective manner. The Board prescribes the duties of the Executive Analyst. The Executive Analyst is prohibited from participating in any activity that substantially compromises the Executive Analyst's ability to discharge effectively and impartially the Executive Analyst's duties to the Board.

Pursuant to the Maine Administrative Procedure Act in § 12007, each state board must appoint a clerk who is responsible for submitting reports to and responding to the Secretary of State and the Commissioner of Administrative and Financial Services. The Board employs one Office Specialist II position organized under the Office of the Commissioner to serve as the Board Clerk and to provide administrative and logistical support to the Board.

Pursuant to 38 M.R.S. § 342(11-A), the Commissioner provides the Board with the technical services of the Department by calling on staff from the appropriate program(s) to serve the Board's administrative and technical needs. Pursuant to 38 M.R.S. § 341-F(5), the Board may obtain the services of consultants as necessary to carry out its statutory responsibilities.



**Figure 1.** Organizational flow chart indicating lines of responsibility for Board staff.



#### **D. Financial Summary**

The Government Evaluation Report in 3 M.R.S. § 956(2)(E) requires the Board to provide a financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years.

The Board of Environmental Protection Fund (“Board Fund”) was established by the Legislature in 38 M.R.S. § 341-G as a non-lapsing fund to be used by the Board to carry out its duties. The fund does not have an independent source of revenue; rather money is transferred to the fund annually from the Maine Ground and Surface Waters Clean-up and Response Fund, the Maine Hazardous Waste Fund, and the Maine Environmental Protection Fund. Transfers to the Board Fund are in proportion to each contributing fund’s percentage of the total special revenues received by the Department. The amount of money allocated to the Board Fund each fiscal year is limited by statute, and through P.L. 2025, ch. 2, was increased from \$325,000 to \$425,000.

Pursuant to 5 M.R.S. § 12004-D(2), the volunteer Board members receive the legislative per diem for meeting attendance and meal allowance. The current per diem is \$55.00 per day. The Board Fund funds the per diem for Board members, the position of Board Executive Analyst, and the Office Specialist II position serving as the Board Clerk. The Board Fund also includes funds for the costs of Board meetings and public hearings, such as room and equipment rental; travel and meal expenses; staff phone, computer and other technology costs; office supplies; mailings; training; and professional fees for court reporters and any consultants hired to assist the Board.

The amount of money transferred to the Board Fund annually and the amount expended can vary significantly from year to year depending upon the number and nature of the matters pending before the Board, which determines the number of meetings and public hearings required. Funds are transferred to the account at the beginning of the fiscal year based upon anticipated needs. Any funds remaining at the end of the fiscal year are carried forward, reducing the amount to be transferred into the Board Fund at the beginning of the next fiscal year.

**Figure 2.** Summary of expenses and funds allocated for the past ten fiscal years.

Fiscal Year	Personnel expenses	Funding allocated
FY 25	\$336,924.74	\$307,072.83
FY 24	\$312,644.66	\$277,643.04
FY 23	\$280,798.57	\$269,363.47
FY 22	\$270,007.33	\$253,162.53
FY 21	\$254,211.07	\$250,270.15
FY 20	\$253,383.62	\$256,160.82
FY 19	\$258,856.91	\$223,864.64
FY 18	\$227,135.92	\$239,132.09
FY 17	\$242,582.00	\$318,487.00
FY 16	\$221,120.55	\$125,514.28
FY 15	\$208,514.73	\$247,635.00

#### **E. Interagency Coordination and Cooperation**

The Government Evaluation Report in 3 M.R.S. § 956(2)(G) requires the Board to identify those areas where the Board has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which the Board could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements.

Pursuant to 38 M.R.S. §§ 342(11) and (11-A), the Commissioner provides the Board with administrative support and the technical services of the Department. Pursuant to 38 M.R.S. § 341-F(6), which provides that the Board may cooperate with other state or federal departments or agencies to carry out the responsibilities under Title 38, the Board utilizes the expertise of sister agencies, such as the Department of Health and Human Services, Department of Inland Fisheries and Wildlife, and the Department of Marine Resources, in fulfilling its duties and responsibilities. These state agencies provide technical support on matters related to their areas of expertise that overlap with laws and rules administered by the Department, including the Board.

#### **F. Constituencies Served**

The Government Evaluation Report in 3 M.R.S. § 956(2)(H) requires the Board to identify the constituencies served by the Board, noting any changes or projected changes.

