

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2265

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H.P. 1635

House of Representatives, March 9, 1998

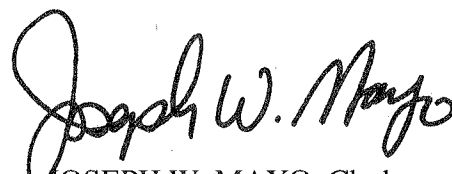
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### **An Act to Reduce Nonpoint Source Pollution from Existing Sources.**

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Reported by Representative ROWE for the Joint Standing Committee on Natural Resources pursuant to Resolve 1997, chapter 67.

Reference to the Joint Standing Committee on Natural Resources suggested and printing ordered under Joint Rule 218.

  
JOSEPH W. MAYO, Clerk

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

2  
3       **Sec. 1. 30-A MRSA §5903, sub-§7-A**, as amended by PL 1997, c.  
4 555, §§1 and 2, is further amended to read:

6       **7-A. Municipality.** "Municipality" means:

8       A. Any city, town, special district, county, plantation or  
9 municipal village corporation within the State;

10       B. For the purpose of section 5953, subsection 1, paragraph  
11 D only, any water utility as defined in subsection 13; ~~or~~

12       C. For the purpose of section 5953, subsection 1, paragraph  
13 D, section 5953-B and section 6006-B, any public water  
14 system as defined under Title 22, section 2601, subsection  
15 8; ~~or~~

16       D. For the purpose of section 5953, subsection 1, paragraph  
17 D, section 5953-A and section 6006-A, any nonprofit  
18 organization exempt from taxation under the United States  
19 Internal Revenue Code, Section 501(c).

20       **Sec. 2. 38 MRSA §419-B** is enacted to read:

21       **§419-B. Restriction on the use of fertilizer containing**  
22       **phosphorus on lawns or similar landscaped areas**  
23       **in lake watersheds**

24       **1. Definitions.** As used in this section, unless the  
25 context otherwise indicates, the following terms have the  
26 following meanings.

27       A. "Fertilizer" means a substance used to make soil more  
28 fertile, such as manure or a chemical mixture.

29       B. "Lake or pond watershed" means the land area that drains  
30 to a lake or pond via overland flow, natural or man-made  
31 drainage systems, water bodies or wetlands.

32       C. "Lawn or similar landscaped area" means an area that is  
33 kept mowed and is covered with vegetation such as grasses or  
34 legumes. It does not include agricultural fields.

35       **2. Prohibition; exception.** A person may not use fertilizer  
36 containing phosphorus on a lawn or similar landscaped area within  
37 a lake or pond watershed except:

38       A. During the initial establishment of the lawn or similar  
39 landscaped area; or

2           B. When a soil test indicates that phosphorus is needed to  
4           maintain healthy vegetation.

6           **Sec. 3. 38 MRSA §420-C**, as amended by PL 1997, c. 502, §1, is  
repealed and the following enacted in its place:

8           **§420-C. Erosion and sedimentation control**

10           This section applies to a project or any portion of a  
12           project located within an organized area of this State. This  
14           section does not apply to agricultural fields. Forest management  
16           activities, including associated road construction or  
18           maintenance, conducted in accordance with applicable standards of  
the Maine Land Use Regulation Commission, are deemed to comply  
with this section. This section may not be construed to limit a  
municipality's authority under home rule to adopt ordinances  
containing stricter standards than those contained in this  
section.

20           1. Activity on or after July 1, 1997. A person who  
22           conducts, or causes to be conducted, an activity that involves  
24           filling, displacing or exposing soil or other earthen materials  
26           on or after July 1, 1997 shall take measures to prevent  
28           unreasonable erosion of soil or sediment beyond the project site  
30           or into a protected natural resource as defined in section  
32           480-B. Erosion control measures must be in place before the  
activity begins. Measures must remain in place and functional  
until the site is permanently stabilized. Adequate and timely  
temporary and permanent stabilization measures must be taken and  
the site must be maintained to prevent unreasonable erosion and  
sedimentation.

