

1 2	FIRST REGULAR SESSION				
3 4	ONE HUNDRED AND ELEVENTH L	.EGISLATURE			
- 5 6	Legislative Document	No. 1250			
7	S.P. 402	In Senate, March 17, 1983			
8	Referred to the Committee on Energy and Na for concurrence and ordered printed.	atural Resources. Sent down			
10	JOY J. O'BR	RIEN, Secretary of the Senate			
10	Presented by Senator Pray of Penobscot. Cosponsors: Representative Jacques of Water McGowan of Pittsfield and Representative Mitche				
12 13	STATE OF MAINE				
14 15 16	IN THE YEAR OF OUR NINETEEN HUNDRED AND EIG				
17 18 19	AN ACT to Revise the Clas System for Maine Wat				
20 21	Be it enacted by the People of the follows:	e State of Maine as			
22 23	Sec. 1. 38 MRSA §361-A, sub-§ 1971, c. 470, §1, is amended to re	2, as enacted by PL ad:			
24 25 26	2. <u>Fresh</u> surface waters. "Fr means all waters of the State othe and ground water.	esh surface waters" er than tidal waters			
27 28	<b>Sec. 2. 38 MRSA §363, first ¶</b> 1971, c. 618, §12, is further amen				
29 30 31 32	The board shall have 4 standa fication of fresh surface waters. shall remain in effect only unti waters that are not great ponds ha	These standards			

1 <u>fied in accordance with the procedures and standards</u> 2 in sections 367-A to 367-D.

3 Sec. 3. 38 MRSA §363-A, first ¶, as enacted by 4 PL 1977, c. 373, §6, is amended to read:

5 The board shall have 2 standards for the classi-6 fication of great ponds. <u>These standards shall</u> 7 remain in effect only until all great ponds have been 8 reclassified in accordance with the procedures and 9 standards in sections 367-A to 367-C and section 10 367-E.

11 Sec. 4. 38 MRSA §363-B, as enacted by PL 1979, 12 c. 472, §10, is amended to read:

13 §363-B. Standards of classification of ground water

14 The board shall have 2 standards for the classi-15 fication of ground water.

16 Etass GW-A Class G1 shall be the highest classi-17 fication and shall be of such quality that it can be 18 used for public water supplies. These waters shall be 19 free of radioactive matter or any matter that imparts 20 color, turbidity, taste or odor which would impair 21 usage of these waters, other than that occurring from 22 natural phenomena.

23 Elass GW-B Class G2, the 2nd highest classifica-24 tion, shall be suitable for all usages other than 25 public water supplies.

26 Sec. 5. 38 MRSA §364, first ¶, as amended by PL 27 1971, c. 618, §12, is further amended to read:

The board shall have 5 standards for classification of tidal waters. These standards shall remain in effect only until all tidal or marine waters have been reclassified in accordance with the procedures and standards in sections 367-A to 367-C and section 367-F.

 34
 Sec. 6.
 38
 MRSA §365, as amended by PL 1977, c.

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 300, §15, is repealed.

1 Sec. 7. 38 MRSA §367, as amended by PL 1979, c. 2 495, §3, is repealed. 3 Sec. 8. 38 MRSA §§367-A to 367-F are enacted to 4 read: 5 §367-A. Classification of Maine waters 6 In accordance with this section and sections 7 367-B to 367-F, the board shall recommend to the Legislature the reclassification of all surface 8 9 the State no later than the beginning of waters of 10 the First Regular Session of the 113th Legislature. 11 Waters of the State shall bear a dual classification consisting of 2 designations separated by a 12 13 slash mark (/). The first classification designates the existing water quality and the 2nd classification 14 designates water quality management goal for the par-15 16 ticular body of water. Waste discharge licenses 17 issued pursuant to section 414-A shall be based on 18 the water quality management goal for the particular 19 receiving water. 20 Classification of all surface waters shall be based on designated uses, water quality criteria necessary to support the designated uses and dis-charge policies consistent with the designated uses. 21 22 23 Classification of great ponds shall be based on trophic state and current trend of trophic change. 24 25 §367-B. Procedures for classification of Maine 26 27 waters 28 The waters of the State described in sections 368 29 to 371-B shall be classified in accordance with this subchapter. 30 31 Following public notice, the board shall conduct classification studies and investigations. Informa-32 33 tion collected during these studies and investigations shall be made available to the public in an 34 expeditious manner. After consultation with other 35 state agencies and, where appropriate, individuals, 36 37 citizens groups, industries, municipalities and fed-38 eral and interstate water pollution control agencies, the board shall propose classifications. The board 39

