

# MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1126, L.D. 1582, Bill, "An Act to Clarify and Amend the Storm Water Management Laws, the Erosion and Sedimentation Control Laws, and the Site Location of Development Laws"

Amend the bill by striking out all of the emergency preamble.

Further amend the bill by striking out all of section 3 and inserting in its place the following:

Sec. 3. 38 MRSA §420-D, sub-§10, ¶¶A and B, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by Pt. C, §2, are amended to read:

A. When a permit is required because of the size of the proposed impervious area, the following fees apply.

(1) If structural means of erosion storm water control are used, the fee is \$500 for from 20,000 square feet up to one acre of impervious area, plus \$250 for each additional whole acre of impervious area.

(2) If solely vegetative means of erosion storm water control are used, the fee is \$250 for from 20,000 square feet up to one acre of impervious area, plus \$125 for each additional whole acre of impervious area.

B. When a permit is required because of the size of the proposed disturbed area, the following fees apply.

(1) If structural means of erosion storm water control are used, the fee is \$500 for 5 acres, plus \$250 for each additional whole acre of impervious disturbed area.

COMMITTEE AMENDMENT

2 (2) If solely vegetative means of erosion storm water  
control are used, the fee is \$250 for 5 acres, plus  
4 \$250 ~~\$125~~ for each additional whole acre of impervious  
disturbed area.'

6 Further amend the bill in section 4 in subsection 11 in the  
first paragraph in the first line (page 3, line 4 in L.D.) by  
8 inserting after the following: "establish a" the following:  
'nonpoint source reduction'

10 Further amend the bill in section 4 in subsection 11 by  
12 inserting after the first paragraph a new blocked paragraph to  
read:

14 'Rules adopted pursuant to this subsection are routine technical  
16 rules as defined in Title 5, chapter 375, subchapter II-A.'

18 Further amend the bill in section 4 in subsection 11 in  
paragraph A in subparagraph (2) in the 3rd and 4th lines (page 3,  
20 lines 32 and 33 in L.D.) by striking out the following: "a  
dedicated to the protection of natural areas,"

22 Further amend the bill in section 4 in subsection 11 in  
24 paragraph A by striking out all of subparagraph (3) and inserting  
in its place the following:

26 '(3) The commissioner may set a fee rate of no more  
28 than \$10,000 per pound of available phosphorus, except  
30 that the commissioner may set a rate up to \$20,000 per  
32 pound for a project located in the direct watershed of  
a severely blooming lake.'

34 Further amend the bill in section 4 in subsection 11 in  
paragraph A by inserting at the end a new subparagraph to read:

36 '(5) Projects funded through compensation fees as  
38 provided in this paragraph must be located in the same  
watershed as the project with respect to which the  
40 compensation fee is paid.'

42 Further amend the bill in section 4 in subsection 11 by  
striking out all of paragraph B and inserting in its place the  
44 following:

46 'B. The department may allow an applicant with a project  
within the direct watershed of a coastal wetland, river,  
48 stream or brook to address all or part of the storm water  
quality standards for the project through payment of a  
50 compensation fee as provided by rules adopted pursuant to  
this subsection.'

2 Further amend the bill in section 5 in subsection 2 in  
3 paragraph F in the first 2 lines (page 5, lines 21 and 22 in  
4 L.D.) by striking out the following: "section 542, subsection 7"  
5 and inserting in its place the following: 'this section'

6  
7 Further amend the bill by inserting after section 5 the  
8 following:

9  
10 '**Sec. 6. 38 MRSA §482, sub-§3-D** is enacted to read:

11  
12 **3-D. Oil terminal facility.** "Oil terminal facility" means  
13 a facility and related appurtenances located in, on, over or  
14 under the surface of any land or water that is used or capable of  
15 being used to transfer, process, refine or store oil as defined  
16 in section 542, subsection 6. "Oil terminal facility" does not  
17 include:

18  
19 A. A facility used or capable of being used to store less  
20 than 1,500 barrels or 63,000 gallons of oil;

21  
22 B. A facility not engaged in the transfer of oil to or from  
23 the waters of the State; or

24  
25 C. A facility consisting only of a vessel or vessels as  
26 defined in section 542, subsection 11.'

