

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1144

6
7 S.P. 414

In Senate, March 27, 1985

8 Submitted by the Department of Environmental Protection pursuant to
9 Joint Rule 24.

10 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 Usher of Cumberland.

11 Cosponsored by Representative Hoglund of Portland, Representative
Dexter of Kingfield and Representative Michaud of Medway.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Amend the Department of
18 Environmental Protection Laws.
19

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

22 Sec. 1. 4 MRSA §152, sub-§6, as enacted by PL
23 1983, c. 796, §1, is amended to read:

24 6. Land use laws. Original jurisdiction, con-
25 current with that of the Superior Court, to grant eq-
26 uitable relief in proceedings involving alleged vio-
27 lations of a local land use ordinance or regulation
28 or a state land use statute or regulation, which
29 shall include, but shall not be limited to, the fol-
30 lowing: The laws pertaining to the Maine Land Use
31 Regulation Commission, Title 12, chapter 206-A; mini-
32 mum lot size law, Title 12, sections 4807 to 4807-G;
33 shoreland zoning ordinances adopted pursuant to Title
34 12, sections 4811 to 4817; the Alteration of Rivers,
35 Streams and Brooks law, Title 12, sections ~~7776-7780~~
36 7776 to 7780; the plumbing and subsurface wastewater

1 disposal rules adopted by the Department of Human
2 Services pursuant to Title 22, section 42; laws per-
3 taining to public water supplies, Title 22, sections
4 2642, 2647 and 2648; local ordinances pursuant to Ti-
5 tle 22, section 2642; local ordinances adopted pursu-
6 ant to Title 30, section 1917; local building codes
7 adopted pursuant to Title 30, sections 1917 and 2151;
8 Title 30, chapter 215, subchapter I, automobile
9 junkyards and subchapter X, regulation and inspection
10 of plumbing; Title 30, section 4359, malfunctioning
11 domestic sewage disposal units; Title 30, section
12 4956, the subdivision law, and local subdivision or-
13 dinances adopted pursuant to Title 30, section 1917
14 and subdivision regulations adopted pursuant to Title
15 30, section 4956; local zoning ordinances adopted
16 pursuant to Title 30, section 1917 and in accordance
17 with Title 30, section 4962; the Great Ponds Act, Ti-
18 tle 38, sections 386 to 396; laws pertaining to the
19 discharge of wastes, Title 38, sections 413, 414,
20 417, 418 and 420; the Alteration of Coastal Wetlands
21 Act, Title 38, sections 471 to 476 and 478; and the
22 Site Location of Development Act, Title 38, sections
23 481 to 485 and 488 to 490; and the Oil Discharge Pre-
24 vention and Pollution Control laws, Title 38, sec-
25 tions 543, 545, 545-A and 560.

26 Sec. 2. 38 MRSA §349, sub-§1, as amended by PL
27 1983, c. 796, §18, is repealed and the following en-
28 acted in its place:

29 1. Criminal penalties. Any person who violates
30 any provisions of the laws administered by the de-
31 partment or the terms or conditions of any order,
32 rule, license, permit, approval or decision of the
33 board is guilty of a Class E crime and may be pun-
34 ished accordingly, except notwithstanding Title 17-A,
35 section 1301, subsection 1, paragraph C, or subsec-
36 tion 3, paragraph E, the fine for such a violation
37 shall not exceed \$25,000 for each day of the viola-
38 tion.

39 This subsection does not apply to actions subject to
40 the criminal penalties set forth in section 1306-A.

41 Sec. 3. 38 MRSA §349, sub-§4, as amended by PL
42 1983, c. 796, §18, is repealed.

1 Sec. 4. 38 MRS §353, sub-§3, as amended by PL
2 1983, c. 743, §6, is further amended to read:

3 3. License fee. A license fee shall be paid
4 prior to the issuance of any license or permit. If a
5 license fee is paid prior to board or commissioner
6 action on the application, the department shall re-
7 fund the license fee if the board or commissioner de-
8 nies the application or if the application is with-
9 drawn by the applicant.

10 Sec. 5. 38 MRS §390-A, sub-§1, as amended by PL
11 1983, c. 483, §7 and c. 566, §12, is repealed and the
12 following enacted in its place:

13 1. Fund purposes and administration. There is
14 established a nonlapsing Lake Restoration and Protec-
15 tion Fund, from which the department may pay an
16 amount equal to the local share from state appropria-
17 tion of the eligible costs incurred in a lake resto-
18 ration or protection project. Eligible costs in-
19 clude all costs except those related to land acquisi-
20 tion, legal fees and debt service. All money cred-
21 ited to that fund shall be used by the department for
22 projects to improve or maintain the quality of lake
23 waters in the State and for no other purpose. The
24 Commissioner of Environmental Protection may autho-
25 rize the State Controller to draw his warrant for
26 such funds as may be necessary to pay the lawful ex-
27 penses of the lake restoration or protection project,
28 up to the limits of the money duly authorized. Any
29 balance remaining in the fund shall continue without
30 lapse from year to year and remain available for the
31 purposes for which the fund is established and for no
32 other purpose.

