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H.P. 255

House of Representatives, February 4, 2025

An Act to Support Removal of Overboard Discharge Systems

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative HEPLER of Woolwich.

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

2 **Sec. 1. 33 MRSA §173, sub-§3, ¶A**, as enacted by PL 1999, c. 476, §1, is amended
3 to read:

4 A. The type of system. If the system involves an overboard discharge as defined in
5 Title 38, section 466, subsection 9-A, this fact must be explicitly stated in the
6 disclosure;

7 **Sec. 2. 33 MRSA §173, sub-§3, ¶J**, as enacted by PL 1999, c. 476, §1, is amended
8 to read:

9 J. The name of the contractor who services the system; ~~and~~

10 **Sec. 3. 33 MRSA §173, sub-§3, ¶K**, as enacted by PL 1999, c. 476, §1, is amended
11 to read:

12 K. For systems within shoreland zones, disclosures on septic systems required by Title
13 30-A, section 4216; ~~and~~

14 **Sec. 4. 33 MRSA §173, sub-§3, ¶L** is enacted to read:

15 L. For overboard discharge systems, a summary of the transfer requirements of Title
16 38, section 413, subsections 3 and 3-A.

17 **Sec. 5. 38 MRSA §411, first ¶**, as amended by PL 2001, c. 232, §9, is further
18 amended to read:

19 The commissioner may pay an amount not to exceed 80% of the expense of a municipal
20 or quasi-municipal pollution abatement construction program or a pollution abatement
21 construction program in an unorganized township or plantation authorized by the county
22 commissioners. The commissioner may make payments to the Maine Municipal Bond
23 Bank to supply the State's share of the revolving loan fund established by Title 30-A,
24 section 6006-A. The commissioner may pay up to 90% of the expense of a municipal or
25 quasi-municipal pollution abatement construction program or a pollution abatement
26 construction program in an unorganized township or plantation authorized by the county
27 commissioners in which the construction cost of the project does not exceed \$100,000 ~~as~~
28 ~~long as not~~ 250% of the median household income in the State. Median household income
29 must be based on the most recent data from the State Economist or the United States
30 Department of Commerce, Bureau of the Census, whichever is lower. Not more than one
31 grant is ~~may be~~ made to any applicant each in a calendar year, ~~except that the.~~ The
32 commissioner may pay a percentage of the cost of individual projects serving single-family
33 dwellings, ~~or~~ seasonal dwellings or commercial establishments according to the following
34 schedule:

ANNUAL INCOME	SINGLE FAMILY	DWELLING	SEASONAL DWELLING
\$0 to \$5,000	100%	50%	50%
\$5,001 to \$20,000	90%	50%	50%
\$20,001 to \$30,000	50%	25%	25%
\$30,001 to \$40,000	25%	25%	25%
\$40,001 or more	0%	0%	0%

41
42 ~~GROSS PROFIT~~ ~~COMMERCIAL ESTABLISHMENT~~

1	\$0 to \$50,000	50%
2	\$50,001 to \$100,000	25%
3	\$100,001 or more	0%

4 **Sec. 6. 38 MRSA §411, sub-§1** is enacted to read:

5 **1. Single family dwellings.** The grant percentage for single-family dwellings is as
6 follows:

7 A. When the annual income of an applicant is 0% to 50% of the state median household
8 income, the grant percentage is 100%;

9 B. When the annual income of an applicant is 51% to 75% of the state median
10 household income, the grant percentage is 90%;

11 C. When the annual income of an applicant is 76% to 100% of the state median
12 household income, the grant percentage is 50%;

13 D. When the annual income of an applicant is 101% to 110% of the state median
14 household income, the grant percentage is 25%; and

15 E. When the annual income of an applicant is greater than 110% of the state median
16 household income, the grant percentage is 0%;

17 **Sec. 7. 38 MRSA §411, sub-§2** is enacted to read:

18 **2. Seasonal dwellings.** The grant percentage for seasonal dwellings is as follows:

19 A. When the annual income of an applicant is 0% to 75% of the state median household
20 income, the grant percentage is 50%;

