

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 636

H. P. 559

House of Representatives, February 4, 1981

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Masterton of Cape Elizabeth.

Cosponsor: Representative Benoit of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Create a Land Use Violation Hearing Examiner.

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

30 MRSA c. 239-A is enacted to read:

CHAPTER 239-A

LAND USE VIOLATION HEARING EXAMINER

§ 4965. Purpose; findings

The Legislature finds that the violation of land use ordinances and statutes administered and enforced by municipalities defeats the purposes of state enabling statutes. Municipal officials charged with enforcement of these laws often find that property owners refuse to comply voluntarily with official requests to cease violations. The Legislature recognizes that the legal system presently available to municipal officials seeking to prosecute violations is cumbersome and costly and often does not process a violation quickly enough to have a sufficient deterrent effect against future violations. Therefore, the Legislature finds that to enable code enforcement at the local level to be more effective, an inexpensive, informal, simple and speedy intermediate hearing process is needed as an alternative to prosecuting a violation in District or Superior Court. The Legislature also finds that such an intermediate hearing process would serve to

relieve the burdensome caseload with which the courts presently are faced, freeing the court to deal with more serious matters.

§ 4965-A. Creation of a land use violation hearing examiner

1. Position established. There is hereby created the position of land use violation hearing examiner.

2. Appointment; term. The Governor shall appoint hearing examiners who shall serve for 2-year terms, unless removed sooner by the Governor for cause after notice and hearing. Only attorneys experienced in land use law may be considered for appointment as a hearing examiner. The Governor shall select examiners from among those attorneys who submit their names for consideration. The Governor shall appoint at least one hearing examiner for each court district and shall appoint at least 2 hearing examiners who are willing to travel to any court district to hear a case. An examiner need not be a resident of the court district in which he is hearing a case. A list of hearing examiners and their addresses shall be filed by the Governor with both the clerks of the District Courts and the clerk of each municipality and plantation. The list shall indicate which examiners are available in a particular district and which are available to travel to any district.

3. Oath. Hearing examiners shall swear an oath before a dedimus justice prior to assuming the duties of office.

4. Conflict of interest. A hearing examiner shall be bound by the same rules on conflict of interest as members of the judiciary.

§ 4965-B. Bringing a claim

1. Jurisdiction. A hearing examiner may hear and decide prosecutions brought under land use ordinances, regulations and statutes which include, but are not limited to, violations of: The Maine State Plumbing Code; section 4956 and any local subdivision ordinances and regulations; chapter 215, subchapter 1; Title 12, chapter 424 and local shoreland zoning ordinances, including those which were state imposed; local zoning ordinances; local building codes, local site review ordinances; and similar land use laws.

2. Alternative remedy; removal of case. The procedures of this chapter shall be alternatives and not exclusive. A municipality, plantation or person prosecuting a violation may use existing procedures and remedies available by statute or at common law. Every action begun under this chapter shall be decided under this chapter and may not be removed to District or Superior Court.

3. Standing. A municipal or plantation official acting on behalf of the municipality or plantation or a person, corporation or other legal entity with standing may file a complaint with a hearing examiner.

4. Location of hearing. A land use violation complaint brought before a hearing examiner under this chapter shall be heard by an examiner at a hearing held in a public building in the municipality or plantation in which the alleged violation occurred.

5. Complaint; form. The person filing a complaint with the hearing examiner shall prepare his own typed or hand-printed form which shall contain all of the following information:

- A. The plaintiff's name and address;**
- B. The defendant's name and address;**
- C. The statute, regulations or ordinance being violated. If it is an ordinance, he shall attach a copy attested by a municipal clerk; if it is subdivision regulations, he shall attach a copy attested by a clerk of the board which adopted them; if it is the Maine State Plumbing Code, he shall attach a copy attested by the authorized agent of the Department of Human Services;**
- D. The name and address of the person bringing the complaint on behalf of the municipality or plantation, if applicable;**
- E. The date of the offense;**
- F. The location of the offense;**
- G. A brief statement of the violation forming the basis of the complaint;**
- H. The signature of the person filing the complaint;**
- I. The date the complaint was filed; and**
- J. The signature and seal of the notary or justice of the peace before whom the complaint was sworn before being filed, when the complaint is being presented and filed by a person who is not an attorney.**

6. Hearing date; notice. On receiving a complaint, the hearing examiner shall set a date for a hearing, not more than 30 days from the receipt of the complaint. Within 7 days of receipt of the complaint, the examiner shall notify, in writing, both the plaintiff and the defendant and shall send the defendant a copy of the plaintiff's complaint. Notices to the plaintiff and defendant shall be by certified mail, return receipt requested.

