

MAINE STATE LEGISLATURE

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(Emergency)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2251

S.P. 863 In Senate, February 11, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.

Reference to the Committee on Appropriations and Financial
Affairs suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator ESTES of York.

Cosponsored by Representative HOLLOWAY of Edgecomb,
Representative RYDELL of Brunswick, Senator CLARK of Cumberland.

STATE OF MAINE

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

1 AN ACT to Assist Homeowners and
2 Businesses to Comply with the
3 Overboard Discharge Law.
4

5 **Emergency preamble.** Whereas, Acts of the
6 Legislature do not become effective until 90 days
7 after adjournment unless enacted as emergencies; and

8 Whereas, rapid implementation of the overboard
9 discharge law is imperative to clean up numerous

1 polluted shellfishing areas that are important natural
2 and economic resources; and

3 Whereas, some homeowners and businesses may
4 experience serious economic hardship in their efforts
5 to comply with the law; and

6 Whereas, in the judgment of the Legislature, these
7 facts create an emergency within the meaning of the
8 Constitution of Maine and require the following
9 legislation as immediately necessary for the
10 preservation of the public peace, health and safety;
11 now, therefore,

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

14 Sec. 1. 10 MRSA §963-A, sub-§10, ¶I, as amended
15 by PL 1987, c. 521, §1, is further amended to read:

16 I. Any water supply system project; or

17 Sec. 2. 10 MRSA §963-A, sub-§10, ¶J, as enacted
18 by PL 1987, c. 521, §2, is amended to read:

19 J. Any underground oil storage facility
20 replacement project; or

21 Sec. 3. 10 MRSA §963-A, sub-§10, ¶K is enacted
22 to read:

23 K. Any overboard discharge replacement project.

24 Sec. 4. 10 MRSA §963-A, sub-§§42-A and 42-B are
25 enacted to read:

26 42-A. Overboard discharge. "Overboard discharge"
27 means the same as set forth in Title 38, section 466,
28 subsection 9-A.

29 42-B. Overboard discharge replacement project.
30 "Overboard discharge replacement project" means the
31 removal, rehabilitation or replacement of a privately
32 owned waste water disposal system utilized by a

1 business which results in an overboard discharge.

2 Sec. 5. 10 MRSA §1023-E is enacted to read:

3 §1023-E. Overboard Discharge Replacement Fund

4 1. Creation. The Overboard Discharge Replacement
5 Fund is created and established under the jurisdiction
6 and control of the authority.

7 2. Sources of money. There shall be paid into
8 the fund the following:

9 A. All money appropriated for inclusion in the
10 fund;

11 B. Subject to any pledge, contract or other
12 obligation, all interest, dividends or other
13 pecuniary gains from investment of money of the
14 fund;

15 C. Subject to any pledge, contract or other
16 obligations, any money which the authority
17 receives in repayment of advances from the fund;
18 and

19 D. Any other money available to the authority and
20 directed by the authority to be paid into the fund.

21 3. Application of fund. Money in the fund may be
22 applied to carry out any power of the authority under
23 or in connection with section 1026-G, including, but
24 not limited to, to pledge or transfer and deposit
25 money in the fund as security for and to apply money
26 in the fund in payment of principal, interest and
27 other amounts due on insured loans. Money in the fund
28 may be used for direct loans for all or part of
29 overboard discharge replacement projects when the
30 authority determines that:

31 A. Replacement, rehabilitation or removal of the
32 overboard discharge is required by applicable law
33 within 2 years from the date of application to the
34 authority for a loan;

1 B. The applicant demonstrates a reasonable
2 likelihood that it will not be able to obtain the
3 funds necessary to undertake all or any part of
4 the project from any other source, including a
5 loan insured under section 1026-G;

6 C. There is a reasonable likelihood that the
7 applicant will be able to repay the loan; and

8 D. The project will assist in creating or
9 retaining jobs and will provide a more healthy
10 environment.

11 The authority, pursuant to Title 5, chapter 375,
12 subchapter II, shall adopt rules for determining
13 eligibility, feasibility, terms, conditions and
14 security for the loans. Money in the fund not needed
15 currently to meet the obligations of the authority as
16 provided in this section may be invested in such a
17 manner as permitted by law.

18 4. Accounts within fund. The authority may
19 divide the fund into such separate accounts as it
20 determines necessary or convenient for carrying out
21 this section, including, but not limited to, accounts
22 reserved for direct loan funds.

23 5. Revolving fund. The fund shall be a
24 nonlapsing, revolving fund. All money in the fund
25 shall be continuously applied by the authority to
26 carry out this section and section 1026-G.