33 Sec. 6. 38 MRS §451-A, sub-§1, as amended by PL
34 1983, c. 566, §26, is further amended to read:

35 1. Power to grant variances. The Board of Envi-
36 ronmental Protection ~~shall~~ may grant a variance from
37 any statutory water pollution abatement time schedule
38 to any municipality or quasi-municipal entity, here-
39 inafter called the "municipality," upon application
40 by it. The board ~~shall~~ may grant a variance only upon
41 a finding that:

1 A. Federal funds for the construction of municipi-
2 pal waste water treatment facilities are not
3 available for the project;

4 B. The municipality has demonstrated that it has
5 completed preliminary plans acceptable to the De-
6 partment of Environmental Protection for the
7 treatment of municipal wastes and for construc-
8 tion of that portion of the municipal sewage sys-
9 tem intended to be served by the planned municipi-
10 pal treatment plant when that plant first begins
11 operations; and

12 C. Beginning on October 1, 1976, the municipali-
13 ty shall collect, from each discharger into its
14 sewage system and each discharger not connected
15 to the sewage system which has signed an approved
16 agreement with the municipality pursuant to sub-
17 section 2, a fee sufficient to equal their pro-
18 portionate share of the actual current cost of
19 operating the sewage system for which preliminary
20 plans have been completed and approved pursuant
21 to paragraph B. Actual current costs shall in-
22 clude but not be limited to preliminary plans,
23 final design plans, site acquisition, legal fees,
24 interest fees, sewer system maintenance and reha-
25 bilitation and other administrative costs. A mu-
26 nicipality may provide, when permitted under the
27 federal construction grant program, that in lieu
28 of such annual fees paid by dischargers, the mu-
29 nicipality may apportion an appropriate amount
30 from general revenues to cover that share of fees
31 to be paid by dischargers.

32 The funds collected or apportioned pursuant to
33 this paragraph and interest collected thereon
34 shall be invested and expended pursuant to Title
35 30, chapter 241.

36 Any funds paid by a discharger or discharger not
37 connected to the sewage system pursuant to this
38 paragraph may be credited to the account of the
39 discharger if the municipality is subsequently
40 reimbursed by the federal construction grant pro-
41 gram. The credit arrangement shall be determined
42 by agreement between the municipality and the
43 discharger.

1 Variances shall be issued for a term certain not to
2 exceed 3 years, and may be renewed, except that no
3 variance shall run longer than the time specified for
4 completion of the municipal waste treatment facility.
5 Upon notice of the availability of federal funds, the
6 municipality shall present to the Department of Envi-
7 ronmental Protection for approval an implementation
8 schedule for designing, constructing and placing the
9 waste collection and treatment facilities in opera-
10 tion.

11 Variances may be conditioned upon reasonable and nec-
12 essary terms relating to appropriate interim measures
13 to be taken by the municipality to maintain or im-
14 prove water quality.

15 Sec. 7. 38 MRSA §482, sub-§2, as amended by PL
16 1983, c. 819, Pt. A, §63, is further amended to
17 read:

18 2. Development which may substantially affect
19 the environment. "Development which may substantially
20 affect the environment," in this Article called "de-
21 velopment," means any state, municipal, quasi-municipal,
22 educational, charitable, commercial or industrial
23 development, including subdivisions, which occupa-
24 pies a land or water area in excess of 20 acres, or
25 which contemplates drilling for or excavating natural
26 resources, on land or under water where the area af-
27 fected is in excess of 60,000 square feet, or which
28 is a mining activity, or which is a hazardous activi-
29 ty, or which is a structure; but excluding state
30 highways, state aid highways, borrow pits for sand,
31 fill or gravel, of less than 5 acres or when regu-
32 lated by the Department of Transportation, and such
33 borrow pits entirely within the jurisdiction of the
34 Maine Land Use Regulation Commission under, chapter
35 206-A, and those activities regulated by the Depart-
36 ment of Marine Resources under Title 12, section
37 6072.

38 No person ~~shall~~ may construct or cause to be con-
39 structed or operate or cause to be operated, or in
40 the case of a subdivision sell, offer for sale, or
41 cause to be sold, any development requiring approval
42 under section 483 without first having obtained ap-
43 proval for such construction, operation or sale from
44 the Board of Environmental Protection.