7. Continuances. Complaints brought before the land use hearing examiner may only be continued once, unless a case of extreme necessity and undue hardship is shown by the person requesting the continuance. The hearing examiner has sole discretion to determine whether extreme necessity and undue hardship exist.

8. Filing fee. On filing a complaint, the complaining party shall pay a fee of \$75 to the hearing examiner, plus the cost of sending notices and a copy of the complaint. The complaining party shall also pay the travel costs of the hearing examiner, to be calculated using the current state reimbursement rate. Each time a case is continued, the continuing party shall pay \$25 to the hearing examiner.

§ 4965-C. Representation by an attorney

A party to an action before the hearing examiner may be represented by an

attorney. Any party, including a plantation, municipality or other corporation or partnership, may be represented by a person other than an attorney.

§ 4965-D. Evidence

At the hearing, the Maine Rules of Evidence do not apply. The hearing examiner may admit any material and proper evidence and may assist in developing relevant facts. The examiner may establish reasonable procedures governing the conduct of the hearing.

The examiner may not consider any evidence submitted outside of the official hearing without the consent of both parties. The examiner may enter the property involved in the violation, if the examiner finds that an on-site inspection is necessary before rendering a decision. Before the examiner visits the scene of the violation, he shall notify both parties to provide them an opportunity to accompany him.

§ 4965-E. Record of hearing

A party wishing to have the hearing recorded shall arrange and pay for such recording.

§ 4965-F. Judgment

1. **Costs.** If the plaintiff prevails, the examiner shall award costs in addition to the judgment, exclusive of any attorney fees.

2. **Failure to appear.** If either party fails to appear for the hearing, the examiner may render judgment for the other party, including a dismissal. The examiner may continue the case if the failure to appear is for good reason.

3. **Decision; relief granted.** The hearing examiner shall render a decision within 30 days of the conclusion of the hearing. The examiner shall provide both parties with a copy of the decision, either personally or by certified mail, return receipt requested. The decision shall contain:

- A. The name of the prevailing party;
- B. The name of the losing party;
- C. The amount of judgment and costs awarded plus any other relief granted;
- D. A statement of the specific findings of fact and conclusions of law supporting the examiner's decision;
- E. The date of the decision;
- F. The time within which an appeal must be filed; and
- G. The signature of the examiner.

The examiner may grant any relief, both legal and equitable, which he finds appropriate within the limits of the law under which the violation is being

prosecuted and within the limits of the enforcement or penalty provision of the statute, ordinance or regulation which authorized the prosecution.

4. **Filing with clerk.** The examiner shall file any judgment with the clerk of the District Court of the division in which the municipality is located. The judgment shall be retained by the clerk for 3 years and then may be destroyed.

5. **Retention of evidence.** The hearing examiner shall retain any evidence submitted during the hearing until the appeal period has expired, at which time the evidence shall be returned to the appropriate party. If an appeal is filed, the examiner shall forward the evidence to the Superior Court hearing the appeal, upon receiving notification from the party bringing the appeal.

6. **Appeal.** Any decision of the hearing examiner is final within 10 days of the date the decision was received by both parties, unless an aggrieved party has filed an appeal with the Superior Court within that time period.

7. **Contempt.** Unless appealed within the time period stated in subsection 6, a decision of the hearing examiner is binding on the parties to the action. Failure to comply with the decision constitutes contempt. The Superior Court may enforce a final order of the hearing examiner against a person in contempt. If the court finds that a party is in contempt, it may order that party to pay the prosecuting party the costs of enforcing the order of the examiner, including attorneys' fees.

STATEMENT OF FACT

The purpose of this bill is to provide an informal, inexpensive legal system in which to prosecute violations of various land use laws. It is modeled after the Small Claims Court and Unemployment Compensation hearing procedures. The bill is designed to create a system in which individuals, local governments and corporations may participate without being represented by an attorney. The fees provided in the bill are intended to make the process financially self-sustaining. The hearing examiner system is an alternative to prosecuting the case as a request for injunctive relief in Superior Court or as a civil violation in District Court, and is not intended as a substitute for these other legal avenues. However, once prosecution has been filed under this system, the case may not be transferred to District or Superior Court.