

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1709

H.P. 1251 House of Representatives, May 29, 1987  
Referred to the Committee on Energy and Natural  
Resources. Sent up for concurrence and ordered printed.  
Ordered sent forthwith.

EDWIN H. PERT, Clerk  
Presented by Representative MURPHY of Berwick.  
Cosponsored by Senator CAHILL of Sagadahoc,  
Representatives RIDLEY of Shapleigh and ANDERSON of Woodland.

STATE OF MAINE

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

1 AN ACT to Amend the Laws Administered by the  
2 Department of Environmental  
3 Protection.  
4

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

7 Sec. 1. 4 MRSA §152, sub-§6, as amended by PL  
8 1985, c. 746, §2, is further amended to read:

9 6. Land use laws. Original jurisdiction, con-  
10 current with that of the Superior Court, to grant equ-  
11uitable relief in proceedings involving alleged vio-  
12lations of a local land use ordinance or regulation  
13or a state land use statute or regulation, which  
14shall include, but shall not be limited to, the fol-  
15lowing: The laws pertaining to the Maine Land Use

1 Regulation Commission, Title 12, chapter 206-A; mini-  
2 mum lot size law, Title 12, sections 4807 to 4807-G;  
3 shoreland zoning ordinances adopted pursuant to Title  
4 12, sections 4811 to 4817; the Alteration of Rivers,  
5 Streams and Brooks law, Title 38, sections 425 to  
6 431; the plumbing and subsurface wastewater disposal  
7 rules adopted by the Department of Human Services  
8 pursuant to Title 22, section 42; laws pertaining to  
9 public water supplies, Title 22, sections 2642, 2647  
10 and 2648; local ordinances pursuant to Title 22, sec-  
11 tion 2642; local ordinances adopted pursuant to Title  
12 30, section 1917; local building codes adopted pursu-  
13 ant to Title 30, sections 1917 and 2151; Title 30,  
14 chapter 215, subchapter I, automobile junkyards and  
15 subchapter X, regulation and inspection of plumbing;  
16 Title 30, section 4359, malfunctioning domestic sew-  
17 age disposal units; Title 30, section 4956, the sub-  
18 division law, and local subdivision ordinances  
19 adopted pursuant to Title 30, section 1917 and subdivi-  
20 sion regulations adopted pursuant to Title 30, sec-  
21 tion 4956; local zoning ordinances adopted pursuant  
22 to Title 30, section 1917 and in accordance with Ti-  
23 tle 30, section 4962; the Great Ponds Act, Title 38,  
24 sections 386 to 396; laws pertaining to the discharge  
25 of wastes, Title 38, sections 413, 414, 417, 418 and  
26 420; the Alteration of Coastal Wetlands Act, Title  
27 38, sections 471 to 476 and 478; the Site Location of  
28 Development Act, Title 38, sections 481 to 485 and  
29 488 to 490; and the Oil Discharge Prevention and Pol-  
30 lution Control laws, Title 38, sections 543, 545,  
31 563, 564, 565, 566, 567 and 568; the Freshwater Wet-  
32 lands laws, Title 38, sections 405 to 410-D; and the  
33 Stream Alteration laws, Title 38, sections 425 to  
34 431.

35 Sec. 2. 38 MRSa §352, sub-§2, ¶A, as enacted by  
36 PL 1983, c. 574, §1, is amended to read:

37 A. Filing-fees Processing fees shall be assessed  
38 for direct costs incurred in determining the ac-  
39 ceptability of an application for processing and  
40 in processing an application to determine whether  
41 it meets statutory and regulatory criteria.

42 Sec. 3. 38 MRSa §352, sub-§2, ¶B, as enacted by  
43 PL 1983, c. 574, §1, is repealed.

1           Sec. 4. 38 MRSA §352, sub-§3, as enacted by PL  
2           1983, c. 574, §1, is repealed and the following en-  
3           acted in its place:

4           3. Maximum fee. Except as provided in this sub-  
5           section, no fee may exceed the maximum established in  
6           Table 1. If the commissioner determines that a par-  
7           ticular application, by virtue of its size,  
8           uniqueness, complexity or other relevant factors, is  
9           likely to require significantly more costs than those  
10           listed on Table 1, he may designate that application  
11           as subject to special fees. Such a designation must  
12           be made at, or prior to, the time the application is  
13           accepted as complete and may not be based solely on  
14           the likelihood of extensive public controversy. All  
15           department staff who have worked on the review of the  
16           application will submit quarterly reports to the com-  
17           missioner detailing the time spent on the application  
18           and all expenses attributable to the application.  
19           The processing fee for that application shall be the  
20           actual cost to the department. The application shall  
21           be billed quarterly and all fees must be paid prior  
22           to receipt of the permit. Costs incurred by the de-  
23           partment as a result of any appeals will not be con-  
24           sidered in this process.

25           Sec. 5. 38 MRSA §352, sub-§4, as repealed and  
26           replaced by PL 1985, c. 746, §14, is repealed and the  
27           following enacted in its place:

28           4. Accounting system. In order to determine the  
29           extent to which the functions set out in this section  
30           are necessary for the licensing process or are being  
31           performed in an efficient and expeditious manner, the  
32           commissioner shall require that all employees of the  
33           department involved in any aspect of these functions  
34           shall keep accurate and regular daily time records  
35           describing the matters worked on, services performed  
36           and amount of time devoted to those matters and ser-  
37           vices, as well as amounts of money expended in per-  
38           forming these functions for a sufficient duration as  
39           determined by the commissioner to establish to his  
40           satisfaction that the fees are appropriate.

