

SENATE

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2009 MAR 17 AM 11:30

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STATE OF MAINE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON MARINE RESOURCES

TO: Senator, Bill Diamond, Senate Chair  
Representative, Emily Ann Cain, House Chair  
Members, Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Dennis Damon, Senate Chair   
Representative Leila Percy, House Chair   
Joint Standing Committee on Marine Resources

DATE: March 17, 2009

SUBJ: Committee on Marine Resources' Report Back on the Biennial Budget (LD 353)

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Our committee has completed its review of the proposals in LD 353 that pertain to the Department of Marine Resources. Although our discussions on those budget proposals were difficult, we were able to arrive at a unanimous set of recommendations on all items as outlined below.

**MAR-1 through MAR-25.** First, with respect to the appropriations and allocation recommendations contained in sections MAR-1 through MAR-25, the committee voted to unanimously approve all those recommendations. The one qualification to those proposals as presented relates to Reference # 3269 on page MAR-15, in which the committee agreed with the elimination of the Marine Resource Scientist II position but recommended that the head-count for that position remain in place without funding.

**Part K.** Secondly, the committee also unanimously endorsed Part K of LD 353, which proposes to rename the Division of Administrative Services program in the department to the Office of the Commissioner program.

**Part G.** Thirdly, the committee spent the majority of its time on budget discussions on Part G of LD 353, which proposes a 15% increase on license fees levied by the department. In the end, the committee voted unanimously to approve the license fee increases but only on the condition, as outlined below, that \$310,485 of the anticipated increase in General Fund revenues for FY 2009-

10 (\$392,483) and FY 2010-11 (\$448,414) expected to be generated by those increases be used to fund four new positions in the department's Public Health Division to preserve the viability of the State's critically important shellfish programs.

**Discussion of Part G recommendation.** At current staffing levels, the Department of Marine Resources is not maintaining compliance with the National Shellfish Sanitation Program (NSSP). Failure to maintain compliance with the NSSP will, by preventing the state from ensuring that shellfish harvested in the state meet the necessary public health standards, prevent the state from being able to ship its shellfish resources in interstate commerce. If we are restricted from shipping our shellfish in interstate commerce because we are unable to meet federal sanitation standards, it will directly threaten the continued viability of Maine's shellfish industry (estimated to generate \$50 to \$60 million annually) and tarnish our reputation for high quality seafood; a reputation that makes all of Maine's seafood products, including lobster, highly competitive in the global seafood market.

We also believe that apportioning 100% of the new revenue deriving from these license fee increases to the General Fund is inappropriate and inconsistent with longstanding practices with respect to how shellfish license fees are apportioned. As you know, revenue received from shellfish licenses are divided between the General Fund (35%) and the department's Shellfish Fund (65%). Part G, however, assesses the 15% increase on the total license fee and directs 100% of the newly realized license fee revenue to the General Fund. We strongly believe that the new license fee revenues should be divided between the General Fund and the Shellfish fund in the same proportion as are current shellfish license fee revenues.

For those reasons, our support for Part G of LD 353 is contingent upon using a portion of the revenues raised by the license fee increases proposed in Part G of LD 353 to fund the four positions in the department that we consider essential to preserving the shellfish industry by ensuring continued compliance with the NSSP.

The positions we recommend be created in the Public Health Division and funded by a portion of the Part G license fee increases are:

<u>Position</u>	<u>Estimated annual cost</u> <u>(by DMR)</u>
<b>One (1) Marine Resource Scientist III</b> to oversee the Growing Areas Classification Program	\$76,189
<b>One (1) Microbiologist II position</b> , to work at the Lamoine Laboratory	\$64,432
<b>Two (2) Marine Resource Scientist I</b> positions for the Boothbay and Lamoine Growing Area Classification Program	\$128,864
All Other (vehicles, mileage, phones, computers, etc)	<u>\$41,000</u>
Total estimated costs for four (4) positions	<u>\$310,485</u>

Prior to making this recommendation, the committee reviewed every program in the department and looked for any opportunities to fund these essential positions through efficiencies, other reductions or other funding mechanisms. We do not believe other options exist except through the mechanism we propose here, and failing to fund these positions is not an option for the department or for the State of Maine. To the extent that this recommendation creates an otherwise unfunded General Fund revenue gap in the biennial budget, we would be happy to meet with your committee to discuss the many other options we examined and the resource and economic implications of each of those items.

