

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1582

H.P. 1126

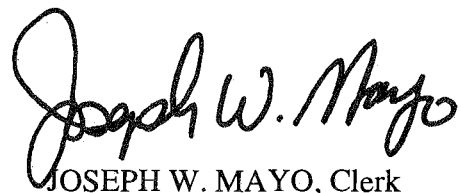
House of Representatives, March 18, 1997

**An Act to Clarify and Amend the Storm Water Management Laws, the Erosion and Sedimentation Control Laws, and the Site Location of Development Laws.**

(EMERGENCY)

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Reference to the Committee on Natural Resources suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative ROWE of Portland.  
Cosponsored by Senator TREAT of Kennebec.

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

4  
6           **Whereas,** a study of the site location of development laws by  
the Land and Water Resources Council resulted in the enactment of  
storm water management laws and erosion and sedimentation control  
8 laws, as well as major changes to the site location of  
development laws; and

10           **Whereas,** these provisions will take effect July 1, 1997; and

12  
14           **Whereas,** the amendments proposed in this legislation include  
changes to the new storm water management laws and erosion and  
sedimentation control laws and changes the site location of  
16 development laws; and

18           **Whereas,** it is necessary that the proposed amendments in  
this legislation also take effect on July 1, 1997; and

20  
22           **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
24 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

28           **Sec. 1. 38 MRSA §420-C, first ¶,** as enacted by PL 1995, c. 704,  
30 Pt. B, §2 and affected by Pt. C, §2, is amended to read:

32           A person who conducts, or causes to be conducted, an  
activity that involves filling, displacing or exposing soil or  
34 other earthen materials shall take measures to prevent  
unreasonable erosion of soil or sediment beyond the project site  
36 or into a protected natural resource as defined in section  
480-B. Erosion control measures must be in place before the  
38 activity begins. Measures must remain in place and functional  
until the site is permanently stabilized. Adequate and timely  
40 temporary and permanent stabilization measures must be taken and  
42 the site must be maintained to prevent unreasonable erosion and  
sedimentation.

44           **Sec. 2. 38 MRSA §420-D, sub-§§2 and 5,** as enacted by PL 1995,  
c. 704, Pt. B, §2 and affected by Pt. C, §2, are amended to read:

46  
48           **2. Review.** If the applicant is able to meet the standards  
for storm water using solely vegetative means, the department  
shall review the application within 30 calendar days. If  
50 structural means are used to meet those standards, the department

2 shall review the application within 60 calendar days. The review  
3 period begins upon receipt of a complete application and may be  
4 extended pursuant to section 344-B or if a joint order is  
5 required pursuant to subsection 5. The department may request  
6 additional information necessary to determine whether the  
7 standards of this section are met. The application is deemed  
8 approved if the department does not notify the applicant within  
9 the applicable review period.

10 The department may allow a municipality or a quasi-municipal  
11 organization, such as a watershed management district, to  
12 substitute a management system for storm water approved by the  
13 department for the permit requirement applicable to projects in a  
14 designated area of the municipality. The municipality or  
15 quasi-municipality may elect to have this substitution take  
16 effect at the time the system is approved by the department, or  
17 at the time the system is completed as provided in an  
18 implementation schedule approved by the department.

20 **5. Relationship to other laws.** A storm water permit  
21 pursuant to this section is not required for a project requiring  
22 review by the department pursuant to any of the following  
23 provisions but the project may be required to meet standards for  
24 management of storm water adopted pursuant to this section:  
25 ~~article 5-A, protection of natural resources;~~ article 6, site  
26 location of development, unless the project requires review  
27 solely as a development that generates 100 or more passenger car  
28 equivalents at peak hour; article 7, performance standards for  
29 excavations for borrow, clay, topsoil or silt; article 8-A,  
30 performance standards for quarries; and sections 631 to 636,  
31 permits for hydropower projects. When a project requires a storm  
32 water permit and requires review pursuant to article 5-A, the  
33 department shall issue a joint order unless the permit required  
34 pursuant to article 5-A is a permit-by-rule or general permit, or  
35 separate orders are requested by the applicant and approved by  
36 the department.

38 **Sec. 3. 38 MRSA §420-D, sub-§10, ¶B,** as enacted by PL 1995, c.  
39 704, Pt. B, §2 and affected by Pt. C, §2, is amended to read:

40  
41 B. When a permit is required because of the size of the  
42 proposed disturbed area, the following fees apply.

