

# MAINE STATE LEGISLATURE

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Date: 3/26/8

(Filing No. H-822)

NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1535, L.D. 2160, Bill, "An Act To Protect Shellfish Waters and Shellfish Resources from Coastal Pollution"

Amend the bill by adding after the title and before the enacting clause the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.'

Amend the bill by striking out sections 1, 2 and 3 and inserting the following:

'Sec. 1. 30-A MRSA §3428, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§3428. Malfunctioning domestic waste water disposal units; abatement of nuisance

Malfunctioning waste water disposal units, including septic tanks, cesspools, cisterns, dry wells, drainage beds, drains, sewer lines and pipes and the like, have become a menace to the health and general welfare of the citizens of this State and are declared to be a nuisance.

1. Abatement procedure. Upon complaint of any person resulting in documentation of a malfunctioning waste water disposal unit or on their own information, the municipal officers shall serve an order to remedy a malfunctioning waste water disposal unit upon the owner or occupant of any premises within that municipality which that has such a malfunctioning unit.

2. Content of order. The order shall must be addressed to the owner of the premises and must contain:

- A. The date;

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- 1 B. The fact of the malfunctioning waste water disposal unit;
- 2 C. A notice to remedy the nuisance within 10 days of service of the order; and
- 3 D. The signatures of the municipal officers.

4 ~~If service is to be made upon a tenant or occupant in possession, the order must be~~  
 5 ~~addressed to that person in addition to the owner. The municipal officers may allow the~~  
 6 ~~owner of the premises to request an extension of the 10-day period for no longer than an~~  
 7 ~~additional 20 days and may explain how to request an extension in the order. The~~  
 8 ~~municipal officers or their agents may approve an extension if it is reasonably necessary~~  
 9 ~~for and likely to result in remediation of the nuisance.~~

10 **3. Service and return of service.** One of the municipal officers or a law  
 11 enforcement officer shall serve the order personally upon the owner, tenant or occupant in  
 12 possession. The server shall make and file a return of service indicating the method used  
 13 and the person served.

14 **4. Abatement.** If the nuisance is not abated within the 10-day period ~~of such period~~  
 15 up to but not exceeding the additional 20 days as allowed by the municipal officers under  
 16 subsection 2, the municipal officers or their agents may enter the premises and have the  
 17 malfunction adequately remedied. To recover any actual and direct expenses, including  
 18 reasonable ~~attorney~~ attorney's fees if the municipality is the prevailing party, incurred by  
 19 the municipality in the abatement of such nuisances, the municipality shall:

20 A. File a civil action against the owner. The costs, including reasonable attorney  
 21 fees, to create and prosecute an action to collect expenses following such a civil  
 22 complaint, shall also be recovered from the owners; or

23 B. Assess a special tax against the land on which the waste water disposal unit is  
 24 located for the amount of the expenses. This amount shall be included in the next  
 25 annual warrant to the tax collector of the municipality for collection in the same  
 26 manner as other state, county and municipal taxes are collected. Interest as  
 27 determined by the municipality pursuant to Title 36, section 505, in the year in which  
 28 the special tax is assessed, shall accrue on all unpaid balances of any special tax  
 29 beginning on the 60th day after the day of commitment of the special tax to the  
 30 collector. The interest shall be added to and become part of the tax.

31 **Sec. 2. 30-A MRSA §4216**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,  
 32 §106 and amended by PL 1989, c. 6 and c. 9, §2 and repealed and replaced by c. 104, Pt.  
 33 A, §43 and Pt. C, §§8 and 10, is repealed and the following enacted in its place:

34 **§4216. Transfers of shoreland property**

35 **1. Shoreland areas.** Any person transferring property on which a subsurface waste  
 36 water disposal system is located within a shoreland area, as described in Title 38, section  
 37 435, shall provide the transferee with a written statement by the transferor as to whether  
 38 the system has malfunctioned during the 180 days preceding the date of transfer.

39 **2. Coastal shoreland areas.** In addition to the requirements of subsection 1, the  
 40 following provisions apply to the transfer of property within a coastal shoreland area as  
 41 described in Title 38, section 435.

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1     A. A person purchasing property on which a subsurface waste water disposal system  
2     is located within a coastal shoreland area, as described in Title 38, section 435, shall  
3     prior to purchase have the system inspected by a person certified by the department  
4     except that if it is impossible due to weather conditions to perform an inspection of  
5     the system prior to the purchase, the inspection must be performed within 9 months  
6     after transfer of the property. If the inspection finds that the system is  
7     malfunctioning, the system must be repaired or replaced within one year after transfer  
8     of the property. For purposes of this paragraph only, indications of a malfunctioning  
9     system are limited to the indications specified in the definition of "malfunctioning  
10    system" in the department's rules regulating subsurface waste water disposal that are  
11    in effect on the effective date of this paragraph.