34           2. Activity prior to July 1, 1997. A person who owns or  
36           controls property on which an activity involving filling,  
38           displacing or exposing soil or other earthen materials was  
40           conducted prior to July 1, 1997 shall take measures necessary to  
42           prevent unreasonable erosion of soil or sediment beyond the  
44           project site or into a protected natural resource as defined in  
46           section 480-B. Adequate permanent stabilization measures must be  
taken and the site must be maintained to prevent unreasonable  
erosion and sedimentation. This subsection applies on and after  
July 1, 2005 to property located in the watershed of a body of  
water most at risk from new development as identified in rules  
adopted by the department pursuant to section 420-D, subsection 3  
and on and after July 1, 2010 to other property.

48           **Sec. 4. 38 MRSA §436-A, sub-§1-A** is enacted to read:

2 1-A. Basement. "Basement" means any portion of a structure  
with a floor-to-ceiling height of 6 feet or more and having more  
4 than 50% of its volume below the existing ground level.

6 **Sec. 5. 38 MRSA §439-A, sub-§§4-A and 4-B** are enacted to read:

8 4-A. Mitigation measures. Notwithstanding any provision in  
a local ordinance to the contrary, for a structure that does not  
10 meet the water setback requirements approved by the board, a  
permit may not be issued for the relocation, reconstruction or  
12 replacement of more than 50% of the market value of a principal  
structure, the addition or replacement of a basement or an  
14 expansion under subsection 4-B, paragraph E unless a written plan  
to mitigate nonpoint source pollution is approved by the  
16 municipal planning board. The plan must provide for the  
following mitigation measures to be implemented and maintained.

18 A. Unstabilized areas resulting in soil erosion must be  
mulched, seeded or otherwise stabilized and maintained to  
20 prevent further erosion and sedimentation to water bodies  
and wetlands.

22 B. Cleared openings created as part of a building  
relocation, reconstruction or replacement must be replanted  
24 to establish effective visual screening of the structure  
from the water body or wetland.

26 C. Roofs and associated drainage systems, driveways,  
parking areas and other nonvegetated surfaces must be  
28 designed or modified, as necessary, to prevent concentrated  
flow of storm water runoff from reaching a water body or  
30 wetland. Where possible, runoff must be directed through a  
vegetated area or infiltrated into the soil through the use  
32 of a dry well, stone apron or similar measure.

34 The mitigation plan must be filed in the registry of deeds of the  
36 county in which the property is located.

38 4-B. Alternative expansion requirement. Notwithstanding  
40 subsection 4, a municipality may adopt an ordinance that permits  
expansions pursuant to this subsection of principal and accessory  
42 structures that do not meet the water setback requirements  
approved by the board if the ordinance is no less restrictive  
44 than the requirements in this subsection.

46 A. All new principal and accessory structures, excluding  
functionally water-dependent uses, must meet the water  
48 setback requirements approved by the board. An expansion of  
a legally existing nonconforming structure pursuant to this

2           subsection may not create further nonconformity with the  
3           water setback requirement.

4           B. Expansion of any portion of a structure within 25 feet  
5           of the normal high-water line of a water body or upland edge  
6           of a wetland is prohibited, even if the expansion will not  
7           increase nonconformity with the water setback requirement.  
8           Expansion of an accessory structure that is located closer  
9           to the normal high-water line of a water body or upland edge  
10           of a wetland than the principal structure is prohibited,  
11           even if the expansion will not increase nonconformity with  
12           the water setback requirement.

13           C. Legally existing nonconforming principal and accessory  
14           structures that do not meet the water setback requirements  
15           may be expanded or altered as follows, as long as other  
16           applicable land use standards adopted by the municipality  
17           are met and the expansion is not prohibited by paragraph A  
18           or B.

19                   (1) For structures located less than 75 feet from the  
20                   normal high-water line of a water body or upland edge  
21                   of a wetland, the maximum combined total floor area for  
22                   all structures is 1,000 square feet, and the maximum  
23                   height of any structure is 20 feet or the height of the  
24                   existing structure, whichever is greater.