41

TABLE I

MAXIMUM FEES IN DOLLARS

<u>TITLE 36</u>	<u>PROCESSING</u>	<u>CERTIFICATION</u>
<u>SECTION</u>	<u>FEE</u>	<u>FEE</u>
656, sub-§1, WE, Pollution Control Facilities		
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	<u>\$250</u>	<u>\$20</u>
B. Air pollution control and §1760, sub-§30, air pollution control facilities	<u>250</u>	<u>20</u>
<u>TITLE 38</u>	<u>PROCESSING</u>	<u>LICENSE</u>
<u>SECTION</u>	<u>FEE</u>	<u>FEE</u>
362-A, Experiments	<u>\$ 40</u>	<u>\$ 160</u>
393, Great Ponds	<u>75</u>	<u>50</u>
410-E, Freshwater wetlands	<u>100</u>	<u>50</u>
413, Waste discharge license		
A. Residential	<u>40</u>	<u>25</u>
B. Commercial		
1. Flow of less than 2,000 gallons per day	<u>80</u>	<u>160</u>
2. Flow of 2,000 to 20,000 gallons per day inclusive	<u>150</u>	<u>500</u>
3. Flow of greater than 20,000 gallons per day	<u>300</u>	<u>1,200</u>
C. Industrial minor (based upon EPA list of major and minor source discharges)		

1	1. Discharges of	500	160
2	cooling water, sani-		
3	tary waste water or		
4	treated storm water		
5	only		
6	2. All others	500	2,000
7	D. Industrial major		
8	(based upon EPA list of		
9	major source discharges)		
10	1. Discharge of	1,200	750
11	cooling water or		
12	sanitary waste water		
13	only		
14	2. All others	1,200	2,200
15	E. Publicly owned treat-		
16	ment works		
17	1. Flow of less	100	200
18	than or equal to		
19	50,000 gallons per		
20	day, but less than		
21	or euql to 50,000		
22	gallons per day and		
23	no significant in-		
24	dustrial component		
25	2. Flow of greater	55	1,200
26	than 50,000 gallons		
27	per day, but less		
28	than 0.5million gal-		
29	lons per day and no		
30	significant indus-		
31	trial component		
32	3. Flow of at	100	1,800
33	least 0. 5 million		
34	gallons per day, but		
35	less than 5 million		
36	gallons per day and		
37	no significant in-		
38	dustrial component		
39	4. Flow of at least	100	1,800
40	5 million gallons		
41	per day or a signif-		
42	icant industrial		
43	component		
44	F. Special discharges		
45	1. Aquatic pesti-	130	25
46	cides		
47	2. Dredge spoils	130	25

1	<u>418, Log storage</u>	<u>55</u>	<u>25</u>
2	<u>421, Solid waste disposal ar-</u>		
3	<u>eas</u>	<u>1,400</u>	<u>100</u>
4	<u>427, Alteration of rivers,</u>		
5	<u>streams and brooks</u>	<u>150</u>	<u>50</u>
6	<u>451, Mixing zones</u>	<u>1,200</u>	<u>2,200</u>
7	<u>451-A, Time schedule variances</u>	<u>25</u>	<u>25</u>
8	<u>471, Coastal wetlands and sand</u>		
9	<u>dunes</u>	<u>200</u>	<u>100</u>
10	<u>483, Site location</u>		
11	<u>A. Subdivisions</u>	<u>30/lot</u>	<u>25</u>
12	<u>B. Structures</u>	<u>1,100</u>	<u>500</u>
13	<u>C. Mining</u>	<u>775</u>	<u>500</u>
14	<u>D. Other</u>	<u>775</u>	<u>500</u>
15	<u>543, Oily waste discharge</u>	<u>40</u>	<u>160</u>
16	<u>560, Vessels at anchorage</u>	<u>125</u>	<u>100</u>
17	<u>587, Ambient air quality or</u>		
18	<u>emissions standards variances</u>	<u>5,050</u>	<u>50</u>
19	<u>590, Air emissions licenses</u>		
20	<u>A. Greater than or equal</u>	<u>10,500</u>	<u>1,200</u>
21	<u>to 1,000 tons per year of</u>		
22	<u>any criteria air</u>		
23	<u>pollutant</u>		
24	<u>B. Greater than or equal</u>	<u>5,050</u>	<u>400</u>
25	<u>to 100 tons per year, but</u>		
26	<u>less than 1,000 tons per</u>		
27	<u>year of any criteria air</u>		
28	<u>pollutant</u>		
29	<u>C. Greater than or equal</u>	<u>1,050</u>	<u>100</u>
30	<u>to 50 tons per year, but</u>		
31	<u>less than 100 tons per</u>		
32	<u>year of any criteria air</u>		
33	<u>pollutant</u>		
34	<u>D. Less than 50 tons per</u>	<u>525</u>	<u>50</u>
35	<u>year of any criteria air</u>		
36	<u>pollutant</u>		

1	<u>633, Hydropower projects</u>		
2	<u>A. New or expanded gen-</u>	<u>450/MW</u>	<u>50/MW</u>
3	<u>erating capacity</u>		
4	<u>B. Maintenance and re-</u>	<u>50</u>	<u>25</u>
5	<u>pair or other structural</u>		
6	<u>alterations not involving</u>		
7	<u>an increase in generating</u>		
8	<u>capacity</u>		
9	<u>1101, Sanitary districts</u>	<u>150</u>	<u>50</u>
10	<u>1304, Nonhazardous waste fa-</u>		
11	<u>cilities</u>		
12	<u>A. Septage facilities,</u>	<u>300</u>	<u>250</u>
13	<u>other than landfill or</u>		
14	<u>landspreading sites</u>		
15	<u>B. Sludge facilities,</u>	<u>550</u>	<u>500</u>
16	<u>other than landfill or</u>		
17	<u>landspreading sites</u>		
18	<u>C. Landspreading sites</u>	<u>50</u>	<u>35</u>
19	<u>D. Transfer stations</u>	<u>550</u>	<u>500</u>
20	<u>E. Landfills</u>	<u>1,575</u>	<u>1,500</u>
21	<u>F. Resource recovery and</u>	<u>1,575</u>	<u>1,500</u>
22	<u>volume reduction facili-</u>		
23	<u>ties</u>		
24	<u>G. Other, including</u>	<u>550</u>	<u>250</u>
25	<u>land-applied utilization</u>		
26	<u>programs</u>		
27	<u>H. Septage disposal site</u>	<u>50</u>	<u>25</u>
28	<u>designation</u>		
29	<u>United States Clean Water Act,</u>		
30	<u>United States Code Title 33,</u>		
31	<u>Section 1251, et seq., Section</u>		
32	<u>401, Water Quality Certifica-</u>		
33	<u>tions only when issued along</u>		
34	<u>with Federal Energy Regulatory</u>		
35	<u>Commission</u>		
36	<u>Renewals</u>	<u>450/MW</u>	<u>50/MW</u>