Thank you for the opportunity to provide you with our recommendations on these matters. We look forward to discussing these with you further at our work session, and would be happy to provide you with any additional information at that time.

Cc: Members, Joint Standing Committee on Marine Resources  
George LaPointe, Commissioner of Marine Resources  
David Etnier, Deputy Commissioner of Marine Resources  
Curtis Bentley, OPLA

SENATE

DENNIS S. DAMON, DISTRICT 28, CHAIR  
NANCY B. SULLIVAN, DISTRICT 4  
CHRISTOPHER W. RECTOR, DISTRICT 22

O.F.P.R.

2009 MAR 26 AM 10:47

CURTIS C. BENTLEY, LEGISLATIVE ANALYST  
VERONICA SNOW, COMMITTEE CLERK



HOUSE

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STATE OF MAINE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON MARINE RESOURCES

TO: Senator, Bill Diamond, Senate Chair  
Representative, Emily Ann Cain, House Chair  
Members, Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Dennis Damon, Senate Chair *DD*  
Representative Leila Percy, House Chair *LP*  
Joint Standing Committee on Marine Resources

DATE: March 25, 2009

SUBJ: Committee on Marine Resources' Report Back on the Biennial Budget (LD 353)

As you recall, in our March 17th report to you on our portion of the biennial budget we recommended that four positions be created within the Public Health Division to ensure Maine can come into compliance with federal shellfish standards and that those positions be funded by a portion of the Part G license fee increases. Your committee rejected that recommendation and requested that we find an alternative funding source for those positions.

Because of chronic staffing shortages within the Department of Marine Resources, Maine's \$50 to \$60 million dollar a year shellfish industry is at serious risk of being lost. This is entirely unacceptable and entirely preventable if we can work together to solve this pressing issue. As you know, the marine harvesters are already facing a 15% license fee increase in this budget. We support that increase but we cannot now go back to the shellfish industry and ask for even more. The need for these positions is not because of anything shellfish harvesters have done. These positions are needed to monitor pollution issues well outside the control of the shellfish harvesters but yet they continue to be saddled with increasing costs and disappointing cutbacks in department staffing.

Therefore, we recommend the creation of 2 new positions funded through the General Fund as outlined below. This is a "bare bones" option and we do not know if it will be enough to preserve the ability of our shellfish industry to ship shellfish in interstate commerce. We request that your committee provide General Fund funding for these two positions so that all of Maine shares the costs of keeping our waters clean and our shellfish resources safe for consumption. The 2 position we recommend be created in the Public Health Division and funded by a portion of the Part G license fee increases are:

<u>Position</u>	<u>FY 10</u>	<u>FY 11</u>
<b>One (1) Marine Resource Scientist III</b> to oversee the Growing Areas Classification Program	\$83,352	\$88,354
<b>One(1) Marine Resource Scientist I</b> position for the Growing Area Classification Program	\$71,746	\$75,875
All Other (vehicles, mileage, phones, computers, etc)	<u>\$22,125</u>	<u>\$22,125</u>
Total estimated costs for two(2) positions	\$177,223	\$186,354

**PLEASE NOTE:** If your committee is unable to find General Fund revenue to fund these positions, our committee would like the opportunity to try one more time to find a funding solution.

Thank you for the opportunity to provide you with our recommendation on this matter and look forward to your assistance in dealing with this issue.

Cc: Members, Joint Standing Committee on Marine Resources  
George LaPointe, Commissioner of Marine Resources  
David Etnier, Deputy Commissioner of Marine Resources

SENATE

DENNIS S. DAMON, DISTRICT 28, CHAIR  
NANCY B. SULLIVAN, DISTRICT 4  
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CURTIS C. BENTLEY, LEGISLATIVE ANALYST  
VERONICA SNOW, COMMITTEE CLERK



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STATE OF MAINE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON MARINE RESOURCES

TO: Senator, Bill Diamond, Senate Chair  
Representative, Emily Ann Cain, House Chair  
Members, Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Dennis Damon, Senate Chair *[Signature]*  
Representative Leila Percy, House Chair *[Signature]*  
Joint Standing Committee on Marine Resources

DATE: April 3, 2009

SUBJ: Committee on Marine Resources' Report Back on the Biennial Budget (LD 353)  
Regarding Water Quality Positions (*Vote: 10-2*)

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As you recall, in our March 17th report to you regarding the Department of Marine Resources' biennial budget we recommended that four positions be created within the Public Health Division to ensure Maine would come into compliance with federal shellfish standards and that those positions be funded by a portion of the Governor's Part G license fee increases. Your committee rejected that recommendation and requested that we find an alternative funding source for those positions. On March 24<sup>th</sup> we responded by reducing the number of those positions to two and requested that your committee help us fund these positions from the General Fund. Your committee also rejected that recommendation and requested that we try again. This is our third attempt to resolve this issue.

