

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
123rd Legislature
Second Regular Session

Chapter 568
H.P. 1535 - L.D. 2160

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

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 30-A MRSA §3428, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§ 3428. Malfunctioning domestic waste water disposal units; abatement of nuisance

Malfunctioning waste water disposal units, including septic tanks, cesspools, cisterns, dry wells, drainage beds, drains, sewer lines and pipes and the like, have become a menace to the health and general welfare of the citizens of this State and are declared to be a nuisance.

1. Abatement procedure. Upon complaint of any person resulting in documentation of a malfunctioning waste water disposal unit or on their own information, the municipal officers shall serve an order to remedy a malfunctioning waste water disposal unit upon the owner ~~or occupant~~ of any premises within that municipality ~~which~~that has such a malfunctioning unit.

2. Content of order. The order ~~shall~~must be addressed to the owner of the premises and must contain:

- A. The date;
- B. The fact of the malfunctioning waste water disposal unit;
- C. A notice to remedy the nuisance within 10 days of service of the order; and
- D. The signatures of the municipal officers.

If service is to be made upon a tenant or occupant in possession, the order must be addressed to that person in addition to the owner. The municipal officers may allow the owner of the premises to request an extension of the 10-day period for no longer than an additional 20 days and may explain how to request an extension in the order. The municipal officers or their agents may approve an extension if it is reasonably necessary for and likely to result in remediation of the nuisance.

3. Service and return of service. One of the municipal officers or a law enforcement officer shall serve the order personally upon the owner, tenant or occupant in possession. The server shall make and file a return of service indicating the method used and the person served.

4. Abatement. If the nuisance is not abated within the 10-day period or such period up to but not exceeding the additional 20 days as allowed by the municipal officers under subsection 2, the municipal officers or their agents may enter the premises and have the malfunction adequately remedied. To recover any actual and direct expenses, including reasonable ~~attorney~~attorney's fees if the municipality is the prevailing party, incurred by the municipality in the abatement of such nuisances, the municipality shall:

A. File a civil action against the owner. The costs, including reasonable attorney fees, to create and prosecute an action to collect expenses following such a civil complaint, shall also be recovered from the owners; or

B. Assess a special tax against the land on which the waste water disposal unit is located for the amount of the expenses. This amount shall be included in the next annual warrant to the tax collector of the municipality for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505, in the year in which the special tax is assessed, shall accrue on all unpaid balances of any special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest shall be added to and become part of the tax.

Sec. 2. 30-A MRSA §4216, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6 and c. 9, §2 and repealed and replaced by c. 104, Pt. A, §43 and amended by Pt. C, §§8 and 10, is repealed and the following enacted in its place:

§ 4216. Transfers of shoreland property

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

2. Coastal shoreland areas. In addition to the requirements of subsection 1, the following provisions apply to the transfer of property within a coastal shoreland area as described in Title 38, section 435.

A. A person purchasing property on which a subsurface waste water disposal system is located within a coastal shoreland area, as described in Title 38, section 435, shall prior to purchase have the system inspected by a person certified by the department except that if it is impossible due to weather conditions to perform an inspection of the system prior to the purchase, the inspection must be performed within 9 months after transfer of the property. If the inspection finds that the system

is malfunctioning, the system must be repaired or replaced within one year after transfer of the property. For purposes of this paragraph only, indications of a malfunctioning system are limited to the indications specified in the definition of "malfunctioning system" in the department's rules regulating subsurface waste water disposal that are in effect on the effective date of this paragraph.

B. A subsurface waste water disposal system that has been installed pursuant to section 4211 and rules adopted under Title 22, section 42 within 3 years prior to the closing date of the transfer of property is not subject to the inspection requirements of paragraph A.

C. If the seller of the shoreland property has a written inspection report for an inspection of the subsurface waste water disposal system that was performed within 3 years prior to the date of the transfer of property by a person certified by the department, then the seller shall provide the inspection results to the purchaser, and the purchaser is not required to have the system inspected pursuant to paragraph A.

D. The inspection described in paragraph A is not required if the purchaser certifies to the local plumbing inspector that the purchaser will replace the subsurface waste water disposal system within one year of the transfer of property.

Sec. 3. 30-A MRSA §4221, sub-§3, ¶F, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

F. Perform other duties as provided by municipal ordinance; ~~and~~

Sec. 4. 30-A MRSA §4221, sub-§3, ¶G, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

G. Investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate action as specified by the department by rule in the ~~State of Maine Enforcement Manual, Procedures for Correcting Violations to the Subsurface Waste Water Disposal and Plumbing Rules~~ department's enforcement manual for subsurface waste water disposal and plumbing rules; and

Sec. 5. 30-A MRSA §4221, sub-§3, ¶H is enacted to read:

H. Accompany staff of the Department of Environmental Protection or the department in the conduct of a sanitary survey intended to identify potentially failing subsurface waste water disposal systems affecting shellfish harvesting areas when requested by either agency.

