

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 855, L.D. 1187, Bill, "An Act to Amend the Overboard Discharge Laws"

Amend the bill by striking everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 38 MRSa §411-A is enacted to read:

§411-A. State contribution to residential overboard discharge replacement projects

1. General authority. Subject to the availability of funds under section 411, the department shall pay a portion of the expense of a pollution abatement construction project which results in the elimination of an overboard discharge to the waters of the State where that elimination is required under section 414-A, subsection 1-B. The costs eligible for payment under this program include the costs that the department requires for abandonment of the overboard discharge and the design, engineering and construction costs of the replacement system. Grants made under this section may be made directly to the owners of the overboard discharge and may also be made to sanitary and sewer districts which have agreed to establish operation and maintenance programs for holding tanks within their boundaries.

2. Cost-share. The department shall determine the portion of project expenses which are eligible for grants under this section as follows.

A. The department shall pay 90% of the costs of a project which results in the removal of a year-round residential overboard discharge.

B. The department shall pay 50% of the costs of a project which results in the removal of a commercial overboard discharge.

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C. The department shall pay 25% of the costs of a project which results in the removal of a seasonal residential overboard discharge.

For the purposes of this section and section 414-A, seasonal residential overboard discharge means an overboard discharge from a human habitation which is occupied for less than 6 months in any calendar year.

3. Priority. The department shall utilize grants made under this section to eliminate sources of contamination to shellfish harvesting areas and to eliminate public nuisance conditions.

4. Reimbursement. The department shall utilize grants under this section to reimburse individuals for the costs of removing any overboard discharge, subject to the provisions of subsection 2, when:

A. The removal occurred after June 1, 1987, and prior to the effective date of this section;

B. The removal resulted in the elimination of sources of contamination to shellfish areas or public nuisance conditions; and

C. The removal was the direct result of an unsuccessful licensing application under former section 464, subsection 4, paragraph G.

**Sec. 2. 38 MRSA §414, sub-§3-A is enacted to read:**

3-A. Inspection of overboard discharges. The department shall inspect all licensed overboard discharges a minimum of twice each calendar year. The department shall assess all costs of inspection, including personnel costs and necessary laboratory analyses, to the license holder. No assessment under this section may exceed \$100 annually. All revenues received under this subsection shall be credited to the Maine Environmental Protection Fund. The department may retain private contractors to undertake the inspections required under this subsection.

**Sec. 3. 38 MRSA §414-A, sub-§1-B is enacted to read:**

1-B. Relicensing of overboard discharges. The following provisions shall govern the relicensing of overboard discharges.

A. The board shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of relicensing, when it finds that there are no technologically proven alternative methods of waste water disposal consistent with the Maine State

1 Plumbing Code which will not result in an overboard  
2 discharge.

3  
4 B. For the purposes of this subsection, the department  
5 shall not require the installation or use of waste water  
6 holding tanks as a "technologically proven alternative  
7 method of waste water disposal" except in the following  
8 cases:

9  
10 (1) Seasonal residential overboard discharges which are  
11 located on the mainland or on any island connected to  
12 the mainland by vehicle bridge or by scheduled car  
13 ferry service; and

14 (2) All overboard discharges located within the  
15 boundaries of a sanitary or sewer district when the  
16 district has agreed to service and maintain the holding  
17 tank at an annual fee that does not exceed those fees  
18 charged to other similar users of the district's  
19 services who are physically connected to the sewers of  
20 the district.

21  
22 C. The board shall issue a conditional permit to any  
23 applicant denied a license for an overboard discharge under  
24 this subsection. The term of the permit shall extend until  
25 6 months after the department offers a grant to the  
26 applicant for the costs of replacing the overboard discharge  
27 under the provisions of section 411-A.

28  
29 D. The board shall limit to a maximum of 5 years the term  
30 of any overboard discharge license, including relicensings,  
31 issued after June 1, 1987. All licenses in existence on  
32 June 1, 1987, with expiration dates occurring in 1989 or  
33 1990, shall expire on the date stated in the license. All  
34 other licenses in existence on June 1, 1987, shall expire on  
35 the same day and month stated in the existing license but in  
36 a new year, determined by the following schedule:

37

<u>Current Expiration Date</u>	<u>New Date</u>
<u>1991, 1992</u>	<u>1990</u>
<u>1993, 1994</u>	<u>1991</u>
<u>1995, 1996</u>	<u>1992</u>
<u>1997, 1998</u>	<u>1993</u>

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41  
42 E. At the time of each relicensing of an overboard  
43 discharge, the board shall impose all conditions necessary  
44 to meet the requirements of this section and all other  
45 relevant laws.