27 **Sec. 6. 10 MRSA §1024, sub-§1, as amended by PL**
28 **1987, c. 521, §5, is further amended to read:**

29 1. Request for funds. If at any time the money
30 in the Mortgage Insurance Fund and the money in the
31 Loan Insurance Reserve Fund, exclusive of the money
32 pledged or assigned as security for specific
33 obligations of the authority, is insufficient to meet
34 expenses and obligations of the authority, as these
35 expenses and obligations are projected by the
36 authority to become due and payable, the authority
37 shall in writing request the Governor to provide the

1 necessary money. The Governor shall transfer
2 sufficient money to the Mortgage Insurance Fund or
3 Loan Insurance Reserve Fund, as directed by the
4 authority, from the State Contingent Account or the
5 proceeds of bonds of the State issued pursuant to
6 subsection 2. If at any time the money in the
7 Underground Oil Storage Facility Replacement Fund,
8 exclusive of any amounts reserved by law or rule for
9 direct loans pursuant to section 1023-D, subsection 3,
10 is insufficient to meet the expenses and obligations
11 of the authority incurred pursuant to section 1026-F,
12 as these expenses and obligations are projected by the
13 authority to become due and payable, the authority
14 shall in writing request the Governor to provide the
15 necessary money. Within 30 days of receipt of the
16 request, the Governor shall transfer sufficient money
17 to the Underground Oil Storage Facility Replacement
18 Fund from the Ground Water Oil Clean-up Fund or the
19 proceeds of bonds of the State issued pursuant to
20 subsection 2. If at any time the money in the
21 Overboard Discharge Replacement Fund, exclusive of any
22 amounts reserved by law or rule for direct loans
23 pursuant to section 1023-E, subsection 3, is
24 insufficient to meet the expenses and obligations of
25 the authority incurred pursuant to section 1026-G, as
26 these expenses and obligations are projected by the
27 authority to become due and payable, the authority
28 shall request, in writing, the Governor to provide the
29 necessary money. Within 30 days of receipt of the
30 request, the Governor shall transfer sufficient money
31 to the Overboard Discharge Replacement Fund from the
32 State Contingent Account or the proceeds of bonds of
33 the State issued pursuant to subsection 2.

34 Sec. 7. 10 MRSA §1024, sub-§2, ¶B, as amended
35 by PL 1987, c. 521, §6, is further amended to read:

36 B. In the amount required, but not exceeding in
37 the aggregate at any one time outstanding the
38 amount set forth in:

39 (1) The Constitution of Maine, Article IX,
40 Section 14-A, as it may be from time to time
41 amended, except that bonds issued under that
42 section and this subsection shall not exceed

1 in the aggregate at any one time outstanding
2 the principal amount of ~~\$82,500,000~~
3 \$87,500,000; and

4 (2) The Constitution of Maine, Article IX,
5 Section 14-D, as it may be from time to time
6 amended, except that bonds issued under that
7 section and this subsection shall not exceed
8 in the aggregate at any one time outstanding
9 the principal amount of \$4,000,000;

10 **Sec. 8. 10 MRSA §1025**, first ¶, as amended by
11 PL 1987, c. 521, §7, is further amended to read:

12 When, in the opinion of the authority, the action
13 is necessary to safeguard the Mortgage Insurance Fund,
14 Loan Insurance Reserve Fund or Underground Oil
15 Storage Facility Replacement Fund or Overboard
16 Discharge Replacement Fund and to maintain income from
17 eligible projects, the authority may, in addition to
18 its other powers:

19 **Sec. 9. 10 MRSA §1026-G** is enacted to read:

20 §1026-G. Mortgage insurance for overboard discharge
21 replacement projects

22 1. Insurance. In addition to its other powers
23 under this chapter, subject to the limitations of this
24 subchapter, except sections 1026-B to 1026-D, the
25 authority may insure up to 100% of mortgage payments
26 with respect to mortgage loans for overboard discharge
27 replacement projects when the authority determines
28 that:

29 A. Such a project is necessitated by applicable
30 law;

31 B. The applicant demonstrates a reasonable
32 likelihood that it will not be able to obtain a
33 loan for the project on reasonable terms without
34 insurance pursuant to this section;

35 C. The applicant demonstrates a reasonable
36 likelihood that it will be able to repay the

1 insured loan; and

2 D. The project will assist in creating or
3 retaining jobs and providing a more healthy
4 environment.

5 2. Limitation on mortgage insurance. The
6 authority shall not at any time have, in the aggregate
7 amount of principal and interest outstanding, mortgage
8 insurance obligations pursuant to this section
9 exceeding \$5,000,000 less the outstanding balance of
10 any bonds issued under section 1024, subsection 2,
11 with respect to obligations incurred under this
12 section.

