

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1693

H.P. 1194

House of Representatives, January 6, 2010

**An Act To Protect the Environment and Natural Resources of the  
State by Regulating the Discharge of Certain Substances into the  
Environment**

(EMERGENCY)

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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 FLAHERTY of Scarborough.  
Cosponsored by Representatives: ADAMS of Portland, EBERLE of South Portland, HINCK of Portland, MacDONALD of Boothbay, McCABE of Skowhegan, MORRISON of South Portland, PENDLETON of Scarborough, RUSSELL of Portland.

1       **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3       **Whereas,** the unregulated discharge of ballast water from ocean-going vessels into  
4 the coastal waters of the State poses a significant risk to the biological, ecological and  
5 economic vitality of the State; and

6       **Whereas,** in order for the Board of Environmental Protection to provisionally adopt  
7 major substantive rules in time for legislative review in 2011, this legislation must take  
8 effect immediately; and

9       **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
10 the meaning of the Constitution of Maine and require the following legislation as  
11 immediately necessary for the preservation of the public peace, health and safety; now,  
12 therefore,

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

14       **Sec. 1. 38 MRSA §423-E** is enacted to read:

15       **§423-E. Prohibited discharges; ballast water from ocean-going vessels**

16       This section governs the discharge of ballast water by an ocean-going vessel on or  
17 after January 1, 2011. For the purposes of this section, "ocean-going vessel" means a  
18 vessel operating within the coastal waters of the State that is equipped with ballast tanks  
19 capable of taking on and discharging water for the purposes of controlling or maintaining  
20 the vessel's trim, draft or stability or to control stresses on the vessel.

21       **1. Permit required.** Beginning January 1, 2011, the owner or operator of an ocean-  
22 going vessel may not discharge ballast water from that vessel into the coastal waters of  
23 the State without first obtaining a permit from the department.

24       **2. Interim ballast water standards; 2011 to 2021.** From January 1, 2011 to  
25 January 1, 2021, subject to the implementation schedule in subsection 3, the owner or  
26 operator of an ocean-going vessel may not discharge ballast water to the coastal waters of  
27 the State that contains:

28       **A. Any detectable living organisms greater than 50 micrometers in minimum**  
29 **dimension;**

30       **B. More than 0.01% living organisms that are between 10 and 50 micrometers in**  
31 **minimum dimension;**

32       **C. For living organisms that are less than 10 micrometers in minimum dimension:**

33               (1) More than 1,000 bacteria per 100 milliliters;

34               (2) More than 10,000 viruses per 100 milliliters; and

35               (3) Concentrations of microbes that constitute more than 125 colony-forming  
36 units of *Escherichia coli* per 100 milliliters and 32 colony-forming units of  
37 intestinal enterococci per 100 milliliters; and

1 D. More than one colony-forming unit per 100 milliliters or more than one colony-  
2 forming unit per gram of wet weight of zoological samples of toxicogenic Vibrio  
3 cholerae, serotypes O1 and O139.

4 **3. Implementation schedule for interim ballast water standards.** The interim  
5 ballast water standards established in subsection 2 apply:

6 A. Beginning January 1, 2011, to ocean-going vessels constructed on or after that  
7 date with a ballast water capacity less than or equal to 5,000 metric tons;

8 B. Beginning January 1, 2013, to ocean-going vessels constructed on or after that  
9 date with a ballast water capacity greater than 5,000 metric tons;

10 C. Beginning January 1, 2015, to ocean-going vessels constructed before January 1,  
11 2011 with a ballast water capacity from 1,500 to 5,000 metric tons; and

12 D. Beginning January 1, 2017, to ocean-going vessels constructed before January 1,  
13 2011 with a ballast water capacity less than 1,500 metric tons and to ocean-going  
14 vessels constructed before January 1, 2013 with a ballast water capacity greater than  
15 5,000 metric tons.

16 **4. Final standards.** After January 1, 2021, the owner or operator of an ocean-going  
17 vessel may not discharge into the coastal waters of the State any ballast water that  
18 contains any detectable living organisms.

19 **5. Penalty.** A person who violates this section, or rules adopted by the board to  
20 implement this section, commits a civil violation and is subject to a penalty of not less  
21 than \$1,000 and not more than \$10,000 for each violation.

22 **6. Rules.** The board shall adopt rules to implement this section. Rules adopted  
23 under this subsection are major substantive rules as defined in Title 5, chapter 375,  
24 subchapter 2-A. These rules must be adopted on an emergency basis in calendar year  
25 2010 and subsequently submitted for review by the Legislature no later than January 14,  
26 2011. The rules must prescribe an annual ballast water discharge permit fee that is based  
27 on the ballast water capacity of vessels covered by this section and that is, in the  
28 aggregate, sufficient to fully fund the cost of implementing and enforcing this section.

29 **Emergency clause.** In view of the emergency cited in the preamble, this  
30 legislation takes effect when approved.

## 31 SUMMARY

32 This bill prohibits ocean-going vessels from discharging ballast water that contains  
33 any detectable living organisms into the coastal waters of the State after January 1, 2021.  
34 The bill defines "ocean-going vessel" as any vessel operating within the coastal waters of  
35 the State that is equipped with ballast tanks capable of taking on and discharging water  
36 for the purposes of controlling or maintaining the vessel's trim, draft or stability or to  
37 control stresses on the vessel. The bill establishes interim standards in effect from  
38 January 1, 2011 to January 1, 2021 that allow ocean-going vessels to obtain a permit from  
39 the Department of Environmental Protection to discharge ballast water that contains  
40 minimal amounts of living organisms, bacteria, viruses and microbes into the coastal

1 waters of the State. Those interim standards are incrementally applied to larger and older  
2 ocean-going vessels over that 10-year period. A person who violates these provisions  
3 commits a civil violation and is subject to a penalty of not less than \$1,000 and not more  
4 than \$10,000 for each violation.

5 The Board of Environmental Protection is required to adopt emergency major  
6 substantive rules in 2010 to implement these provisions, and to subsequently submit those  
7 rules to the Legislature for review no later than January 14, 2011. The rules must require  
8 an annual ballast water discharge permit for ocean-going vessels. The annual fee for that  
9 permit must be based on the ballast water capacity of vessels covered by these provisions  
10 and must be, in the aggregate, sufficient to fully fund the cost of implementing and  
11 enforcing these provisions.