

# MAINE STATE LEGISLATURE

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**December 22, 2009**

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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**Legislative Document**

**No. 1573**

H.P. 1111

House of Representatives, December 22, 2009

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**An Act To Improve Water Quality through the Phaseout of  
Overboard Discharges and the Improvement of the Boat Pump-out  
Laws**

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Received by the Clerk of the House on December 18, 2009. Referred to the Committee on  
Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Speaker PINGREE of North Haven.  
Cosponsored by Representatives: DUCHESNE of Hudson, MAZUREK of Rockland, PERCY  
of Phippsburg, VAN WIE of New Gloucester, WEBSTER of Freeport, Senators: DAMON of  
Hancock, GERZOFKY of Cumberland, TRAHAN of Lincoln.

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

2 **Sec. 1. 38 MRSA §411-A, sub-§1**, as enacted by PL 1989, c. 442, §1 and  
3 affected by c. 890, Pt. A, §40 and amended by Pt. B, §25, is repealed and the following  
4 enacted in its place:

5 **1. General authority.** Subject to the availability of funds under section 411, the  
6 commissioner shall pay a portion of an alternative to an overboard discharge system as  
7 provided in this section. In the event the overboard discharge owner is not eligible for  
8 complete funding through a grant, the commissioner may loan the balance of the eligible  
9 alternative system costs not funded through a grant as provided in this section.

10 A. Pursuant to the cost-share schedule in subsection 2-A, the commissioner shall pay  
11 a portion of the expense of a technologically proven alternative system construction  
12 project that results in the elimination of an overboard discharge to the waters of the  
13 State when that elimination is required under section 414-A, subsection 1-B. The  
14 department may not provide grant funds to an overboard discharge owner for the  
15 removal of an overboard discharge at a residence unless the residence is the owner's  
16 primary residence.

17 B. If the overboard discharge owner is not eligible for complete funding through a  
18 grant, the overboard discharge owner may be eligible for funding provided by the  
19 revolving loan fund established by Title 30-A, section 6006-A as administered  
20 through the Maine Municipal Bond Bank or its designee for the expense of a  
21 technologically proven alternative system construction project that results in the  
22 elimination of an overboard discharge to the waters of the State when that elimination  
23 is required under section 414-A, subsection 1-B.

24 C. The costs eligible for payment through a grant or loan under this section include  
25 the costs that the department requires for abandonment of the overboard discharge  
26 and the design, engineering and construction costs of the replacement system. Grants  
27 or loans made under this section may be made directly to the owners of the overboard  
28 discharges and may also be made to sanitary and sewer districts that have agreed to  
29 establish operation and maintenance programs for holding tanks within their  
30 boundaries.

31 **Sec. 2. 38 MRSA §411-A, sub-§2-A**, as enacted by PL 2003, c. 246, §4, is  
32 amended to read:

33 **2-A. Cost-share.** The commissioner shall determine the portion of project expenses  
34 eligible for grants under this section as follows:

35 A. For an owner of an overboard discharge with an annual income less than  
36 \$25,000, 100%;

37 B. For an owner of an overboard discharge with an annual income ~~between~~ from  
38 \$25,000 ~~and~~ to \$50,000, 90%;

39 C. For an owner of an overboard discharge with an annual income ~~between~~ from  
40 \$50,001 ~~and~~ to \$75,000, 50%;

1 D. For an owner of an overboard discharge with an annual income ~~between from~~  
2 \$75,001 ~~and to~~ \$100,000, 35%;

3 E. For an owner of an overboard discharge with an annual income ~~over \$100,000~~  
4 from \$100,001 to \$125,000, 25%; and

5 E-1. For an owner of an overboard discharge with an annual income over \$125,000,  
6 \$0; and

7 F. For a publicly owned overboard discharge facility, 50% to a maximum of  
8 \$150,000.

9 For purposes of this subsection, "annual income" means the sum of all the property  
10 owner's federal taxable gross income for the previous year for ~~single-family dwellings,~~  
11 individual taxpayers or gross profits for the previous year for commercial establishments  
12 ~~and gross rents for the previous year for rental properties~~, as listed on the relevant federal  
13 income tax returns. A rental property must be considered a commercial establishment or  
14 as contributing to annual income depending upon how it is reported on the overboard  
15 discharge owner's taxes. "Annual income" for trusts also includes all individual  
16 beneficiaries' federal gross incomes or the grantor's gross income.

