

# MAINE STATE LEGISLATURE

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DATE: 6/15/95

(Filing No. H-492 )

MAJORITY  
NATURAL RESOURCES

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 609, L.D. 819, Bill, "An Act to Require Notification to the Landowner When Land Is Being Considered for Placement in a Resource Protection Zone"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

**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, two thirds 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 §4352, sub-§10,** as enacted by PL 1993, c. 374, §4, is amended to read:

**10. Additional notice; limited areas.** Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.

A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment.

**COMMITTEE AMENDMENT**

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B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 14 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. ~~The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to these persons named in the certificate.~~ Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B.

Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with paragraph B must be brought in Superior Court within 30 days after the adoption of the amended ordinance or map. ~~The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph B, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed amendment to the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge.~~ Nothing in this subsection alters the right of a person to challenge the validity of any ordinance based on the failure of the municipality to provide notice as required in paragraph A and subsection 9.

**Sec. 2. 38 MRSA §438-A, sub-§1-B is enacted to read:**

1-B. Notification to landowners. In addition to notice required in Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to a landowner in that municipality whose property is being considered by the municipality or by the board for placement in a resource protection zone. Notification to the landowner must be made by first class mail to the last known address of the person to whom property tax on each parcel is assessed.

A. If the municipality is considering placement of the property in a resource protection zone, the municipality must send notice not less than 14 days before the planning board first considers adoption or amendment of a zoning ordinance or map that places the landowner's property in the resource protection zone.

**COMMITTEE AMENDMENT**

2 B. If the board is considering placement of the property in  
4 a resource protection zone, the municipality must send  
6 notice not later than 30 days before the close of the public  
comment period prior to formal consideration of placement of  
the property in a resource protection zone by the board.

8 Any action challenging the validity of an ordinance based on the  
10 municipality's failure to comply with this subsection must be  
12 brought in Superior Court within 30 days after adoption or  
14 amendment of the ordinance or map. Nothing in this subsection  
alters the right of a person to challenge the validity of any  
ordinance or map based on the failure of the municipality to  
provide notice as required in Title 30-A, section 4352,  
subsection 9.'

16 Further amend the bill by inserting at the end before the  
18 statement of fact the following:

20 **FISCAL NOTE**

22 This bill requires certain municipalities that have  
24 properties that are being placed in a resource protection zone to  
26 notify the property owners. The additional costs of this state  
28 mandate may be significant. Pursuant to the Mandate Preamble,  
30 the two-thirds vote of all members elected to each House exempts  
the State from the constitutional requirement to fund 90% of the  
additional local costs.

32 The Board of Environmental Protection will incur some minor  
34 additional costs to adopt certain rules pertaining to written  
notification to a landowner whose property is being considered  
for placement in a resource protection zone. These costs can be  
absorbed within the board's existing budgeted resources.'

36 **STATEMENT OF FACT**

38 The amendment replaces the bill. It specifies that the  
40 municipality is the notifying agent, whether the shoreland zoning  
42 ordinance is proposed by the municipality or by the Board of  
44 Environmental Protection. It also removes the requirement that  
46 notice be given by certified mail, and requires that notice be  
sent by first class mail, which may be certified mail with return  
48 receipt requested at the option of the municipality. The  
amendment specifies the timing of the notice and adds a municipal  
mandate preamble.

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2 It requires that any challenge to the validity of an  
3 ordinance or map based on failure to give individual notice to  
4 landowners be brought in Superior Court within 30 days after the  
5 ordinance or map is adopted or amended.

6 The amendment also changes the law requiring a municipality  
7 to provide individual notice to landowners regarding changes in  
8 zoning ordinances relating to industrial, commercial and retail  
9 uses. It strikes language requiring municipal officers to record  
10 information regarding notices they sent and providing that the  
11 list of such information is prima facie evidence that the notice  
12 was actually sent. It strikes language requiring that a  
13 landowner challenging the validity of an ordinance based on the  
14 municipality's failure to provide individual notice must  
15 demonstrate to the court that the landowner did not receive the  
16 required notice, had no independent knowledge of the ordinance,  
17 and was materially prejudiced by the lack of notice or knowledge.