1 shall call public hearings in the affected area or 2 reasonably adjacent thereto, for the purpose of pre-3 senting to all interested persons the proposed clas-4 sification for each particular water body.

## 5 §367-C. General provisions

6 All surface waters of the State shall be free of 7 sludge deposits and floating substances such as oil, 8 grease, foam or scum, except as it naturally occurs. 9 There shall be no discharge of sewage, industrial 10 waste, heat, hazardous matter or other substances to 11 waters of the State which imparts color, odor, taste, 12 turbidity, toxicity, radioactivity or other charac-13 teristics which cause those waters to be unsuitable 14 for the uses ascribed to their class. Nonpoint 15 source discharges to all classified water bodies from forestry operations located in areas under the juris-16 17 diction of the Maine Land Use Regulation Commission and performed in accordance with Title 12, chapter 18 19 206-A, are exempt from the requirements of section 413, subsection 1, provided that the discharges do not violate the provisions of the assigned classifi-20 21 22 cations. There shall be no new discharge of sewage or industrial waste, with the exception of noncontact 23 24 cooling water or discharges incidental to hydroelec-25 tric power generation, to Class GP1 or GP2 waters, their tributaries or to waters with a drainage area 26 of less than 10 square miles. There shall be no 27 alteration of the volume of flow in any classified 28 29 body of water in a manner which will, in combination 30 with natural conditions and licensed discharges, 31 cause the quality of downstream waters to fall below the minimum standards established in this chapter or 32 33 cause those waters to be unsuitable for their desig-34 nated uses.

35 §367-D. Standards for classification of rivers, 36 streams and brooks

37 The State shall have 4 standards for classifica-38 tion of fresh surface waters that are not classified 39 as great ponds. These standards apply to the classi-40 fication of a segment for both its existing quality 41 and its water quality management goal.

Class F1 shall be the highest classification of 1 rivers, streams and brooks and shall be applied to 2 waters whose quality is largely unaffected by human 3 activity and which are significant resources for 4 reasons of ecological, social, scenic or recreational 5 6 importance, as determined by the Legislature. Waters 7 of this class shall be suitable for drinking water 8 supply after disinfection, water contact recreation, fishing and other recreational activities, navigation 9 10 and as a habitat for fish and wildlife. The aquatic life, dissolved oxygen and fecal coliform bacteria 11 12 content of these waters shall be as they naturally 13 occur.

14 The discharge of pollutants to these waters shall 15 be prohibited, except that nonpoint source discharges 16 which comply with section 367-C or section 413, sub-17 section 2, shall be permitted. All surface waters 18 upstream of Class F1 waters shall have a management 19 goal of Class F1 or Class GP1.

20 <u>Class F2 shall be the 2nd highest classification</u> 21 of rivers, streams and brooks. Waters of this class 22 shall be suitable for drinking water supply after 23 treatment, water contact recreation, fishing and 24 other recreational activities, industrial process and 25 cooling water supply, power generation, navigation 26 and as a habitat for fish and wildlife.

27 The dissolved oxygen content of Class F2 waters shall be not less than 75% of saturation. Between 28 May 15th and September 30th, the fecal coliform bac-29 30 teria level shall not exceed a geometric mean of 200 31 per 100 milliliters, nor shall more than 10% of the samples exceed 400 per 100 milliliters. During the 32 remainder of the year, fecal coliform bacteria shall 33 34 be present only in amounts which do not cause these waters to be unsuitable for their designated uses 35 36 other than water contact recreation.