17 **Sec. 3. 38 MRSA §413, sub-§3**, as amended by PL 2007, c. 292, §18, is further  
18 amended to read:

19 **3. Transfer of ownership.** Application for transfer of a license must be made no  
20 later than 2 weeks after the transfer of ownership or interest in the source of the discharge  
21 is completed. If a person possessing a license issued by the department transfers the  
22 ownership of the property, facility or structure that is the source of a licensed discharge,  
23 without transfer of the license being approved by the department, the license granted by  
24 the department continues to authorize a discharge within the limits and subject to the  
25 terms and conditions stated in the license, except that the parties to the transfer are jointly  
26 and severally liable for any violation until such time as the department approves transfer  
27 or issuance of a waste discharge license to the new owner. The department may in its  
28 discretion require the new owner to apply for a new license, or may approve transfer of  
29 the existing license upon a satisfactory showing that the new owner can abide by its terms  
30 and conditions.

31 Except when it has been demonstrated within 5 years prior to a transfer, or some other  
32 time period acceptable to the department, that there is no technologically proven  
33 alternative to an overboard discharge, prior to transfer of ownership of property  
34 containing an overboard discharge, the parties to the transfer shall determine the  
35 feasibility of technologically proven alternatives to the overboard discharge that are  
36 consistent with the plumbing standards adopted by the Department of Health and Human  
37 Services pursuant to Title 22, section 42 based on documentation from a licensed site  
38 evaluator provided by the applicant and approved by the Department of Environmental  
39 Protection. The licensed site evaluator shall demonstrate experience in designing  
40 replacement systems for overboard discharge. If an alternative to the overboard  
41 discharge is identified, the alternative system must be installed within 90 days of property  
42 transfer, except that, if soil conditions are poor due to seasonal weather, the alternative  
43 may be installed as soon as soil conditions permit. The installation of an alternative to  
44 the overboard discharge may be eligible for funding under section 411-A.

1 This subsection applies to licenses issued before September 1, 2010.

2 **Sec. 4. 38 MRSA §413, sub-§3-A** is enacted to read:

3 **3-A. Transfer of ownership, significant expansion, division and public sewer**  
4 **connection.** Beginning September 1, 2010, if property containing an overboard  
5 discharge is transferred or a significant action is proposed, the following procedures  
6 apply. For purposes of this subsection, "significant action" means significant  
7 reconstruction of the primary residence, expansion of the primary residence by 30%,  
8 division of the lot or transfer of the adjacent lot when the same person has a financial  
9 interest in the lot with the primary residence and the adjacent lot.

10 A. If a person possessing a license issued by the department transfers the ownership  
11 of the property, facility or structure that is the source of a licensed discharge without  
12 transfer of the license being approved by the department, the license granted by the  
13 department continues to authorize a discharge within the limits and subject to the  
14 terms and conditions stated in the license as long as the parties to the transfer are  
15 jointly and severally liable for any violation thereof until such time as the department  
16 approves transfer or issuance of a waste discharge license to the new owner. The  
17 department may in its discretion require the new owner to apply for a new license or  
18 may approve transfer of the existing license upon a satisfactory showing that the new  
19 owner can abide by its terms and conditions.

20 B. If there is a transfer, or if a significant action is proposed, the owner of an  
21 overboard discharge must conduct an alternatives analysis and may be required to  
22 remove the overboard discharge system as provided in this paragraph.

23 (1) Except when it has been demonstrated within 5 years prior to a transfer, or  
24 some other time period acceptable to the department, that there is no  
25 technologically proven alternative to an overboard discharge, prior to transfer of  
26 ownership of property containing an overboard discharge, the parties to the  
27 transfer shall determine the feasibility of technologically proven alternatives to  
28 the overboard discharge that are consistent with the plumbing standards adopted  
29 by the Department of Health and Human Services pursuant to Title 22, section  
30 42.