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

46 (2) If solely vegetative means of erosion control are  
47 used, the fee is \$250 for 5 acres, plus \$250 for each  
48 additional whole acre of impervious disturbed area.  
49  
50

2            **Sec. 4. 38 MRSA §420-D, sub-§11** is enacted to read:

4            **11. Compensation fee.** The department may establish a  
6 program to allow an applicant to pay a compensation fee in lieu  
of meeting certain requirements, as provided in this subsection.

8            A. The department may allow an applicant with a project in  
10 the direct watershed of a lake to address certain on-site  
12 phosphorus reduction requirements through payment of a  
14 compensation fee as provided in this paragraph. The  
16 commissioner shall determine the appropriate compensation  
fee for each project. The compensation fee must be paid  
either into a compensation fund or to an organization  
authorized by the department and must be a condition of the  
permit.

18            (1) The department may establish a storm water  
20 compensation fund for the purpose of receiving  
22 compensation fees, grants and other related income.  
24 The fund must be a nonlapsing fund dedicated to payment  
26 of the costs and related expenses of compensation  
28 projects. Income received under this subsection must  
be deposited with the Treasurer of State to the credit  
of the fund and may be invested as provided by  
statute. Interest on these investments must be  
credited to the fund. The department may make payments  
from the fund consistent with the purpose of the fund.

30            (2) The department may enter into a written agreement  
32 with a public, quasi-public or private, nonprofit  
34 organization, dedicated to the protection of natural  
36 areas, for purposes of receiving compensation fees and  
38 implementing compensation projects. If the authorized  
40 agency is a state agency other than the department, it  
42 shall establish a fund meeting the requirements  
44 specified in subparagraph (1). The authorized  
46 organization shall maintain records of expenditures and  
provide an annual summary report to the department. If  
the organization does not perform in accordance with  
this section or with the requirements of the written  
agreement, the department may revoke the organization's  
authority to conduct activities in accordance with this  
paragraph. If an organization's authorization is  
revoked, any remaining funds must be provided to the  
department.

48            (3) The board shall establish by rule the compensation  
50 rate per pound of available phosphorus. The rate per  
pound may be set higher for projects located in the

2 direct watersheds of severely blooming lakes. The  
3 commissioner shall evaluate the rate per pound at least  
4 every 2 years and adjust it if necessary based upon the  
5 cost of treating and eliminating phosphorus sources in  
6 watersheds. Rules adopted pursuant to this  
7 subparagraph are routine technical rules as defined in  
8 Title 5, chapter 375, subchapter II-A.

9  
10 (4) Except in an urbanized part of a designated growth  
11 area, best management practices must be incorporated on  
12 site that, by design, will reduce phosphorus export by  
13 at least 50%, and a phosphorus compensation fee must be  
14 paid to address the remaining phosphorus reduction  
15 required to meet the parcel's phosphorus allocation.  
16 In an urbanized part of a designated growth area, an  
17 applicant may pay a phosphorus compensation fee in lieu  
18 of part or all of the on-site phosphorus reduction  
19 requirement. The commissioner shall identify urbanized  
20 parts of designated growth areas in the direct  
21 watersheds of lakes most at risk, in consultation with  
22 the State Planning Office.

23 B. The department may allow an applicant with a project  
24 within the direct watershed of a coastal wetland, river,  
25 stream or brook to address all or part of the storm water  
26 quality standards through payment of a compensation fee as  
27 provided in this paragraph.

28  
29 (1) The compensation fee must be paid to a  
30 municipality or quasi-municipality that has received  
31 approval to substitute a management system for storm  
32 water pursuant to subsection 2 and has elected to have  
33 the substitution take effect when the system is  
34 completed. The project must be located in the area  
35 served by the system.

36  
37 (2) The compensation rate for projects to be served by  
38 the management system for storm water must be  
39 determined by the department, in consultation with the  
40 municipality, and must be specified in the department's  
41 approval of the management system for storm water.

42  
43 (3) The compensation fee must be a condition of the  
44 permit.