Sec. 6. 30-A MRSA §4452, sub-§5, ¶M, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

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

Sec. 7. 38 MRSA §342, sub-§7, as amended by PL 2003, c. 245, §3, is further amended to read:

7. Representation in court. The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6-A. The commissioner

may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to represent a municipality in an action to obtain an administrative search warrant to allow entry of a local plumbing inspector onto property without the consent of the property owner in order to inspect a subsurface waste water disposal system in an area designated by the department as provided in section 424-A, subsection 3, paragraph A. Licensed Maine attorneys do not need to file the certification referred to in the Maine Rules of Civil Procedure, Rule 80K(h). Certification of nonattorney employees must be provided as under Title 30-A, section 4453.

Sec. 8. 38 MRSA §424-A is enacted to read:

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

1. Definitions. For purposes of this section, the following terms have the following meanings:

A. "System" means a subsurface waste water disposal system;

B. "Local plumbing inspector" means a plumbing inspector for the municipality where the system is located;

C. "Municipality" means the municipality where the system is located; and

D. "Certified inspector" means a person certified pursuant to rules adopted by the Department of Health and Human Services to inspect systems.

2. Notification to municipality. If the department or the Department of Marine Resources identifies a violation of a bacteria or toxics standard that is reasonably believed to have resulted in whole or in part from one or more malfunctioning systems and is contributing to closure of a shellfish area, the agency shall notify the municipality.

3. Inspection. If the department or the Department of Marine Resources has notified a municipality pursuant to subsection 2, and by mutual agreement inspections are not to be conducted by the department, the Department of Marine Resources or the municipality, the system or systems must be inspected and an abatement order issued and enforced according to the procedures in this subsection.

A. The department shall designate an area suspected of containing one or more malfunctioning systems and inform the municipality of the designation. The municipality shall provide the department sufficient information concerning property ownership within the designated area to enable the department to send a letter to the owner of each property containing a system within the designated area.

B. The department shall notify each owner of property containing a system within the designated area that the system is suspected of contributing to water quality problems and must be inspected to determine compliance with the rules regulating subsurface waste water disposal adopted by the Department of Health and Human Services.

C. Within 60 days of notification by the department pursuant to paragraph B or within a lesser time period as provided in the notification of the department, the property owner shall:

(1) Submit to the department results of an inspection by a certified inspector that has occurred within the last 12 months pursuant to requirements in Title 30-A, section 4216;

(2) Provide evidence to the department that the system was installed or repaired within the last 12 months; or

(3) Provide for an inspection by a certified inspector. The property owner shall notify the department of the results of the inspection on a form provided by the department and signed by the certified inspector. The inspection must be conducted at a time of year when the system is operating under representative conditions of use for the property. If representative conditions of use will not occur within the period specified by the department, such as if the residence is seasonal and not currently in use, the property owner may request an extension from the department during the inspection period and the department may grant an extension.

D. If an inspection is required pursuant to paragraph C, subsection (3), the provisions of this paragraph apply.

(1) It is the responsibility of the property owner to pay for inspection of the system or systems by a certified inspector.

(2) The local plumbing inspector is not required to conduct the inspection.

(3) If a property owner is unwilling or unable to provide for an inspection, the municipality shall contract with an independent certified inspector. The municipality may assess a fee or a special tax against the land on which the system is located for the amount necessary to hire the certified inspector for the system. The amount of the special tax must be included in the next annual warrant to the tax collector of the municipality for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505, in the year in which the special tax is assessed, must accrue on all unpaid balances of any special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest must be added to and become part of the tax. When determining whether or not to assess a fee or special tax pursuant to this paragraph the municipality shall consider the availability of municipal resources.

4. Abatement orders. If a system is determined to be malfunctioning, the municipality shall issue an abatement order pursuant to Title 30-A, section 3428 to the owner of the property and send a copy of the abatement order to the department.

5. Enforcement of abatement order. This section is enforced primarily at the local level pursuant to Title 30-A, section 4452. In addition to and in coordination with enforcement of the abatement order by the municipality under subsection 4, the department and the Department of Health and Human Services may enforce an abatement order.

6. Rules. The department in coordination with the Department of Health and Human Services and the Department of Marine Resources may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. Rulemaking for subsurface waste water disposal system inspection certification. The Department of Health and Human Services in coordination with the Department of Marine Resources and the Department of Environmental Protection may adopt rules establishing the requirements for the certification of individuals to inspect subsurface waste water disposal systems. The existing voluntary certification program jointly run by the Department of Health and Human Services and Department of Environmental Protection may be used as a model for the rules. Individuals certified under the existing program must be certified under rules developed under this section. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 10. Study of additional mechanisms to abate water quality problems from malfunctioning subsurface waste water disposal systems and licensed overboard discharge systems. The Department of Health and Human Services, the Department of Environmental Protection, the Department of Marine Resources and the Executive Department, State Planning Office shall jointly develop recommendations on strategies to further abate water quality problems that affect shellfish harvesting and recreational uses of waters and that are the result of malfunctioning subsurface waste water disposal systems or licensed overboard discharge systems. The recommendations must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2009.