

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2000

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Legislative Document

No. 2604

H.P. 1868

House of Representatives, March 3, 2000

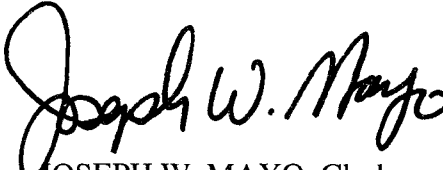
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### **An Act to Address Nonpoint Source Pollution from Certain Sources.**

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Reported by Representative MARTIN for the Joint Standing Committee on Natural Resources pursuant to Public Law 1997, chapter 748, section 5.

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  
4       **Sec. 1. 33 MRSA §173, sub-§§3 to 5**, as enacted by PL 1999, c. 476, §1, are amended to read:

6       **3. Subsurface wastewater disposal system.** The type of  
8 waste subsurface wastewater disposal system used on the  
10 property. If the property has a private waste subsurface  
12 wastewater disposal system, the seller shall provide a copy, if  
available, of the subsurface wastewater disposal system design as  
depicted on the application submitted to the Department of Human  
Services and shall disclose:

14       A. The type of system;

16       B. The size in gallons and type the construction material  
18 of the tank;

20       C. The location of the tank;

22       ~~D. Any malfunctions of the tank;~~

24       E. The date of installation or most recent inspection of  
the tank;

26       F. The location of the leach field;

28       G. Any malfunctions of the tank or leach field;

30       H. The date of installation of the leach field or most  
32 recent inspection and the name of the inspector;

34       I. The date of the most recent ~~servicing of the system~~  
septic tank pumping;

36       J. The name of the contractor who ~~services the system~~ most  
38 recently pumped out the septic tank; and

40       K. For systems within shoreland zones, disclosures on  
42 septic subsurface wastewater disposal systems required by  
Title 30-A, section 4216; and

44       L. Information indicating that materials are available from  
46 the Department of Human Services, Division of Health  
48 Engineering and the Department of Environmental Protection  
to assist in identifying malfunctions and properly  
maintaining a subsurface wastewater disposal system;

50       **4. Hazardous materials.** The presence or prior removal of  
hazardous materials or elements on the residential real property,  
including, but not limited to:

- 2 A. Asbestos;
- 4 B. Lead-based paint for pre-1978 homes in accordance with  
6 federal regulations;
- 8 C. Radon; and
- 10 D. Underground oil storage tanks as required under Title  
12 38, section 563, subsection 6; and
- 14 5. **Known defects.** Any known defects; and

16 **Sec. 2. 33 MRSA §173, sub-§6** is enacted to read:

18 6. Land use laws in shoreland zone. For property located  
20 within the shoreland area described in Title 38, section 435,  
22 information concerning the shoreland zoning laws, Title 38,  
24 chapter 3, subchapter I, article 2-B and the natural resources  
protection laws, Title 38, chapter 3, subchapter I, article 5-A.  
The Department of Environmental Protection shall develop a  
publication containing information for this purpose, and the  
publication must be attached to the property disclosure statement.

26 **Sec. 3. 38 MRSA §480-C, sub-§4** is enacted to read:

28 4. Prohibition on cutting or removal of vegetation within  
30 25 feet of small streams. A person may not perform or cause to  
32 be performed the cutting or removal of vegetation within 25 feet  
34 of the normal high-water line of a small stream without first  
36 obtaining a permit from the department, except that selective  
cutting of trees and other vegetation may be performed without a  
permit if no more than 40% of the trees 4 inches or more in  
diameter, measured at 4 1/2 feet above ground level, are cut in  
any 10-year period and a well-distributed stand of trees and  
other natural vegetation remains.

38 For purposes of this subsection, "small stream" means a stream  
40 that is:

42 A. Depicted as a solid or broken blue line on the most  
44 recent edition of the United States Geological Survey  
7.5-minute series topographic map; and

46 B. Not a river as defined in section 436-A, subsection 11 or  
a stream as defined in section 436-A, subsection 11-A.

48 **Sec. 4. 38 MRSA §480-Q, sub-§6**, as amended by PL 1995, c. 460,  
50 §5, is further amended to read:

2           **6. Agricultural activities.** Subject to other provisions of  
3 this article that govern other protected natural resources,  
4 cutting or removing vegetation within 25 feet of the normal  
5 high-water line of a small stream as defined in section 480-C,  
6 subsection 4 or altering a freshwater wetland for the purpose of  
7 normal farming activities such as clearing of vegetation for  
8 agricultural purposes if the land topography is not altered,  
9 plowing, seeding, cultivating, minor drainage and harvesting,  
10 construction or maintenance of farm or livestock ponds or  
11 irrigation ditches, maintenance of drainage ditches and  
12 construction or maintenance of farm roads;