37 Discharges to Class F2 waters shall not cause 38 harm to aquatic life in the receiving waters after 39 combination with any discharge, and in combination 40 with all other discharges, shall be of sufficient 41 quality to support all aquatic species indigenous to 42 the receiving water without detrimental changes in 43 the resident biological community. Discharges to

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1 waters of this class shall not cause fish to be 2 unsuitable for human consumption or cause the pH of 3 the water to fall outside the 6.0 to 8.5 range. The 4 water quality management goal of Class F2 waters 5 shall be F2 or higher.

6 Class F3 shall be the 3rd highest classification 7 of rivers, streams and brooks. Waters of this class 8 shall be suitable for drinking water supply after 9 treatment, limited water contact recreation, fishing 10 and other recreational activities, industrial process 11 and cooling water supply, power generation, navi-12 gation and as a habitat for fish and wildlife.

13 The dissolved oxygen content of Class F3 waters shall be not less than 5.0 parts per million or 60% 14 of saturation, whichever is higher. Between October 15 1st and May 15th, fecal coliform bacteria shall be 16 17 present in these waters only in amounts which do not 18 cause these waters to be unsuitable for their desig-19 nated uses other than limited water contact recrea-20 tion.

Discharges to Class F3 waters may cause some impact to aquatic life in that the properties of the 21 22 23 receiving water after combination with any discharge 24 and in combination with all other discharges may result in some changes in the resident biological 25 community. These discharges shall not impair the 26 fishable quality of these waters in that the result-27 28 ant water quality shall be sufficient to naturally 29 support all indigenous species of fish. Discharges to waters of this class shall not cause fish to be 30 31 unsuitable for human consumption or the pH of the 32 water to fall outside the 6.0 to 8.5 range. The 33 water quality management goal of Class F3 waters 34 shall be F3 or higher.

35 Class F4 shall be the lowest classification of 36 rivers, streams and brooks and shall be assigned only 37 to waters which do not meet a higher classification. The water quality management goal of Class F4 waters 38 39 shall be Class F3 or higher. Waters of this class 40 shall be suitable for power generation, industrial process and cooling water supply, navigation and as a 41 42 limited habitat for fish and wildlife.

1	The dissolved oxygen content of Class F4 waters
2	shall be not less than 2.0 parts per million nor
3	shall fecal coliform bacteria be present in amounts
4	which indicate a condition endangering the public
5	health.
6	Discharges to Class F4 waters might cause sig-
7	nificant impact to aquatic life but shall not impair
8	the ability of these waters to naturally support some
9	species of fish. Discharges to Class F4 waters shall
10	not create a public nuisance as defined in Title 17,
11	section 2802.
12	§367-E. Standards for classification of great ponds
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 20	The State shall have 2 standards for classifica- tion of great ponds. Class GP1 or GP2 shall be the classification of all great ponds, except that exca- vation and impoundments of rivers may be otherwise classified as specified in section 368. Waters of these classes shall be suitable for drinking water supply after disinfection, water contact recreation, fishing and other recreational activities, industrial process and cooling water supply, power generation, navigation and as a habitat for fish and wildlife. The quality of these waters shall be described by a Trophic State Index ranging from 0 to 100 as de- fined by the board which shall include measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. The fecal coliform bacteria
29	content of waters classified as GP1 or GP2 shall not
30	exceed 200 per 100 milliliters at any place or any
31	time.
32	There shall be no new discharge into Class GP1 or
33	GP2 waters of sewage or industrial wastes with the
34	exception of noncontact cooling water. Existing li-
35	censed discharges of sewage or industrial wastes into
36	these waters or their tributaries shall be allowed to
37	continue only until practical alternatives exist, or
38	as provided in section 371-A, subsection 3 for
39	aquatic pesticides. No materials may be placed on or
40	removed from the shores or banks of a Class GP1 or
41	GP2 water body in such a manner that the materials
42	may fall or be washed into the water or that contami-

nated drainage therefrom may flow or leach into those waters, except as provided in section 391. No discharge resulting from a change of land use in the watershed of a Class GP1 or GP2 water body may, by itself or in combination with other discharges, cause the degradation of the quality of that water through siltation, phosphorus loading or other means.

