

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DATE: 3-16-98

(Filing No. H-904)

2
4
6
8

HEALTH AND HUMAN SERVICES

10 Reproduced and distributed under the direction of the Clerk of
12 the House.

14 **STATE OF MAINE**
16 **HOUSE OF REPRESENTATIVES**
18 **118TH LEGISLATURE**
20 **SECOND REGULAR SESSION**

22 COMMITTEE AMENDMENT "A" to H.P. 1441, L.D. 2005, Bill, "An
24 Act to Conform Maine's Safe Drinking Water Laws with the 1996
26 Amendments of the Federal Safe Drinking Water Act"

28 Amend the bill by striking out everything after the enacting
30 clause and before the summary and inserting in its place the
32 following:

34 'Sec. 1. 22 MRSA §2601, sub-§8, as amended by PL 1993, c. 410,
36 Pt. DD, §2, is further amended to read:

38 **8. Public water system.** "Public water system" means any
40 publicly or privately owned system of pipes or other constructed
42 conveyances, structures and facilities through which water is
44 obtained for or sold, furnished or distributed to the public for
46 human consumption, if such a system has at least 15 service
connections, regularly serves an average of at least 25
individuals daily at least 60 days out of the year or bottles
water for sale. Any publicly or privately owned system that only
stores and distributes water, without treating or collecting it;
obtains all its water from, but is not owned or operated by, a
public water system; and does not sell water or bottled water to
any person, is not a "public water system." The term "public
water system" includes any collection, treatment, storage or
distribution pipes or other constructed conveyances, structures
or facilities under the control of the supplier of water and used
primarily in connection with such a system, and any collection or
pretreatment storage facilities not under that control that are

COMMITTEE AMENDMENT

R. 013

COMMITTEE AMENDMENT "A" to H.P. 1441, L.D. 2005

used primarily in connection with such a system. The system does not include the portion of service pipe owned and maintained by a customer of the public water system.

For purposes of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe is not considered a connection if:

A. The water is used exclusively for purposes other than residential uses. For the purposes of this subsection, the term "residential uses" includes drinking, bathing, cooking and other similar uses; and

B. The commissioner determines that alternative water to achieve the equivalent level of public health protection provided by the applicable state primary drinking water regulation is provided for residential or similar uses; or

C. The commissioner determines that the water provided for residential or similar uses is centrally treated or treated at the point of entry by the provider, a pass-through entity or the user to achieve the equivalent level of protection provided by the applicable state primary drinking water regulation.

Sec. 2. 22 MRS A §2612-A is enacted to read:

§2612-A. Capacity development

1. Authority. The commissioner is authorized to ensure that all new community water systems and new nontransient, noncommunity systems commencing operation after October 1, 1999 demonstrate technical, managerial and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

2. Rulemaking. The commissioner shall adopt rules to ensure that all new community water systems and new nontransient, noncommunity systems commencing operation after October 1, 1999 demonstrate technical, managerial and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 3. 22 MRS A §2613, sub-§1, as amended by PL 1995, c. 622, §1, is further amended to read:

COMMITTEE AMENDMENT

1. **Variances.** The commissioner may grant one or more
variances from an applicable state primary drinking water
regulation to a public water system if the variance will not
result in an unreasonable risk to the public health and if:

A. Because of the characteristics of the raw water sources
reasonably available to the systems, the system can not meet
the maximum contaminant levels of the drinking water
regulation despite application of the best technology,
treatment techniques or other means; or

B. Where a specified treatment technique for a contaminant
is required by the state primary drinking water regulation,
the system demonstrates to the commissioner's satisfaction
that the treatment technique is not required to protect the
public health because of the nature of the raw water source.

Prior to granting a variance, the commissioner shall provide an
opportunity for public hearing pursuant to the Maine
Administrative Procedure Act on the proposed variance. Variances
may be conditioned on monitoring, testing, analyzing or other
requirements to ensure the protection of the public health; and
variances granted under paragraph A must include a compliance
schedule under which the public water system will meet each
contaminant level for which a variance is granted as
expeditiously as is feasible.