37       Sec. 6. 38 MRSA §353, as amended by PL 1985, c.  
38       746, §§15 and 16, is further amended to read:

39       §353. Payment of fees

40       ~~1.--Filing--fee.--A--filing-fee--shall-be-paid-at~~



1 the--time--of--filing--the--application--and--is  
2 nonrefundable.--The--department--may--not--process--appli-  
3 cations--not--accompanied--by--a--filing--fee--

4 2. Processing fee. A processing fee shall be  
5 paid within 10 days of the time the applicant is no-  
6 tified that the application has been accepted for  
7 processing by the commissioner and is not refundable,  
8 even if the applicant withdraws the application once  
9 processing has begun at the time of filing the  
10 application. Failure to pay the processing fee with-  
11 in the 10-day period will result in the cessation of  
12 processing until the fee has been paid at the time of  
13 filing the application will result in the application  
14 being returned to the applicant. The department  
15 shall not refund the processing fee if the applica-  
16 tion is denied by the board or the commissioner. If  
17 the application is withdrawn by the applicant within  
18 30 days of the start of processing, the processing  
19 fee shall be refunded.

20 3. License fee. A license fee shall be paid  
21 prior to the issuance of any license or permit. If a  
22 license fee is paid prior to board or commissioner  
23 action on the application, the at the time of filing  
24 the application. Failure to pay the license fee at  
25 the time of filing will result in the application be-  
26 ing returned to the applicant. The department shall  
27 refund the license fee if the board or commissioner  
28 denies the application or if the application is with-  
29 drawn by the applicant.

30 3-A. Certification fee. A certification fee  
31 shall be paid prior to the issuance of any certifica-  
32 tion. If the certification fee is paid prior to the  
33 certification and the certification is not issued,  
34 the department shall refund the certification fee.

35 4. Duplicate fees. The department shall not as-  
36 sess applicants for direct costs associated with fil-  
37 ing, processing of licensing if those costs were pre-  
38 viously assessed as the result of the filing, pro-  
39 cessing or licensing of separate but related applica-  
40 tions.

41 5. Renewals or amendments. The filing fee for  
42 renewals or amendments shall be the same as the fil-

1 ~~ing-fee-for-an-initial-application.~~ The processing  
2 fee for renewals or amendments shall be equal to di-  
3 rect costs up to 1/2 the processing fee for initial  
4 applications. The license fee for renewals shall be  
5 identical to the initial license fee. The license  
6 fee for amendments shall not exceed the initial li-  
7 cense fee.

8 6. Application deemed unacceptable for process-  
9 ing. An application deemed unacceptable for process-  
10 ing which has been returned to the applicant ~~shall~~  
11 may be resubmitted to the department within 60 days  
12 of the date the application was returned. If the ap-  
13 plication is resubmitted after the 60-day period has  
14 transpired, the resubmitted application shall be con-  
15 sidered a new application and the appropriate  
16 processing fees shall be assessed.

17 7. Fees for minor revisions. All fees assessed  
18 for the costs of processing permits issued in accord-  
19 ance with section 344, subsection 7, shall be paid in  
20 full when the notification is submitted to the de-  
21 partment. All fees for any minor license or permit  
22 revision shall be paid in full when the request for  
23 the revision is submitted to the department. ~~The ap-~~  
24 ~~applicant--may--also--choose--to--prepay--the--filing--pro-~~  
25 ~~cessing--and--license--fees--for--applications--pertaining~~  
26 ~~to--any--other--license--or--permit--category.~~

27 8. Processing fee for certification. The pro-  
28 cessing fee for certification shall be assessed on  
29 the actual direct costs incurred by the department,  
30 but not greater than the processing fee found on Ta-  
31 ble I, section 352. The processing fee ~~found on Ta-~~  
32 ~~ble-I~~ shall be due according to subsection 2. Upon  
33 completion of processing, where direct costs are less  
34 than the processing fee found in section 352 on Table  
35 I, a refund shall be made to the applicant.

36 **Sec. 7. 38 MRSA §394, as amended by PL 1985, c.**  
37 **746, §18, is further amended to read:**

38 §394. Exemptions

39 Maintenance and minor repair above the high water  
40 line causing no additional intrusion of an existing  
41 structure into the great pond, the placement of water

1 lines to serve a single-family house, installation of  
2 cables for utilities, such as telephone and power ca-  
3 bles, provided that the excavated trench to access  
4 the great pond is backfilled and riprapped to prevent  
5 erosion and that the excavated trench on the landward  
6 side of the riprapped area is seeded and mulched to  
7 prevent erosion and provided that the right to place  
8 the cable across the lake bottom has been obtained  
9 from the Department of Conservation, Bureau of Public  
10 Lands, are exempt from this subchapter.

11 **Sec. 8.** 38 MRSA §414-A, sub-§1, ¶C, as enacted  
12 by PL 1973, c. 450, §15, is repealed and the follow-  
13 ing enacted in its place:

14 C. The discharge either by itself or in combina-  
15 tion with other discharges will not lower the exis-  
16 ting quality of any body of water, except after  
17 making a finding following opportunity for public  
18 participation that the action is necessary to  
19 achieve important economic or social benefits to  
20 the State and when the action is in conformance  
21 with section 464, subsection 3. That finding  
22 must be made following procedures established by  
23 rule of the board; and

24 **Sec. 9.** 38 MRSA §427, sub-§5, as enacted by PL  
25 1985, c. 481, Pt. A, §86, is amended to read:

26 5. Participation by the Department of Inland  
27 Fisheries and Wildlife. The commissioner or the  
28 board shall solicit comments from the Department of  
29 Inland Fisheries and Wildlife regarding each stream  
30 alteration permit application, except for projects  
31 designed, approved and supervised by soil and water  
32 conservation districts. The commissioner shall noti-  
33 fy the Department of Inland Fisheries and Wildlife  
34 about the disposition of each stream alteration per-  
35 mit application.