8 <u>Class GP1 waters shall have a stable or decreas-</u> 9 ing trophic state, subject only to natural fluctu-10 ations, and shall be free of culturally-induced 11 <u>blue-green, Cyanophyta, algal blooms. The water</u> 12 <u>quality management goal of Class GP1 waters shall be</u> 13 <u>GP1.</u>

14 Class GP2 waters include those great ponds which 15 support repeated culturally-induced blue-green, 16 Cyanophyta, algal blooms or whose water quality is 17 characterized by a current trend of increasing 18 trophic state which cannot be accounted for solely by 19 natural fluctuations. The water quality management 20 goal of Class GP2 shall be GP1.

21 §367-F. Standards for classification of tidal waters

22 The State shall have 3 standards for classifica-23 tion of tidal waters which shall apply to the classi-24 fication of an area for both its existing quality and 25 its water quality management goal.

26 <u>Class S1</u> shall be the highest classification of 27 tidal waters. Waters of this class shall be suitable 28 for water contact recreation, fishing and other 29 recreation activities, propagation and harvesting of 30 shellfish for direct consumption, industrial process 31 and cooling water supply, power generation, navi-32 gation and as a habitat for fish and wildlife.

33 The dissolved oxygen content of Class S1 waters 34 shall be as it naturally occurs. In waters of this 35 class, the median bacteria levels in any series of 36 representative samples shall not exceed 70 total 37 coliform bacteria or 14 fecal coliform bacteria per 100 milliliters nor shall more than 10% of the 38 samples exceed 230 total coliform bacteria or 39 70 fecal coliform bacteria per 100 milliliters. 40

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1	With the exception of noncontact cooling water,
2	new discharges to waters designated as having a cur-
3	rent water quality classification or water quality
4	management goal of Class S1 shall be prohibited.
5	Existing licensed discharges to waters with a current
6	water quality classification of Class S1 shall be
7	allowed to continue only until practical alternatives
8	exist, provided that such discharges will not violate
9	water quality standards, cause these waters to be
10	unsuitable for their designated uses or cause harm to
11	estuarine or marine life in that the receiving water
12	after combination with any discharge and in combina-
13	tion with all other discharges shall be of sufficient
14	quality to support all estuarine and marine life
15	indigenous to the receiving water without changes in
16	the resident biological community. Discharges to
17	waters of this class shall not cause fish or shell-
18	fish to be unsuitable for human consumption or the pH
19	of the water to fall outside the 6.7 to 8.5 range.
20	The water quality management goal of Class S1 waters
21	shall be S1.
22	Class S2 shall be the 2nd highest classification
23	of tidal waters. Waters of this class shall be suit-
24	able for water contact recreation, fishing and other
25	able for water contact recreation, fishing and other
	recreational activities, propagation and harvesting
26	of shellfish, industrial process and cooling water
27	supply, power generation, navigation and as a habitat
28	for fish and wildlife.
29	The dissolved oxygen content of Class S2 waters
30	shall be not less than 85% of saturation. The median
31	bacteria levels in any series of representative
32	
	samples of Class S2 waters designated as shellfish
33	propagation and harvesting areas by the Department of
	propagation and harvesting areas by the Department of
33 34	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform
33 34 35	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100
33 34 35 36	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples
33 34 35 36 37	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal
33 34 35 36 37 38	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2
33 34 35 36 37 38 39	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa-
33 34 35 36 37 38 39 40	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa- gation and harvesting areas, the fecal coliform bac-
33 34 35 36 37 38 39 40 41	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa- gation and harvesting areas, the fecal coliform bac- teria level between May 15th and September 30th,
33 34 35 36 37 38 39 40 41 42	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa- gation and harvesting areas, the fecal coliform bac- teria level between May 15th and September 30th, based on a minimum of 10 samples, shall not exceed a
33 34 35 36 37 38 39 40 41 42 43	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa- gation and harvesting areas, the fecal coliform bac- teria level between May 15th and September 30th, based on a minimum of 10 samples, shall not exceed a geometric mean of 200 per 100 milliliters nor shall
33 34 35 36 37 38 39 40 41 42 43 44	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa- gation and harvesting areas, the fecal coliform bac- teria level between May 15th and September 30th, based on a minimum of 10 samples, shall not exceed a geometric mean of 200 per 100 milliliters nor shall more than 10% of the samples exceed 400 per 100
33 34 35 36 37 38 39 40 41 42 43	propagation and harvesting areas by the Department of Marine Resources shall not exceed 700 total coliform bacteria or 150 fecal coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 total coliform bacteria or 500 fecal coliform bacteria per 100 milliliters. For Class S2 waters which are not designated as shellfish propa- gation and harvesting areas, the fecal coliform bac- teria level between May 15th and September 30th, based on a minimum of 10 samples, shall not exceed a geometric mean of 200 per 100 milliliters nor shall