A variance may be issued to a system on the condition that the
system install the best technology, treatment techniques or other
means that are available, taking costs into consideration,
according to the United States Environmental Protection Agency
and based upon an evaluation satisfactory to the commissioner
that indicates that alternative sources of water are not
reasonably available to the system.

Sec. 4. 22 MRSA §2613, sub-§1-A is enacted to read:

1-A. Small system variances. The commissioner may grant a
variance for compliance with a requirement specifying a maximum
contaminant level or treatment technique contained in a state
primary drinking water regulation to public water systems serving
3,300 or fewer persons. With the approval of the Administrator
of the United States Environmental Protection Agency, the
commissioner may grant a variance under this subsection to a
public water system serving more than 3,300 persons but fewer
than 10,000 persons.

The commissioner shall adopt rules for variances to be granted
under this subsection. Rules adopted pursuant to this subsection

are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 5. 22 MRSA §2613, sub-§2, as amended by PL 1995, c. 622, §2, is further amended to read:

2. **Exemptions.** The commissioner may grant one or more exemptions from an applicable state primary drinking water regulation to a public water system, if:

A. The exemption will not result in an unreasonable risk to the public health;

B. The public water system is unable to comply with the regulation or to implement measures to develop an alternative source of water supply due to compelling factors, which may include economic factors such as qualification of the public water system serving a disadvantaged community. For purposes of this paragraph "disadvantaged community" means the service area of a public water system that meets affordability criteria established by the department after public review and comment; and

C. The public water system was in operation on the earliest effective date under present or prior law of the contaminant level or treatment technique requirement; and

D. Management or restructuring changes can not reasonably be made that will result in compliance with this chapter or, if compliance can not be achieved, improve the quality of the drinking water.

Prior to implementation of a schedule for compliance with contaminant level or treatment technique requirements and for implementation of control measures, the commissioner shall provide notice and opportunity for public hearing pursuant to the requirements of the Maine Administrative Procedure Act. Each exemption must also be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health and must include a compliance schedule, including increments of progress or measures to develop an alternative source of water supply, under which the public water system will meet each contaminant level for which an exemption is granted as expeditiously as is feasible.

Sec. 6. 22 MRSA §2613, sub-§3-A is enacted to read:

3-A. Exemption criteria. An exemption described in subsection 2 may not be granted unless:

R. of S.

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

A. The public water system can not meet the standards without capital improvements that can not be completed within the period of the exemption;

B. In the case of a public water system that needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to the state revolving loan fund program or any other federal or state program that is reasonably likely to be available within the period of the exemption; or

C. The public water system has entered into an enforceable agreement to become part of a regional public water system and the system is taking practicable steps to meet the standards.

Sec. 7. 22 MRSA §2613, sub-§4, as enacted by PL 1995, c. 622, §3, is amended to read:

4. **Exemption; extended.** The exemption described in subsection 2 is effective for up to one year after the date of the issuance of the exemption.

A. The final date for compliance provided in any schedule in an exemption may be extended for a period not to exceed 3 years after the date of the issuance of the exemption ~~if:~~

~~(1) The public water system can not meet the standards without capital improvements that can not be completed within the period of the exemption;~~

~~(2) In the case of a public water system that needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain financial assistance; or~~

~~(3) The public water system has entered into an enforceable agreement to become part of a regional public water system and the system is taking practicable steps to meet the standards.~~

B. In the case of a system that does not serve more than ~~500 service connections~~ 3,300 people and that needs financial assistance for the necessary improvements, an exemption granted may be renewed for one ~~or more~~ to 3 additional 2-year periods, but may not exceed a total of 6 additional years, if the system establishes that it is taking all practicable steps to meet the requirements established in the exemption.