13 3. Mortgage eligibility. The authority, pursuant
14 to Title 5, chapter 375, subchapter II, may adopt
15 rules for determining eligibility, project
16 feasibility, terms, conditions and security for
17 insured mortgage loans under this section. Without
18 limitation, the authority may establish a system for
19 giving priority to applicants for overboard discharge
20 replacement projects based on when such projects are
21 necessitated by applicable law. The authority may
22 accept less than adequate collateral when necessary to
23 implement an overboard discharge replacement project.

24 Sec. 10. 10 MRSA §1029, sub-§2, ¶A, as amended
25 by PL 1987, c. 521, §9, is further amended to read:

26 A. Make the payment at the time and in the manner
27 provided by the applicable contract or agreement,
28 charging the payment to the Mortgage Insurance
29 Fund, Loan Insurance Reserve Fund, or, in the
30 case of payments required under agreements issued
31 pursuant to section 1026-F, to the Underground Oil
32 Storage Facility Replacement Fund or, in the case
33 of payments required under agreements issued
34 pursuant to section 1026-G, to the Overboard
35 Discharge Replacement Fund;

36 Sec. 11. 10 MRSA §1030, as amended by PL 1987,
37 c. 521, §10, is further amended to read:

1 §1030. Incontestability

2 Any mortgage insurance commitment or contract
3 executed and delivered by the authority under this
4 subchapter shall be conclusive evidence of the
5 eligibility of the mortgage for insurance subject to
6 satisfaction of any conditions set forth in the
7 mortgage insurance contract or commitment and that the
8 requirements of sections 1026-A to ~~1026-F~~ 1026-G
9 have, to the extent determined applicable by the
10 authority, been satisfied or made conditions of the
11 mortgage insurance commitment or contract, and the
12 validity of any mortgage insurance commitment or
13 contract so executed and delivered shall be
14 incontestable in the hands of an insured except for
15 fraud or misrepresentation on the part of the insured.

16 Sec. 12. 30 MRSA §4552, sub-§19, as amended by
17 PL 1981, c. 321, §2, is further amended to read:

18 19. Home improvement note. "Home improvement
19 note" means an interest bearing obligation, secured in
20 whole or in part by a mortgage, insurance or otherwise
21 as may be agreed upon by the state authority from time
22 to time, made to improve or rehabilitate single family
23 or multi-unit residential housing in the State,
24 including without limitation the replacement, removal
25 or rehabilitation of malfunctioning waste water
26 treatment systems.

27 Sec. 13. 30 MRSA c. 239, sub-c. II, art. 6-B is
28 enacted to read:

29 ARTICLE 6-B

30 OVERBOARD DISCHARGE ASSISTANCE PROGRAM

31 §4770-C. Overboard Discharge Assistance Fund

32 1. Creation. The Overboard Discharge Assistance
33 Fund is established under the jurisdiction of the
34 Maine State Housing Authority. For the purposes of
35 this article, "authority" means the Maine State
36 Housing Authority.

1 2. Sources of fund. The following shall be paid
2 into the fund:

3 A. All money appropriated for inclusion in the
4 fund;

5 B. Subject to any pledge, contract or other
6 obligation, any money which the authority receives
7 in repayment of loans or advances from the fund;

8 C. Subject to any pledge, contract or other
9 obligation, all interest, dividends or other
10 income from investment of the fund; and

11 D. Any other money, including federal money,
12 deposited in the fund to implement the provisions
13 of this article.

14 3. Application of fund. The authority may apply
15 money in the fund for purposes authorized by this
16 article. Money in the fund not needed currently for
17 purposes of this article may be deposited with the
18 authority to the credit of the fund or may be invested
19 in such a manner as is provided by law.

20 4. Accounts within fund. The authority may
21 divide the funds into such separate accounts as it
22 determines necessary or convenient for carrying out
23 this article.

24 5. Revolving fund. The fund shall be a
25 nonlapsing revolving fund. All money in the fund
26 shall be continuously applied by the authority to
27 carry out this article.

28 §4770-D. Maine Overboard Discharge Assistance Program

29 The Maine Overboard Discharge Assistance Program
30 shall provide assistance to homeowners whose homes are
31 serviced by substandard or malfunctioning waste water
32 treatment systems, including straight pipe discharges,
33 individual overboard discharge systems, subsurface
34 waste water disposal systems, septic tanks, leach
35 fields and cesspools, which systems result in direct

1 discharges of domestic pollutants to the surface
2 waters of the State.

3 1. Operation. The authority shall administer the
4 Maine Overboard Discharge Assistance Program which may
5 be operated in conjunction with other programs of the
6 authority and in cooperation with the Department of
7 Environmental Protection. Other programs of the
8 authority may be used to supplement or be used in
9 conjunction with the Maine Overboard Discharge
10 Assistance Program to achieve the purpose of this
11 article.