36 **Sec. 10.** 38 MRSA §430, sub-§1, as enacted by PL  
37 1985, c. 481, Pt. A, §87, is amended to read:

38 1. Public works and private crossing and dam  
39 projects. Notwithstanding section 425, that section  
40 shall not apply to river, stream or brook crossings  
41 in connection with public works projects which alter

1 not more than a total of 300 feet in any mile of  
2 shore nor to private crossing or dam projects which  
3 alter not more than a total of 100 feet in any mile  
4 of shore. Alterations to both shores of the river,  
5 stream or brook shall be combined in arriving at a  
6 total shore footage. The altered shoreline shall in-  
7 clude the shoreline perimeter created by  
8 impoundments. This exception shall not apply to any  
9 project on outstanding river segments, as identified  
10 in section 426.

11 Sec. 11. 38 MRSA §451-A, sub-§1, as amended by  
12 PL 1985, c. 162, §6, is further amended to read:

13 1. Power to grant variances. The Board of Envi-  
14 ronmental Protection may grant a variance from any  
15 statutory water pollution abatement ~~time-schedule re-~~  
16 quirement pursuant to section 414-A, subsection 1,  
17 paragraph D, to any municipality or quasi-municipal  
18 entity, hereinafter called the "municipality," upon  
19 application by it. The board may grant a variance on-  
20 ly upon a finding that:

21 A. Federal funds for the construction of municipi-  
22 pal waste water treatment facilities are not  
23 available for the project;

24 B. The municipality has demonstrated that it has  
25 completed preliminary plans acceptable to the De-  
26 partment of Environmental Protection for the  
27 treatment of municipal wastes and for construc-  
28 tion of that portion of the municipal sewage sys-  
29 tem intended to be served by the planned municipi-  
30 pal treatment plant when that plant first begins  
31 operations; and

32 C. Beginning on October 1, 1976, the municipali-  
33 ty shall collect, from each discharger into its  
34 sewage system and each discharger not connected  
35 to the sewage system which has signed an approved  
36 agreement with the municipality pursuant to sub-  
37 section 2, a fee sufficient to equal their pro-  
38 portionate share of the actual current cost of  
39 operating the sewage system for which preliminary  
40 plans have been completed and approved pursuant  
41 to paragraph B. Actual current costs shall in-  
42 clude but not be limited to preliminary plans,

1 final design plans, site acquisition, legal fees,  
2 interest fees, sewer system maintenance and reha-  
3 bilitation and other administrative costs. A mu-  
4 nicipality may provide, when permitted under the  
5 federal construction grant program, that in lieu  
6 of such annual fees paid by dischargers, the mu-  
7 nicipality may apportion an appropriate amount  
8 from general revenues to cover that share of fees  
9 to be paid by dischargers.

10 The funds collected or apportioned pursuant to  
11 this paragraph and interest collected thereon  
12 shall be invested and expended pursuant to Title  
13 30, chapter 241.

14 Any funds paid by a discharger or discharger not  
15 connected to the sewage system pursuant to this  
16 paragraph may be credited to the account of the  
17 discharger if the municipality is subsequently  
18 reimbursed by the federal construction grant pro-  
19 gram. The credit arrangement shall be determined  
20 by agreement between the municipality and the  
21 discharger.

22 Variances shall be issued for a term certain not to  
23 exceed 3 years, and may be renewed, except that no  
24 variance shall run longer than the time specified for  
25 completion of the municipal waste treatment facility.  
26 In any event, no variance issued under this section  
27 may extend beyond July 1, 1988. Upon notice of the  
28 availability of federal funds, the municipality shall  
29 present to the Department of Environmental Protection  
30 for approval an implementation schedule for design-  
31 ing, constructing and placing the waste collection  
32 and treatment facilities in operation.

33 Variances may be conditioned upon reasonable and nec-  
34 essary terms relating to appropriate interim measures  
35 to be taken by the municipality to maintain or im-  
36 prove water quality.

37 **Sec. 12. 38 MRSA §451-A, sub-§7, as amended by**  
38 **PL 1983, c. 566, §29, is repealed.**

39 **Sec. 13. 38 MRSA §455, as amended by PL 1983, c.**  
40 **646, is repealed.**

1           **Sec. 14. 38 M RSA §467, sub-§4, ¶F, as enacted by**  
2           **PL 1985, c. 698, §15, is amended to read:**

3           **F. Moose River Drainage.**

4                   (1) Moose River, main stem.

5                           (a) Above its confluence with Number  
6                           One Brook in Beattie Township - Class  
7                           A.

8                           (b) From its confluence with Number  
9                           One Brook in Beattie Township to its  
10                           confluence with Attean Pond - ~~Class-B~~  
11                           Class AA.

12                           (c) From the outlet of Attean Pond to  
13                           its confluence with Big Wood Pond -  
14                           Class A.

15                           (d) From the outlet of Big Wood Pond  
16                           to its confluence with Long Pond -  
17                           Class C.

18                           (e) From the outlet of Long Pond to  
19                           its confluence with Brassua Lake -  
20                           Class B.

21                           (f) From the outlet of Brassua Lake to  
22                           its confluence with Moosehead Lake -  
23                           Class B.

24                   (2) Moose River, tributaries.

25                           (a) All tributaries entering above the  
26                           outlet of Big Wood Pond - Class A.

27           **Sec. 15. 38 M RSA §467, sub-§7, ¶B, as enacted by**  
28           **PL 1985, c. 698, §15, is amended to read:**

29           **B. Penobscot River, East Branch Drainage.**

30                   (1) East Branch of the Penobscot River,  
31                   main stem.

