

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

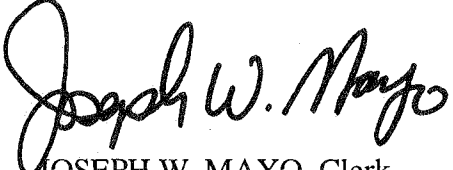
No. 1217

H.P. 900

House of Representatives, February 25, 1997

**An Act to Protect the State's Lakes, Rivers and Coastal Wetlands
through a Comprehensive Watershed Protection Program.**

Reference to the Committee on Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Senator TREAT of Kennebec and
Representatives: BULL of Freeport, COWGER of Hallowell, FISK of Falmouth, HONEY of
Boothbay, Senator: MILLS of Somerset.

2 **Preamble.** Two thirds of both Houses of the Legislature
4 deeming it necessary in accordance with the Constitution of
6 Maine, Article IX, Section 14, to authorize the issuance of bonds
on behalf of the State of Maine to provide funds for the Priority
Watershed Program administered by the Department of Environmental
Protection.

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

10 **PART A**

12 **Sec. A-1. 38 MRSA §420-D, sub-§11** is enacted to read:

14 11. Compensation fee program. For the purpose of providing
16 additional flexibility to entities required to meet a phosphorous
allocation under this section, the department may establish a
18 compensation fee program. The program must allow an applicant
who is required to meet a phosphorous allocation for a project in
20 a watershed at risk from development to address a portion of the
necessary phosphorus export reduction on site and pay a
phosphorus compensation fee in lieu of addressing the remainder.

22 The board shall establish by rule the portion of the phosphorus
24 export reduction that must be met on site and the compensation
rate per pound for phosphorus. The rate per pound may be set
26 higher for projects located in the direct watersheds of severely
blooming lakes. The commissioner shall determine the appropriate
28 compensation fee for each project, evaluate the rate per pound
annually and adjust it, if necessary, based upon the cost of
30 treating and eliminating phosphorus sources in watersheds. The
compensation fee must be paid either into a compensation fund or
32 to an organization authorized by the department and must be a
condition of any permit issued by the department pursuant to this
34 section. Any rule adopted under this subsection is a routine
technical rule pursuant to Title 5, chapter 375, subchapter II-A.

36 A. The department may establish a compensation fund for the
38 purpose of receiving compensation fees, grants and other
related income. The fund must be a separate, nonlapsing,
40 trust account maintained by the Treasurer of State and
dedicated to payment of the costs and related expenses of
42 compensation projects under this subsection. The department
may make payments from the fund consistent with the purpose
44 of the fund.

46 B. The department may enter into an enforceable, written
48 agreement with a public, quasi-public or private, nonprofit
organization, dedicated to the protection of natural areas,
for the purpose of receiving compensation fees and
50 implementing compensation projects under this subsection.
If the authorized agency is a state agency other than the

2 department, it must establish a fund meeting the
requirements specified in paragraph A.

4 The authorized organization must maintain records of
expenditures and provide an annual summary report to the
6 department. If the organization does not perform in
accordance with this subsection, or with the requirements of
8 the written agreement, the department may revoke the
organization's authority to conduct activities in accordance
10 with this subsection. If an organization's authorization is
revoked, any remaining funds must be provided to the
12 department.

14 **Sec. A-2. 38 MRSA §480-Z is enacted to read:**

16 **§480-Z. Watershed protection**

18 **1. Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
20 following meanings.

22 A. "Best management practices" means practices in
accordance with best management practice guidelines, as
24 defined in section 410-H, subsection 1.

26 B. "Coastal wetlands" has the same meaning as in section
480-B, subsection 2.

28 C. "Nonpoint source" has the same meaning as in section
30 410-H, subsection 2.

32 **2. Program.** The department may create, implement and
administer a comprehensive watershed protection program. In
34 carrying out such a program, the department shall:

36 A. Develop and implement strategies designed to protect the
State's lakes, rivers, coastal wetlands and other surface
38 waters from nonpoint source pollution;

40 B. Conduct scientific research and water quality surveys to
establish baseline information about the condition of the
42 State's surface waters and the relative risk to surface
waters from development activities;

44 C. Implement regulatory and nonregulatory approaches to
46 watershed protection, including public education and
technical assistance;
48

2 D. Coordinate activities with other departments, agencies,
4 private and nonprofit entities that are also involved in
6 activities aimed at controlling nonpoint source pollution;

8 E. Establish and implement a priority watershed program for
10 the purpose of directing public and private attention and
12 financial support to the management of water bodies at risk
14 due to nonpoint source pollution; and

16 F. Establish a compensation fee program for the purposes of
18 providing additional flexibility to regulated entities in
20 their approach to meeting any nutrient runoff mitigation
22 requirements of the department.

24 3. Priority Watershed Program. The Priority Watershed
26 Program, referred to in this subsection as "the program," must be
28 conducted as described in this subsection.