The importance of Maine's reputation for producing high quality seafood on the entire state's economy cannot be overstated. That reputation is what makes our seafood highly competitive in the global market place and why people specifically seek out Maine seafood. Our seafood industry has an enormous impact on Maine's economy with the shellfish sector alone generating between \$50 and \$60 million annually. However, because of chronic staffing shortages at the department, our shellfish program has been repeatedly found to be in noncompliance with federal shellfish water quality standards. The federal government has stated if we remain in noncompliance, it will have no choice but to move forward with measures that will prevent our shellfish from being shipped in interstate commerce. Without question this will harm Maine's reputation for safe, high quality shellfish and while unjustly, it will tarnish the reputation of our entire seafood industry. This will have a significant long-term negative impact on Maine's economy.

A representative of the FDA has stated that for a long term solution to our compliance issues the department would need 4 new positions within its Public Health Division. Therefore, we are proposing statutory language (attached) that will raise the revenue necessary to fund three (3) of those four (4) position and we strongly encourage your committee work with us and identify General Fund revenue to fund one (1) of the two Marine Resource Scientist I position listed below. Our proposed statutory language will raise revenue from those who contribute to water quality issues along our coast but do not shoulder any of the costs for monitoring water quality testing. We recommend the following positions be created within the Public Health Division:

<u>Position</u>	<u>FY 10</u>	<u>FY 11</u>
<b>One (1) Marine Resource Scientist III</b> to oversee the Growing Areas Classification Program	\$83,352	\$88,354
<b>One (1) Microbiologist II position</b> , to work at the Lamoine Laboratory	\$69,393	\$73,268
<b>Two (2) Marine Resource Scientist I</b> positions for the Boothbay and Lamoine Growing Area Classification Program	\$143,492	\$147,621
All Other (vehicles, mileage, phones, computers, etc)	<u>\$41,000</u>	<u>\$41,000</u>
Total estimated costs for four (4) positions	\$337,2237	\$350,243

We strongly encourage you to accept this proposal as it provides a just, long-term solution to providing adequate water quality testing for our shellfish industry. However, if you do not, our committee would like the opportunity to continue to work on finding another solution.

Thank you for continuing to work with our committee on this matter.

cc: Members, Joint Standing Committee on Marine Resources  
 Patrick Norton, Director, OPLA  
 George LaPointe, Commissioner of Marine Resources  
 David Etnier, Deputy Commissioner of Marine Resources

**Proposed MAR Committee amendment to LD 353**

**PART XX**

**Sec. X. 30-A MRSA §4211, sub-§5, ¶D,** as amended by PL 1999, c. 228, §3, is further amended to read:

D. A nonengineered subsurface wastewater disposal system fee not to exceed \$100 may be charged, and a surcharge of \$10 must be charged. The surcharge must be paid by the municipality to the Treasurer of State, who shall credit the amount to the Clean Shores Fund established under Title 38, section 424-B.

**Sec. X. 38 MRSA §353-B, sub-§2, ¶A,** as amended by PL 2007, c. 558, §3, is further amended to read:

A. The base, annualized license renewal service and maximum fees that may be assessed to categories of discharge activities are as follows.

Discharge Group		Base fee not to exceed	Maximum fee for individual in group	Annualized license renewal service fee	<u>Water quality improvement surcharge</u>
Publicly owned treatment facilities, 10,000 gallons per day or less	annual fee	\$67	none	\$150	
Publicly owned treatment facilities, more than 10,000 gallons per day to 0.1 million gallons per day	annual fee	\$219	none	\$150	
Publicly owned treatment facilities, more than 0.1 million gallons per day to 1.0 million gallons per day	annual fee	\$219	none	\$225	
Publicly owned treatment facilities, more than 1.0 million	annual fee	\$219	none	\$450	