45 **Sec. 5. 38 MRSA §482, sub-§2, as amended by PL 1995, c. 700,**  
46 **§3 and c. 704, Pt. A, §3 and affected by Pt. C, §2, is repealed**  
47 **and the following enacted in its place:**  
48

2        2. Development of state or regional significance that may  
3        substantially affect the environment. "Development of state or  
4        regional significance that may substantially affect the  
5        environment," in this article also called "development," means  
6        any federal, state, municipal, quasi-municipal, educational,  
7        charitable, residential, commercial or industrial development  
8        that:

9            A. Occupies a land or water area in excess of 20 acres;

10           B. Is a metallic mineral mining or advanced exploration  
11           activity as defined in this section;

12           C. Is a structure as defined in this section;

13           D. Is a subdivision as defined in this section;

14           E. Generates 100 or more passenger car equivalents at peak  
15           hour; or

16           F. Is an oil terminal facility as defined in section 542,  
17           subsection 7.

18        **Sec. 6. 38 MRSA §484, sub-§2, ¶B,** as enacted by PL 1995, c.  
19        704, Pt. A, §9 and affected by Pt. C, §2, is amended to read:

20           B. Notwithstanding any other provision of this article, the  
21           review of any proposed development that requires approval  
22           under this article solely because it is a development that  
23           generates 100 or more passenger car equivalents at peak hour  
24           is limited only to issues relevant to the traffic movement  
25           standard in this section. The additional provisions in this  
26           paragraph apply only to section 485-A permits for a proposed  
27           development that generates 100 to 200 passenger car  
28           equivalents at peak hour and is subject to the limited scope  
29           of review provided in this subsection.

30           If an application is subject to review by the department,  
31           the department, together with the Department of  
32           Transportation and the appropriate representative of the  
33           municipality or municipalities where the project is located,  
34           shall discuss with the applicant the scope of impact  
35           evaluation required for the proposed development and the  
36           type of proceedings warranted. The applicant shall provide  
37           notice to abutting municipalities. The Department of  
38           Transportation shall make the final determination on the  
39           appropriate scope of evaluation and information required.  
40           If the Department of Transportation determines as a result  
41           of these communications that the applicant has demonstrated  
42           that the proposed development satisfies ~~minimum-performance~~

standards adopted for developments that generate 100 to 200 passenger car equivalents at peak hour and the Department of Transportation determines that there are no other significant traffic-related issues presented, the department may issue a permit to the applicant without further proceedings.

**Sec. 7. 38 MRSA §484, sub-§4-A**, as enacted by PL 1995, c. 704, Pt. A, §11 and affected by Pt. C, §2, is amended to read:

**4-A. Storm water management and erosion and sedimentation control.** The proposed development, other than a metallic mineral or advanced exploration activity, meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. For purposes of review of metallic mineral mining or advanced exploration, these standards apply in all areas of the State. If a permit is issued pursuant to this article, a permit is not required pursuant to section 420-D. A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7. If exempt from under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality rules standards adopted pursuant to section 420-D.

**Sec. 8. 38 MRSA §488, sub-§11**, as amended by PL 1995, c. 659, §2 and c. 700, §8, is repealed and the following enacted in its place:

**11. Farm and fire ponds.** A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for mining or advanced exploration activity or excavation for borrow, clay, topsoil or silt.

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

**Sec. 10. 38 MRSA §488, sub-§19**, as enacted by PL 1995, c. 704, Pt. A, §20 and affected by Pt. C, §2, is amended to read:

**19. Municipal capacity.** A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached,



2 residential housing, common areas or open space with an aggregate  
3 area of from 30 acres up to and including 100 acres is exempt  
4 from review under this article if located wholly within a  
5 municipality or municipalities having delegated review pursuant  
6 to section 489-A or meeting the criteria in paragraphs A to C as  
7 determined by the department. The planning board of the  
8 municipality in which the development is located or an adjacent  
9 municipality may petition the commissioner to review such a  
10 structure or subdivision if it has regional environmental  
11 impacts. This petition must be filed within 20 days of the  
12 receipt of the application by the municipality. State  
13 jurisdiction must be exerted, if at all, within 30 days of  
14 receipt of the completed project application by the commissioner  
15 from the municipality or within 30 days of receipt of any  
16 modification to that application from the municipality. Review  
17 by the department is limited to the identified regional  
18 environmental impacts. The criteria are as follows:

19 A. A municipal planning board or reviewing authority is  
20 established and the municipality has adequate resources to  
21 administer and enforce the provisions of its ordinances. In  
22 determining whether this criterion is met, the commissioner  
23 may consider any specific and adequate technical assistance  
24 that is provided by a regional council;

25 B. The municipality has adopted a site plan review  
26 ordinance. In determining the adequacy of the ordinance,  
27 the commissioner may consider model site plan review  
28 ordinances commonly used by municipalities in this State  
29 that address the issues reviewed under applicable provisions  
30 of this article prior to July 1, 1997; and

31 C. The municipality has adopted subdivision regulations.  
32 In determining the adequacy of these regulations, the  
33 commissioner may consider model subdivision regulations  
34 commonly used by municipalities in this State.  
35

36 The department, in consultation with the State Planning Office,  
37 shall publish a list of those municipalities determined to have  
38 capacity pursuant to this subsection. This list need not be  
39 established by rule and must be published by January 1, 1997. If  
40 the department fails to publish the list by January 1, 1997,  
41 municipalities with a site plan or subdivision ordinances or  
42 regulations are deemed to have capacity for corresponding  
43 projects until January 1, 1998, or until the list is published,  
44 whichever period is longer. The list must specify whether a  
45 municipality has capacity to review structures or subdivisions of  
46 lots for single-family, detached, residential housing, common  
47 areas or open space or both types of development. The department  
48 may recognize joint arrangements among municipalities and  
49

2 regional organizations in determining whether the requirements of  
3 this subsection are met. On and after January 1, 2003, the  
4 department shall irrebuttably presume and publish that each  
5 municipality with a population of 2,500 or more, as measured by  
6 the United States Census of the year 2000, has capacity as  
7 provided in this subsection.

8 An application for a modification to a development that was  
9 reviewed by a municipality and exempted pursuant to this  
10 subsection is exempt as long as the modification will not cause  
11 the total area of the development to exceed the maximum acreage  
12 specified in the first paragraph of this subsection for that type  
13 of development or, based upon information submitted by the  
14 municipality concerning the development and modification, the  
15 department determines that the modification may be adequately  
16 reviewed by the municipality.

18 **Sec. 11. PL 1995, c. 704, Pt. A, §23, sub-§3** is amended to read:

20 3. A municipality with delegated authority pursuant to the  
21 Maine Revised Statutes, Title 38, section 489-A prior to the  
22 effective date of this Act continues to have delegated authority  
23 following the effective date of this Act and is presumed to have  
24 capacity pursuant to Title 38, section 489-D 488, subsection 19  
25 as of the effective date of this Act.

26 **Sec. 12. PL 1995, c. 704, Pt. C, §1** is amended to read:

28 **Sec. C-1. Rule-making authority.** The Department of  
29 Environmental Protection has authority to adopt rules in  
30 accordance with the Maine Revised Statutes, Title 5, chapter 375  
31 to implement Title 38, section 420-D; section 484, subsection 2,  
32 paragraph B; and section 485-A, subsection 1-C, as enacted by  
33 this Act and in accordance with the terms of those sections.  
34 Such rules, except those adopted pursuant to Title 38, section  
35 420-D, subsection 11, must be provisionally adopted and submitted  
36 to the Legislature for review as major substantive rules pursuant  
37 to Title 5, chapter 375, subchapter II-A no later than January 1  
38 31, 1997. Rulemaking to update the first established lists of  
39 "watersheds of bodies of water most at risk from new development"  
40 and "sensitive or threatened regions of watersheds" is not  
41 considered major substantive rulemaking pursuant to Title 5,  
42 chapter 375, subchapter II-A.

44 **Sec. 13. Allocation.** The following funds are allocated the  
45 from Maine Environmental Protection Fund to carry out the  
46 purposes of this Act.

48

1997-98

1998-99

2 ENVIRONMENTAL PROTECTION,  
4 DEPARTMENT OF

6 Storm Water Compensation Fund

8 All Other \$50,000 \$50,000

10 Provides an allocation for  
12 the storm water compensation  
14 activity.

16 **Sec. 14. Retroactivity.** That section of this Act that repeals  
18 and replaces the Maine Revised Statutes, Title 38, section 488,  
20 subsection 11 applies retroactively to April 10, 1996, and that  
22 section of this Act that repeals Title 38, section 488,  
24 subsection 16 applies retroactively to July 4, 1996.