21 B. When the annual income of an applicant is 76% to 110% of the state median
22 household income, the grant percentage is 25%; and

23 C. When the annual income of an applicant is greater than 110% of the state median
24 household income, the grant percentage is 0%; and

25 **Sec. 8. 38 MRSA §411, sub-§3** is enacted to read:

26 **3. Commercial establishments.** The grant percentage for commercial establishments
27 is as follows:

28 A. When the annual income of an applicant is 150% or less of the state median
29 household income, the grant percentage is 50%;

30 B. When the annual income of an applicant is 151% to 250% of the state median
31 household income, the grant percentage is 25%; and

32 C. When the annual income of an applicant is greater than 251% of the state median
33 household income, the grant percentage is 0%.

34 **Sec. 9. 38 MRSA §411, 2nd ¶**, as amended by PL 1999, c. 375, §2, is repealed and
35 the following enacted in its place:

36 For purposes of this section, annual income is determined separately for residential
37 property owners and commercial establishments. For a residential property owner,
38 including a trust, "annual income" means the sum of the taxable incomes of each owner of
39 the property if it is jointly owned, or of each beneficiary and grantor if the property owner
40 is a trust, for the previous year as listed on the relevant federal income tax returns for the

1 previous year. For a commercial establishment, "annual income" means taxable income or
2 ordinary business income for the previous year as listed on the relevant federal income tax
3 return plus any depreciation or other noncash expense that was deducted to compute taxable
4 or ordinary business income on that return. A rental property must be considered a
5 commercial establishment or as contributing to annual income depending on how it is
6 reported on the owner's federal income tax return from the previous year.

7 **Sec. 10. 38 MRSA §411**, as amended by PL 2017, c. 137, Pt. A, §8, is further
8 amended by enacting after the 2nd paragraph a new paragraph to read:

9 For a pollution abatement system that is used by multiple single-family or seasonal
10 dwellings, such as resident-owned mobile home parks or home owners' associations, and
11 the property is not owned by a commercial establishment, the average annual income of all
12 single-family or seasonal dwellings attached to the pollution abatement system must be
13 used to calculate the allowable grant percentage.

14 **Sec. 11. 38 MRSA §411-A**, as amended by PL 2009, c. 654, §§1 and 2, is further
15 amended by amending the section headnote to read:

16 **§411-A. State contribution to residential overboard discharge replacement projects**

17 **Sec. 12. 38 MRSA §411-A, sub-§2-A**, as amended by PL 2009, c. 654, §2, is
18 further amended to read:

19 **2-A. Cost-share.** The commissioner shall determine the portion of project expenses
20 eligible for grants under this section as follows:

21 A. For an owner of ~~an~~ a residential or commercial overboard discharge with an annual
22 income ~~less than \$25,000~~ of 0% to 100% of state median household income, 100%;

23 B. For an owner of ~~an~~ a residential or commercial overboard discharge with an annual
24 income ~~from \$25,000 to \$50,000~~ of 101% to 150% of state median household
25 income, 90%;

26 C. For an owner of ~~an~~ a residential or commercial overboard discharge with an annual
27 income ~~from \$50,001 to \$75,000~~ of 151% to 200% of state median household
28 income, 50%;

29 ~~D. For an owner of an overboard discharge with an annual income from \$75,001 to~~
30 ~~\$100,000, 35%;~~

31 E. For an owner of ~~an~~ a residential or commercial overboard discharge with an annual
32 income ~~from \$100,001 to \$125,000~~ of 201% to 250% of state median household
33 income, 25%;

34 E-1. For an owner of ~~an~~ a residential or commercial overboard discharge with an
35 annual income over ~~\$125,000~~ 250% of state median household income, ~~\$0~~ 0%; and

36 F. For a publicly owned overboard discharge facility, 50% to a maximum of ~~\$150,000~~
37 500% of state median household income.