12    B. A subsurface waste water disposal system that has been installed pursuant to  
13    section 4211 and rules adopted under Title 22, section 42 within 3 years prior to the  
14    closing date of the transfer of property is not subject to the inspection requirements of  
15    paragraph A.

16    C. If the seller of the shoreland property has a written inspection report for an  
17    inspection of the subsurface waste water disposal system that was performed within 3  
18    years prior to the date of the transfer of property by a person certified by the  
19    department, then the seller shall provide the inspection results to the purchaser, and  
20    the purchaser is not required to have the system inspected pursuant to paragraph A.

21    D. The inspection described in paragraph A is not required if the purchaser certifies  
22    to the local plumbing inspector that the purchaser will replace the subsurface waste  
23    water disposal system within one year of the transfer of property.

24    **Sec. 3. 30-A MRSA §4221, sub-§3, ¶F**, as enacted by PL 1987, c. 737, Pt. A, §2  
25    and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is  
26    further amended to read:

27        F. Perform other duties as provided by municipal ordinance; ~~and~~

28    **Sec. 4. 30-A MRSA §4221, sub-§3, ¶G**, as enacted by PL 1987, c. 737, Pt. A,  
29    §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10,  
30    is further amended to read:

31        G. Investigate complaints of alleged violations relating to plumbing or subsurface  
32        waste water disposal and take appropriate action as specified by the department by  
33        rule in the ~~State of Maine Enforcement Manual, Procedures for Correcting Violations~~  
34        ~~to the Subsurface Waste Water Disposal and Plumbing Rules.~~ department's  
35        enforcement manual for subsurface waste water disposal and plumbing rules; and

36    **Sec. 5. 30-A MRSA §4221, sub-§3, ¶H** is enacted to read:

37        H. Accompany staff of the Department of Environmental Protection or the  
38        department in the conduct of a sanitary survey intended to identify potentially failing  
39        subsurface waste water disposal systems affecting shellfish harvesting areas when  
40        requested by either agency.

41    **Sec. 6. 30-A MRSA §4452, sub-§5, ¶M**, as enacted by PL 1989, c. 104, Pt. A,  
42    §45 and Pt. C, §10, is amended to read:

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M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428 and laws regarding malfunctioning subsurface waste water disposal systems pursuant to Title 38, section 424-A;

**Sec. 7. 38 MRSA §342, sub-§7**, as amended by PL 2003, c. 245, §3, is further amended to read:

**7. Representation in court.** The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6-A. The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to represent a municipality in an action to obtain an administrative search warrant to allow entry of a local plumbing inspector onto property without the consent of the property owner in order to inspect a subsurface waste water disposal system in an area designated by the department as provided in section 424-A, subsection 3, paragraph A. Licensed Maine attorneys do not need to file the certification referred to in the Maine Rules of Civil Procedure, Rule 80K(h). Certification of nonattorney employees must be provided as under Title 30-A, section 4453.

**Sec. 8. 38 MRSA §424-A** is enacted to read:

**§424-A. Coordination for addressing water quality problems related to subsurface waste water disposal systems in shellfish growing areas.**

**1. Definitions.** For purposes of this section, the following terms have the following meanings:

- A. "System" means a subsurface waste water disposal system;
- B. "Local plumbing inspector" means a plumbing inspector for the municipality where the system is located;
- C. "Municipality" means the municipality where the system is located; and
- D. "Certified inspector" means a person certified pursuant to rules adopted by the Department of Health and Human Services to inspect systems.

**2. Notification to municipality.** If the department or the Department of Marine Resources identifies a violation of a bacteria or toxics standard that is reasonably believed to have resulted in whole or in part from one or more malfunctioning systems and is contributing to closure of a shellfish area, the agency shall notify the municipality.

**3. Inspection.** If the department or the Department of Marine Resources has notified a municipality pursuant to subsection 2, and by mutual agreement inspections are not to be conducted by the department, the Department of Marine Resources or the municipality, the system or systems must be inspected and an abatement order issued and enforced according to the procedures in this subsection.

- A. The department shall designate an area suspected of containing one or more malfunctioning systems and inform the municipality of the designation. The municipality shall provide the department sufficient information concerning property