As stated previously, 38 M.R.S. § 341-B establishes that the purpose of the Board 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 people served by the Board include applicants, licensees, appellants, entities regulated by statutes and rules administered by the Department, and members of the public who are potentially affected by the programs administered by the Department. No changes to the scope of constituencies served by the Board are anticipated in the coming years.

## **G. Alternative Delivery Systems**

The Government Evaluation Report in 3 M.R.S. § 956(2)(I) requires the Board to provide a summary of efforts by the Board regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives.

The Board fulfills its statutory purpose through rulemaking, decisions on selected permit applications, decisions on appeals of Commissioner licensing actions, review of enforcement actions, and recommending changes in the law to the Legislature. The Board accomplishes its responsibilities and duties through proceedings that are open to the public and that generally allow public input at one or more points during the proceeding. Although not required by law, in practice, the Board provides a live audio and video stream of its meetings and hearings, and an audio record of all Board proceedings is made pursuant to the Freedom of Access Act, 1 M.R.S. § 403(3). Materials pertaining to Board meetings and hearings and guidance documents regarding Board procedures are posted on the Board's webpage. In summary, the Board strives to conduct its proceedings in a manner that maximizes opportunities for public observation and input and that is most efficient for the regulated community and to persons interested in matters coming before the Board.

## **H. Emerging Issues**

The Government Evaluation Report in 3 M.R.S. § 956(2)(J) requires the Board to identify emerging issues for the agency or program in the coming years.

The Board largely responds to the needs of the Department on an as-needed basis. In the coming years, the Board anticipates that the Legislature and Department will continue to make progress on the issues of solid waste, per- and polyfluoroalkyl substances (PFAS) regulation and contamination, energy generation and distribution developments, and further balancing of water quality protection with demands for new development. At this time, the Board is not aware of any specific proposed projects or rules that will come before the Board related to the emerging issues identified in this section; however, Board members are selected to represent a broad spectrum of technical and scientific backgrounds in environmental issues and are accustomed to tackling new environmental issues as they emerge.

## **I. Comparison of Federal Laws and Regulations**

The Government Evaluation Report in 3 M.R.S. § 956(2)(L) requires the Board to provide a comparison of any related federal laws and regulations to the state laws governing the Board and the rules implemented by the Board.

The only federal law specifically applicable to the Board (as opposed to the Department's programs as a whole) is the requirement at 38 M.R.S. § 341-C(8)(A) and (B) governing Board member participation in certain Clean Water Act and Clean Air Act matters that come before the Board. The law prohibits a Board member from participating in applications for National Pollutant Discharge Elimination System (NPDES) permits under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342. This provision of Maine law addresses Board membership and potential conflicts of interest in NPDES permitting and

requires consistency with federal law and the regulations of the United States Environmental Protection Agency. It prohibits a Board member from participating in the review of, or action on, any application for a NPDES permit if the Board member receives, or during the previous two years has received, a significant portion of income directly or indirectly from any NPDES license or permit holders or any applicant for a NPDES license or permit. The law also prohibits a Board member from participating in the review of or acting on any permitting decision or enforcement order under the federal Clean Air Act, 42 United States Code, Section 7401, *et seq.* if the Board member receives or derives a significant portion of that Board member's income from persons subject to permits or enforcement orders under the federal Clean Air Act. Board members whose participation is restricted under 38 M.R.S. § 341-C(8)(A) or (B) must recuse themselves from those matters coming before the Board. The law defines "a significant portion of income" as "10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement."

## **J. Use of Personal Information**

The Government Evaluation Report in 3 M.R.S. § 956(2)(M) requires the Board to provide information on the Board's policies for collecting, managing and using personal information over the internet and nonelectronically, information on the Board's implementation of information technologies and an evaluation of the Board's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement.

Personal information is often included in materials submitted to the Board in the course of the Board fulfilling its responsibilities and duties under 38 M.R.S. § 341-D. For example, license applications, public comments on matters pending before the Board, and appeals submitted to the Board for review typically include, minimally, the name and address of the submitter. With limited exception, once information is submitted to the Board it becomes a public record as defined by the Freedom of Access Act, 1 M.R.S. § 402(3) and must be made available to any person for inspection and copying pursuant to 1 M.R.S. § 408-A. Submissions to the Board may be posted on the Board's webpage for the benefit of the public.

