

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

H.P. 255 - L.D. 401

An Act to Support Removal of Overboard Discharge Systems

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

Sec. 1. 38 MRSA §411, first ¶, as amended by PL 2001, c. 232, §9, is further amended to read:

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

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

GROSS PROFIT	COMMERCIAL ESTABLISHMENT
\$0 to \$50,000	50%
\$50,001 to \$100,000	25%

~~\$100,001 or more~~

0%

Sec. 2. 38 MRSA §411, sub-§1 is enacted to read:

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

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

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

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

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

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

Sec. 3. 38 MRSA §411, sub-§2 is enacted to read:

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

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

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

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

Sec. 4. 38 MRSA §411, sub-§3 is enacted to read:

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

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

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

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

Sec. 5. 38 MRSA §411, 2nd ¶, as amended by PL 1999, c. 375, §2, is repealed and the following enacted in its place:

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

return plus any depreciation or other noncash expense that was deducted to compute taxable or ordinary business income on that return. A rental property must be considered a commercial establishment or as contributing to annual income depending on how it is reported on the owner's federal income tax return from the previous year.

Sec. 6. 38 MRSA §411, as amended by PL 2017, c. 137, Pt. A, §8, is further amended by enacting after the 2nd paragraph a new paragraph to read:

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

Sec. 7. 38 MRSA §411-A, as amended by PL 2009, c. 654, §§1 and 2, is further amended by amending the section headnote to read:

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

Sec. 8. 38 MRSA §411-A, sub-§2-A, as amended by PL 2009, c. 654, §2, is further amended to read:

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

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

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

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

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

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

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

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

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

return plus any depreciation or other noncash expense that was deducted to compute taxable or ordinary business income on that return. A rental property must be considered a commercial establishment or as contributing to annual income depending on how it is reported on the overboard discharge owner's federal income tax return from the previous year. Median household income must be based on the most recent data from the State Economist or the United States Department of Commerce, Bureau of the Census, whichever is lower.

Sec. 9. 38 MRSA §411-A, sub-§4, as repealed and replaced by PL 2003, c. 246, §5, is amended to read:

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

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

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

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

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

Sec. 10. 38 MRSA §413, sub-§3-A, as amended by PL 2011, c. 121, §2, is further amended to read:

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

A. Application for transfer of an overboard discharge license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge

without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license as long as the parties to the transfer are jointly and severally liable for any violation thereof until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

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

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

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

(3) The determination concerning whether there is a technologically proven alternative to an overboard discharge must be based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection that the system constitutes a best practicable treatment under section 414-A, subsection 1-B. If an alternative to the overboard discharge is identified, the alternative system must be installed within 180 days of property transfer or significant action, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. ~~The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A.~~ On a property transfer, a commercial establishment may request an extension of the 180-day period based on information that an extension is necessary due to technical, economic or environmental considerations. The department may authorize an extension for a commercial establishment for as short an additional period as the department considers reasonable but in no case may an extension be authorized to continue beyond the expiration of the current waste discharge license or 2 years from the property transfer, whichever is later. Within 10 business days of receipt of a complete extension request, the department shall issue a written decision approving or denying the extension.

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

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

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

Sec. 11. 38 MRSA §414, sub-§3-A, as repealed and replaced by PL 2003, c. 246, §8, is amended to read:

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

Sec. 12. 38 MRSA §414-A, sub-§1-B, ¶A, as amended by PL 2009, c. 654, §5, is further amended by repealing subparagraph (1) and enacting the following in its place:

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

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

(b) The licensed site evaluator shall determine whether pretreatment techniques or devices authorized for use by the rules adopted by the Department of Health and Human Services governing subsurface wastewater disposal can be installed to reduce the subsurface disposal system sizing requirements;

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

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

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

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

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

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

Sec. 13. 38 MRSA §414-A, sub-§1-B, ¶A, as amended by PL 2009, c. 654, §5, is further amended by amending subparagraph (3) to read:

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

Sec. 14. 38 MRSA §414-A, sub-§1-B, ¶G is enacted to read:

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