

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2005

H.P. 1441

House of Representatives, January 14, 1998

**An Act to Conform Maine's Safe Drinking Water Laws with the 1996
Amendments of the Federal Safe Drinking Water Act.**

Submitted by the Department of Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BROOKS of Winterport.
Cosponsored by Senator PINGREE of Knox and
Representatives: BAKER of Bangor, BERRY of Livermore, BRAGDON of Bangor, BRUNO
of Raymond, CAMERON of Rumford, JABAR of Waterville, O'BRIEN of Augusta,
WHEELER of Eliot.

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

2
4 **Sec. 1. 22 MRSA §2601, sub-§1-E** is enacted to read:

6 1-E. Disadvantaged community. "Disadvantaged community"
8 means the service area of a public water system that meets
10 affordability criteria established by the department after public
12 review and comment.

14 **Sec. 2. 22 MRSA §2601, sub-§8**, as amended by PL 1993, c. 410,
16 Pt. DD, §2, is further amended to read:

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

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

40 A. The water is used exclusively for purposes other than
42 residential uses. For the purposes of this subsection,
44 residential uses may consist of drinking, bathing, cooking
46 or other similar uses;

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

C. The commissioner determines that the water provided for
 residential or similar uses for drinking, cooking and
 bathing is centrally treated or treated at the point of

2 entry by the provider, a pass-through entity or the user to
3 achieve the equivalent level of protection provided by the
4 applicable state primary drinking water regulation.

6 **Sec. 3. 22 MRSA §2612-A** is enacted to read:

8 **§2612-A. Capacity development**

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

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

28 **Sec. 4. 22 MRSA §2613, sub-§1**, as amended by PL 1995, c. 622,
29 §1, is further amended to read:

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

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

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

48 Prior to granting a variance, the commissioner shall provide an
49 opportunity for public hearing pursuant to the Maine
50 Administrative Procedure Act on the proposed variance. Variances
 may be conditioned on monitoring, testing, analyzing or other

2 requirements to ensure the protection of the public health; and
variances granted under paragraph A must include a compliance
4 schedule under which the public water system will meet each
contaminant level for which a variance is granted as
6 expeditiously as is feasible.

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

14 **Sec. 5. 22 MRSA §2613, sub-§1-A** is enacted to read:

16 **1-A. Small system variances.** The commissioner may grant a
18 variance for compliance with a requirement specifying a maximum
contaminant level or treatment technique contained in a state
20 primary drinking water regulation to public water systems serving
3,300 or fewer persons. With the approval of the Administrator
22 of the United States Environmental Protection Agency, the
commissioner may grant a variance under this subsection to a
24 public water system serving more than 3,300 persons but fewer
than 10,000 persons.

26 The commissioner shall adopt rules for variances to be granted
28 under this subsection. Rules adopted pursuant to this subsection
are routine technical rules as defined in Title 5, chapter 375,
30 subchapter II-A.

32 **Sec. 6. 22 MRSA §2613, sub-§2**, as amended by PL 1995, c. 622,
§2, is further amended to read:

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

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

42 B. The public water system is unable to comply with the
regulation or to implement measures to develop an
44 alternative source of water supply due to compelling
factors, which may include economic factors, including
46 qualification of the public water system serving a
disadvantaged community as defined in section 2601,
48 subsection 1-E; and

2 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

4
6 D. Management or restructuring changes can not reasonably
be made that will result in compliance with this chapter or,
8 if compliance can not be achieved, improve the quality of
the drinking water.

10 Prior to implementation of a schedule for compliance with
12 contaminant level or treatment technique requirements and for
implementation of control measures, the commissioner shall
14 provide notice and opportunity for public hearing pursuant to the
requirements of the Maine Administrative Procedure Act. Each
16 exemption must also be conditioned on monitoring, testing,
analyzing or other requirements to ensure the protection of the
18 public health and must include a compliance schedule, including
increments of progress or measures to develop an alternative
20 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.

22 **Sec. 7. 22 MRSA §2613, sub-§3-A is enacted to read:**

24 3-A. Exemption criteria. An exemption described in
26 subsection 2 may not be granted unless:

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

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

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

44 **Sec. 8. 22 MRSA §2613, sub-§4, as enacted by PL 1995, c. 622,**
46 **§3, is amended to read:**

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

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

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

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

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

20 B. In the case of a system that does not serve more than
22 500 service connections a population of 3,300 and that needs
financial assistance for the necessary improvements, an
24 exemption granted may be renewed for one ~~or more~~ to 3
additional 2-year periods, but not to exceed a total of 6
26 additional years, if the system establishes that it is
taking all practicable steps to meet the requirements
28 established in the exemption.

30 **Sec. 9. 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
32 read:

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

38 **Sec. 10. 22 MRSA §2615, sub-§1**, as repealed and replaced by PL
1995, c. 622, §5, is amended to read:

40 **1. Notification.** -A- Each owner or operator of a public
42 water system shall notify the public of the nature and extent of
possible health effects as soon as practicable, but not later
44 than the time periods established under subsection 4, if the
system:

46 A. Is not in compliance with a state drinking water rule;

48 B. Fails to perform monitoring, testing or analyzing or
fails to provide samples as required by departmental rules;

2 C. Is subject to a variance or an exemption granted under
section 2613; or

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6 D. Is not in compliance with the terms of a variance or an
exemption granted under section 2613.

8 Public notification under this section must be provided
concurrently to the system's local health officer and to the
10 department. When required by law, the department shall forward a
copy of the notification to the Administrator of the United
12 States Environmental Protection Agency. The department may
require notification to a public water system's individual
14 customers by mail delivery or by hand delivery within a
reasonable time, but not earlier than required under federal laws.

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18 **Sec. 11. 22 MRSA §2620, sub-§1**, as enacted by PL 1993, c. 678,
§4, is amended to read:

20 **1. Maximum penalty.** An administrative penalty may not be
greater than \$750 for each violation, except that for water
22 systems serving more than 10,000 people, an administrative
penalty may not be less than \$1,000 for each violation. Each day
24 that a violation remains uncorrected may be counted as a separate
violation.

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28 **Sec. 12. 22 MRSA §2622**, as amended by PL 1983, c. 819, Pt. A,
§55, is further amended to read:

30 **§2622. Classification of public water systems and parts**

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

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44 The commissioner,--with-the-advice-of-the board, with the
advice of the department, shall establish the criteria and
46 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.

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50 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.

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Sec. 13. 22 MRSA §2650 is enacted to read:

§2650. Source water quality assessment

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

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

SUMMARY

The bill brings the State's safe drinking water laws into conformance with the federal Safe Drinking Water Act as amended in 1996. This is necessary for the drinking water program of the Department of Human Services to maintain primacy and to obtain primacy for any new rules the United States Environmental Protection Agency promulgates in the future.

The bill also establishes provisions for a small system variance that would allow the drinking water program to have the flexibility provided under the federal Safe Drinking Water Act as amended in 1996. Further, the bill authorizes the Commissioner of Human Services to adopt a source water assessment program and a capacity development program. If the commissioner does not have the authority to adopt the source water assessment and capacity development programs, then the drinking water program will not be eligible for a full state revolving loan fund allocation in the future. Finally, the bill grants the Advisory Board for Licensure of Water Treatment Plant Operators to classify public water systems. The change is necessary to ensure the enforceability of the board rules.