11 of 8

2 **Sec. 8. 22 MRSA §2613**, as amended by PL 1995, c. 622, §§1 to
3, is further amended by adding at the end a new paragraph to
4 read:

6 A public water system may not receive an exemption under
7 this section if the system was granted a variance under
8 subsection 1-A.

10 **Sec. 9. 22 MRSA §2620, sub-§1**, as enacted by PL 1993, c. 678,
§4, is amended to read:

12 **1. Maximum penalty.** An administrative penalty may not be
14 greater than \$750 for each violation, except that for public
15 water systems serving more than 10,000 people, an administrative
16 penalty may not be less than \$1,000 for each violation. Each day
17 that a violation remains uncorrected may be counted as a separate
18 violation.

20 **Sec. 10. 22 MRSA §2620-C**, as enacted by PL 1993, c. 678, §4,
is amended to read:

22 **§2620-C. Rules**

24 The commissioner shall adopt rules establishing procedures
26 regarding notice and the issuance, amendment and withdrawal of
27 administrative compliance orders and administrative consent
28 orders.

30 The commissioner shall adopt rules establishing a permitting
31 process for public water systems. Rules adopted pursuant to this
32 paragraph are major substantive rules as defined in Title 5,
33 chapter 375, subchapter II-A.

34 **Sec. 11. 22 MRSA §2622**, as amended by PL 1983, c. 819, Pt. A,
36 §55, is further amended to read:

38 **§2622. Classification of public water systems and parts thereof**

40 The ~~commissioner~~ board, with the advice of the department,
41 shall classify all public water systems and the water treatment
42 plants or collection, treatment or storage facilities or
43 structures that are part of a system with due regard to the size
44 and type of facilities, the character of water to be treated and
45 any other physical conditions affecting such system or part
46 thereof and specify the qualifications the operator of the system
47 or of a part of a system must have to supervise successfully the
48 operation of the system or parts thereof so as to protect the
49 public health or prevent nuisance conditions.

1 The commissioner, ~~with the advice of the~~ board, with the
2 advice of the department, shall establish the criteria and
4 conditions for the classification of public water systems and
water treatment plants or collection, treatment or storage
facilities or structures that are part of a system.

6
8 The commissioner, with the advice of the board, may
establish classes of public water supply systems which that do
not require licensed individuals as operators.

10 **Sec. 12. 22 MRSA §2650** is enacted to read:

12 **§2650. Source water quality assessment program**

14 **1. General authorization.** The commissioner is authorized
16 to implement and carry out a source water quality assessment
program.

18 **2. Rulemaking.** The commissioner shall adopt rules
20 establishing the procedures for implementation and enforcement of
the source water quality assessment program to comply with state
22 and federal laws. Rules adopted pursuant to this subsection are
24 routine technical rules as defined in Title 5, chapter 375,
subchapter II-A.

26 **Sec. 13. 22 MRSA §2660-E, first ¶,** as enacted by PL 1993, c.
28 410, Pt. DD, §4, is amended to read:

30 In addition to fees authorized under section 9, the
commissioner may impose a an annual operation fee upon each
32 public water system in the State ~~for the purpose of retaining~~
~~primaey.~~

34 **Sec. 14. 30-A MRSA §5953-B, sub-§3, ¶E,** as enacted by PL 1997,
36 c. 555, §3, is amended to read:

38 E. The Department of Human Services certifies to the bank
that the loan eligibility priority, established under
40 section 6006-B, subsection 3 5, entitles the applicant to
financing or assistance under this section.

42 **Sec. 15. 30-A MRSA §6006-B, sub-§1, ¶A,** as enacted by PL 1991,
44 c. 605, §14, is amended to read:

46 A. There is established in the custody of the bank a
special fund to be known as the safe drinking water
48 revolving loan fund to provide financial assistance under
subsection 2 for the acquisition, design, planning,
50 construction, enlargement, repair, protection or improvement
of drinking water supplies or treatment facilities including

any of those actions required under the federal Safe Drinking Water Act of 1974 1996, 42 United States Code, Sections 300f to 300j-9, supplement 1997, as amended, hereinafter referred to as the federal Safe Drinking Water Act of 1996.