38 For purposes of this subsection, annual income is determined separately for residential
39 property owners and commercial establishments. For a residential property owner,
40 including a trust, "annual income" means the sum of the taxable incomes of each owner of
41 the property if it is jointly owned or of each beneficiary and grantor if the property owner
42 is a trust for the previous year as listed on the relevant federal income tax returns for the

1 previous year. For a commercial establishment, “annual income” means taxable income or
2 ordinary business income for the previous year as listed on the relevant federal income tax
3 return plus any depreciation or other noncash expense that was deducted to compute taxable
4 or ordinary business income on that return. A rental property must be considered a
5 commercial establishment or as contributing to annual income depending on how it is
6 reported on the overboard discharge owner’s federal income tax return from the previous
7 year. Median household income must be based on the most recent data from the State
8 Economist or the United States Department of Commerce, Bureau of the Census,
9 whichever is lower.

10 **Sec. 13. 38 MRSA §411-A, sub-§4**, as repealed and replaced by PL 2003, c. 246,
11 §5, is amended to read:

12 **4. Reimbursement of actual or incurred costs.** The commissioner shall utilize grants
13 under this section to reimburse individuals for the actual or incurred cost of removing any
14 overboard discharge, subject to the provisions of subsection 2-A, when:

15 A. The removal occurred after September 30, 1989 but was carried out according to
16 plans and specifications approved by the commissioner in advance of construction and
17 prior to the offering of a grant under this section;

18 B. The removal resulted in the elimination of sources of contamination to shellfish
19 areas or public nuisance conditions; ~~and~~

20 C. The removal is required under section 413, subsection 3 or section 414-A,
21 subsection 1-B-; ~~and~~

22 D. The owner of the overboard discharge system and the overboard discharge removal
23 contractor have certified that the overboard discharge removal project has been
24 completed, including proper abandonment of the overboard discharge system in
25 accordance with the rules adopted by the department governing the licensing and
26 abandonment of overboard discharge systems and the local plumbing inspector has
27 certified that an alternative disposal system has been installed in conformance with the
28 rules adopted by the Department of Health and Human Services governing subsurface
29 wastewater disposal.

30 **Sec. 14. 38 MRSA §413, sub-§3-A**, as amended by PL 2011, c. 121, §2, is further
31 amended to read:

32 **3-A. Transfer of ownership, significant expansion, division and public sewer**
33 **connection.** Beginning September 1, 2010, if property containing an overboard discharge
34 is transferred or a significant action is proposed, the following procedures apply. For
35 purposes of this subsection, "significant action" means a single construction project
36 performed on a primary residence with an overboard discharge when the total material and
37 labor cost of the construction project exceeds ~~\$50,000~~ 100% of the median household
38 income as specified in section 411. "Significant action" does not include construction that
39 makes the residence accessible to a person with a disability who resides in or regularly uses
40 the residence or reconstruction performed in response to an event beyond the control of the
41 owner, such as a hurricane, flood, fire or the unanticipated physical destruction of the
42 residence.

43 A. Application for transfer of an overboard discharge license must be made no later
44 than 2 weeks after the transfer of ownership or interest in the source of the discharge

1 is completed. If a person possessing a license issued by the department transfers the
2 ownership of the property, facility or structure that is the source of a licensed discharge
3 without transfer of the license being approved by the department, the license granted
4 by the department continues to authorize a discharge within the limits and subject to
5 the terms and conditions stated in the license as long as the parties to the transfer are
6 jointly and severally liable for any violation thereof until such time as the department
7 approves transfer or issuance of a waste discharge license to the new owner. The
8 department may in its discretion require the new owner to apply for a new license or
9 may approve transfer of the existing license upon a satisfactory showing that the new
10 owner can abide by its terms and conditions.

11 B. If there is a transfer, or if a significant action is proposed, the owner of an overboard
12 discharge must conduct an alternatives analysis, pursuant to section 414-A, subsection
13 1-B, and may be required to remove the overboard discharge system as provided in this
14 paragraph. For the purposes of this paragraph, a property transfer is limited to a
15 monetary sale of the property containing the overboard discharge.