25                   (2) For structures located less than 100 feet from the  
26                   normal high-water line of a great pond classified as  
27                   GPA or a river flowing to a great pond classified as  
28                   GPA, the maximum combined total floor area for all  
29                   structures is 1,500 square feet, and the maximum height  
30                   of any structure is 25 feet or the height of the  
31                   existing structure, whichever is greater, except that  
32                   any portion of those structures located less than 75  
33                   feet from the normal high-water line or upland edge of  
34                   a wetland must meet the floor area and height limits in  
35                   subparagraph (1).

36           Existing principal and accessory structures that exceed  
37           these floor area or height limits may not be expanded.

38           For the purposes of this paragraph, a basement is not  
39           counted toward floor area.

40           D. When a new basement is added to an existing structure or  
41           when a basement is constructed as part of a reconstruction  
42           or replacement structure, the structure and the basement  
43           must be placed so that the setback requirement is met to the

2           greatest practical extent, as determined by the planning  
3           board.

4           E. A municipality may permit an expansion that causes the  
5           maximum floor area limits established in paragraph C to be  
6           exceeded by not more than 500 square feet if:

7                   (1) The principal structure is set back at least 50  
8                   feet from the normal high-water line of a water body or  
9                   upland edge of a wetland;

10                   (2) A well-distributed stand of trees and other  
11                   vegetation, as defined in the minimum guidelines  
12                   adopted by the board, extend at least 50 feet inland  
13                   from the normal high-water line or upland edge of a  
14                   wetland for the entire width of the property or, if  
15                   such a buffer is not present, a written plan to  
16                   reestablish a buffer of native trees, shrubs and other  
17                   ground cover within 50 feet of the shoreline is  
18                   approved by the planning board. The plan must be  
19                   implemented at the time of construction and must be  
20                   designed to meet the minimum guidelines as the  
21                   vegetation matures. The plan must provide for the  
22                   establishment and maintenance of a well-distributed  
23                   stand of trees spaced so that there is at least one  
24                   tree per 80 square feet of newly established buffer.  
25                   Planted trees may be no less than 3 feet tall for  
26                   coniferous species and no less than 6 feet tall for  
27                   deciduous species. There must be a mix of at least 3  
28                   native tree species growing in adjacent areas within  
29                   the buffer, with no one species making up more than 50%  
30                   of the number of trees planted, unless otherwise  
31                   approved by the planning board based on the adjacent  
32                   stand composition;

33                   (3) Adjacent to a great pond classified as GPA or a  
34                   river flowing to a great pond classified as GPA, ground  
35                   cover and vegetation less than 3 feet in height are  
36                   allowed to naturally reestablish within 50 feet of the  
37                   normal high-water line, except that a footpath not to  
38                   exceed 6 feet in width may be established and  
39                   maintained. Natural revegetation may be supplemented  
40                   by native trees, shrubs and other ground cover; and

41                   (4) A mitigation plan is approved by the planning  
42                   board pursuant to subsection 4-A.

43           The written plan required pursuant to subparagraph (2) must  
44           be filed in the registry of deeds of the county in which the  
45           property is located.

2           A copy of all permits issued pursuant to this paragraph must  
3           be forwarded by the municipality to the department within 14  
4           days of the issuance of the permit.

6           **Sec. 6. Reports; nonpoint source pollution.** By January 15, 1999,  
7           the Department of Environmental Protection shall submit the  
8           following reports to the joint standing committee of the  
9           Legislature having jurisdiction over natural resources matters.  
10          In developing these reports, the department shall consult with  
11          interested persons and relevant state agencies.

12           1. The department shall submit a report that includes an  
13          evaluation of options and recommendations for improving the  
14          implementation and maintenance of buffer strips along water  
15          resources, including small streams. The department shall  
16          consider both regulatory and nonregulatory approaches and shall  
17          evaluate at least the following options: changes to the mandatory  
18          shoreland zoning laws to include first order streams in the  
19          shoreland zone and changes to the natural resources protection  
20          laws to apply those laws to the cutting of vegetation adjacent to  
21          streams.