12 A. Money in the fund may be used as security for
13 or be applied in payment of principal, interest,
14 fees and other charges due on loans made or
15 insured under this program.

16 B. Money in the fund may be used as grants to
17 assist homeowners who qualify for grant assistance
18 under this program.

19 2. Provisions governing use of money. The fund
20 shall be administered subject to the provisions in
21 this section. Priority shall be given to homeowners
22 who are or are likely to be in noncompliance with the
23 state waste classification program, Title 38, article
24 4-A and who do not have access to adequate capital or
25 credit to remove, rehabilitate or replace the waste
26 water treatment system. For purposes of this article,
27 homeowner includes the owner of a mobile home or
28 manufactured housing unit and the owner of rental
29 housing.

30 A. The authority, by rules adopted in accordance
31 with the Maine Administrative Procedure Act, Title
32 5, chapter 375, shall establish priorities of
33 assistance to homeowners. These priorities shall
34 be based on the assets of the homeowner;
35 availability of credit or assistance or income
36 from other sources, including financial
37 institutions, investments, trust funds and other
38 similar sources; the degree of environmental or
39 public health hazard; the immediacy of the need
40 for assistance; and any other variables deemed

1 important by the authority.

2 B. Grants may be provided to a homeowner if:

3 (1) The grant is essential to providing
4 housing to the homeowner;

5 (2) The income of the homeowner is
6 insufficient to repay any loan or portion of
7 a loan; and

8 (3) Grants shall not exceed \$5,000 per
9 homeowner household.

10 C. Loans from the fund shall not exceed \$10,000
11 per homeowner household at rates of interest not
12 to exceed 8% per year.

13 D. Loans from the fund may be made for periods of
14 up to 30 years. In the event that a homeowner
15 cannot repay a loan in full within the 30-year
16 period, the authority may extend the repayment
17 period if the authority determines that the loan
18 can be repaid during the extension period. The
19 authority may waive the payment of interest on any
20 loan or portion of a loan for which the interest
21 payment will be an undue hardship on a household.

22 E. Money in the fund may be used to reduce
23 interest rates on loans provided by financial
24 institutions located in this State to homeowners
25 who meet the eligibility requirements of this
26 program.

27 F. The program shall be directed primarily at
28 households without access to adequate capital or
29 credit and which meet the eligibility requirements
30 of this program.

31 G. The program shall be directed secondarily at
32 eliminating overboard discharges into shellfish
33 growing areas designated by the Department of
34 Marine Resources.

1 3. Loan insurance. The authority may insure
2 payments due under a loan or lease and may pledge
3 money in the fund as security for such loan or lease,
4 which may be in addition to or in lieu of insurance
5 provided under other provisions of this chapter.
6 Loans or leases shall not constitute any debt or
7 liability on the part of the authority or the State,
8 except to the extent specifically provided by contract
9 executed by the authority.

10 4. Use of loans and grants. Loans and grants
11 provided in this article may be used for refinancing
12 mortgages, or the payment of interest or a portion of
13 the interest on loans.

14 5. Procedures. The authority may adopt rules in
15 accordance with the Maine Administrative Procedure
16 Act, Title 5, chapter 375, by which the program shall
17 be implemented.

18 §4770-E. Bonds; issuance; separability of provisions

19 The authority is hereby authorized to issue bonds
20 from time to time to carry out the purposes of this
21 article. These bonds shall be secured in such manner
22 as the authority may by resolution provide. The bonds
23 shall be known as overboard discharge assistance
24 bonds. The authority to issue the bonds under this
25 article shall constitute a complete, additional and
26 alternative method for the issuance of bonds from that
27 authority provided in any other article in this
28 subchapter. No limitation or restriction as to use of
29 proceeds or total authorized amount of obligations
30 outstanding stated in this article may apply to bonds
31 issued pursuant to any other article of this
32 subchapter, nor may restrictions or limitations
33 recited in other articles apply to bonds issued
34 pursuant to this article. The provisions of sections
35 4756 to 4762 shall not be applicable to bonds issued
36 pursuant to this article. All other provisions of
37 this subchapter shall apply to bonds issued pursuant
38 to this article.

39 The authority shall not at any time have, in the
40 aggregate principal amount outstanding, overboard

1 credit in the private sector. Second, a program is
2 established in the Maine State Housing Authority to
3 provide assistance to homeowners who find themselves
4 in a similar situation.

5 It is the intent of the Legislature that any form
6 of assistance offered under the programs established
7 by this legislation result in improvements in the
8 quality of the surface waters of the State.

9 MR. TERRY 3983122987

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