32                           (a) Above its confluence with Grand  
33                           Lake Mattagamon - Class A.

1 (b) From the dam at the outlet of  
2 Grand Lake Mattagamon to a point lo-  
3 cated 1,000 feet downstream from the  
4 dam at the outlet of Grand Lake  
5 Mattagamon - Class B.

6 (c) From a point located 1,000 feet  
7 downstream from the dam at the outlet  
8 of Grand Lake Mattagamon to its conflu-  
9 ence with the West Branch - Class B.

10 (2) East Branch of the Penobscot River,  
11 tributaries.

12 (a) All tributaries and segments of  
13 the East Branch of the Penobscot River  
14 entering above the outlet of Grand Lake  
15 Mattagamon which are not otherwise  
16 classified - Class A.

17 (b) All tributaries and segments of  
18 the East Branch of the Penobscot River  
19 entering below the outlet of Grand Lake  
20 Mattagamon which are not otherwise  
21 classified - Class B.

22 (c) All tributaries and segments of  
23 the East Branch of the Penobscot River  
24 which are within the boundaries of Bax-  
25 ter State Park - Class AA.

26 (d) Sawtelle Brook, from a point lo-  
27 cated 1,000 feet downstream from the  
28 dam at the outlet of Sawtelle Deadwater  
29 to its confluence with the Seboeis Riv-  
30 er - Class B.

31 (e) Seboeis River, from the outlet of  
32 Snowshoe Lake to its confluence with  
33 the East Branch - Class B.

34 (f) Wassataquoik Stream, from the  
35 boundary of Baxter State Park to its  
36 confluence with the East Branch - Class  
37 B.

38 (g) Webster Brook, from a point lo-

1 cated 1,000 feet downstream from the  
2 dam at the outlet of Telos Lake to its  
3 confluence with Grand-Lake-Mattagamon  
4 Webster Lake - Class B.

5 **Sec. 16. 38 MRSA §467, sub-§10, ¶A,** as enacted  
6 by PL 1985, c. 698, §15, is amended to read:

7 A. Narraguagus River, main stem.

8 (1) From the outlet of Eagle Lake to the  
9 confluence with the West Branch of the  
10 Narraguagus River in Cherryfield - Class-A  
11 Class AA.

12 (2) From the confluence with the West  
13 Branch of the Narraguagus River in  
14 Cherryfield to tidewater - Class B.

15 **Sec. 17. 38 MRSA §467, sub-§13, ¶A,** as enacted  
16 by PL 1985, c. 698, §15, is amended to read:

17 A. St. Croix River, main stem.

18 (1) From the outlet of Chiputneticook Lakes  
19 to the Grand Falls Dam, those waters lying  
20 within the State - Class B.

21 (2) From the Grand Falls Dam to its conflu-  
22 ence with Woodland Lake, the Woodland Dam,  
23 those waters lying within the State, includ-  
24 ing all impoundments - Class C.

25 (3) From the Woodland Dam to tidewater,  
26 those waters lying within the State, includ-  
27 ing all impoundments - Class C.

28 **Sec. 18. 38 MRSA §467, sub-§15, ¶¶B and C,** as  
29 enacted by PL 1985, c. 698, §15, are amended to read:

30 B. Allagash River Drainage.

31 (1) Allagash River, main stem.

32 (a) From Churchill Dam to a point lo-  
33 cated 1,000 feet downstream from  
34 Churchill Dam - Class A.



1 (b) From a point located 1,000 feet  
2 downstream from Churchill Dam to its  
3 confluence with Gerald Brook in  
4 Allagash - Class AA.

5 (c) From its confluence with Gerald  
6 Brook in Allagash to its confluence  
7 with the St. John River - Class A.

8 (2) Allagash River, tributaries.

9 (a) All tributaries and--segments of  
10 the Allagash River which are not other-  
11 wise classified - Class A.

12 (b) Allagash Stream, from the outlet  
13 of Allagash Pond in T.9, R.15, W.E.L.S.  
14 to its confluence with Chamberlain Lake  
15 - Class AA.

16 (c) Chemquasabamticook Stream, from  
17 the outlet of Chemquasabamticook Lake  
18 to its confluence with Long Lake -  
19 Class AA.

20 (d) Musquacook Stream, from the outlet  
21 of Third Musquacook Lake to its conflu-  
22 ence with the Allagash River - Class  
23 AA.

24 C. Aroostook River Drainage.

25 (1) Aroostook River, main stem.

26 (a) From the confluence of Millinocket  
27 Stream and Munsungan Stream to its con-  
28 fluence with the Machias River - Class  
29 AA.

30 (b) From its confluence with the  
31 Machias River to the Sheridan Dam -  
32 Class B.

33 (c) From the Sheridan Dam to its con-  
34 fluence with Presque Isle Stream, in-  
35 cluding all impoundments - Class B.

- 1 (d) From its confluence with Presque  
2 Isle Stream to a point located 3.0  
3 miles upstream of the intake of the  
4 Caribou water supply, including all  
5 impoundments - Class C.
- 6 (e) From a point located 3.0 miles up-  
7 stream of the intake of the Caribou wa-  
8 ter supply to a point located 100 yards  
9 downstream of the intake of the Caribou  
10 water supply, including all  
11 impoundments - Class B.
- 12 (f) From a point located 100 yards  
13 downstream of the intake of the Caribou  
14 water supply to the international  
15 boundary, including all impoundments -  
16 Class C.
- 17 (2) Aroostook River, tributaries.
- 18 (a) All tributaries and--segments of  
19 the Aroostook River entering above the  
20 confluence with St. Croix Stream which  
21 are not otherwise classified - Class A.
- 22 (b) Limestone Stream from the Long  
23 Road Bridge to the international bound-  
24 ary - Class C.
- 25 (c) Little Machias River and its trib-  
26 utaries - Class A.
- 27 (d) Little Madawaska River and its  
28 tributaries, including Madawaska Lake  
29 tributaries above the Route 161 bridge  
30 in Stockholm - Class A.
- 31 (e) Machias River, from the outlet of  
32 Big Machias Lake to the Garfield  
33 Plantation-Ashland boundary - Class AA.
- 34 (f) Machias River tributaries entering  
35 above the Garfield-Ashland boundary -  
36 Class A.
- 37 (g) Millinocket Stream, from the out-

1 let of Millinocket Lake to its conflu-  
2 ence with Munsungan Stream - Class AA.

