

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1022

H.P. 758

House of Representatives, March 10, 2011

### **An Act To Amend the Law Concerning Overboard Discharge Systems**

(EMERGENCY)

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

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST  
Clerk

Presented by Representative TILTON of Harrington.  
Cosponsored by Senator SAVIELLO of Franklin and  
Representatives: FITZPATRICK of Houlton, PARKER of Veazie.

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,** since 2003, prior to transferring ownership of property containing an  
4 overboard discharge system, the parties to the transfer have been required to determine  
5 the feasibility of technologically proven alternatives to the overboard discharge system.  
6 If an alternative is identified, the alternative system must be installed and the overboard  
7 discharge system must be removed; and

8           **Whereas,** parties who transferred ownership of property containing an overboard  
9 discharge system without determining the feasibility of alternatives and without removing  
10 the overboard discharge system are subject to substantial penalties until the requirements  
11 of the law are changed; and

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

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

17           **Sec. 1. 38 MRSA §413, sub-§3,** as amended by PL 2009, c. 654, §3, 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~~

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

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

5 **Sec. 2. 38 MRSA §413, sub-§3-A**, as enacted by PL 2009, c. 654, §4, is repealed.

6 **Sec. 3. 38 MRSA §414, sub-§3-C** is enacted to read:

7 **3-C. Outreach to owners of overboard discharge systems.** The department shall  
8 provide education and outreach to owners of overboard discharge systems on the  
9 importance of proper maintenance of an overboard discharge system and instruction on  
10 how to properly maintain an overboard discharge system.

11 **Sec. 4. 38 MRSA §414-A, sub-§1-B, ¶A**, as amended by PL 2009, c. 654, §5, is  
12 further amended to read:

13 A. The department shall find that the discharge meets the requirements of best  
14 practicable treatment under this section for purposes of licensing when it finds that  
15 there are no technologically proven alternative methods of wastewater disposal  
16 consistent with the plumbing code adopted by the Department of Health and Human  
17 Services pursuant to Title 22, section 42 that will not result in an overboard  
18 discharge.

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

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

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

37 (4) If a technologically proven alternative system for an overboard discharge  
38 from a residence is identified and is not eligible for grant funding according to  
39 the cost-share schedule under section 411-A, subsection 2-A and the overboard  
40 discharge is subject to a license that expires on or after July 2, 2010 and prior to

1 July 2, 2012, the department may not require the alternative to be installed earlier  
2 than July 2, 2012.

3 (5) If a technologically proven alternative system for an overboard discharge  
4 from a commercial establishment is identified and is not eligible for grant  
5 funding according to the cost-share schedule under section 411-A, subsection  
6 2-A and the overboard discharge is subject to a license that expires on or after  
7 July 2, 2010 and prior to July 2, 2012, the department may not require the  
8 alternative to be installed earlier than July 2, 2012.

9 **Sec. 5. Retroactivity.** This Act is retroactive to January 1, 2004.

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

12 **SUMMARY**

13 This bill removes the requirement that, prior to transferring ownership of property  
14 containing an overboard discharge system, the parties to the transfer must determine the  
15 feasibility of technologically proven alternatives to the overboard discharge system and  
16 install the alternative system if one is identified. The bill also directs the Department of  
17 Environmental Protection to provide education and outreach to owners of overboard  
18 discharge systems. The bill makes the changes to the law retroactive to January 1, 2004.