

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1518

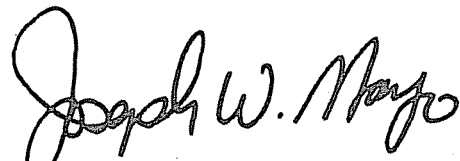
H.P. 1119

House of Representatives, May 17, 1993

An Act to Bring State Water Quality Law into Compliance with Federal Requirements.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.
Cosponsored by Senator LAWRENCE of York and
Representatives: ANDERSON of Woodland, COLES of Harpswell, CONSTANTINE of Bar
Harbor, GOULD of Greenville, LORD of Waterboro, MARSH of West Gardiner, MITCHELL
of Freeport, POULIN of Oakland, WENTWORTH of Arundel, Senators: CIANCHETTE of
Somerset, LUDWIG of Aroostook.

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

Sec. 1. 38 MRSA §464, sub-§2-A is enacted to read:

2-A. Removal of designated uses; creation of subcategories of designated uses. Removal of designated uses and creation of subcategories of designated uses are governed by the provisions of this subsection and 40 Code of Federal Regulations, Part 131, as amended.

A. The board must conduct a use attainability analysis:

(1) Prior to proposing to the Legislature a designated use of a specific water body that does not include the uses specified in the Federal Water Pollution Control Act, Public Law 92-500, Section 101(a)(2), as amended; or

(2) Prior to proposing to the Legislature the removal of a designated use or the adoption of a subcategory of such a designated use that requires less stringent criteria.

B. The board may not recommend to the Legislature the removal of a designated use or the establishment of a subcategory of the use, if:

(1) It is an existing use as defined in section 464, subsection 4, paragraph F, subparagraph (1), unless another designated use is adopted requiring more stringent criteria;

(2) The use can be attained by implementing effluent limits required under the Federal Water Pollution Control Act, Public Law 92-500, Sections 301(b) and 306, as amended and by implementing reasonable best management practices for nonpoint source control;

(3) The water body in question is currently attaining the designated use; or

(4) Adoption of the recommendation allows the introduction of a new discharge or the expansion of an existing discharge into the water body in question that is not attaining the designated use.

C. The board may adopt any recommendation under this subsection only after holding a public hearing in the affected area or adjacent to the affected area. Conduct of the public hearing and the board's subsequent decision are governed by Title 5, chapter 375, subchapter IV.

2 D. A finding by the board that attainment of a designated
4 use is not feasible must be supported by a demonstration
that the conditions of 40 Code of Federal Regulations
131.10(g) are met.

6 E. The board shall forward any recommendation it adopts to
8 the joint standing committee of the Legislature having
10 jurisdiction over natural resources matters at the next
12 regular session of the Legislature. The Legislature has
sole authority to make changes in the designated uses of the
waters of the State, including the creation of a subcategory
of a designated use.

14 **Sec. 2. 38 MRSA §466, sub-§§4-A and 11-A are enacted to read:**

16 **4-A. Designated use.** "Designated use" means the use
18 specified in water quality standards for each water body or
segment under sections 465 to 465-C and sections 467 to 470
20 whether or not that use is being attained. A designated use
includes its associated habitat characteristic under sections 465
to 465-C.

22 **11-A. Use attainability analysis.** "Use attainability
24 analysis" means a structured scientific assessment of the factors
26 affecting the attainment of a designated use in a water body.
The assessment may include consideration of physical, chemical,
28 biological and economic factors.

30 STATEMENT OF FACT

32 This bill has been introduced in response to the formal
34 disapproval by the federal Environmental Protection Agency, of
Public Law 1991, Part A, Chapter 814. This bill provides the
36 correct procedure to be used by the State in considering those
unusual situations in which existing conditions may preclude the
38 attainment of a water body's statutory classification of
quality. This procedure, called a "use attainability analysis,"
is closely modeled on the federal requirements adopted by the
40 federal Environmental Protection Agency, 40 Code of Federal
Regulations, Part 131. All requirements of this federal
42 regulation are incorporated by reference.

44 This bill provides further clarification on certain portions
of the federal requirements. Consistent with the intent of
46 federal law, this bill expressly prohibits use of the use
attainability analysis process to eliminate existing uses, to
48 allow degradation of a water body that is currently meeting its
classification or the further degradation of a water body that
50 has failed to attain its classification. The bill provides for a
formal public hearing and decision-making process in order to

ensure adequate public participation as required by federal law.
2 The bill also provides a standard for deciding whether or not it
is "feasible" for a water body to attain its classification.
4 This standard involves the investigation of alternatives
including the analysis of technical feasibility and social and
6 economic impacts.