Sec. 16. 30-A MRSA §6006-B, sub-§1, ¶C, as enacted by PL 1991, c. 605, §14, is repealed and the following enacted in its place:

C. For the purposes of this section, the term "public water system" is the same as defined in Title 22, section 2601, subsection 8 and "community water system" and "noncommunity water system" are the same as defined in Title 22, section 2660-B.

Sec. 17. 30-A MRSA §6006-B, sub-§2, as amended by PL 1995, c. 665, Pt. II, §§1 and 2 and affected by §3, is further amended to read:

2. Uses. The revolving loan fund may be used for one or more of the following purposes:

A. To make loans to public water utilities systems under this section and section 5953-B;

B. To make loans to ~~refund bonds or notes of~~ a water utility municipality, an intermunicipal or interstate agency or other eligible participant as specified in the federal Safe Drinking Water Act of 1996 to buy or refinance bonds or notes issued after December 31, 1988 July 1, 1993 for the purpose of financing the construction of any capital improvement or management program described in section 5953-B, subsection 1 and certified under section 5953-B, subsection 3;

C. To guarantee or insure, directly or indirectly, the payment of notes or bonds issued or to be issued by a public water utility system for the purpose of financing the construction of any capital improvement described in section 5953-B, subsection 1 and certified under section 5953-B, subsection 3;

D. To guarantee or insure, directly or indirectly, funds established by public water utilities systems for the purpose of financing construction of any capital improvement described in section 5953-B, subsection 1 and certified under section 5953-B, subsection 3;

E. To invest available fund balances and to credit the net interest income on those balances to the revolving loan fund;

A. of S.

2 F. To invest as a source of revenue or security for the
4 payment of principal and interest on general or special
6 obligations of the bank if the proceeds of the sale of the
8 obligations have been deposited in the fund or loaned to
eligible participants in the programs financed with the
fund, or as a source of revenue to subsidize municipal loan
payment obligations;

10 G. To pay the costs of the bank and the Department of Human
12 Services associated with the administration of the revolving
loan fund and projects financed by it ~~provided that no, as~~
14 ~~long as such costs are paid from a separate, dedicated and~~
~~identifiable administrative account into which not more than~~
16 ~~the lesser of 2% of the aggregate of the highest fund~~
~~balances in any fiscal year and 4% or such greater amount as~~
18 ~~may be permitted under federal law as part of the federal~~
Safe Drinking Water Act of 1996 of any each capitalization
20 grants grant allotment provided by the Federal Government
~~for deposit in the revolving loan fund is used for these~~
22 ~~purposes, and other amounts, must be deposited;~~

24 H. To pay the costs required, authorized or funded under
the federal Safe Drinking Water Act of 1974 1996, ~~42-United~~
26 ~~States Code, Sections 300f to 300j-9, as amended,~~ regarding
the treatment of drinking water or other federal law or
28 program that provides money for deposit to the fund for the
purposes of this section; and

30 I. To provide training and technical assistance to public
32 water systems serving a population of 10,000 or fewer
through the statewide rural water association. The
34 statewide rural water association may use an amount equal to
1% of the federal capitalization grant. Training and
36 technical assistance must be consistent with the annual
Department of Human Services public water system
38 supervision, or "PWSS," work plan.

Sec. 18. 30-A MRSA §6006-B, sub-§§4 and 5 are enacted to read:

40 **4. Priorities for financial assistance.** At least annually,
42 the Department of Human Services shall prepare and certify to the
44 bank a project priority list of those community and nonprofit
46 noncommunity public water system projects eligible for financing
or assistance under this section. The factors to be considered
in developing the priority list must include, but are not limited
48 to:

A. Projects that address serious risk to human health;

H.S.