27  
28 Further amend the bill by inserting after section 7 the  
29 following:

30  
31 '**Sec. 8. 38 MRSA §488, sub-§9**, as enacted by PL 1993, c. 383,  
32 §26 and affected by §42, is amended to read:

33  
34 **9. Development within unorganized areas.** A development  
35 located entirely within an area subject to the jurisdiction of  
36 the Maine Land Use Regulation Commission, other than a metallic  
37 mineral mining or advanced exploration activity or an oil  
38 terminal facility, is exempt from the requirements of this  
39 article. For developments within the commission's jurisdiction,  
40 the Director of the Maine Land Use Regulation Commission may  
41 request and obtain technical assistance and recommendations from  
42 the department. The commissioner shall respond to the requests  
43 in a timely manner. The recommendations of the department must  
44 be considered by the Maine Land Use Regulation Commission in  
45 acting upon a development application.'

46  
47 Further amend the bill by striking out all of section 9  
48 (page 6, lines 41 and 42 in L.D.) and inserting in its place the  
49 following:

R. 4. 8.

2 'Sec. 9. 38 MRSA §488, sub-§16, as repealed and replaced by PL  
1995, c. 625, Pt. A, §53 and repealed by c. 700, §9, is repealed.'

4 Further amend the bill by striking out all section 10.

6 Further amend the bill in section 12 in that part designated  
8 "Sec. C-1." in the 10th and 11th lines (page 8, lines 38 and 39 in  
L.D.) by striking out the following: "January 1 31" and inserting  
10 in its place the following: 'January-1 February 28'

12 Further amend the bill in section 12 in that part designated  
14 "Sec. C-1." in the 11th line (page 8, line 39 in L.D.) by striking  
out the following: "established" and inserting in its place the  
following: 'comprehensive'

16 Further amend the bill by striking out all of section 13 and  
18 inserting in its place the following:

'Sec. 13. Allocation. The following funds are allocated from  
20 Other Special Revenue to carry out the purposes of this Act.

	<b>1997-98</b>	<b>1998-99</b>
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22  
24 **ENVIRONMENTAL PROTECTION,  
DEPARTMENT OF**

26 **Land and Water Quality**

All Other	\$50,000	\$50,000
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30 Provides an allocation for  
32 the storm water compensation  
34 fund.'

36 Further amend the bill by inserting after section 13 the  
following:

38 'Sec. 14. Applicability of Site Law to existing oil terminal facilities.  
An oil terminal facility that is in existence on June 30, 1997  
40 does not require review under the site location of development  
laws on or after that date unless it is or becomes a structure as  
42 defined in the Maine Revised Statutes, Title 38, section 482,  
subsection 6.

44  
46 **Sec. 15. Report concerning reducing nonpoint source pollution from  
developed areas in the shoreland zone, and addressing equity concerns  
relating to expansions.** By January 1, 1998, the Department of  
48 Environmental Protection shall prepare

and submit a report to the Joint Standing Committee on Natural Resources on the following issues:

1. Whether approval of an expansion of a nonconforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot, including necessary installation and maintenance of best management practices; and

2. Whether the 30% expansion rule set out in the Maine Revised Statutes, Title 38, section 439-A, subsection 4 and department rules adopted pursuant to that subsection should be amended to improve the equity of its application, considering factors such as existing building size, building setback, lot area, lot frontage, degree of expansion allowed, water quality impacts and aesthetic impacts.

The report must include any draft legislation necessary to achieve any recommended changes and must briefly describe any necessary regulatory changes. In preparing the report, the department shall convene and consult with a work group that includes representatives of groups, including, but not limited to, municipalities, shorefront property owners, water utilities and environmental organizations.

**Sec. 16. Use of compensation fees.** Rules adopted by the Department of Environmental Protection pursuant to section 4 of this Act must provide guidance on the use of compensation fees to organizations authorized by the department to receive those fees. In developing the rules, the department shall consider appropriate percentages that should be allocated to project implementation, education, technical assistance and other project components.'

Further amend the bill by striking out all of the emergency clause.

