

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2249

H.P. 1610

House of Representatives, March 6, 2008

### An Act To Protect Lake Water Quality

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Reported by Representative KOFFMAN of Bar Harbor for the Joint Standing Committee on Natural Resources pursuant to Public Law 2007, chapter 65, section 2.

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2 **Sec. 1. 23 MRSA §3106** is enacted to read:

3 **§3106. Road impact fees assessed by a municipality**

4 To ensure that private roads in lake watersheds are properly constructed and  
5 maintained to prevent degrading lake water quality due to storm water runoff, a  
6 municipality may adopt an ordinance that includes an assessment of an annual fee to  
7 property owners whose properties are accessed by a private road if the private road:

8 **1. Three or more dwellings.** Services 3 or more seasonal or year-round dwellings;

9 **2. Within lake watershed.** Is located in whole or in part within a lake watershed;  
10 and

11 **3. Not in accordance with road standards.** Is not constructed or maintained in  
12 accordance with road standards for the protection of lake water quality as provided for in  
13 the municipal ordinance.

14 The Department of Environmental Protection shall develop guidance on appropriate  
15 road standards pursuant to subsection 3. The amount assessed per lot under this section  
16 must be based on the estimated cost to upgrade the road to meet municipal standards.  
17 Funds generated by the assessment must be held in a municipal account and used to pay  
18 for upgrading private roads that were the basis for the assessment authorized by this  
19 section and for the municipality's administrative costs, including the cost of inspecting the  
20 private roads.

21 **Sec. 2. 38 MRSA §420-D, sub-§11, ¶A,** as enacted by PL 1997, c. 502, §4, is  
22 amended to read:

23 A. The department may allow an applicant with a project in the direct watershed of  
24 a lake to address certain on-site phosphorus reduction requirements through payment  
25 of a compensation fee as provided in this paragraph. The commissioner shall  
26 determine the appropriate compensation fee for each project. The compensation fee  
27 must be paid either into a compensation fund or to an organization authorized by the  
28 department and must be a condition of the permit.

29 (1) The department may establish a storm water compensation fund for the  
30 purpose of receiving compensation fees, grants and other related income. The  
31 fund must be a nonlapsing fund dedicated to payment of the costs and related  
32 expenses of compensation projects. Income received under this subsection must  
33 be deposited with the Treasurer of State to the credit of the fund and may be  
34 invested as provided by statute. Interest on these investments must be credited to  
35 the fund. The department may make payments from the fund consistent with the  
36 purpose of the fund.

37 (2) The department may enter into a written agreement with a public, quasi-  
38 public or private, nonprofit organization for purposes of receiving compensation  
39 fees and implementing compensation projects. If the authorized agency is a state

1 agency other than the department, it shall establish a fund meeting the  
2 requirements specified in subparagraph (1). The authorized organization shall  
3 maintain records of expenditures and provide an annual summary report to the  
4 department. If the organization does not perform in accordance with this section  
5 or with the requirements of the written agreement, the department may revoke the  
6 organization's authority to conduct activities in accordance with this paragraph.  
7 If an organization's authorization is revoked, any remaining funds must be  
8 provided to the department.

9 (3) The commissioner may set a fee rate of no more than ~~\$10,000~~ \$25,000 per  
10 pound of available phosphorus, ~~except that the commissioner may set a rate up to~~  
11 ~~\$20,000 per pound for a project located in the direct watershed of a severely~~  
12 ~~blooming lake.~~

13 (4) Except in an urbanized part of a designated growth area, best management  
14 practices must be incorporated on site that, by design, will reduce phosphorus  
15 export by at least 50%, and a phosphorus compensation fee must be paid to  
16 address the remaining phosphorus reduction required to meet the parcel's  
17 phosphorus allocation. In an urbanized part of a designated growth area, an  
18 applicant may pay a phosphorus compensation fee in lieu of part or all of the on-  
19 site phosphorus reduction requirement. The commissioner shall identify  
20 urbanized parts of designated growth areas in the direct watersheds of lakes most  
21 at risk, in consultation with the State Planning Office.

22 (5) Projects funded through compensation fees as provided in this paragraph  
23 must be located in the same watershed as the project with respect to which the  
24 compensation fee is paid.

25 (6) As an alternative to paying a compensation fee, the department may allow an  
26 applicant to meet a municipally required mitigation option if the department  
27 determines that the local mitigation option will provide at least as much long-  
28 term reduction in phosphorus loading to the lake as likely would have occurred  
29 under payment of the compensation fee.

30 **Sec. 3. 38 MRS §439-B** is enacted to read:

31 **§439-B. Contractors certified in erosion control**

32 An excavation contractor conducting excavation activity in a shoreland area shall  
33 ensure that a person certified in erosion control practices by the department is responsible  
34 for management of erosion and sediment control practices at the site. A person certified  
35 by the department must be physically present at the site each day earth-moving activity  
36 occurs until the site is permanently stabilized to prevent soil erosion. For purposes of this  
37 section, "excavation contractor" means an individual or firm engaged in a business that  
38 causes the disturbance of soil, including grading, filling and removal, or in a business in  
39 which the disturbance of soil results from an activity that the individual or firm is retained  
40 to perform.

41 This section takes effect January 1, 2013.

1

## SUMMARY

2 This bill is submitted by the Joint Standing Committee on Natural Resources  
3 pursuant to Public Law 2007, chapter 65. It authorizes municipalities to assess annual  
4 fees under certain conditions to property owners whose properties are accessed by a  
5 private road. It requires excavation contractors working in the shoreland zone to ensure  
6 that a person certified in erosion control practices is in charge of erosion control practices  
7 at the site. It changes the phosphorous compensation fee. It authorizes the Department of  
8 Environmental Protection to allow applicants to meet municipal mitigation requirements  
9 in lieu of paying a compensation fee.