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

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

30 (3) The determination concerning whether there is a technologically proven
31 alternative to an overboard discharge must be based on documentation from a
32 licensed site evaluator provided by the applicant and approved by the Department
33 of Environmental Protection that the system constitutes a best practicable treatment
34 under section 414-A, subsection 1-B. If an alternative to the overboard discharge
35 is identified, the alternative system must be installed within 180 days of property
36 transfer or significant action, except that, if soil conditions are poor due to seasonal
37 weather, the alternative may be installed as soon as soil conditions permit. ~~The~~
38 ~~installation of an alternative to the overboard discharge may be eligible for funding~~
39 ~~under section 411-A.~~ On a property transfer, a commercial establishment may
40 request an extension of the 180-day period based on information that an extension
41 is necessary due to technical, economic or environmental considerations. The
42 department may authorize an extension for a commercial establishment for as short
43 an additional period as the department considers reasonable but in no case may an
44 extension be authorized to continue beyond the expiration of the current waste
45 discharge license or 2 years from the property transfer, whichever is later. Within

1 10 business days of receipt of a complete extension request, the department shall
2 issue a written decision approving or denying the extension.

3 (4) When the ownership of a property containing an overboard discharge has been
4 transferred, the transferee may request from the department a waiver from the
5 requirement in subparagraph (3) to install an alternative system. The department
6 shall grant the waiver upon demonstration by the transferee that the transferee's
7 annual income as defined in section 411-A, subsection 2-A is less than ~~\$25,000~~
8 100% of the median household income as specified in section 411. A request for
9 a waiver must be submitted with an application for transfer of the overboard
10 discharge license in accordance with paragraph A.

11 Nothing in this paragraph requires a municipality to withhold a local permit or approval
12 associated with a significant action until the provisions of this paragraph have been
13 met.

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

16 **Sec. 15. 38 MRSA §414, sub-§3-A**, as repealed and replaced by PL 2003, c. 246,
17 §8, is amended to read:

18 **3-A. Inspection of overboard discharge systems.** The department shall inspect all
19 licensed overboard discharge systems. The cost of the inspections must be assessed as part
20 of the annual license fee. For residential overboard discharges owned by individuals, the
21 department shall provide a fee reduction based on the adjusted gross income of the license
22 holder on the most recent tax return under the federal Internal Revenue Code of 1986. If
23 the license holder's adjusted gross income is less than ~~\$15,000~~ 50% of the median
24 household income as specified in section 411, the license holder may reduce the total fee
25 by ~~\$125~~ 50%. Any overboard discharge license owner with a mechanical treatment system
26 must provide annual proof of a private maintenance contract for maintenance of that
27 system.

28 **Sec. 16. 38 MRSA §414-A, sub-§1-B, ¶A**, as amended by PL 2009, c. 654, §5, is
29 further amended by repealing subparagraph (1) and enacting the following in its place:

30 (1) The department's finding must be based on documentation from a licensed site
31 evaluator provided by the overboard discharge owner and approved by the
32 department. The licensed site evaluator shall provide the overboard discharge
33 owner with written certification, on a form provided by the department, that all
34 potential alternatives for replacement of the overboard discharge on land owned or
35 controlled by the overboard discharge owner, with or without a variance, have been
36 evaluated by the licensed site evaluator. In performing the evaluation under this
37 subparagraph:

38 (a) The licensed site evaluator shall determine whether practices to reduce the
39 quantity of raw wastewater can be applied that may allow a reduction in the
40 subsurface disposal system sizing requirements;

41 (b) The licensed site evaluator shall determine whether pretreatment
42 techniques or devices authorized for use by the rules adopted by the
43 Department of Health and Human Services governing subsurface wastewater

1 disposal can be installed to reduce the subsurface disposal system sizing
2 requirements;

3 (c) The licensed site evaluator shall determine whether proprietary systems
4 and devices authorized for use by the rules adopted by the Department of
5 Health and Human Services governing subsurface wastewater disposal can be
6 installed to reduce the subsurface disposal system sizing requirements;

7 (d) The licensed site evaluator shall determine whether the subsurface disposal
8 system area can be configured to fit within the property dimensions by
9 separating the waste streams, such as laundry wastewater and sanitary
10 wastewater, between 2 or more leach fields, drip irrigation sites or other
11 disposal areas;