30 A. The department shall focus attention on the control of
32 nonpoint source pollution from existing and new sources by
34 funding through the program entities and individuals with
36 the strongest project proposals for addressing nonpoint
38 source pollution associated with surface water at risk from
40 new development.

42 B. All categories of surface water, including rivers,
44 streams, coastal waters and lakes, must be considered as
46 potential candidates for the program.

48 C. To the extent practical, entire basins, including
50 associated rivers, lakes and coastal waters, must be
52 considered potential candidates for the program.

54 D. The department shall give preference to projects that:

56 (1) Seek to protect surface waters and watersheds in
58 an integrated program, especially when those water
60 bodies are threatened by rapid watershed development;

62 (2) Show evidence of extensive local support in either
64 matching funds or services with particular emphasis on
66 local volunteer services;

68 (3) Seek to solve current problems and plan for future
70 protection of resources;

2 (4) Produce products or information that can be of use
3 in more than one setting or in other projects in the
4 State; and

5 (5) Have been given a high priority status as a result
6 of scientific studies based upon water quality, habitat
7 value or other relevant characteristics, including
8 anticipated economic benefit.

10 E. The board shall oversee the program. The board shall
11 approve projects, encompassing either watershed or basin,
12 based on the technical advice of the department, the State
13 Planning Office, the Department of Marine Resources and the
14 Department of Human Services, while allowing for broad
15 public input on project proposals that have been submitted
16 to the board.

18 F. Projects may be nominated by state agencies, tribes or
19 potential grant recipients, including towns, soil and water
20 conservation districts, conservation commissions, watershed
21 districts, lake associations or other entities that would
22 manage or are supportive of a proposed project.

24 G. Each project proposal must be based on an existing or
25 planned integrated watershed management plan, which
26 generally should include the following elements:

28 (1) A planning phase that includes:

30 (a) Assessment of condition and uses of water
31 bodies within the watershed;

32 (b) Inventory of the types of land uses and
33 severity of nonpoint source pollution in the
34 watershed;

35 (c) Evaluation of the types and severity of other
36 factors that may be affecting water quality;

37 (d) Determination of levels of nonpoint source
38 pollution control and measures necessary to
39 improve or protect water quality; and

40 (e) A plan for preparing or approval of a
41 priority watershed plan documenting the evaluation
42 and implementation procedures as set out in
43 divisions (a) to (d) and projected costs;

44 (2) An implementation phase that includes:
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2 (a) Local regional agreements that identify
implementation responsibilities;

4 (b) Education and communication strategy to
inform eligible landowners of the importance of
6 utilizing best management practices on a voluntary
or cost-shared basis;

8 (c) Cost-sharing agreements that outline
10 practices, costs and schedules for instituting
best management practices or other management
12 options; and

14 (d) Strategy and schedule for instituting best
management practices; and

16 (3) An evaluation phase that includes a plan for
18 ensuring objective evaluation of the performance of
entities supported through financial assistance from
20 the department, including a plan for developing other
sources of financial support with the clear objective
22 of self-sustaining support.

24 H. The program shall maximize cooperative alliances among
stakeholder organizations, including lake associations, and
26 promote the formation of new alliances, when necessary.

28 I. The program must be funded at a level of \$500,000
annually for 5 years through a General Fund bond issue in
30 the amount of \$2,500,000.

32 4. Cooperation with other departments and agencies. The
department shall cooperate with other departments or agencies of
34 this State and with any other state or states and with the
Federal Government for the purpose of carrying out this
36 subchapter relating to protecting the water quality of the
State's lakes, rivers, coastal wetlands and other water resources
38 from pollution caused by storm water runoff. The department
shall:

40 A. Coordinate with the United States Environmental
42 Protection Agency to ensure that grants complement and
advance the goals of the department's overall watershed
44 protection program;

46 B. Coordinate with the United States Department of
Agriculture Soil Conservation Service to ensure that
48 entities engaged in agricultural activities are informed of
the best management practices to mitigate storm water runoff
50 and encouraged to fully implement those practices;

2 C. Coordinate with the Maine Forest Service to ensure that
4 entities involved in forestry practices are informed of the
best management practices to mitigate storm water runoff and
6 encouraged to implement those practices;

8 D. Coordinate with the Maine Land Use Regulation Commission
10 to ensure that regulated entities in the unorganized
12 territories are informed of the best management practices to
mitigate storm water runoff and encouraged to implement
those practices; and

14 E. Coordinate with the Department of Transportation and
16 local municipalities to develop and implement strategies for
reducing storm water run-off damage created by using road
sand during winter months.

18 **5. Evaluation of program and options for additional funds.**

20 By December 31, 1999, the department shall present to the board
22 an evaluation of the program as a means of mitigating storm water
24 runoff associated with watersheds and water bodies at risk from
development. The report must present options and any
26 recommendations for improving the program and for raising funds
through sources other than the General Fund, such as compensation
fees pursuant to section 420-D, subsection 11.