13           **Sec. 5. 38 MRSA §480-Q, sub-§7-A,** as enacted by PL 1989, c.  
14 838, §6, is amended to read:

15           **7-A. Forestry.** Forest management activities, including  
16 associated road construction or maintenance, in or adjacent to an  
17 existing forested wetland, or a harvested forested wetland or  
18 forest management activities involving the cutting or removal of  
19 vegetation within 25 feet of the normal high-water line of a  
20 small stream as defined in section 480-C, subsection 4, as long  
21 as:  
22

23           A. The activity results in a forest stand that meets the  
24 minimum stocking requirements in rules adopted pursuant to  
25 Title 12, section 8869. This requirement takes effect when  
26 those rules are adopted;

27           B. The activity meets ~~permit--by--rule~~ permit-by-rule  
28 standards in rules adopted pursuant to this article, for any  
29 road crossing of a river, stream or brook, or for any soil  
30 disturbance adjacent to a great pond, river, stream or brook  
31 and the commissioner is notified before the forest  
32 management activity commences;

33           C. The forested wetland is not mapped as a significant  
34 wildlife habitat under section 480-I; and

35           D. Any road construction is not used to access development  
36 but is used primarily for forest management activities,  
37 unless the road is removed and the site restored to its  
38 prior natural condition. Roads must be the minimum feasible  
39 width and total length consistent with forest management  
40 activities. This exemption does not apply to roads that  
41 provide access to development in a subdivision as defined in  
42 Title 30-A, section 4401, subsection 4, for the organized  
43 portions of the State, or Title 12, section 682, subsection  
44 2, including divisions of land exempted by Title 12, section  
45 682, subsection 2, paragraph A, for portions of the State  
46  
47  
48

2 under the jurisdiction of the Maine Land Use Regulation  
Commission.

4 **Sec. 6. Recommendations; inspections of subsurface wastewater**  
5 **disposal systems.** The Department of Environmental Protection and  
6 the Department of Human Services shall develop recommendations  
7 for requiring inspections of subsurface wastewater disposal  
8 systems at the time of real estate transfers. The  
9 recommendations must include requirements for inspection of any  
10 system that is more than 20 years old or that lacks documentation  
11 of the system design and location, provisions for certifying  
12 system inspectors and provisions regarding responsibility for  
13 paying for a mandatory inspection. In developing the  
14 recommendations, the departments shall consult with interested  
15 parties. The departments shall submit a report with their  
16 recommendations and any implementing legislation to the joint  
17 standing committee of the Legislature having jurisdiction over  
18 natural resources matters by January 15, 2001. The joint standing  
19 committee of the Legislature having jurisdiction over natural  
20 resources matters may report out a bill to the First Regular  
21 Session of the 120th Legislature relating to inspections of  
22 subsurface wastewater disposal systems.

24 **Sec. 7. Real Estate Commission rulemaking.** The Real Estate  
25 Commission shall amend its rules relating to real estate  
26 brokerage standards of practices to provide that the requirements  
27 in the Maine Revised Statutes, Title 33, section 173, subsections  
28 3 and 6 apply to the transfer of any interest in residential real  
29 property, whether by sale, exchange, installment land contract,  
30 lease with an option to purchase or any other option to purchase,  
31 when the transaction is conducted with the assistance of a person  
32 licensed to practice real estate brokerage. Such rules are  
33 routine technical rules pursuant to Title 5, chapter 375,  
34 subchapter II-A.

## 36 SUMMARY

38 This bill implements the recommendations of the Department  
39 of Environmental Protection relating to measures to reduce  
40 nonpoint source pollution and improve water quality. The bill  
41 amends the natural resources protection laws to require a permit  
42 for the cutting or removal of vegetation, other than for farming  
43 or forest management activities, within 25 feet of small mapped  
44 streams. The bill requires that sellers of residential real  
45 property and real estate brokers disclose additional information  
46 regarding subsurface wastewater disposal systems and information  
47 regarding land use laws affecting property located within the  
48 shoreland zone. The bill also requires the Department of  
49 Environmental Protection and the Department of Human Services to

2 submit a report to the Legislature by January 15, 2001 with recommendations for requiring inspections of old subsurface wastewater disposal systems at the time of real estate transfers.