22           2. The department shall submit a report, in cooperation  
23          with the Department of Human Services, that includes an  
24          evaluation of options and recommendations for identifying and  
25          facilitating the upgrade or replacement of substandard subsurface  
26          disposal systems. The report must include a recommendation on  
27          whether a program for identifying and upgrading or replacing  
28          substandard subsurface disposal systems should be limited to  
29          systems located in the shoreland zone associated with great ponds  
30          or should include other shoreland areas.

31           The joint standing committee of the Legislature having  
32          jurisdiction over natural resources matters may report out  
33          legislation to the First Regular Session of the 119th Legislature  
34          regarding buffer strips along water resources and substandard  
35          subsurface disposal systems.

36           **Sec. 7. Report; erosion control.** By January 15, 2004, the  
37          Department of Environmental Protection shall submit a report to  
38          the joint standing committee of the Legislature having  
39          jurisdiction over natural resources matters regarding compliance  
40          with the Maine Revised Statutes, Title 38, section 420-C. The  
41          report must evaluate past and projected compliance with the  
42          erosion control laws and may include recommendations regarding  
43          staffing requirements necessary to ensure compliance with section  
44          420-C.



2 The joint standing committee of the Legislature having  
jurisdiction over natural resources matters may report out  
4 legislation to the Second Regular Session of the 121st  
Legislature regarding compliance with the erosion control laws.

6  
8 **SUMMARY**

This bill does the following.

10  
12 1. It authorizes the Maine Municipal Bond Bank to make  
loans from the clean water revolving loan fund to nonprofit  
14 organizations.

16 2. It restricts the use of fertilizer containing phosphorus  
on lawns and similar areas within a lake or pond watershed to 2  
18 situations: during the initial establishment of a lawn or similar  
landscaped area or when a soil test indicates that phosphorus is  
needed to maintain healthy vegetation.

20  
22 3. It extends the erosion and sedimentation control laws to  
projects conducted prior to July 1, 1997 that involved filling,  
24 displacing or exposing soil or other earthen materials. It  
requires a property owner to take measures necessary to prevent  
26 unreasonable erosion beyond the project site or into a protected  
natural resource and to take adequate permanent stabilization  
28 measures and to maintain the site to prevent unreasonable erosion  
and sedimentation. These requirements will apply to property  
30 located in the watershed of a body of water most at risk from new  
development as of July 1, 2005 and to other property as of July  
1, 2010.

32  
34 4. It amends the mandatory shoreland zoning laws to require  
planning board approval of a written plan to mitigate nonpoint  
36 source pollution prior to a permit being issued for certain  
significant construction involving a structure that does not meet  
38 water setback requirements. The plan must provide for mitigation  
measures to be implemented and maintained, including  
40 stabilization to prevent erosion and sedimentation; establishment  
of visual screening; and modification of roofs, driveways and  
42 other nonvegetated surfaces to prevent concentrated flow of storm  
water runoff.

44  
46 5. It also amends the mandatory shoreland zoning laws to  
authorize a municipality to adopt an ordinance that permits the  
48 expansion of nonconforming structures using standards different  
from the current 30% expansion rule. It establishes standards  
50 for such expansions, including floor area and height limits, and  
authorizes a municipality to permit an expansion with an extra  
500 square feet of floor area if the principal structure is set

2 back at least 50 feet and a well-distributed stand of trees  
3 extends at least 50 feet inland or a written plan to establish  
4 such a buffer is approved by the planning board. The bill also  
5 defines "basement" for purposes of the mandatory shoreland zoning  
6 laws.

7  
8 6. It requires the Department of Environmental Protection  
9 to submit several reports, with varying due dates, to the joint  
10 standing committee of the Legislature having jurisdiction over  
11 natural resources matters on the following topics: the  
12 implementation and maintenance of buffer strips along water  
13 resources, a program for identifying and upgrading substandard  
14 subsurface disposal systems and compliance with the erosion  
15 control laws. The bill also gives the joint standing committee  
16 of the Legislature having jurisdiction over natural resources  
matters authority to report out legislation on these issues.