28 **PART B:**

30 **Sec. B-1. Authorization of bonds to provide for the Priority**
32 **Watershed Program administered by the Department of Environmental**
34 **Protection.** The Treasurer of State is authorized, under the
36 direction of the Governor, to issue bonds in the name and on
38 behalf of the State in an amount not exceeding \$2,500,000 to
40 raise funds for the Priority Watershed Program administered by
42 the Department of Environmental Protection as authorized by
section 6. The bonds are a pledge of the full faith and credit
of the State. The bonds may not run for a period longer than 20
years from the date of the original issue of the bonds. At the
discretion of the Treasurer of State, with the approval of the
Governor, any issuance of bonds may contain a call feature.

44 **Sec. B-2. Records of bonds issued to be kept by the Treasurer of**
46 **State.** The Treasurer of State shall keep an account of each bond
showing the number of the bond, the name of the successful bidder
to whom sold, the amount received for the bond, the date of sale
and the date when payable.

2 **Sec. B-3. Sale; how negotiated; proceeds appropriated.** The
4 Treasurer of State may negotiate the sale of the bonds by
6 direction of the Governor, but no bond may be loaned, pledged or
8 hypothecated on behalf of the State. The proceeds of the sale of
10 the bonds, which must be held by the Treasurer of State and paid
12 by the Treasurer of State upon warrants drawn by the State
14 Controller, are appropriated solely for the purposes set forth in
16 this Act. Any unencumbered balances remaining at the completion
18 of the project in section 6 lapse to the debt service account
20 established for the retirement of these bonds.

22 **Sec. B-4. Interest and debt retirement.** The Treasurer of State
24 shall pay interest due or accruing on any bonds issued under this
26 Act and all sums coming due for payment of bonds at maturity.

28 **Sec. B-5. Disbursement of bond proceeds.** The proceeds of the
30 bonds must be expended as set out in section 6 under the
32 direction and supervision of the Department of Environmental
34 Protection.

36 **Sec. B-6. Allocations from General Fund bond issue; finance Priority
38 Watershed Program.** The proceeds of the sale of bonds must be
40 expended as designated in the following schedule.

42 **ENVIRONMENTAL PROTECTION,
44 DEPARTMENT OF**

46 **Priority Watershed Program** \$2,500,000

48 Funds to be used to finance the Priority
Watershed Program administered by the
Department of Environmental Protection
pursuant to the Maine Revised Statutes,
Title 38, section 480-Z for 5 years.

Sec. B-7. Contingent upon ratification of bond issue. Sections 1
to 6 do not become effective unless the people of the State have
ratified the issuance of bonds as set forth in this Act.

Sec. B-8. Appropriation balances at year end. At the end of each
fiscal year, all unencumbered appropriation balances representing
state money carry forward. Bond proceeds that have not been
expended within 10 years after the date of the sale of the bonds
lapse to General Fund debt service.

Sec. B-9. Bonds authorized but not issued. Any bonds authorized
but not issued, or for which bond anticipation notes are not
issued within 5 years of ratification of this Act, are

deauthorized and may not be issued; except that the Legislature may, within 2 years after the expiration of that 5-year period, extend the period for issuing any remaining unissued bonds or bond anticipation notes for an additional amount of time not to exceed 5 years.

Sec. B-10. Referendum for ratification; submission at statewide election; form of question; effective date. This Act must be submitted to the legal voters of the State of Maine at a statewide election held on the Tuesday following the first Monday of November following passage of this Act. The municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting on the following question:

"Do you favor a \$2,500,000 bond issue for the Priority Watershed Program administered by the Department of Environmental Protection?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if a majority of the legal votes are cast in favor of the Act, the Governor shall proclaim the result without delay, and the Act becomes effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this referendum.

SUMMARY

This bill authorizes the Department of Environmental Protection to conduct a comprehensive watershed protection program designed to protect the State's lakes, rivers, coastal wetlands and other surface waters from nonpoint source pollution. The program will address both existing and emerging pollution sources that can cause water bodies to experience significant changes in trophic condition, decline in cold water fisheries, harm to marine ecosystems and economic impacts due to these pollution-induced impacts.

2 Part A establishes the overall program at the Department of
Environmental Protection and also establishes a priority
4 watershed program to provide focused attention to high priority
watersheds at risk from development. Part A also requires the
6 department to coordinate its efforts with other departments,
agencies, private and nonprofit entities involved in regulatory
and nonregulatory approaches to watershed protection.

8
10 Part A also establishes a compensation fee program, which
would provide additional flexibility for new developments that
12 must meet the requirements of the storm water laws of the Maine
Revised Statutes, Title 38, section 420-D.

14 Part B authorizes a General Fund bond issue in the amount of
\$2,500,000 to fund the Priority Watershed Program administered.
16