FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 1250

S.P. 402 In Senate, March 17, 1983

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Pray of Penobscot.

Cosponsors: Representative Jacques of Waterville, Representative McGowan of Pittsfield and Representative Mitchell of Freeport.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Revise the Classification System for Maine Waters.

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

Sec. 1. 38 MRSA §361-A, sub-§2, as enacted by PL 1971, c. 470, §1, is amended to read:

2. Fresh surface waters. "Fresh surface waters" means all waters of the State other than tidal waters and ground water.

Sec. 2. 38 MRSA §363, first ¶, as amended by PL 1971, c. 618, §12, is further amended to read:

The board shall have 4 standards for the classification of fresh surface waters. These standards shall remain in effect only until all fresh surface waters that are not great ponds have been reclassi-

fied in accordance with the procedures and standards in sections 367-A to 367-D.

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

The board shall have 2 standards for the classification of great ponds. These standards shall remain in effect only until all great ponds have been reclassified in accordance with the procedures and standards in sections 367-A to 367-C and section 367-E.

Sec. 4. 38 MRSA §363-B, as enacted by PL 1979, c. 472, §10, is amended 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~~ Class GL 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~~ Class GL, the 2nd highest classification, shall be suitable for all usages other than public water supplies.

Sec. 5. 38 MRSA §364, first ¶, as amended by PL 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.

Sec. 6. 38 MRSA §365, as amended by PL 1977, c. 300, §15, is repealed.

Sec. 7. 38 MRSA §367, as amended by PL 1979, c. 495, §3, is repealed.

Sec. 8. 38 MRSA §§367-A to 367-F are enacted to read:

§367-A. Classification of Maine waters

In accordance with this section and sections 367-B to 367-F, the board shall recommend to the Legislature the reclassification of all surface waters of the State no later than the beginning of the First Regular Session of the 113th Legislature.

Waters of the State shall bear a dual classification consisting of 2 designations separated by a slash mark (/). The first classification designates the existing water quality and the 2nd classification designates water quality management goal for the particular body of water. Waste discharge licenses issued pursuant to section 414-A shall be based on the water quality management goal for the particular receiving water.

Classification of all surface waters shall be based on designated uses, water quality criteria necessary to support the designated uses and discharge policies consistent with the designated uses. Classification of great ponds shall be based on trophic state and current trend of trophic change.

§367-B. Procedures for classification of Maine waters

The waters of the State described in sections 368 to 371-B shall be classified in accordance with this subchapter.

Following public notice, the board shall conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizens groups, industries, municipalities and federal and interstate water pollution control agencies, the board shall propose classifications. The board

shall call public hearings in the affected area or reasonably adjacent thereto, for the purpose of presenting to all interested persons the proposed classification for each particular water body.

§367-C. General provisions

All surface waters of the State shall be free of sludge deposits and floating substances such as oil, grease, foam or scum, except as it naturally occurs. There shall be no discharge of sewage, industrial waste, heat, hazardous matter or other substances to waters of the State which imparts color, odor, taste, turbidity, toxicity, radioactivity or other characteristics which cause those waters to be unsuitable for the uses ascribed to their class. Nonpoint source discharges to all classified water bodies from forestry operations located in areas under the jurisdiction of the Maine Land Use Regulation Commission and performed in accordance with Title 12, chapter 206-A, are exempt from the requirements of section 413, subsection 1, provided that the discharges do not violate the provisions of the assigned classifications. There shall be no new discharge of sewage or industrial waste, with the exception of noncontact cooling water or discharges incidental to hydroelectric power generation, to Class GP1 or GP2 waters, their tributaries or to waters with a drainage area of less than 10 square miles. There shall be no alteration of the volume of flow in any classified body of water in a manner which will, in combination with natural conditions and licensed discharges, cause the quality of downstream waters to fall below the minimum standards established in this chapter or cause those waters to be unsuitable for their designated uses.

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

The State shall have 4 standards for classification of fresh surface waters that are not classified as great ponds. These standards apply to the classification of a segment for both its existing quality and its water quality management goal.

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

The discharge of pollutants to these waters shall be prohibited, except that nonpoint source discharges which comply with section 367-C or section 413, subsection 2, shall be permitted. All surface waters upstream of Class F1 waters shall have a management goal of Class F1 or Class GPl.

Class F2 shall be the 2nd highest classification of rivers, streams and brooks. Waters of this class shall be suitable for drinking water supply after treatment, 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 dissolved oxygen content of Class F2 waters shall be not less than 75% of saturation. Between May 15th and September 30th, the fecal coliform bacteria level shall not exceed a geometric mean of 200 per 100 milliliters, nor shall more than 10% of the samples exceed 400 per 100 milliliters. During the remainder of the year, fecal coliform bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other than water contact recreation.

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

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

Class F3 shall be the 3rd highest classification of rivers, streams and brooks. Waters of this class shall be suitable for drinking water supply after treatment, limited 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 dissolved oxygen content of Class F3 waters shall be not less than 5.0 parts per million or 60% of saturation, whichever is higher. Between October 1st and May 15th, fecal coliform bacteria shall be present in these waters only in amounts which do not cause these waters to be unsuitable for their designated uses other than limited water contact recreation.