Although the Board must receive some personal information to validate the authenticity of submissions on pending matters, the Board encourages people to exclude from any submission sensitive personal information. For example, the Department's webpage regarding rulemaking and opportunity for comment (<https://www.maine.gov/dep/rules/index.html>, accessed October 30, 2025) includes the following notice:

NOTICE: Comments submitted to the Department are public record. The Department regularly discloses public comments to requesters and make comments publicly available on its website. DO NOT INCLUDE any information you do not intend to make public, such as medical or other personal information. Comments submitted by email create records which will include the sender's email address. Should you wish to maintain the privacy of the sending email, the Department encourages you to submit your written comments via conventional



mail, withholding applicable contact information you do not wish to make public from the submission.

The Board does not otherwise collect, manage, use, or distribute personal information of any person over the internet or otherwise.

#### **K. List of Information Required to be Filed by the Public with the Agency**

The Government Evaluation Report in 3 M.R.S. § 956(2)(N) requires the Board to provide a list of reports, applications and other similar paperwork required to be filed with the agency by the public.

The public is not required to file any reports, applications, or similar paperwork with the Board.

Applicants seeking a license from the Board (when original licensing jurisdiction rests with the Board pursuant to 38 M.R.S. § 341-D(2)) and any person petitioning the Board for the adoption or modification of any rule are required to file certain documents in accordance with applicable statutes and rules. Appellants seeking appeal or review of a final agency action pursuant to 38 M.R.S. § 341-D(4) are required to submit certain information for the appeal to be processed. Statutes (such as 38 M.R.S. § 341-D(4)(A) regarding the information necessary to process an appeal) and Departmental rules (such as Chapter 2, § 23 regarding appeals of Commissioner licensing decisions) govern the type, timing and content of information that must be submitted to the Board when an applicant, appellant, or petitioner seeks to initiate a proceeding before the Board.

#### **L. List of Reports Required by the Legislature**

The Government Evaluation Report in § 956(2)(O) requires the Board to provide list of reports required by the Legislature to be prepared or submitted by the Board.

The Board is responsible for preparing and submitting to the Legislature the following reports.

- 38 M.R.S. § 341-D(7) requires the Board to report to the joint standing committee of the Legislature having jurisdiction over natural resource matters (i.e., the Joint Standing Committee on Environment and Natural Resources, “ENR”) by January 15<sup>th</sup> of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the Board.
- 38 M.R.S. § 464(3)(B) requires the Board to from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards. This is referred to as the Triennial Review of Maine’s Water Quality Standards. After conducting the review, the Board must submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters (i.e., ENR) a report describing the Board’s findings and any recommendations for changes to the water quality classification system and related standards and the joint standing committee may report out legislation to implement those recommendations.

## **M. Provisions that May Require Legislative Review**

The Government Evaluation Report in § 956(2)(Q) requires the Board to identify provisions contained in the Board's enabling or authorizing statutes that may require legislative review to determine the necessity of amendment to align the statutes with federal law, other state law or decisions of the United States Supreme Court or the Supreme Judicial Court.

The Board is established by the Maine Administrative Procedure Act in 5 M.R.S. § 12004(5) and 38 M.R.S. § 341-A(2). The Board's statutory responsibilities and duties pertain to the administration and enforcement of state laws and state rules that are adopted in accordance with applicable requirements of the Maine Administrative Procedure Act. Pursuant to 38 M.R.S. § 341-H, the Board adopts, amends and repeals rules as necessary for the conduct of the Department's business, including the processing of applications, the conduct of hearings and other administrative matters. The Board may initiate rulemaking to align its procedural rules (for example, Chapter 2; Chapter 3, *Rules Concerning the Conduct of Licensing Hearings*; and Chapter 4, *Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders*) with changes in Maine law.

Where the Department has received authorization from the U.S. Environmental Protection Agency to administer certain federal programs in Maine (for example, the Maine Pollutant Discharge Elimination System program to implement the federal National Pollutant Discharge Elimination System regulations), the Board adopts rules to implement the federal requirements that are at least as stringent as the federal regulations.

The Board is not aware of any enabling or authorizing statutes that may require, now or within the foreseeable future, legislative review for alignment with the federal law or judicial decisions, or with other state laws. The Board's rulemaking authority in 38 M.R.S. § 341-H provides sufficient authority for the Board to adopt, amend, or repeal rules, as necessary, for the Department to administer its programs in alignment with federal law, other state laws, and decisions of the United States Supreme Court or the Supreme Judicial Court.