1 Sec. 8. 38 MRSA §532, first ¶, as amended by PL
2 1983, c. 812, §292, is further amended to read:

3 There shall be 5 members, hereinafter in this
4 subchapter called Commissioners of the New England
5 Interstate Water Pollution Control Commission from
6 the State of Maine, as authorized by Title 5, section
7 12004, subsection 12. One commissioner shall be the
8 Commissioner of ~~the Department of~~ Human Services and
9 one the ~~Chairman of the Maine Board~~ Commissioner of
10 Environmental Protection or his designee. The term of
11 any such commissioner shall terminate at the time he
12 ceases to hold said state office and his successor in
13 that office shall be his successor as commissioner on
14 this commission. The Governor shall appoint 3 more
15 commissioners who shall be citizens of the State, one
16 to represent municipal interests, one to represent
17 industrial interests and one to represent the public
18 generally. The term of the last 3 said commissioners
19 shall be for a period of 3 years and he shall hold
20 office until his successor shall be appointed and
21 qualified. The terms of each of the initial 5 members
22 shall begin at the date of the appointment, provided
23 the said compact shall then have been executed by the
24 Governor of this State as prescribed in section 531;
25 otherwise they shall begin upon the effective date of
26 the compact in accordance with section 537.

27 Sec. 9. 38 MRSA §603-A, sub-§2, ¶¶A and B, as
28 enacted by PL 1983, c. 504, §10, are amended to read:

29 A. The sulfur content for liquid fossil fuels is
30 as follows.

31 (1) In the Central Maine, Downeast,
32 Aroostook County and Northwest Maine Air
33 Quality Control Regions, no person may use
34 any liquid fossil fuel with a sulfur content
35 greater than 2.5% by weight any time after
36 November 1, 1973. In the Metropolitan Port-
37 land Air Quality Control Region outside the
38 Portland Peninsula Air Quality Control Re-
39 gion, no person may use any liquid fossil
40 fuel with a sulfur content greater than 2.5%
41 by weight any time after June 1, 1975.

1 (2) In the Portland Peninsula Air Quality
2 Control Region, no person may use any liquid
3 fossil fuel with a sulfur content greater
4 than 1.5% by weight any time after November
5 1, 1975.

6 (3) In the Portland Peninsula Air Quality
7 Control Region, no person may use any liquid
8 fossil fuel with a sulfur content greater
9 than 1.0% by weight any time after November
10 1, 1985.

11 B. The sulfur content for solid fossil fuels is
12 as follows:

13 (1) 1.2 pounds sulfur per million British
14 Thermal Units calculated as a calendar quar-
15 ter average for sources in the Central
16 Maine, Downeast, Aroostook County, Northwest
17 Maine Air Quality Control Regions and that
18 portion of the Metropolitan Portland Air
19 Quality Region outside the Portland Peninsu-
20 la Air Quality Region. A calendar quarter
21 shall be composed of the months as follows:
22 (1) January, February, March; (2) April,
23 May, June; (3) July, August, September; and
24 (4) October, November, December; and

25 (2) 0.72 pounds sulfur per million British
26 Thermal Units calculated as a calendar quar-
27 ter average for sources in the Portland Pe-
28 ninsula Air Quality Region until November 1,
29 1985. A calendar quarter shall be composed
30 of the months as follows: (1) January, Feb-
31 ruary, March; (2) April, May, June; (3) Ju-
32 ly, August, September; and (4) October, No-
33 vember, December; and.

34 (3) 0.48 pounds sulfur per million British
35 Thermal Units calculated as a calendar quar-
36 ter average for sources in the Portland Pe-
37 ninsula Air Quality Region after November 1,
38 1985. A calendar quarter shall be composed
39 of the months as follows: (1) January, Feb-
40 ruary, March; (2) April, May, June; (3) Ju-
41 ly, August, September; and (4) October, No-
42 vember, December.

1 Sec. 10. 38 MRSA §1319-C, sub-§2, as enacted by
2 PL 1981, c. 478, §7, is repealed.

3 Sec. 11. 38 MRSA §1319-D, first ¶, as enacted by
4 PL 1981, c. 478, §7, is amended to read:

5 The Maine Hazardous Waste Fund is established to
6 be used by the department as a nonlapsing, revolving
7 fund for carrying out the department's responsibilities
8 under this subchapter. This fund shall not ex-
9 ceed \$600,000. All fees, penalties, interest and oth-
10 er charges under this subchapter shall be credited to
11 this fund. This fund shall be charged with the ex-
12 penses of the department related to this subchapter,
13 including costs of removal or abatement of discharges
14 and costs of the inspection or supervision of hazard-
15 ous waste activities and hazardous waste handlers.

