

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1479

S. P. 468

In Senate, March 26, 1979

Referred to the Committee on Energy and Natural Resources. Sent down for concurrence and ordered printed.

Presented by Senator Trafton of Androscoggin.

Cosponsor: Senator Huber of Cumberland.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Relating to the Protection of Ground Water.

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

Sec. 1. 17 MRSA § 2802, first sentence is amended to read:

The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or of the public; causing or permitting abandoned wells or tin mining shafts to remain unfilled or uncovered to the injury or prejudice of others; causing or suffering any offal, filth or noisome substance to collect, or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor or collection of water; corrupting or rendering unwholesome or impure the water of a river, stream ~~or~~, pond ~~or~~ **aquifer**; unlawfully diverting it from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings or otherwise, of highways, private ways, streets, alleys, common landing places or burying grounds are nuisances within the limitations and exceptions mentioned.

Sec. 2. 22 MRSA § 2641, as enacted by PL 1975, c. 751, § 4, is amended to read:

§ 2641. Source of public water supply defined

As used in this article, unless the context otherwise indicates, “source of public water supply” means any natural or man-made impoundment, pond or lake of under 2,500 acres, **or ground water aquifer** whose waters are transported or delivered by a public water system to the public. Where the intake of a public water supply is on the outlet ~~or~~ of any impoundment, pond or lake, the source of such public water supply shall be considered to be the impoundment, pond or lake itself.

Sec. 3. 22 MRSA § 2642, sub-§ 1, first sentence, as enacted by PL 1975, c. 751, § 4, is amended to read:

The municipal officers of each municipality shall have the authority, after notice and public hearing, to adopt regulations governing the surface uses of sources of public water supply, ~~or~~ portions thereof **or land overlying ground water aquifers used as sources of public water supply**, located within that municipality in order to protect the quality of such sources of public water supply or the health, safety or welfare of persons dependent upon such supplies.

Sec. 4. 30 MRSA § 2151, sub-§ 6 is enacted to read:

6. Ground water.

A. Providing for the protection and conservation of the quality and quantity of ground water. The purpose of this subsection is to promote the health, safety and general welfare of the public by preventing harm to ground water.

Sec. 5. 30 MRSA § 4956, sub-§ 3, ¶ M is enacted to read:

M. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

Sec. 6. 38 MRSA § 361-A, sub-§§ 1-B and 1-C are enacted to read:

1-B. Aquifer. “Aquifer” means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

1-C. Aquifer recharge area. “Aquifer recharge area” means land composed of permeable porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmit it to aquifers.

Sec. 7. 38 MRSA § 361, sub-§ 2-A is enacted to read:

2-A. Ground water. “Ground water” means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

Sec. 8. 38 MRSA § 363-B is enacted to read:

§ 363-B. Standards of classification of ground water

The board shall have 2 standards for the classification of ground water.

Class GW-A shall be the highest classification and shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usage of these waters, other than that occurring from natural phenomena.

Class GW-B, the 2nd highest classification, shall be suitable for all usages other than public water supplies.

Sec. 9. 38 MRSA § 371-B is enacted to read:

§ 371-B. Classification of ground water

All ground water shall be classified as not less than Class GW-A, except as otherwise provided in this section. The board shall reclassify any ground water after careful consideration, public hearings and in consultation with other state agencies and, where appropriate, federal and interstate water pollution control agencies and the municipalities and industries involved, and where the board finds that it is in the best interests of the public that the waters be so classified. This reclassification shall thereafter be the classification applicable to the ground water until 90 days after the date of adjournment of the next regular session of the Legislature unless the regular session shall adopt by legislative enactment a new classification.

Sec. 10. 38 MRSA c. 3, sub-c. 1, Art. 1-B is enacted to read:

ARTICLE 1-B. GROUND WATER PROTECTION PROGRAM**§ 401. Findings; purpose**

The Legislature finds and declares that the protection of ground water resources is critical to promote the health, safety and general welfare of the people of the State. Aquifers provide a significant amount of the water used by the people of the State. Aquifers and aquifer recharge areas are critical elements in the hydrologic cycle. Aquifer recharge areas collect, conduct and purify the water that replenishes aquifers.

The Legislature further finds and declares that an adequate supply of safe drinking water is a matter of the highest priority and that it is the policy of the State to protect, conserve and maintain ground water supplies in the State.

The Legislature further finds and declares that ground water resources are endangered by unwise uses and land use practices.