Discharges to Class F3 waters may cause some impact to aquatic life in that the properties of the receiving water after combination with any discharge and in combination with all other discharges may result in some changes in the resident biological community. These discharges shall not impair the fishable quality of these waters in that the resultant water quality shall be sufficient to naturally support all indigenous species of fish. Discharges to waters of this class shall not cause fish to be unsuitable for human consumption or the pH of the water to fall outside the 6.0 to 8.5 range. The water quality management goal of Class F3 waters shall be F3 or higher.

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

The dissolved oxygen content of Class F4 waters shall be not less than 2.0 parts per million nor shall fecal coliform bacteria be present in amounts which indicate a condition endangering the public health.

Discharges to Class F4 waters might cause significant impact to aquatic life but shall not impair the ability of these waters to naturally support some species of fish. Discharges to Class F4 waters shall not create a public nuisance as defined in Title 17, section 2802.

§367-E. Standards for classification of great ponds

The State shall have 2 standards for classification of great ponds. Class GP1 or GP2 shall be the classification of all great ponds, except that excavation 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 defined 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 content of waters classified as GP1 or GP2 shall not exceed 200 per 100 milliliters at any place or any time.

There shall be no new discharge into Class GP1 or GP2 waters of sewage or industrial wastes with the exception of noncontact cooling water. Existing licensed discharges of sewage or industrial wastes into these waters or their tributaries shall be allowed to continue only until practical alternatives exist, or as provided in section 371-A, subsection 3 for aquatic pesticides. No materials may be placed on or removed from the shores or banks of a Class GP1 or GP2 water body in such a manner that the materials 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.

Class GP1 waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced blue-green, Cyanophyta, algal blooms. The water quality management goal of Class GP1 waters shall be GP1.

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

§367-F. Standards for classification of tidal waters

The State shall have 3 standards for classification of tidal waters which shall apply to the classification of an area for both its existing quality and its water quality management goal.

Class S1 shall be the highest classification of tidal waters. Waters of this class shall be suitable for water contact recreation, fishing and other recreation activities, propagation and harvesting of shellfish for direct consumption, industrial process and cooling water supply, power generation, navigation and as a habitat for fish and wildlife.

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

With the exception of noncontact cooling water, new discharges to waters designated as having a current water quality classification or water quality management goal of Class S1 shall be prohibited. Existing licensed discharges to waters with a current water quality classification of Class S1 shall be allowed to continue only until practical alternatives exist, provided that such discharges will not violate water quality standards, cause these waters to be unsuitable for their designated uses or cause harm to estuarine or marine life in that the receiving water after combination with any discharge and in combination with all other discharges shall be of sufficient quality to support all estuarine and marine life indigenous to the receiving water without changes in the resident biological community. Discharges to waters of this class shall not cause fish or shellfish to be unsuitable for human consumption or the pH of the water to fall outside the 6.7 to 8.5 range. The water quality management goal of Class S1 waters shall be S1.

Class S2 shall be the 2nd highest classification of tidal waters. Waters of this class shall be suitable for water contact recreation, fishing and other recreational activities, propagation and harvesting of shellfish, industrial process and cooling water supply, power generation, navigation and as a habitat for fish and wildlife.

The dissolved oxygen content of Class S2 waters shall be not less than 85% of saturation. The median bacteria levels in any series of representative samples of Class S2 waters designated as shellfish 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 propagation and harvesting areas, the fecal coliform bacteria 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 milliliters. During the remainder of the year, Class

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

Discharges to Class S2 waters shall not cause harm to estuarine or marine life in that the properties of the receiving water after combination with any discharge and in combination with all other discharges shall be of sufficient quality to support all estuarine and marine life indigenous to the receiving water without changes in the resident biological community. Discharges to waters of this class shall not cause fish or shellfish to be unsuitable for human consumption or the pH to fall outside the 6.7 to 8.5 range. The water quality management goal of Class S2 waters shall be S2 or higher.

Class S3 shall be the lowest classification of tidal waters. Waters of this class shall be suitable for limited water contact recreation, fishing and other recreation activities, industrial process and cooling water supply, power generation, navigation and as habitat for fish and wildlife. Shellfish may be taken from Class S3 waters only under certain conditions specified by the Department of Marine Resources.

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

Discharges to Class S3 waters may cause some impact to estuarine and marine life in that the properties of the receiving water, after combination with any discharge and in combination with all other discharges, may result in some changes in the resident biological community. These discharges shall not impair the fishable quality of these waters in that the resultant water quality shall be sufficient to naturally support all indigenous species of fish. Discharges to waters of this class shall not cause fish to be unsuitable for human consumption of the pH to fall outside the 6.7 to 8.5 range.

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

§371-B. Classification of ground water

All ground water shall be classified as not less than Class GW, unless reclassified under the provisions of section 367-B.

STATEMENT OF FACT

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

Sections 1, 2, 3, 4 and 5 amend Title 38, sections 361-A, 363, 363-A, 363-B and 364 to provide for the transition from the present system to the revised system.

Sections 6 and 7 repeal the classification procedures in Title 38, sections 365 and 367.

Section 8 describes the broad framework of the revised classification system, establishes uniform procedures for classification of all waters of the State and establishes the standards for classification of Maine waters.

Section 9 amends Title 38, section 371-B to eliminate the separate procedures for classification of ground water in favor of the uniform classification procedures in section 8.

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