3 (h) Munsungan Stream, from the outlet  
4 of Little Munsungan Lake to its conflu-  
5 ence with Millinocket Stream - Class  
6 AA.

7 (i) Pattee Brook (Fort Fairfield) and  
8 its tributaries above the dam just up-  
9 stream of the Route 167 bridge - Class  
10 A.

11 (j) Presque Isle Stream and its tribu-  
12 taries above its confluence with, but  
13 not including, the North Branch of  
14 Presque Isle Stream - Class A.

15 (k) St. Croix Stream from the outlet  
16 of St. Croix Lake to its confluence  
17 with Hall Brook in T.9, R.5, W.E.L.S. -  
18 Class A.

19 (l) St. Croix Stream from its conflu-  
20 ence with Hall Brook in T.9, R.5,  
21 W.E.L.S. to its confluence with the  
22 Aroostook River - Class AA.

23 (m) St. Croix Stream tributaries -  
24 Class A.

25 (n) Salmon Brook, from the dam immedi-  
26 ately above Washburn to its confluence  
27 with the Aroostook River - Class C.

28 (o) Squapan Stream and its tributaries  
29 above the B&A Railroad bridge - Class  
30 A.

31 (p) Unnamed Stream (Presque Isle) near  
32 Vining Station on Washburn Road - Class  
33 C.

34 **Sec. 19. 38 MRSA §469, sub-§8, ¶¶E and F, as en-**  
35 **acted by PL 1985, c. 698, §15, are amended to read:**

36 E. Old Orchard Beach.

1 (1) Tidal waters of Goosefare Brook and its  
2 tidal tributaries lying westerly of longi-  
3 tude ~~70° - 22' - 55" W.~~ 70° - 23' - 08" W. -  
4 Class SC.

5 F. Saco.

6 (1) Tidal waters of Goosefare Brook and its  
7 tidal tributaries lying westerly of longi-  
8 tude ~~70° - 22' - 55" W.~~ 70° - 23' - 08" W. -  
9 Class SC.

10 (2) Tidal waters of the Saco River and its  
11 tidal tributaries lying westerly of longi-  
12 tude 70° - 22' - 54" W. - Class SC.

13 Sec. 20. 38 MRSA §473, sub-§2, as enacted by PL  
14 1975, c. 595, §3, is amended to read:

15 2. Adopted zoning ordinance. Adopted a zoning  
16 ordinance approved by the board and the Maine Land  
17 Use Regulation Commission, pursuant to Title 12,  
18 chapter 424 section 438;

19 Sec. 21. 38 MRSA §1304, sub-§12, as enacted by  
20 PL 1985, c. 746, §29, is amended to read:

21 12. Compliance orders. The commissioner may is-  
22 sue compliance orders subject to the provisions of  
23 this subsection.

24 A. Whenever, after investigation, the commis-  
25 sioner determines that there is or has been an  
26 unauthorized discharge of hazardous waste, con-  
27 stituents of hazardous waste, or waste oil into  
28 the environment which is or may be endangering or  
29 causing damage to public health or the environ-  
30 ment or that any person has violated or is in vi-  
31 olation of any requirement of this subchapter,  
32 including rules adopted thereunder, relating to  
33 hazardous waste ~~which is endangering or causing~~  
34 ~~damage to public health or the environment~~ or  
35 waste oil activities, he may issue an order re-  
36 quiring compliance immediately or within a speci-  
37 fied time period or requiring corrective action  
38 or other response measures as necessary to ~~remove~~  
39 ~~the dangers to~~ protect the public health and

1 safety or the environment.

2 The commissioner may require assurance of finan-  
3 cial ability for completing corrective action and  
4 may require, where necessary, that corrective ac-  
5 tion be taken beyond a facility or site to remove  
6 the danger to the public health or the environ-  
7 ment unless the person to whom the order is di-  
8 rected demonstrates to the commissioner that, de-  
9 spite that person's best efforts, he was unable  
10 to obtain the necessary permission to undertake  
11 such actions.

12 B. Any order issued under this subsection may be  
13 directed to any person who causes or caused or  
14 contributes or contributed to the discharge or  
15 violation. Such order shall contain findings of  
16 fact describing, insofar as possible, and with  
17 reasonable specificity, the nature of the dis-  
18 charge or violation, the wastes involved, the na-  
19 ture of the cause or contribution of the person  
20 with respect to the discharge or violation, the  
21 site of the activity, the required action, the  
22 time period for compliance and the danger, if  
23 any, to public health or safety of the environ-  
24 ment.

25 C. Service of the commissioner's findings and an  
26 order shall be made by hand delivery by an autho-  
27 rized representative of the department or by cer-  
28 tified mailing, return receipt requested, in ac-  
29 cordance with the Maine Rules of Civil Procedure.

30 D. The person to whom the order is directed  
31 shall comply immediately or within a specified  
32 time period. That person may apply to the board  
33 within 10 working days after receipt of the order  
34 for a hearing on the order. ~~The hearing shall be~~  
35 ~~held by a majority of the board members within 14~~  
36 ~~days after receipt of the application. Within 7~~  
37 ~~days after the hearing, the board shall make~~  
38 ~~findings of fact and shall continue, revoke or~~  
39 ~~modify the order. Within 15 working days after~~  
40 receipt of the application, the board shall hold  
41 a hearing, make findings of fact and continue,  
42 revoke or modify the order. At the hearing, all  
43 witnesses shall be sworn ~~and the department shall~~

1 establish--the-basis-for-the-order-and-for-naming  
2 the-person-to-whom-the-order-was--directed. The  
3 decision of the board may be appealed to the Su-  
4 perior Court in accordance with the Maine Admin-  
5 istrative Procedure Act, Title 5, chapter 375,  
6 subchapter VII.