12 (e) The licensed site evaluator shall evaluate the feasibility of siting a disposal
13 system using reduced setback distances as authorized for use by the rules
14 adopted by the Department of Health and Human Services governing
15 subsurface wastewater disposal;

16 (f) The licensed site evaluator shall determine whether adjoining or nearby
17 land may be used for wastewater disposal with the permission of the property
18 owner and shall document efforts to obtain an easement from the owner of
19 adjoining or nearby land when, in the licensed site evaluator's judgment, an
20 easement would allow for the installation of a replacement system; and

21 (g) The licensed site evaluator shall determine if connection to a public sewer
22 is feasible, including the use of an easement across another property or right-
23 of-way.

24 The department may require the overboard discharge owner to submit an additional
25 site evaluation by a different licensed site evaluator if the conditions of this
26 subparagraph have not been met.

27 **Sec. 17. 38 MRSA §414-A, sub-§1-B, ¶A**, as amended by PL 2009, c. 654, §5, is
28 further amended by amending subparagraph (3) to read:

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, then
31 the owner of the overboard discharge is not required to install the system until grant
32 funds are available or as provided in section 413, subsection 3 or 3-A. 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 is
35 not one of the systems identified as a priority for funding from available grant funds
36 by the department.

37 **Sec. 18. 38 MRSA §414-A, sub-§1-B, ¶G** is enacted to read:

38 G. Notwithstanding paragraph A, the department may request that a person seeking to
39 renew or transfer an overboard discharge license evaluate the feasibility of a spray
40 irrigation system licensed in accordance with section 413 as an alternative to the
41 overboard discharge system.

1 **SUMMARY**

2 This bill changes the laws governing pollution control in the following ways.

3 1. It requires a seller of residential real property to disclose in the property disclosure
4 statement provided to the purchaser the use of an overboard discharge system on the
5 property and a summary of the transfer requirements for such a system.

6 2. It changes the cost of a municipal or quasi-municipal pollution abatement
7 construction program or a pollution abatement construction program in an unorganized
8 township or plantation authorized by the county commissioners for which the
9 Commissioner of Environmental Protection may pay up to 90% of the expense from
10 \$100,000 to 250% of the median household income in the State.

11 3. It changes the income limits for individual pollution abatement projects serving
12 single-family dwellings, seasonal dwellings or commercial establishments for which the
13 commissioner may pay a percentage of the cost.

14 4. It changes the income limits used to determine the portion of an overboard discharge
15 replacement project that is eligible for grant funding.

16 5. It requires that in order to be eligible for grant funding, the owner of an overboard
17 discharge system and the overboard discharge removal contractor must certify that the
18 overboard discharge removal project has been completed, including proper abandonment
19 of the overboard discharge system, and the local plumbing inspector must certify that an
20 alternative disposal system has been installed.

21 6. It changes the definition of "significant action" in the laws governing overboard
22 discharges to mean a single construction project performed on a primary residence with an
23 overboard discharge when the total material and labor cost of the construction project
24 exceeds 100% of the median household income in the State, rather than \$50,000 as in
25 current law. It provides that a property transfer is limited to a monetary sale of the property
26 containing the overboard discharge.

27 7. It changes the income threshold for which the Department of Environmental
28 Protection must grant a waiver from the requirement to install an alternative system when
29 the ownership of a property containing an overboard discharge has been transferred from
30 less than \$25,000 to less than 100% of the median household income in the State.

31 8. It changes the income threshold for which a license holder for an overboard
32 discharge system may reduce the license fee from less than \$15,000 to less than 50% of the
33 median household income in the State and changes the fee reduction from \$125 to 50% of
34 the fee.

35 9. It specifies determinations that a licensed site evaluator must make in connection
36 with a required finding by the department that an overboard discharge meets the
37 requirements of best practicable treatment for purposes of licensing.

38 10. It provides that the department may request that a person seeking to renew or
39 transfer an overboard discharge license evaluate the feasibility of a spray irrigation system
40 as an alternative to the overboard discharge system.