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

1997-98

1998-99

**APPROPRIATIONS/ALLOCATIONS**

2 Other Funds \$50,000 \$50,000

4 **REVENUES**

6 Other Funds \$50,000 \$50,000

8 The Department of Environmental Protection estimates that  
10 the establishment of a new compensation fee will result in annual  
12 dedicated revenues of \$50,000 beginning in fiscal year 1997-98  
14 for a new Storm Water Compensation Fund. This bill includes  
annual Other Special Revenue allocations of \$50,000 beginning in  
fiscal year 1997-98 for storm water compensation costs.

16 Certain changes in various water and land quality laws will  
18 result in insignificant increases of dedicated revenue to the  
Department of Environmental Protection from permit fees.

20 The Department of Environmental Protection will incur some  
22 minor additional costs to submit a required report to the  
Legislature. These costs can be absorbed within the department's  
existing budgeted resources.

24 This bill may increase prosecutions for Class E crimes. If  
26 a jail sentence is imposed, the additional costs to the counties  
are estimated to be \$83.78 per day per prisoner. These costs are  
28 not reimbursed by the State. The number of prosecutions that may  
result in a jail sentence and the resulting costs to the county  
jail system are expected to be insignificant.

30 The additional workload and administrative costs associated  
32 with the minimal number of new cases filed in the court system  
can be absorbed within the budgeted resources of the Judicial  
34 Department. The collection of additional fines may increase  
General Fund revenue by minor amounts.

38 **SUMMARY**

40 This amendment removes the emergency preamble and emergency  
42 clause from the bill. The amendment changes references in the  
storm water management laws from "erosion control" to "storm  
44 water control" and lowers the fee required when vegetative means  
of storm water control are used from \$250 for each additional  
46 acre over 5 acres of disturbed area to \$125 for each additional  
acre.

48 The amendment changes the compensation fee provisions in the  
50 storm water management laws as follows. It clarifies that the  
compensation fee program established by the Department of

Environmental Protection is a nonpoint source reduction program; it provides that any rules adopted by the department to implement the compensation fee provisions are routine technical rules; it removes the stipulation that organizations receiving compensation fees by agreement with the department must be dedicated to the protection of natural areas; it authorizes the Commissioner of Environmental Protection to set the compensation rate per pound of available phosphorus, establishes a statutory cap on the compensation fee rate and deletes the provision authorizing the Board of Environmental Protection to establish the rate by rule; it clarifies that compensation projects must be located in the same watershed as the project for which the fee was paid; and it allows the department to establish by rule the procedures for payment of compensation fees for projects in the direct watershed of a coastal wetland, river, stream or brook.

The amendment defines an oil terminal facility for purposes of the site location of development laws and specifies that an oil terminal facility within an area subject to the jurisdiction of the Maine Land Use Regulation Commission is not exempt from the site location of development laws. The amendment also clarifies the application of the site location of development laws to oil terminal facilities already in existence on June 30, 1997.

The amendment strikes a provision exempting certain modifications to developments from the site location of development laws if the initial developments were exempt and were reviewed by the municipality.

The amendment extends the date by which storm water rules were to be submitted for review to the Legislature and provides that rules to update the first comprehensive lists, rather than the first established lists of water bodies most at risk from new development and sensitive or threatened regions or watersheds are not major substantive rules.

The amendment also corrects the name of the fund in the allocation provision for the Storm Water Compensation Fund.

The amendment also requires the Department of Environmental Protection to convene a work group and report to the Joint Standing Committee on Natural Resources by January 1, 1998 with recommendations on whether approval of an expansion of a nonconforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot and whether the 30% expansion rule set out in the Maine Revised Statutes, Title 38, section 439-A, subsection 4 and department rules adopted pursuant to that



H. W. S.

COMMITTEE AMENDMENT "A" to H.P. 1126, L.D. 1582

2 subsection should be amended to improve the equity of its  
application.

4 The amendment makes a technical correction to a history line.

6 The amendment also requires the department, in developing  
rules to implement the compensation fees for watershed projects,  
8 to provide guidance to organizations receiving such fees on how  
to use the funds.

10 The amendment also adds a fiscal note to the bill.

12

**COMMITTEE AMENDMENT**