The Legislature further finds and declares it to be the purpose of this Article to require classification of the state's ground water resources.

The Legislature further finds and declares that there are numerous existing state agencies, commissions, boards or similar entities administering various statutes and programs relating to ground water. because of the importance of

ground water to the safety and well-being of the State, there is an urgent need for the coordination and development of the programs to assess the quality and quantity of and to protect ground water.

It is the intention of the Legislature that the Bureau of Geology provide coordination and develop programs for the collection and analysis of information relating to the nature, extent and quality of aquifers and aquifer recharge areas.

It is further the intention of the Legislature that existing programs related to ground water continue in the present form and that the Department of Environmental Protection provide coordination for the protection of ground water through existing statutes and regulations.

§ 402. Liability for unreasonable harm

A possessor of land or his grantee who withdraws ground water from the land is liable for interference with the use of water by another if the withdrawal of water causes unreasonable harm by lowering water quality, water table or reducing artesian pressure or by a direct and substantial effect upon the water or other surface water.

§ 403. Research

The Bureau of Geology in cooperation with the Department of Environmental Protection, is authorized to conduct research and studies to determine recharge and cleansing rates of ground water in different sand and gravel and bedrock formations.

Sec. 11. 38 MRSA § 413, sub-§ 1-B is enacted to read:

1-B. License required for subsurface waste water disposal systems. No person shall install, operate or maintain a subsurface waste water disposal system without first obtaining a license therefor from the board, except that a license shall not be required for systems designed and installed in conformance with the State of Maine Plumbing Code, as promulgated under Title 22, section 42.

Sec. 12. 38 MRSA § 420, first paragraph, as enacted by PL 1971, c. 544, § 130, is amended to read:

No person, firm, corporation or other legal entity shall place, deposit, discharge or spill, directly or indirectly, into the inland **ground or surface waters** or tidal waters of this State, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters, any of the following substances:

Sec. 13. 38 MRSA § 421, as last amended by PL 1973, c. 156, is further amended to read:

§ 421. Solid waste disposal areas; location

No boundary of any public or private solid waste disposal area shall lie closer than 300 feet to any classified body of **surface water**.

If the board shall determine that soil conditions, groundwater conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of **surface** water, it may, after notice to and a hearing with the affected party, order the relocation of such boundaries and the removal of any solid waste, previously deposited within the original boundaries, to the confines of the new boundaries.

Any person, corporation, municipality or state agency establishing a solid waste disposal area after September 23, 1971 may apply to the board for a determination that the boundaries of the proposed area are suitably removed from any classified body of **surface** water.

Any solid waste disposal area whose boundary is closer than 300 feet to any classified body of **surface** water shall be discontinued in conformity with this section prior to December 1, 1973.

Notwithstanding this section, if the Board of Environmental Protection shall determine from an examination of soil conditions, groundwater characteristics, climatic conditions, topography, the nature and amount of the solid waste and other appropriate factors, that the deposit of solid waste within an area less than 300 feet from any classified body of **surface** water, will not result in an unlicensed direct or indirect discharge of pollutants to such body of **surface** water, it may, after notice and hearing, permit the deposit of solid waste within such area, upon such terms and conditions as it deems necessary. Permits issued pursuant to this section shall be for a term of not more than 2 years but may be renewed for successive 2-year terms after reexamination pursuant to this chapter.

Sec. 14. 38 MRSA § 1304, sub-§ 1, 2nd sentence, as enacted by PL 1973, c. 387, is amended to read:

Such regulations shall be designed to encourage logical utilization of recoverable resources, to minimize pollution of the State's air, land ~~and water~~ **surface and ground water** resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety.

STATEMENT OF FACT

The purpose of this bill is to protect the quality and quantity of Maine's ground water. Several recent cases of severe ground water contamination dramatically demonstrates the need to protect this important resource.

Section 1 provides that the Bureau of Geology is to provide leadership for research and mapping of ground water aquifers and that the Department of Environmental Protection is to coordinate regulation of laws protecting ground water. It further establishes a "reasonable use" standard for ground water use, similar to the standard now used for the use of surface waters.

The remaining sections of the bill amend existing statutes, clarifying the role of the State and municipalities in protecting ground water. The amended laws include the nuisance statutes, protection of public water supplies, enabling statutes for municipal police power ordinances, the subdivision law, classification of waters of the State, waste discharge, license requirements, prohibited discharges and the Department of Environmental Protection's authority to promulgate rules and regulations.