## **III. Conclusion**

The Board appreciates the opportunity to provide the Legislature with this Government Evaluation Report and welcomes the opportunity to discuss with the ENR Committee any related topics or questions that are not addressed by this Report.

**ATTACHMENT**

## Attachment A: Board of Environmental Protection Members

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**Susan M. Lessard**  
Bangor, 2<sup>nd</sup> Term

Ms. Lessard has 40 years of experience in local government in Maine. Susan retired from her role as Town Manager for the Town of Bucksport. Ms. Lessard previously served as the Town Manager for the communities of Hampden, Vinalhaven, Fayette, and Livermore Falls. As such Ms. Lessard has extensive experience in solid waste management issues, municipal financial management, and community development. She is a past president of the Maine Municipal Association and has served on the Municipal Review Committee and the Maine Rural Development Council. Ms. Lessard has received a number of awards for her work including the Governor's Environmental Excellence Award (2002) for development of a collaborative process for municipal review of major landfill expansion projects in Hampden, and the Maine Engineering Excellence Award (1998) and Maine Town and City Manager's Association Leadership Award (1999) for the development of an innovative alternative landfill capping plan for the town of Vinalhaven. Ms. Lessard also received a U.S. Coast Guard Public Service Commendation (1996) for her work on a program to transfer ownership of thirty-five Maine lighthouses from the federal government to municipalities and non-profit organizations across the state. Ms. Lessard resides in Bangor with her husband Dan. Ms. Lessard was reappointed to the Board by Governor Janet T. Mills in January 2022.

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**Robert Marvinney**  
Readfield, 1<sup>st</sup> Term

Dr. Marvinney is a Licensed Geologist with more than 40 years of experience with geological and environmental issues in Maine. While not a native of the State, he has spent most of his professional career here. He retired in July 2021 from his position as Director of the Bureau of Resource Information and Land Use Planning, and State Geologist, an appointed position that he held for 26 years. Dr. Marvinney's experience with Maine began in the early 1980s while carrying out geological projects in northern Maine for his Master's and Doctorate degrees from Syracuse University. While State Geologist at the Maine Geological Survey, he initiated, carried out, and/or directed many projects that highlight the impact Maine's geology can have on the health and well-being of Maine citizens. Most recently, he co-chaired the Science and Technical Subcommittee of the Maine Climate Council that produced the report, "*Scientific Assessment of Climate Change and Its Effects in Maine*," that summarizes current impacts and likely future scenarios for climate change in Maine. He has lived in Readfield with his wife Cheryl for more than 34 years and has two grown children. Dr. Marvinney was appointed to the Board by Governor Janet T. Mills in January 2022.



## Attachment A: Board of Environmental Protection Members

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**Barbara Vickery**  
Richmond, 1<sup>st</sup> Term

Barbara Vickery is a Conservation Biologist who spent 33 years with The Nature Conservancy, most recently as Director of Conservation Programs. At the Conservancy she was lead scientist, oversaw the stewardship of its preserves and easements, initiated programs in freshwater and marine conservation, and planned land conservation across the state and region. Mrs. Vickery served on numerous state advisory committees, including the Ecological Reserves Science Advisory Committee, the Bureau of Public Lands Integrated Resource Plan, Maine Forest Biodiversity Project Steering Committee, and steering committees of two of MDIFW's State Wildlife Action Plans, which gave her opportunities to work with industry, state agencies and many other environmental organizations. Mrs. Vickery received a B.A. from Harvard in early childhood education and was a teacher for 10 years. She later earned a B.S. in Biology from Bates College and served as Botanist for the State Planning Office Critical Areas Program before joining The Nature Conservancy. Since retirement eight years ago Mrs. Vickery assumed co-managing editor responsibility for Birds of Maine, a major book that her husband was not able to finish before he died. Since the book's publication in 2020, she has become an active volunteer, serving on the Board of the Forest Society of Maine, as Secretary to the Bates Morse Mt. Conservation Area Corporation, and promoting climate adaptation actions in Richmond, where she lives, and Phippsburg where her family owns seasonal homes. Mrs. Vickery was appointed to the Board by Governor Janet T. Mills in January 2022.