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- 1 ownership within the designated area to enable the department to send a letter to the
- 2 owner of each property containing a system within the designated area.
- 3 B. The department shall notify each owner of property containing a system within
- 4 the designated area that the system is suspected of contributing to water quality
- 5 problems and must be inspected to determine compliance with the rules regulating
- 6 subsurface waste water disposal adopted by the Department of Health and Human
- 7 Services.
- 8 C. Within 60 days of notification by the department pursuant to paragraph B or
- 9 within a lesser time period as provided in the notification of the department, the
- 10 property owner shall:
  - 11 (1) Submit to the department results of an inspection by a certified inspector that
  - 12 has occurred within the last 12 months pursuant to requirements in Title 30-A,
  - 13 section 4216;
  - 14 (2) Provide evidence to the department that the system was installed or repaired
  - 15 within the last 12 months; or
  - 16 (3) Provide for an inspection by a certified inspector. The property owner shall
  - 17 notify the department of the results of the inspection on a form provided by the
  - 18 department and signed by the certified inspector. The inspection must be
  - 19 conducted at a time of year when the system is operating under representative
  - 20 conditions of use for the property. If representative conditions of use will not
  - 21 occur within the period specified by the department, such as if the residence is
  - 22 seasonal and not currently in use, the property owner may request an extension
  - 23 from the department during the inspection period and the department may grant
  - 24 an extension.
- 25 D. If an inspection is required pursuant to paragraph C, subsection (3), the provisions
- 26 of this paragraph apply.
  - 27 (1) It is the responsibility of the property owner to pay for inspection of the
  - 28 system or systems by a certified inspector.
  - 29 (2) The local plumbing inspector is not required to conduct the inspection.
  - 30 (3) If a property owner is unwilling or unable to provide for an inspection, the
  - 31 municipality shall contract with an independent certified inspector. The
  - 32 municipality may assess a fee or a special tax against the land on which the
  - 33 system is located for the amount necessary to hire the certified inspector for the
  - 34 system. The amount of the special tax must be included in the next annual
  - 35 warrant to the tax collector of the municipality for collection in the same manner
  - 36 as other state, county and municipal taxes are collected. Interest as determined
  - 37 by the municipality pursuant to Title 36, section 505, in the year in which the
  - 38 special tax is assessed, must accrue on all unpaid balances of any special tax
  - 39 beginning on the 60th day after the day of commitment of the special tax to the
  - 40 collector. The interest must be added to and become part of the tax. When
  - 41 determining whether or not to assess a fee or special tax pursuant to this
  - 42 paragraph the municipality shall consider the availability of municipal resources.

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1 4. Abatement orders. If a system is determined to be malfunctioning, the  
2 municipality shall issue an abatement order pursuant to Title 30-A, section 3428 to the  
3 owner of the property and send a copy of the abatement order to the department.

4 5. Enforcement of abatement order. This section is enforced primarily at the local  
5 level pursuant to Title 30-A, section 4452. In addition to and in coordination with  
6 enforcement of the abatement order by the municipality under subsection 4, the  
7 department and the Department of Health and Human Services may enforce an abatement  
8 order.

9 6. Rules. The department in coordination with the Department of Health and Human  
10 Services and the Department of Marine Resources may adopt rules to implement this  
11 section. Rules adopted pursuant to this subsection are routine technical rules as defined  
12 in Title 5, chapter 375, subchapter 2-A.'

13 Amend the bill in section 4 in the 3rd line (page 2, line 25 in L.D.) by striking out the  
14 following: "shall" and inserting the following: 'may'

15 Amend the bill in section 4 in the 7th line (page 2, line 29 in L.D.) by striking out the  
16 following: "must" and inserting the following: 'may'

17 Amend the bill in section 4 in the 8th line (page 2, line 30 in L.D.) by striking out the  
18 following: "the rules to be" and inserting the following: 'rules'

19 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
20 section number to read consecutively.

21 **SUMMARY**

22 This amendment replaces the provisions in the bill regarding notice and inspection  
23 requirements of subsurface waste water disposal systems upon the transfer of property in  
24 the shoreland zone. It also clarifies the provisions in the bill that create a process for  
25 coordinating response to water quality problems that are related to subsurface waste water  
26 disposal systems in shellfish growing areas. It also gives to the Department of Health and  
27 Human Services, in coordination with the Department of Marine Resources and the  
28 Department of Environmental Protection, discretion regarding the adoption of rules  
29 establishing certification requirements for subsurface waste water disposal system  
30 inspectors.

31 **FISCAL NOTE REQUIRED**

32 (See attached)



# 123rd MAINE LEGISLATURE

LD 2160

LR 3048(02)

## An Act To Protect Shellfish Waters and Shellfish Resources from Coastal Pollution

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Natural Resources

Fiscal Note Required: Yes

### Fiscal Note

State Mandate - Exempted

#### State Mandates

##### Required Activity

This bill requires local plumbing inspectors to assist the Department of Environmental Protection and the Department of Marine Resources in identifying failing septic systems affecting shellfish harvesting areas, provide information on property ownership within certain designated areas and to provide for an inspection by a certified independent inspector. Pursuant to the Mandate Preamble, the two thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional local costs.

##### Unit Affected

Municipality

##### Costs

Insignificant

#### Fiscal Detail and Notes

Additional costs to the Department of Environmental Protection and the Department of Marine Resources can be absorbed within existing budgeted resources.