26 **Emergency clause.** In view of the emergency cited in the  
28 preamble, this Act takes effect on July 1, 1997.

30 SUMMARY

32 Section 1 to 4 and section 9 include proposed amendments to  
34 the erosion and sedimentation control laws, the Maine Revised  
36 Statutes, Title 38, section 420-C, and the storm water management  
38 laws, Title 38, section 420-D, which are scheduled to take effect  
40 July 1, 1997. Sections 5, 6, 7 and 8 are proposed amendments to  
42 the site location of development laws.

44 Section 1 amends the erosion and sedimentation laws to  
46 clarify that sites must be maintained to prevent erosion and  
48 sedimentation.

50 Section 2 amends provisions describing the relationship  
between storm water management laws and other related laws.  
Section 2 provides that when a joint order is necessary pursuant  
to both the natural resources protection laws and the storm water  
management laws, the review period may be extended. Section 2  
amends the provision allowing a municipality or  
quasi-municipality to substitute a management system for storm  
water for permit requirements to allow the municipality or  
quasi-municipality to elect to have this substitution take effect  
either when the system is approved by the department or when the  
system is completed.

A storm water permit would not be required when a permit is  
required pursuant to the site location of development laws.  
However, when the development is reviewed pursuant to the site  
location of development laws solely under the traffic threshold,

2 so that storm water management may not be reviewed under the site  
location of development laws, a separate storm water permit may  
be required.

4  
6 Section 3 changes a reference from "impervious area" to  
"disturbed area" in the fee provision addressing disturbed area.

8 Section 4 provides authority for the Department of  
10 Environmental Protection to establish a compensation fee program  
to provide an alternative method of meeting the quality standards  
for certain sites.

12 Section 5 repeals and replaces the list of types of  
14 development that require a permit pursuant to the site location  
of development laws. Two bills amended Title 38, section 482,  
16 subsection 2 during the last session. This correction repeals  
both and replaces them with a corrected list reflecting the  
18 intended changes from both previous bills, including repeal of  
the 60,000 natural resource excavation threshold, and the  
20 addition of the new traffic threshold. This section also adds a  
new permit threshold addressing oil refineries.

22 Section 6 changes "minimum performance standards" to  
24 "standards" in Title 38, section 484, subsection 2, relating to  
traffic movement standards.

26 Section 7 amends the new "storm water" standard to provide  
28 that the storm water standard for metallic mineral mining and  
advanced exploration activity continues to be the standard in  
30 department rules adopted to implement Title 38, section 484,  
subsections 3 and 7. The new storm water management laws, Title  
32 38, section 420-D, cited in section 484, subsection 4-A, are  
concerned with construction activity and are not useful in  
34 regulating storm water in the context of mining activity.

36 Section 8 repeals and replaces Title 38, section 488,  
38 subsection 11, which was amended by 2 bills during the last  
session. This section enacts a version that includes the  
intended changes from both bills. These include removing the  
40 10-acre limit on exempt farm and fire ponds and clarifying that  
the exemption is not intended as an exemption for mining  
42 activities.

44 Section 9 repeals Title 38, section 488, subsection 16,  
46 which was amended by one bill and repealed by another during the  
last session. This section repeals the remaining version, which  
exempts small road quarries. The correction takes effect  
48 retroactively to July 4, 1996, at which time quarries were no  
longer regulated under the site law.

50

2 Section 10 adds a provision allowing municipalities to  
review applications for modifications that, in some cases, may  
4 result in a development larger than the upper area threshold  
specified.

6 Section 11 corrects a cross-reference.

8 Section 12 amends the provision addressing rulemaking to  
provide that rulemaking to implement the optional compensation  
10 fee program or to update the list of "watersheds of bodies of  
water most at risk from new development" or the list of  
12 "sensitive or threatened regions or watersheds" is not considered  
major substantive rulemaking. Section 12 also extends from  
14 January 1, 1997 to January 31, 1997 the date by which rules  
relating to the storm water management laws and certain sections  
16 of the site location of development laws must be provisionally  
adopted and submitted to the Legislature.

18 Section 13 provides an allocation provision for the storm  
20 water compensation fund.

22 Section 14 provides for retroactive effective dates for the  
corrections to Title 38, section 488, subsections 11 and 16, and  
24 provides that the remaining provisions take effect July 1, 1997.