gallons per day to 5.0 million gallons per day

Publicly owned treatment facilities, greater than 5 million gallons per day or with significant industrial waste	annual fee	\$770	none	\$650	
Major industrial facility, process wastewater (based on EPA list of major source discharges)	annual fee	\$1,850	none	\$650	
Other industrial facility, process wastewater	annual fee	\$630	none	\$300	
Food handling or packaging wastewater	annual fee	\$315	\$2,100	\$150	
Fish rearing facility over 0.1 million gallons per day	annual fee	\$288	\$1,753	\$300	
Fish rearing facility 0.1 million gallons per day or less	annual fee	\$288	\$400	none	
Marine aquaculture facility	annual fee*	\$288	---	none	
Noncontact cooling water	annual fee	\$90	\$7,000	\$60	
Industrial or commercial sources, miscellaneous or incidental non-process wastewater	annual fee	\$115	\$2,100	\$150	
Municipal combined sewer overflow	annual fee	\$115	\$1,400	\$150	<u>25% or \$350, whichever is less</u>
Sanitary wastewater, excluding overboard	annual fee	\$60	\$1,200	\$300	

discharge

Sanitary overboard discharge, commercial sources	annual fee	\$210	\$1,200	<u>\$75</u>
Sanitary overboard discharge, residential sources 600 gallons per day and less	annual fee	\$175	---	<u>\$75</u>
Sanitary overboard discharge, residential sources more than 600 gallons per day	annual fee	\$200	\$600	<u>\$75</u>
Sanitary overboard discharge, public sources	annual fee	\$210	\$500	<u>\$75</u>
Aquatic pesticide application	annual fee*	\$200	---	\$370
Snow dumps	annual fee*	\$125	---	\$150
Salt and sand storage pile	annual fee*	\$150	---	\$225
Log storage permit	annual fee*	\$200	---	\$150
General permit coverage for industrial storm water discharges (except construction)	annual fee*	\$300	---	
General permit coverage for marine aquaculture facility	annual fee*	\$125	---	none
General permit coverage (other)	annual fee*	\$100	---	\$30
Experimental discharge license	license fee*	\$500	---	\$225
New or amended mixing zone, in	flat fee*	\$4,000	---	

addition to other  
applicable fees

Formation of sanitary district	flat fee*	\$300	---
Transfer of license for residential or commercial sanitary wastewater	flat fee*	\$100	---

\*Discharge or license quantity fees do not apply to these categories.

When a license authorizes multiple discharge points in different categories in the same license, the total maximum fee for the license may not exceed the maximum fee for the most significant category plus 1/2 of the maximum fee for each of the other applicable categories.

A publicly owned treatment facility shall submit annually in conjunction with its annual license fee an amount that represents \$2 per every ratepayer served by the facility.

**Sec. X. 38 MRSA §353-B, sub-§7** is enacted to read:

**7. Revenues derived from surcharge.** Revenues derived from a water quality improvement surcharge must be paid to the Treasurer of State, who shall credit those revenues to the Clean Shores Fund established under section 424-B.

**Sec. X. 38 MRSA §410-I, sub-§3** is enacted to read:

**3. Annual water quality monitoring and remediation planning.** The department shall in coordination with the public health division of the Department of Marine Resources create an annual work plan outlining priorities for the monitoring and classification of shellfish growing areas. The work plan must also prioritize remediation projects that will improve water quality within shellfish growing areas. Staff from both agencies must be assigned in determining responsibilities of the work plan. The Department of Marine Resources shall solicit priorities from municipalities with approved municipal shellfish programs for work within shellfish growing areas in those communities. In order for municipal recommendations to be considered for inclusion in a work plan, the municipality must commit to assist in the identification and remediation of nonpoint source pollution, including failing subsurface wastewater disposal systems, in areas affecting the water quality of shellfish growing areas.

The agencies shall prepare a draft work plan by February 1st of each year and make it available for review at a regularly scheduled meeting of the Shellfish Advisory Council, set out under Title

12, section 6038.

The agencies shall begin implementing the work plan by March 1st annually.

**Sec. X. 38 MRSA §424-B** is enacted to read:

**§ 424-B. Clean Shores Fund**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Fund" means the Clean Shores Fund established in this section.

**2. Fund established.** The Clean Shores Fund is established as a nonlapsing fund under the jurisdiction and control of the department.

**3. Sources of the fund.** The fund consists of:

A. Dedicated revenue derived from surcharges in accordance with section 353-B;

B. Dedicated revenue derived from surcharges in accordance with Title 30-A, section 4211, subsection 5, paragraph D;

C. Sums that are appropriated by the Legislature or transferred to the fund from time to time by the Treasurer of State;

D. Capitalization grants and awards made to the State or an instrumentality of the State by the Federal Government for any of the purposes for which the fund has been established;

E. Interest earned from the investment of fund balances;

F. Private gifts, bequests and donations made to the State for any of the purposes for which the fund has been established; and

G. Other funds from any public or private source received for use for any of the purposes for which the fund has been established.