46  
47 Sec. 4. 38 MRS §464, sub-§4, ¶A, as amended by PL 1987, c.  
48 419, §10, is further amended to read:

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A. Notwithstanding section 414-A, the board shall not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters which, by itself or in combination with other activities, causes water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters;

(4) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;

(5) Discharge of pollutants to any water of the State which violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; or causes fish for human consumption to be injurious to human health as determined by the United States Food and Drug Administration under the procedures established by United States Code, Title 21, section 342 or as determined by the Department of Human Services. The Department of Human Services shall establish a protocol for determining risk in these situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; and

(6) New discharges of domestic pollutants to the surface waters of the State which are not conveyed and treated in municipal or quasi-municipal sewage facilities. "New For the purposes of this subparagraph, "new discharge" means any overboard discharge which is licensed after the effective date of this section was not licensed as of June 1, 1987, except those discharges which were in continuous

1 existence for the 12 months preceding June 1, 1987, as  
3 demonstrated by the applicant to the board with clear  
5 and convincing evidence. For purposes of licensing,  
7 the board shall treat an increase in the licensed  
volume or quantity of an existing discharge or an  
expansion in the months during which the discharge will  
take place as a new discharge of domestic pollutants.

9 ~~Notwithstanding the provisions of this subparagraph, an~~  
11 ~~increase in the volume or quantity of domestic~~  
13 ~~pollutants in a licensed discharge of domestic~~  
15 ~~pollutants emanating from an existing commercial or~~  
17 ~~industrial business or from an existing state or~~  
federal facility is not prohibited so long as, in  
addition to all other provisions of applicable law, all  
the following conditions are met:

19 (a) ~~The board finds that, based on the past~~  
21 ~~record of compliance by the licensee with all~~  
23 ~~requirements of its existing discharge licenses,~~  
25 ~~the licensee is likely to comply with the~~  
27 ~~requirements of any subsequent license governing~~  
the increased discharge. ~~The board shall not make~~  
this finding if there have been significant,  
numerous or repeated violations of any standard,  
limit or condition of the existing licenses;

29 (b) ~~The licensee agrees, as a license condition,~~  
31 ~~to retain qualified employees or independent~~  
33 ~~consultants to ensure that the overboard discharge~~  
35 ~~system is meeting all requirements of the license~~  
37 ~~and to test, monitor and maintain the system. The~~  
board shall require, as a license condition, that  
the licensee test the effluent on a weekly basis  
to ensure that the license requirements are being  
met and that the licensee promptly submit reports  
of these tests to the department; and

39 (c) ~~The board finds that all requirements of~~  
41 ~~paragraph G have been met with respect to the~~  
proposed increase in the overboard discharge.

43 **Sec. 5. 38 MRSA §464, sub-§4, ¶G, as enacted by PL 1987, c.**  
45 **180, §15, is repealed.**

47 **Sec. 6. 38 MRSA §464, sub-§§7 and 8 are enacted to read:**

49 7. Interdepartmental coordination. The board, the  
51 Commissioner of Marine Resources and the Commissioner of Human  
Services shall jointly:

1           A. Make available accurate and consistent information on the  
3           requirements of this section, section 411-A and section  
              414-A, subsection 1-B; and

5           B. Certify waste water treatment and disposal technologies  
7           which can be used to replace overboard discharges.

8.   Development of group systems. Subject to the provisions  
9   of section 414-A, subsection 1-B, the board shall coordinate the  
11 development and implementation of waste water treatment and  
13 disposal systems serving more than one residence or commercial  
      establishment where individual replacement systems are not  
      feasible.