31 (2) Except when it has been demonstrated within 5 years prior to the significant  
32 action, or some other time period acceptable to the department, that there is no  
33 technologically proven alternative to an overboard discharge, prior to the  
34 significant action the owner of the overboard discharge shall determine the  
35 feasibility of a technologically proven alternative to the overboard discharge that  
36 is consistent with the plumbing standards adopted by the Department of Health  
37 and Human Services pursuant to Title 22, section 42.

38 (3) The determination concerning whether there is a technologically proven  
39 alternative to an overboard discharge must be based on documentation from a  
40 licensed site evaluator provided by the applicant and approved by the Department  
41 of Environmental Protection that the system constitutes a best practicable  
42 treatment under section 414-A, subsection 1-B. If an alternative to the overboard  
43 discharge is identified, the alternative system must be installed within 90 days of  
44 property transfer or significant action, except that, if soil conditions are poor due

1 to seasonal weather, the alternative may be installed as soon as soil conditions  
2 permit. The installation of an alternative to the overboard discharge may be  
3 eligible for funding under section 411-A.

4 C. An overboard discharge must be removed without regard to available funding  
5 from the department where connection to a public sewer is practicable.

6 **Sec. 5. 38 MRSA §414-A, sub-§1-B**, as amended by PL 2003, c. 246, §§10 to 13  
7 and c. 689, Pt. B, §6, is further amended to read:

8 **1-B. Licensing of overboard discharges.** The following provisions shall govern the  
9 ~~relicensing~~ licensing of overboard discharges.

10 A. The department shall find that the discharge meets the requirements of best  
11 practicable treatment under this section for purposes of ~~relicensing~~ licensing when it  
12 finds that there are no technologically proven alternative methods of wastewater  
13 disposal consistent with the plumbing code adopted by the Department of Health and  
14 Human Services pursuant to Title 22, section 42 that will not result in an overboard  
15 discharge, ~~based on documentation from a licensed site evaluator provided by the~~  
16 ~~applicant and approved by the department. The licensed site evaluator shall~~  
17 ~~demonstrate experience in designing replacement systems for overboard discharges.~~  
18 ~~If a technologically proven alternative is identified, the alternative must be installed~~  
19 ~~within 180 days of the application's being accepted by the department, subject to~~  
20 ~~availability of funding under section 411 A. If the applicant is not eligible for~~  
21 ~~funding under section 411 A, the alternative system must be installed within 180~~  
22 ~~days. If the applicant is eligible for funding but no funding is available, the~~  
23 ~~installation of an alternative system may be postponed until funding is available.~~

24 (1) The department's finding must be based on documentation from a licensed  
25 site evaluator provided by the overboard discharge owner and approved by the  
26 department. The licensed site evaluator shall demonstrate experience in designing  
27 replacement systems for overboard discharges.

28 (2) If a technologically proven alternative system is identified and is eligible for  
29 grant funding according to the cost-share schedule under section 411-A and grant  
30 funding is available, the alternative system must be installed within 180 days of  
31 written notification from the department, unless soil conditions are poor due to  
32 seasonal weather, in which case the alternative may be installed as soon as soil  
33 conditions permit.

34 (3) If a technologically proven alternative system eligible for grant funding  
35 according to the cost-share schedule is identified and funding is not available,  
36 then the owner of the overboard discharge is not required to install the system  
37 until grant funds are available or as provided in section 413, subsection 3. The  
38 department may determine that grant funds are not available when there are  
39 insufficient funds available for all alternative systems and the alternative system  
40 is not one of the systems identified as a priority for funding from available grant  
41 funds by the department.

