

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2160

H.P. 1535

House of Representatives, January 17, 2008

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative WEBSTER of Freeport.
Cosponsored by President EDMONDS of Cumberland and
Representatives: ADAMS of Portland, AYOTTE of Caswell, DUCHESNE of Hudson,
EBERLE of South Portland, FLETCHER of Winslow, GERZOFKY of Brunswick, HILL of
York, KOFFMAN of Bar Harbor, MAZUREK of Rockland, McDONOUGH of Scarborough,
PERCY of Phippsburg, PIEH of Bremen, PIOTTI of Unity, RECTOR of Thomaston, SMITH
of Monmouth, WATSON of Bath, WHEELER of Kittery, Senators: BARTLETT of
Cumberland, BENOIT of Sagadahoc, DAMON of Hancock, ROSEN of Hancock.

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

2 **Sec. 1. 30-A MRSA §4216**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
3 §106 and amended by PL 1989, c. 6 and c. 9, §2 and repealed and replaced by c. 104, Pt.
4 C, §§8 and 10, is repealed and the following enacted in its place:

5 **§4216. Transfers of shoreland property**

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

11 **2. Coastal shoreland areas.** The following provisions apply to property transferred
12 within a coastal shoreland area.

13 **A.** Any person transferring property on which a subsurface waste water disposal
14 system is located within a coastal shoreland area, as described in Title 38, section
15 435, shall provide the transferee with a written statement by the transferor certifying
16 that:

17 **(1)** The subsurface waste water disposal system has been inspected during the 3
18 years preceding the date of transfer by a person certified by the Department of
19 Health and Human Services. The certification must indicate that:

20 **(a)** The subsurface waste water disposal system is not malfunctioning and is
21 in compliance with section 4211 and rules adopted under Title 22, section 42;
22 or

23 **(b)** The subsurface waste water disposal system is malfunctioning. A
24 subsurface waste water disposal system identified as malfunctioning must be
25 repaired prior to the transfer of the property or the repair of the system must
26 be a condition of sale agreed to by the transferor and the transferee; or

27 **(2)** It is impossible to perform an inspection of the subsurface waste water
28 disposal system prior to the date of transfer. A subsurface waste water disposal
29 system that is not inspected prior to transfer pursuant to this subparagraph must
30 be inspected and, if the system is malfunctioning, repaired within 1 year after the
31 transfer of the property.

32 **B.** The certification required under this subsection must be filed with the local
33 municipality and the local plumbing inspector.

34 **Sec. 2. 30-A MRSA §4452, sub-§5, ¶M**, as enacted by PL 1989, c. 104, Pt. A,
35 §45 and affected by Pt. C, §10, is amended to read:

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

39 **Sec. 3. 38 MRSA §424-A** is enacted to read:

1 §424-A. Coordination for addressing water quality problems related to subsurface
2 waste water disposal systems in shellfish harvesting areas

3 1. Notification to local plumbing inspector. If the department or the Department
4 of Marine Resources identifies a persistent water quality problem related to a subsurface
5 waste water disposal system in a shellfish harvesting area, the agency shall notify the
6 local plumbing inspector.

7 2. Inspections. Upon receipt of notification pursuant to subsection 1 and in
8 accordance with a process developed by the local plumbing inspector in conjunction with
9 the department and the Department of Marine Resources, the local plumbing inspector or
10 a person certified to inspect subsurface waste water disposal systems pursuant to rules
11 adopted by the Department of Health and Human Services shall inspect per year a
12 minimum of 10% of all subsurface waste water disposal systems in the area affected by
13 the water quality problem.

14 3. Abatement orders. If, as a result of an inspection pursuant to subsection 2, a
15 local plumbing inspector determines a subsurface waste water disposal system is
16 malfunctioning, the municipality in which the system is located shall issue an abatement
17 order to the owner of the property. A copy of the abatement order must be submitted to
18 the department. This subsection is enforced primarily at the local level pursuant to Title
19 30-A, section 4452. The department may enforce an abatement order.

20 The department, in coordination with the Department of Marine Resources, shall
21 adopt rules to implement this section. Rules adopted pursuant to this section are routine
22 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

23 **Sec. 4. Rulemaking for subsurface waste water disposal system inspection**
24 **certification.** The Department of Health and Human Services in coordination with the
25 Department of Marine Resources and the Department of Environmental Protection shall
26 adopt rules establishing the requirements for the certification of individuals to inspect
27 subsurface waste water disposal systems. The existing voluntary certification program
28 jointly run by the Department of Health and Human Services and Department of
29 Environmental Protection must be used as a model for the rules. Individuals certified
30 under the existing program must be certified under the rules to be developed under this
31 section. Rules adopted pursuant to this section are routine technical rules as defined in
32 the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

33 **Sec. 5. Study of additional mechanisms to abate water quality problems**
34 **from malfunctioning subsurface waste water disposal systems and licensed**
35 **overboard discharge systems.** The Department of Health and Human Services, the
36 Department of Environmental Protection, the Department of Marine Resources and the
37 Executive Department, State Planning Office shall jointly develop recommendations on
38 strategies to further abate water quality problems that affect shellfish harvesting and
39 recreational uses of waters and that are the result of malfunctioning subsurface waste
40 water disposal systems or licensed overboard discharge systems. The recommendations
41 must be submitted to the joint standing committee of the Legislature having jurisdiction
42 over natural resources matters by January 15, 2009.

1

SUMMARY

2 This bill requires a person transferring property containing a subsurface waste water
3 disposal system in a coastal shoreland area to provide the transferee with certification that
4 the system has been inspected within the last 3 years or that it is impossible to perform an
5 inspection prior to the transfer. If the system has been inspected and found to be
6 malfunctioning, the system must be repaired prior to the transfer or the repair must be a
7 condition of sale. If it is impossible to inspect the system prior to the transfer, the system
8 must be inspected and, if malfunctioning, repaired within 1 year after the transfer. The
9 bill retains the current notification requirements for property transferred in freshwater
10 shoreland areas.

11 The bill creates a process for coordinating resolution of water quality problems
12 related to subsurface waste water disposal systems in shellfish harvesting areas, including
13 notification, inspection and abatement order requirements. The bill also requires the
14 Department of Health and Human Services in coordination with the Department of
15 Marine Resources and the Department of Environmental Protection to adopt routine
16 technical rules establishing requirements for the certification of individuals to inspect
17 subsurface waste water disposal systems. The bill also requires the Department of Health
18 and Human Services, the Department of Environmental Protection, the Department of
19 Marine Resources and the Executive Department, State Planning Office to jointly develop
20 recommendations on strategies to further abate water quality problems that affect
21 shellfish harvesting and recreational uses of waters and that are the result of
22 malfunctioning subsurface waste water disposal systems or licensed overboard discharge
23 systems.