7 Sec. 22. 38 MRSA §1310, last ¶, as repealed and  
8 replaced by PL 1979, c. 699, §16, is amended to read:

9 The person to whom the order is directed shall  
10 comply immediately. An order may not be appealed to  
11 the Superior Court, but a person to whom it is di-  
12 rected may apply to the board for a hearing on the  
13 order, if the application is made within 48 hours af-  
14 ter receipt of the order by the person to whom the  
15 order was directed. ~~The hearing shall be held by the~~  
16 ~~board within 48 hours after receipt of application.~~  
17 ~~Within 7 days after the hearing, the board shall make~~  
18 ~~findings of fact and continue, revoke or modify the~~  
19 ~~order.~~ Within 5 working days after receipt of the  
20 application, the board shall hold a hearing, make  
21 findings of fact and continue, revoke or modify the  
22 order. The decision of the board may be appealed to  
23 the Superior Court in accordance with Title 5, chap-  
24 ter 375, subchapter VII.

25 Sec. 23. 38 MRSA §1319-E, sub-§2, as enacted by  
26 PL 1981, c. 478, §7, is repealed.

27 Sec. 24. 38 MRSA §1364, sub-§6, as enacted by PL  
28 1983, c. 569, §1, is amended to read:

29 6. Accept funds. The department may accept any  
30 public or private funds which may be available for  
31 carrying out the purposes of this chapter. The Un-  
32 controlled Hazardous Substance Sites Trust Fund is  
33 established to be used by the department as a non-  
34 lapsing revolving fund for carrying out the purposes  
35 of this chapter, including the long-term oversight of  
36 uncontrolled hazardous substance sites. Money in the  
37 fund, not needed currently to meet the obligations of  
38 the department in the exercise of its responsibili-  
39 ties under this chapter, shall be deposited with the  
40 Treasurer of State to the credit of the fund and may  
41 be invested in such manner as is provided for by law.  
42 Interest received on that investment shall be cred-

1 ited to the fund. All funds from whatever source  
2 available for site evaluation and investigation and  
3 for the implementation of plans to abate, clean up or  
4 mitigate threats or hazards to the public health,  
5 safety or welfare and to the environment are to be  
6 expended under the direction and supervision of the  
7 commissioner and shall be segregated, apportioned and  
8 expended as provided by the Legislature.

9       Sec. 25. 38 MRSa §1366, last ¶, as enacted by PL  
10 1983, c. 569, §1, is repealed.

11       Sec. 26. 38 MRSa §1367, last ¶, as enacted by PL  
12 1983, c. 569, §1, is amended to read:

13       Funds recovered under this section shall be de-  
14 posited into the account-from-which-the-funds-were  
15 expended Uncontrolled Hazardous Substance Sites Trust  
16 Fund and shall be used by the department to carry out  
17 the purposes of this chapter.

18       Sec. 27. 38 MRSa §1371 is enacted to read:

19 §1371. Lien established

20       All costs incurred by the State resulting from  
21 the abatement, cleanup or mitigation of a discharge  
22 of a hazardous substance or of hazards posed by an  
23 uncontrolled hazardous substance site designated pur-  
24 suant to section 1364, shall be a lien against the  
25 real estate of the person causing the discharge or,  
26 if the site is an uncontrolled site, the responsible  
27 party.

28       1. Notice. A certificate of lien signed by the  
29 Commissioner of Environmental Protection shall be  
30 mailed by certified mail, return receipt requested,  
31 to all those persons of record holding an interest in  
32 such real estate over which the commissioner's lien  
33 is entitled to priority. A certificate may be filed  
34 for record in the office of clerk of any municipality  
35 in which the real estate is situated.

36       2. Recording. Such a lien shall be effective  
37 when filed with the registry of deeds for the county  
38 in which the real estate is located. The lien shall  
39 include a description of the real estate, the amount

1 of the lien and the name of the owner as grantor.  
2 Such a lien shall take precedence over all transfers  
3 and encumbrances recorded on or after June 1, 1987,  
4 in any manner affecting such interest in such real  
5 estate or any part of it, including all real estate  
6 which has been included, within the preceding 3  
7 years, in the property description of the real estate  
8 and is contiguous to the real estate.

9 3. Limitation. This section does apply to real  
10 estate which consists exclusively of residential real  
11 estate.

12 4. Discharge of lien. When the amount with re-  
13 spect to which a lien has been recorded under the  
14 provisions of this section has been paid or reduced,  
15 the commissioner, upon request by any person of  
16 record holding an interest in the real estate, which  
17 is the subject of the lien, shall issue a certificate  
18 discharging or partially discharging such lien, which  
19 certificate shall be recorded in the registry in  
20 which the lien was recorded. Any action of the fore-  
21 closure of the lien shall be brought by the Attorney  
22 General in the name of the State in the Superior  
23 Court for the judicial district in which the property  
24 subject to the lien is situated.

25 STATEMENT OF FACT

26 Section 1 adds the stream alteration and the  
27 freshwater laws to the list of land use laws over  
28 which the District Court has jurisdiction.

29 Sections 2 to 6 make changes to the Maine Envi-  
30 ronmental Protection Fund. One change is from a  
31 3-fee system to a 2-fee system. The filing and pro-  
32 cessing fees are one fee, a processing fee. The com-  
33 pliance or license fee remains the same. This change  
34 will streamline the processing of applications by re-  
35 ducing administrative time and simplifying the over-  
36 all fee structure.

37 Section 7. The 112th Legislature exempted the  
38 placement of certain water lines and utility cables  
39 from review under the Great Ponds Law, the Maine Re-



1       vised Statutes, Title 38, sections 386 to 396. The  
2 Bureau of Public Lands has authority to issue leases  
3 and easements for submerged lands owned by the State,  
4 Title 12, section 558-A. This addition provides for  
5 notice to the Bureau of Public Lands that the ex-  
6 empted activity will occur so that lease or easement  
7 arrangements can be made.