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1 S2 waters which are not designated as shellfish 2 propagation and harvesting areas shall have bacteria 3 present only in amounts which do not impair desig-4 nated uses other than water contact recreation.

5 Discharges to Class S2 waters shall not cause 6 harm to estuarine or marine life in that the prop-7 erties of the receiving water after combination with 8 any discharge and in combination with all other dis-9 charges shall be of sufficient quality to support all 10 estuarine and marine life indigenous to the receiving water without changes in the resident biological com-11 12 munity. Discharges to waters of this class shall not 13 cause fish or shellfish to be unsuitable for human 14 consumption or the pH to fall outside the 6.7 to 8.5 range. The water quality management goal of Class S2 15 16 waters shall be S2 or higher.

17 Class S3 shall be the lowest classification of 18 tidal waters. Waters of this class shall be suitable 19 for limited water contact recreation, fishing and other recreation activities, industrial process and 20 cooling water supply, power generation, navigation 21 22 and as habitat for fish and wildlife. Shellfish may be taken from Class S3 waters only under certain con-23 24 ditions specified by the Department of Marine 25 Resources.

26 The dissolved oxygen content of Class S3 waters 27 shall be not less than 70% of saturation. Fecal 28 coliform bacteria shall be present in these waters 29 only in amounts which do not cause these waters to be 30 unsuitable for their designated uses.

31 Discharges to Class S3 waters may cause some 32 impact to estuarine and marine life in that the prop-33 erties of the receiving water, after combination with any discharge and in combination with all other dis-34 35 charges, may result in some changes in the resident 36 biological community. These discharges shall not 37 impair the fishable quality of these waters in that the resultant water quality shall be sufficient to 38 naturally support all indigenous species of fish. 39 40 Discharges to waters of this class shall not cause fish to be unsuitable for human consumption of the pH 41 to fall outside the 6.7 to 8.5 range. 42

Sec. 9. 38 MRSA §371-B, as enacted by PL 1979,
 c. 472, §11, is repealed and the following enacted in
 its place:

4 §371-B. Classification of ground water

5	A	11 g	round	water	shall	be	classi	fied a	as not	: less
6	than	Cla	ss Gi	l, unl	ess re	clas	sified	under	the	provi-
7	sions	of	sectio	on 367	<u>-B.</u>					

## STATEMENT OF FACT

9 This bill revises the system for classification of waters of the State to incorporate revised water 10 11 quality criteria based on recent scientific findings, 12 to provide additional protection for great ponds, tributaries to great ponds and productive shellfish 13 14 areas, and to prohibit discharges to a limited group 15 of rivers and streams that are determined by the 16 Legislature to be significant resources worthy of 17 protection because of their social, ecological, scenic or recreation importance. 18

19 Sections 1, 2, 3, 4 and 5 amend Title 38, sec-20 tions 361-A, 363, 363-A, 363-B and 364 to provide 21 for the transition from the present system to the 22 revised system.

23 Sections 6 and 7 repeal the classification proce-24 dures in Title 38, sections 365 and 367.

25 Section 8 describes the broad framework of the 26 revised classification system, establishes uniform 27 procedures for classification of all waters of the 28 State and establishes the standards for classifica-29 tion of Maine waters.

30 Section 9 amends Title 38, section 371-B to elim-31 inate the separate procedures for classification of 32 ground water in favor of the uniform classification 33 procedures in section 8.

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