2 B. Projects necessary to ensure compliance with the federal
4 Safe Drinking Water Act of 1996;

6 C. Projects to assist public water systems in need on a per
8 household basis according to the State's affordability
10 criteria; and

12 D. Projects that meet factors used in developing the
14 priority list and that are prepared to proceed to
16 construction.

18 5. Eligibility for financial assistance. Financial
20 assistance for a project may not be granted under this section
22 until the Department of Human Services has certified to the bank
24 that the project is eligible for immediate financing under this
26 section and is on the priority list under subsection 4.

28 **Sec. 19. Allocation.** The following funds are allocated from
30 the Federal Expenditures Fund to carry out the purposes of this
32 Act.

1998-99

24 **HUMAN SERVICES, DEPARTMENT OF**

26 **Bureau of Health**

28 Positions - Legislative Count (-2.000)
30 Personal Services (\$76,349)

32 Deallocates funds for 2 Assistant Engineer
34 positions to transfer these positions to the
36 Public Drinking Water Fund, Other Special
Revenue.

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

1998-99

42 **HUMAN SERVICES, DEPARTMENT OF**

44 **Public Drinking Water Fund**

46 Positions - Legislative Count (2.000)
48 Personal Services \$76,349
All Other 223,651

50 Provides funds for costs associated with the

H. of S.

administration of the safe drinking water revolving loan fund, including funds for 2 Assistant Engineer positions transferred from the Bureau of Health, Federal Expenditures Fund.

DEPARTMENT OF HUMAN SERVICES

TOTAL

\$300,000'

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

FISCAL NOTE

1998-99

APPROPRIATIONS/ALLOCATIONS

Other Funds \$223,651

REVENUES

Other Funds 300,000

This bill provides the Department of Human Services with an Other Special Revenue allocation of \$300,000 in fiscal year 1998-99 for costs associated with the administration of the safe drinking water revolving loan fund. These funds are available from the department's portion of the authorized 4% administrative set-aside. It also includes a Federal Expenditure Fund deallocation of \$76,349 to reflect the transfer of 2 Assistant Engineer positions from the Bureau of Health, Federal Expenditures Fund to the Public Drinking Water Fund, Other Special Revenue.

The additional costs associated with adopting rules can be absorbed by the Department of Human Services utilizing existing budgeted resources. The increase in the maximum administrative penalty for certain violators may also increase Other Special Revenue to the department by minor amounts.'

SUMMARY

This amendment replaces the bill. This amendment corrects dates in the current state safe drinking water laws, updates the

COMMITTEE AMENDMENT

11 of 9

2 laws to conform with federal drinking water requirements and
3 makes more specific the permit requirements and authority of the
4 Department of Human Services to revoke permits for construction,
5 alteration, operation and maintenance of public drinking water
6 systems. It clarifies that fees related to primacy of drinking
7 water jurisdiction are annual operation fees. Conformance with
8 federal law is necessary for the drinking water program of the
9 Department of Human Services to maintain primacy and to obtain
10 primacy for any new rules the United States Environmental
11 Protection Agency promulgates in the future. The amendment
12 allows the Commissioner of Human Services to adopt rules
13 establishing a permit process for public water systems. Rules
14 adopted regarding permitting are major substantive rules.

15
16 The amendment establishes provisions for a small system
17 variance that would allow the drinking water program to have the
18 flexibility provided under the federal Safe Drinking Water Act as
19 amended in 1996. It authorizes the Commissioner of Human
20 Services to adopt a source water quality assessment program and a
21 capacity development program. If the commissioner does not have
22 the authority to adopt the source water assessment and capacity
23 development programs, then the drinking water program will not be
24 eligible for a full state revolving loan fund allocation in the
25 future. Finally, the amendment grants the Board of Licensure of
26 Water Treatment Plant Operators authority to classify public
27 water systems. The change is necessary to ensure the
28 enforceability of the board rules.

29 The amendment also adds a fiscal note.
30