

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

**Sec. 1. 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 C, §106 and amended by PL 1989, c. 6 and c. 9, §2 and repealed and replaced by c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

### **§ 4216. Transfers of shoreland property**

**1. Freshwater shoreland areas.** Any person transferring property on which a subsurface waste water disposal system is located within a freshwater 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.** The following provisions apply to property transferred within a coastal shoreland area.

**A.** Any person transferring property on which a subsurface waste water disposal system is located within a coastal shoreland area, as described in Title 38, section 435, shall provide the transferee with a written statement by the transferor certifying that:

(1) The subsurface waste water disposal system has been inspected during the 3 years preceding the date of transfer by a person certified by the Department of Health and Human Services. The certification must indicate that:

(a) The subsurface waste water disposal system is not malfunctioning and is in compliance with section 4211 and rules adopted under Title 22, section 42; or

(b) The subsurface waste water disposal system is malfunctioning. A subsurface waste water disposal system identified as malfunctioning must be repaired prior to the transfer of the property or the repair of the system must be a condition of sale agreed to by the transferor and the transferee; or

(2) It is impossible to perform an inspection of the subsurface waste water disposal system prior to the date of transfer. A subsurface waste water disposal system that is not inspected prior to transfer pursuant to this subparagraph must be inspected and, if the system is malfunctioning, repaired within 1 year after the transfer of the property.

B. The certification required under this subsection must be filed with the local municipality and the local plumbing inspector.

**Sec. 2. 30-A MRSA §4452, sub-§5, ¶M,** as enacted by PL 1989, c. 104, Pt. A, §45 and affected by 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. 3. 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 harvesting areas**

**1. Notification to local plumbing inspector.** If the department or the Department of Marine Resources identifies a persistent water quality problem related to a subsurface waste water disposal system in a shellfish harvesting area, the agency shall notify the local plumbing inspector.

**2. Inspections.** Upon receipt of notification pursuant to subsection 1 and in accordance with a process developed by the local plumbing inspector in conjunction with the department and the Department of Marine Resources, the local plumbing inspector or a person certified to inspect subsurface waste water disposal systems pursuant to rules adopted by the Department of Health and Human Services shall inspect per year a minimum of 10% of all subsurface waste water disposal systems in the area affected by the water quality problem.

**3. Abatement orders.** If, as a result of an inspection pursuant to subsection 2, a local plumbing inspector determines a subsurface waste water disposal system is malfunctioning, the municipality in which the system is located shall issue an abatement order to the owner of the property. A copy of the abatement order must be submitted to the department. This subsection is enforced primarily at the local level pursuant to Title 30-A, section 4452. The department may enforce an abatement order.

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

**Sec. 4. 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 shall 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 must be used as a model for the rules. Individuals certified under the existing program must be certified under the rules to be 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. 5. 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.

### SUMMARY

This bill requires a person transferring property containing a subsurface waste water disposal system in a coastal shoreland area to provide the transferee with certification that the system has been inspected within the last 3 years or that it is impossible to perform an inspection prior to the transfer. If the system has been inspected and found to be malfunctioning, the system must be repaired prior to the transfer or the repair must be a condition of sale. If it is impossible to inspect the system prior to the transfer, the system must be inspected and, if malfunctioning, repaired within 1 year after the transfer. The bill retains the current notification requirements for property transferred in freshwater shoreland areas.

The bill creates a process for coordinating resolution of water quality problems related to subsurface waste water disposal systems in shellfish harvesting areas, including notification, inspection and abatement order requirements. The bill also requires the Department of Health and Human Services in coordination with the Department of Marine Resources and the Department of Environmental Protection to adopt routine technical rules establishing requirements for the certification of individuals to inspect subsurface waste water disposal systems. The bill also requires the Department of Health and Human Services, the Department of Environmental Protection, the Department of Marine Resources and the Executive Department, State Planning Office to 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.