15           **Sec. 7. Report.** By January 1, 1990, the Department of  
17 Environmental Protection shall report to the joint standing  
19 committee of the Legislature having jurisdiction over natural  
resources on the following issues:

21           1. The ability of sanitary and sewer districts to assist in  
23 the elimination of overboard discharges from the waters of the  
State;

25           2. The feasibility of developing a suitable financial means  
test for the overboard discharge replacement program;

27           3. The estimated state financial requirements to fully  
29 implement the overboard discharge replacement program for  
year-round, seasonal and commercial establishments; and

31           4. The availability of alternative financing arrangements  
33 including loan guarantees, low-interest loans and other  
alternatives to direct grants.

35           The department shall include any recommendations of necessary  
37 legislation and funding in its report.

39           **Sec. 8. Allocation.** The following funds are allocated from  
Other Special Revenue to carry out the purposes of this Act.

	<b>1989-90</b>	<b>1990-91</b>
<b>ENVIRONMENTAL PROTECTION,</b>		
<b>DEPARTMENT OF</b>		
<b>Maine Environmental Protection Fund</b>		
Positions	(3)	(3)
Personal Services	\$67,789	\$90,385
All Other	45,150	60,200
Capital Expenditures	15,244	

Provides funds for 3 Environmental Specialist II positions, 2 seasonal conservation aids, required laboratory analyses, and general operating expenses.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL

\$128,183

\$150,585

FISCAL NOTE

Enactment of this legislation would:

1. Result in an increase in dedicated revenue to the Department of Environmental Protection (Maine Environmental Protection Fund, Acct.#04531.2) of approximately \$129,000 for fiscal year 1989-90 and \$166,000 for fiscal year 1990-91. This increase in revenue would be derived from a proposed annual inspection fee charged to 2,627 residential and commercial waste water treatment facilities; and

2. Require an allocation of Other Special Revenue to the Department of Environmental Protection (Maine Environmental Protection Fund, Acct. #04532.1) in the amount of \$128,183 for fiscal year 1989-90 and \$150,585 for fiscal year 1990-91. This allocation would provide funds for 5 positions of which 3 are year-round and 2 are seasonal. The allocation also provides general operating expenses to inspect residential and commercial waste water licensees.

Finally, it is anticipated that all costs associated with the proposed study of various aspects of the overboard discharge issues would be absorbed by the Department of Environmental Protection utilizing existing resources.'

STATEMENT OF FACT

This amendment replaces the original bill. The amendment maintains the current prohibition on new overboard discharges. The amendment establishes a single standard for the relicensing of existing overboard discharges. The Board of Environmental Protection can only relicense an existing overboard discharge if there is no technologically proven alternative.

Special restrictions are placed on the Department of Environmental Protection's ability to require the use of holding tanks as a replacement for an overboard discharge. It is the Legislature's intent that holding tanks be considered as an alternative for all seasonal dwellings where pumping trucks have ready access. This may include islands with vehicle ferry service. It is further the Legislature's intent that

1 holding tanks be considered as an alternative within any sanitary  
2 and sewer district which has agreed to service the holding tanks  
3 at the same annual fee as other users of the district's  
4 services. The Department of Environmental Protection is directed  
5 to report to the Legislature on the current ability of sanitary  
6 and sewer districts to assume these responsibilities.

7  
8 In the event that a relicensing application is denied, the  
9 department is directed to issue a conditional permit. The term  
10 of the permit extends until 6 months after the department offers  
11 the unsuccessful applicant a grant to cover the replacement  
12 costs. The grant is 90% of replacement costs for a year-round  
13 residential system and 50% for a seasonal or commercial system.  
14 Funding for these grants is linked to the "small community grants  
15 program" currently administered by the Department of  
16 Environmental Protection. The department is authorized to make  
17 any necessary grants directly to the unsuccessful license  
18 applicants. However, the department is allowed to make grants to  
19 sanitary and sewer districts where the districts will establish a  
20 program for holding tank service.

21  
22 The provision in the existing law allowing the expansion of  
23 existing commercial, state and federal overboard discharges is  
24 eliminated.

25  
26 The accelerated schedule for the renewal of existing  
27 overboard discharge licenses established under Public Law 1987,  
28 chapter 180, is slightly altered. Despite the slight delay, the  
29 end point of 1993 is maintained.

30  
31 The department is directed to inspect all licensed overboard  
32 discharges at least twice a year and to charge the license holder  
33 for the costs of inspection.

Reported by the Committee on Energy and Natural Resources  
Reproduced and distributed under the direction of the Clerk of the  
House  
6/13/89 (Filing No. H-502)