1 B. For the purposes of this subsection, the department may not require the  
2 installation or use of wastewater holding tanks as a "technologically proven  
3 alternative method of wastewater disposal" except in the following cases:

4 (1) Seasonal residential overboard discharges that are located on the mainland or  
5 on any island connected to the mainland by vehicle bridge or by scheduled car  
6 ferry service, when the elimination of the discharge alone or in conjunction with  
7 the elimination of other discharges will result in the opening of a shellfish  
8 harvesting area or the removal of a public nuisance condition;

9 (2) All overboard discharges located within the boundaries of a sanitary or sewer  
10 district when the district has agreed to service and maintain the holding tank at an  
11 annual fee that does not exceed those fees charged to other similar users of the  
12 district's services who are physically connected to the sewers of the district; and

13 (3) All overboard discharges located within the municipality when the  
14 municipality has agreed to service and maintain the holding tank at an annual fee  
15 that does not exceed those fees charged to other similar users of the  
16 municipality's services who are physically connected to the sewers of the  
17 municipality.

18 E. At the time of each relicensing of an overboard discharge, the department shall  
19 impose all conditions necessary to meet the requirements of this section and all other  
20 relevant laws.

21 **Sec. 6. 38 MRSA §423-B, sub-§2**, as enacted by PL 1999, c. 655, Pt. B, §1, is  
22 amended to read:

23 **2. Pump-out facilities required.** A marina serving coastal or inland waters shall  
24 provide a pump-out facility or provide through a written contractual agreement approved  
25 by the commissioner a facility to remove sanitary waste from the holding tanks of  
26 watercraft. The pump-out facility must be easily accessible and functional during normal  
27 working hours and at all stages of the tide. The fee charged by the marina is limited to  
28 200% of the fee limit set pursuant to the federal Clean Vessel Act of 1992, 50 Code of  
29 Federal Regulations, Section 85.11 (2008) regardless of the pump-out facility funding  
30 source.

31 **Sec. 7. 38 MRSA §465-B, sub-§1, ¶C**, as amended by PL 2007, c. 291, §6, is  
32 further amended to read:

33 C. There may be no direct discharge of pollutants to Class SA waters, except for the  
34 following:

35 (1) Storm water discharges that are in compliance with state and local  
36 requirements; and

37 (2) Discharges of aquatic pesticides approved by the department for the control of  
38 mosquito-borne diseases in the interest of public health and safety using materials  
39 and methods that provide for protection of nontarget species. When the  
40 department issues a license for the discharge of aquatic pesticides authorized  
41 under this subparagraph, the department shall notify the municipality in which

1 the application is licensed to occur and post the notice on the department's  
2 publicly accessible website; and

3 (3) An overboard discharge licensed prior to January 1, 1986 if no practicable  
4 alternative exists.

## 5 SUMMARY

6 The bill does the following.

7 It provides that, subject to the availability of funds, the Commissioner of  
8 Environmental Protection pays a portion of the cost of the alternative to an overboard  
9 discharge system in the form of a grant if certain criteria are met. Where the grant is  
10 insufficient to cover the cost of removal, the commissioner may offer a loan using funds  
11 from the revolving loan fund.

12 It sets an upper limit on income eligibility for funding to assist the owner of an  
13 overboard discharge and makes several changes and clarifications to the meaning of  
14 "annual income."

15 It clarifies the ownership transfer provisions and requires an alternatives analysis and  
16 possible replacement of an overboard discharge prior to significant reconstruction of the  
17 primary residence, expansion of the primary residence by 30%, division of the lot or  
18 transfer of the adjacent lot where the same person has a financial interest in the lot with  
19 the primary residence and the adjacent lot. Also, an alternative system to an overboard  
20 discharge must be removed where connection to a public sewer is practicable.

21 It changes references to "relicensing" overboard discharges to "licensing" and  
22 requires that an identified technologically proven replacement system be installed within  
23 180 days of site evaluation approval and written notification by the Department of  
24 Environmental Protection. It also provides that the overboard discharge owner may apply  
25 for funding and provides for the postponement of replacement system installation should  
26 grant funding not be available.

27 The bill requires that watercraft sanitary waste pump-out facilities at marinas be  
28 easily accessible and functional during normal working hours and at all stages of the tide.  
29 The bill also sets an upper limit on the pump-out fee equivalent to 200% of the fee limit  
30 set pursuant to the Clean Vessel Act of 1992.

31 The bill also allows the licensing of existing overboard discharges that have no  
32 practicable alternatives.