8       Section 8 makes the antidegradation criteria con-  
9 sistent with Title 38, section 464, subsection 4,  
10 paragraph F, the water reclassification law.

11       Section 9 removes the requirement to solicit com-  
12 ments on a specific type of stream alteration appli-  
13 cation, thereby reducing processing time.

14       Section 10 clarifies the definition of altered  
15 shoreline within the stream alteration law.

16       Section 11 clarifies that the intent of time  
17 schedule variances is to exempt municipalities from  
18 the requirement to provide best practicable treatment  
19 under certain conditions. In previous legislation,  
20 the specific "time schedule" deadline has been de-  
21 leted. The proposed change focuses legislative in-  
22 tent on treatment goal rather than dates which have  
23 now been removed from the laws.

24       Section 11 also sets a July 1, 1988, limitation  
25 on variances which may be issued by the Board of En-  
26 vironmental Protection. This makes state law con-  
27 sistent with the United States Clean Water Act dead-  
28 line for municipalities to provide required  
29 wastewater treatment.

30       Section 12. Repeal of this section is necessary  
31 as the department no longer uses the variance for  
32 single-family homes. Deadline for use of the vari-  
33 ance was July 1, 1985.

34       Section 13. Repeal of this section is necessary.  
35 It required the department to conduct a study of the  
36 sardine industry's wastewater discharges. The study  
37 has been complete, standards set and licenses issued.

38       Sections 14 and 16. As stated on page 13 of the  
39 March, 1986, Water Reclassification Report of the

1 Joint Standing Committee on Energy and Natural Re-  
2 sources, it was the committee's intent that waters  
3 protected under Title 12, section 403, which did not  
4 receive licensed discharges and which were Class A  
5 prior to enactment of L.D. 2283, be upgraded to Class  
6 AA. In the rush of the committee's work, however, a  
7 segment of the Narraguagus River was omitted and a  
8 segment of the Moose River was mistakenly downgraded  
9 to Class B.

10 Section 15. The classification assigned to Web-  
11 ster Brook in Title 38, section 467, subsection 7,  
12 paragraph B, contradicts the AA classification as-  
13 signed to that portion of Webster Brook lying within  
14 the bounds of Baxter State Park under section 467,  
15 subsection 7, paragraph B.

16 Section 17. The enactment of this section was  
17 accidentally recommended when the Department of Envi-  
18 ronmental Protection staff overlooked the fact that  
19 this segment receives a cooling water discharge.  
20 The change is needed to maintain consistency with the  
21 requirements of section 465-A.

22 Section 18. Two minor errors of duplication oc-  
23 curred for tributaries of the Allagash and Aroostook  
24 Rivers.

25 Section 19. An error in transcribing the Depart-  
26 ment of Environmental Protection's proposal was made  
27 which resulted in a misstatement of what longitude  
28 defines the mouth of the Goosefare Brook Estuary.

29 Section 20. When the shoreland zoning law was  
30 transferred from Title 12 to Title 38, this reference  
31 was overlooked.

32 Section 21. This section modifies the compliance  
33 order provision by allowing the orders to be issued  
34 for hazardous waste discharges or violations so that  
35 compliance may be sought without having the commis-  
36 sioner prove that actual damage is occurring to pub-  
37 lic health or the environment. The purpose of the  
38 compliance order provision is to restore compliance  
39 before any harm can occur. This section also changes  
40 how appeals to an order may be conducted by:

1           1. Allowing hearings and the decision on the or-  
2 der to be completed within 15 working days after re-  
3 ceipt of the application. Hearings will not require  
4 6 members of the board to attend. Any decision would  
5 still require a majority of the board to vote, con-  
6 sistent with other statutory provisions; and

7           2. Removing a section which describes departmen-  
8 tal responsibilities in an appeal, but fails to speci-  
9 fy appellant responsibilities. The responsibilities  
10 may be specified during case specific appeal hear-  
11 ings.

12           Section 22. This section specifies that orders  
13 issued under the emergency provisions of section 1310  
14 may be appealed, but specifies that such appeals must  
15 be filed within 48 hours. A hearing and decision  
16 must be made within 5 working days of receipt of an  
17 appeal application.

18           Section 23. This section repeals the limitation  
19 currently placed upon the Hazardous Waste Fund for  
20 use for activities which may be compensated by the  
21 Federal Superfund. The recent federal  
22 reauthorization of the Superfund included provisions  
23 which no longer result in a preemption of the Hazard-  
24 ous Waste Fund by the Superfund for certain activi-  
25 ties. Consequently, the current limitation on the  
26 fund no longer applies.

27           Section 24. This section clarifies how the de-  
28 partment may handle public or private funds received  
29 for the cleanup of uncontrolled sites. Cleanup of  
30 sites often involves future oversight for a period of  
31 years and settlement of these cases with responsible  
32 parties may involve receiving money for future costs  
33 by the State. This section establishes a trust fund  
34 for use by the department to properly administer  
35 those funds. No fees or taxes are associated with  
36 this trust fund.

37           Section 25. This section repeals the last para-  
38 graph of Title 38, section 1366. That paragraph  
39 which describes the use of available funds has been  
40 relocated to 1364, thereby consolidating provisions  
41 concerning funds and allocations.

1           Section 26. This section specifies that funds  
2 recovered for uncontrolled hazardous substance sites  
3 be deposited into the Uncontrolled Hazardous Sub-  
4 stance Sites Trust Fund.

5           Section 27. This section provides the State with  
6 the ability to place a priority lien on property,  
7 other than residential property, where the department  
8 has expended funds to clean up uncontrolled hazardous  
9 substance discharges and sites. This provision will  
10 aid the department as it does in other New England  
11 States, in recovering thousands of dollars in  
12 clean-up funds by registering a lien on the property  
13 until the claim has been satisfied.

14

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