**4. Distribution.** Revenue credited to the fund must be distributed as:

A. A transfer to fund 3 positions within the Department of Marine Resources in the growing area classification program within that department's public health division; and

B. Grants to municipalities or other qualifying applicants for the sole purpose of identifying and abating pollution in shellfish growing areas.

**5. Grants.** The department shall establish by rule criteria for the grant application

process, eligibility for grants and the award and use of grants made under this section.

**6. Rules.** The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. X. Water quality standards for shellfish harvesting.** The Department of Environmental Protection shall consider bacteria and viral standards used by the National Shellfish Sanitation Program's model ordinance when issuing waste discharge licenses to ensure that shellfish harvesting is protected as a designated use under the Maine Revised Statutes, Title 38, section 465-B.

The Department of Environmental Protection shall review whether the imposition of year-round disinfection requirements at licensed wastewater discharge facilities would serve to improve the ability of the Department of Marine Resources to upgrade the classification of shellfish growing areas, where such facilities affect classification status. The Department of Marine Resources shall identify which facilities affect shellfish growing area classification. If the Department of Environmental Protection determines that year-round disinfection improves the ability to upgrade the classification of any shellfish growing areas, it shall change the license of that facility to require year-round disinfection sufficient to improve the classification.

## SUMMARY

This bill creates the Clean Shores Fund within the Department of Environmental Protection to provide a funding source for grants to municipalities and other entities to identify and abate pollution in shellfish growing areas and to pay the Personal Services cost for 3 employees within the Department of Marine Resources in the growing area classification program within the public health division. The dedicated revenue for the Clean Shores Fund is established through surcharges on the installation of new sewer systems and the municipal combined sewer overflow and overboard discharges and on sewer utilities based on the number of ratepayers.

The bill requires the Department of Environmental Protection to work in coordination with the Department of Marine Resources to establish an annual work plan to prioritize monitoring and classification of shellfish growing areas and remediation projects within those areas. The process of developing the work plan must include input from municipalities with approved municipal shellfish programs.

The bill also requires the Department of Environmental Protection to consider bacteria and viral standards when issuing waste discharge licenses to ensure that shellfish harvesting is protected as a designated use under the Maine Revised Statutes, Title 38, section 465-B. The department shall also review whether disinfection requirements at licensed wastewater discharge facilities would improve the ability of the Department of Marine Resources to upgrade classifications of shellfish growing areas and may change license requirements based on the outcome of the review.

O.F.P.R.

SENATE

2009 APR -6 PM 2:48

DENNIS S. DAMON, DISTRICT 25, CHAIR  
NANCY B. SULLIVAN, DISTRICT 4  
CHRISTOPHER W. RECTOR, DISTRICT 22



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STATE OF MAINE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON MARINE RESOURCES

TO: Senator, Bill Diamond, Senate Chair  
Representative, Emily Ann Cain, House Chair  
Members, Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Dennis Damon, Senate Chair *DD*  
Representative Leila Percy, House Chair *LP*  
Joint Standing Committee on Marine Resources

DATE: April 6, 2009

SUBJ: Addendum to the Committee on Marine Resources' Marine Resources Budget Report Back on the Biennial Budget (LD 353) to include the Minority report

As you recall, the Marine Resources Committee submitted its third set of recommendations to your committee on April 3, 2009. The committee voted 10-2 to approve those recommendations. This addendum adds the committee's minority report to our report back of April 3, 2009. The minority recommendations are:

1. Fund the following two new positions within the Public Health Division through existing funds from the Department of Economic and Community Development, the Department of Environmental Protection and the Department of Marine Resources.

<u>Position</u>	<u>FY 10</u>	<u>FY 11</u>
One (1) Marine Resource Scientist III to oversee the Growing Areas Classification Program	\$83,352	\$88,354
One (1) Marine Resource Scientist I position for the Boothbay Growing Area Classification Program	\$71,746	\$73,810
All Other (vehicles, mileage, phones, computers, etc)	<u>\$21,000</u>	<u>\$21,000</u>
Total estimated costs for four (4) positions	\$176,278	\$183,164

2. Remove the 15% license fee increase in the Governor's budget; and
3. Do not include the statutory language attached to April 3, 2009 majority report.

Thank you for your consideration of our report.

cc: Members, Marine Resources Committee