**Robert S. Duchesne**  
Hudson, 2<sup>nd</sup> Term

Robert Duchesne is a former state legislator and radio show broadcast host. Mr. Duchesne's radio career spanned more than three decades, during which he served as host of a popular radio show that was broadcast across eastern and central Maine. During his radio career, Mr. Duchesne was active in charity and public service organizations in the Bangor area, including Downeast Big Brothers Big Sisters, Maine Audubon, and the Maine Association of Broadcasters. He also served on several economic and business development boards. In 2005, Mr. Duchesne was elected to the Maine House of Representatives, where he served six non-consecutive terms. While in the Legislature, he chaired both the Environment and Natural Resources Committee and the Inland Fisheries and Wildlife Committee, and started his own guiding business – Maine Birding Trail. Mr. Duchesne shares his birding expertise in a weekly birding column for the Bangor Daily News. Robert Duchesne resides at Pushaw Lake in Hudson with his wife, Sandi. Mr. Duchesne was reappointed to the Board by Governor Janet T. Mills in February 2024.

## Attachment A: Board of Environmental Protection Members

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**Robert M. Sanford**  
Gorham, 2<sup>nd</sup> Term

Robert Sanford is Professor Emeritus of Environmental Science and Policy at the University of Southern Maine. Mr. Sanford obtained an M.S. and Ph.D. in Environmental Science from the State University of New York College of Environmental Science and Forestry, and an undergraduate degree in Anthropology from SUNY Potsdam. He is the author of numerous books and journal articles on environmental planning and policy, applied archeology, instruction, and civic engagement. Prior to joining the faculty of the University of Southern Maine in 1996, Mr. Sanford served 10 years as an Environmental Board District Coordinator in Vermont. Mr. Sanford has served on numerous advisory committees for state and local government as well as non-profit organizations including the Maine Water Resources Committee, the Maine Farmland Project, and the Friends of the Presumpscot River. Mr. Sanford also served on the Town of Gorham's Municipal Recycling Committee for ten years. He lives in Gorham with his wife and son. Mr. Sanford was reappointed to the Board by Governor Janet T. Mills in February 2024.



**Steven Pelletier**  
Topsham, 2<sup>nd</sup> Term

Mr. Pelletier is a Certified Wildlife Biologist®, Maine Licensed Forester, and Professional Wetland Scientist with over 40 years of professional natural resource experience. Earlier in his career he served as a Wildlife Biologist with the US Forest Service and as an Environmental Specialist for the Maine Department of Environmental Protection's Land Bureau, was later co-founder/ owner of Woodlot Alternatives, Inc., a Maine-based ecological consulting firm, until its acquisition by Stantec Consulting in 2007. At Stantec he served as Senior Principal and US Ecosystems Discipline Lead specializing in rare species habitats and site and landscape-level resource assessments, also serving as Principal Investigator of two federal offshore migration research projects. Mr. Pelletier also conducted and oversaw a broad variety of diverse projects ranging from highway/ rail transportation to offshore energy development. He has authored numerous publications on a variety of natural resource topics including forest biodiversity, bat migration, vernal pools, and resource mitigation and compensation planning. He has served on a variety of Federal and State advisory committees and stakeholder groups and in 1989, co-founded the ME Association of Wetland Scientists. He currently serves on the Maine Board of Licensure of Foresters and several local community organizations including the Brunswick-Topsham Land Trust Advisory Board, Topsham Conservation Commission, and Topsham Development, Inc. Mr. Pelletier resides in Topsham with his wife Mary. Mr. Pelletier was reappointed to the Board by Governor Janet T. Mills in February 2024.

## Attachment A: Board of Environmental Protection Members

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**Elizabeth "Betsy"  
Fitzgerald**  
Machiasport, 1<sup>st</sup> Term

Ms. Fitzgerald has twenty years' experience in local government in Washington County following a thirty-five-year high school teaching career in central Maine. Having recently retired as the Washington County Manager, she currently serves as the Operations Manager for the Town of Machias as well as the code enforcement officer and plumbing inspector for a number of area towns. She recently completed her second term as the Commissioner from Washington County on the Land Use Planning Commission and chaired the Commission for the past year. Ms. Fitzgerald also serves on the Maine State Liquor and Lottery Commission and the Maine Recovery Council. She was instrumental in establishing the Washington County Heritage Center, a repository of historical and genealogical resources for families and their ancestors who came from Washington County. Ms. Fitzgerald resides in Machiasport. Ms. Fitzgerald was appointed to the Board by Governor Janet T. Mills in July 2025.