16 Sec. 12. 38 MRSA §1319-E, sub-§1, as amended by
17 PL 1983, c. 342, §6, is further amended to read:

18 1. Money disbursed. Money in the Maine Hazardous
19 Waste Fund may be disbursed by the department for the
20 following purposes, but for no other:

21 A. Costs incurred in the removal or abatement of
22 an unlicensed discharge or threatened discharge
23 of hazardous waste. Whenever practical, the de-
24 partment shall offer the responsible party the
25 opportunity to remove or abate the discharge or
26 threatened discharge;

27 B. Notwithstanding paragraph A, disbursements to
28 remove discharges of hazardous waste, which are
29 not sudden and which involve costs exceeding
30 \$10,000, may only be expended in accordance with
31 an allocation approved by the Legislature;

32 C. Costs incurred for the purchase of necessary
33 hazardous waste and waste oil testing and, re-
34 sponse, inspection and monitoring equipment and
35 supplies, response and compliance personnel and
36 training of ~~response~~ personnel in accordance with
37 an allocation approved by the Legislature; ~~and~~

38 D. Amounts necessary to reimburse municipalities
39 as required by section 1305-A, subsection 3-; and

1 E. Costs incurred in the inspection or supervi-
2 sion of hazardous waste activities and hazardous
3 waste handlers.

4 For the purposes of this subsection, "sudden" means
5 an unexpected or abrupt discharge which occurs after
6 September 1, 1981.

7 STATEMENT OF FACT

8 Section 1 of this bill authorizes certified em-
9 ployees of the Department of Environmental Protection
10 to serve civil process and represent the department
11 in District Court in the prosecution of violations of
12 the laws pertaining to the discharge of waste. The
13 department presently has this authority to enforce
14 the Great Ponds Act, Alteration of Coastal Wetlands
15 Act and the Site Location of Development Act.

16 Sections 2 and 3 clarify and consolidate statuto-
17 ry provisions governing violations of certain laws
18 administered by the department. The language change
19 ensures continuation of the practice of handling most
20 violations as Class E crimes in District Courts.
21 With the language in section 2, the statutory cita-
22 tion in section 3 is redundant.

23 Section 4 provides for full reimbursement of a
24 prepaid license fee when the application is withdrawn
25 by the applicant.

26 Section 5 corrects a confusing situation created
27 by the enactment of 2 duplicative sections pertaining
28 to the Lake Restoration and Protection Fund.

29 Section 6 provides the Board of Environmental
30 Protection with greater authority to comply with the
31 Clean Water Act, which requires that all municipali-
32 ties have a secondary treatment system for their
33 wastes by July 1, 1988.

34 Section 7 exempts aquaculture projects from the
35 provisions of the Site Location of Development Act
36 when those activities are regulated by the Department
37 of Marine Resources.

1 Section 8 replaces the Chairman of the Board of
2 Environmental Protection with the Commissioner of En-
3 vironmental Protection as one of the 5 members of the
4 New England Interstate Water Pollution Control Com-
5 mission from the State.

6 Section 9 deletes language which requires the
7 sulfur content in liquid and solid fossil fuels used
8 in the Portland Peninsula Air Quality Control Region
9 to be further reduced after November 1, 1985. Sulfur
10 dioxide data collected in the region shows that the
11 additional reduction is not needed.

12 Section 10 repeals the definition of "removal"
13 which encompasses abatement actions other than remov-
14 al. References to "abatement" have been incorporated
15 in the Maine Revised Statutes, Title 38, section
16 1319-E, under section 12 of this bill.

17 Section 11 authorizes the use of the Maine Haz-
18 arduous Waste Fund for inspections of hazardous waste
19 facilities and handlers in addition to the currently
20 authorized spill response activities. This will al-
21 low the Department of Environmental Protection
22 greater flexibility in the use of its field staff and
23 will enable the department to more easily comply with
24 the United States Environmental Protection Agency's
25 25% Hazardous Waste Program Grant matching require-
26 ments.

27 Section 12 specifies that authorized disbursement
28 from the Maine Hazardous Waste Fund include costs in-
29 curred in the hazardous waste clean-up activities or
30 abatement measures, and costs for the Department of
31 Environmental Protection regulatory oversight of haz-
32 arduous waste activities, including inspections, moni-
33 toring land related personnel costs. It also speci-
34 fies that the Department of Environmental Protection
35 may seek recovery of those expenses as appropriate.

36 0528121384