

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 2069

6  
7 S.P. 761

In Senate, February 8, 1984

8 Reported by Senator Trafton for the Commission on Local Land Use  
9 Violation pursuant to Public Law 1983, chapter 458, section 19.

10 Reference to the Committee on Judiciary is suggested and ordered printed  
under Joint Rule 18.

JOY J. O'BRIEN, Secretary of the Senate

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FOUR  
16

17 AN ACT Relating to Enforcement of Land  
18 Use Laws.  
19

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

22 Sec. 1. 4 MRSA §152, as amended by PL 1983, cc.  
23 29, §1 and 447 and as repealed and replaced by PL  
24 1983, c. 583, §1, is repealed and the following en-  
25 acted in its place:

26 §152. Jurisdiction

27 The District Court shall have jurisdiction in the  
28 following matters:

29 1. Jurisdiction exercised by trial justices and  
30 municipal courts. The civil jurisdiction exercised  
31 by all trial justices and municipal courts in the  
32 State on September 16, 1961;

1           2. Civil actions with damages claimed which do  
2 not exceed \$30,000. Original jurisdiction, concu-  
3 rent with that of the Superior Court, of all civil  
4 actions when no equitable relief is demanded and the  
5 damages claimed do not exceed \$30,000;

6           3. Civil actions to enforce liens. Original ju-  
7 risdiction, concurrent with the Superior Court, of  
8 all civil actions to enforce liens under Title 10,  
9 chapter 603, and the court shall determine the amount  
10 pursuant to Title 10, section 3258;

11           4. Exclusive jurisdiction. Original jurisdic-  
12 tion, not concurrent with that of the Superior Court,  
13 of mental health commitment hearings under Title 34,  
14 chapter 229, mental retardation certification hear-  
15 ings under Title 34, chapter 229 and small claims ac-  
16 tions under Title 14, chapter 738; and

17           5. Other actions. Original jurisdiction, con-  
18 current with that of the Superior Court, of the fol-  
19 lowing types of actions, and in these actions the  
20 District Court may grant equitable relief:

21           A. Actions for divorce, annulment of marriage or  
22 judicial separation and of proceedings under Ti-  
23 tle 19;

24           B. Actions to quiet title to real estate under  
25 Title 14, sections 6651 to 6658;

26           C. Actions to quiet title to real estate under  
27 Title 36, section 946;

28           D. Actions for breach of implied warranty and  
29 covenant of habitability under Title 14, section  
30 6021;

31           E. Actions to foreclose mortgages under Title  
32 14, chapter 713, subchapter VI; and

33           F. Actions for restitution under Title 5, sec-  
34 tion 213.

35           6. Land use laws. Original jurisdiction, con-  
36 current with that of the Superior Court, to grant eq-  
37 uitable relief in proceedings involving alleged vio-

1 lations of a local land use ordinance or a state land  
2 use statute, which shall include, but shall not be  
3 limited to the following: The laws pertaining to the  
4 Maine Land Use Regulation Commission, Title 12, chap-  
5 ter 206-A; minimum lot size law, Title 12, sections  
6 4807 to 4807-G; shoreland zoning ordinances adopted  
7 pursuant to Title 12, sections 4811 to 4817; the Al-  
8 teration of Rivers, Streams and Brooks law, Title 12,  
9 sections 7776-7780; the plumbing and subsurface  
10 wastewater disposal rules adopted by the Department  
11 of Human Services pursuant to Title 22, section 42;  
12 local ordinances adopted pursuant to Title 30, sec-  
13 tion 1917; local building codes adopted pursuant to  
14 Title 30, section 2151; Title 30, chapter 215, sub-  
15 chapter I, automobile junkyards and subchapter X,  
16 regulation and inspection of plumbing; Title 30, sec-  
17 tion 4359, malfunctioning domestic sewage disposal  
18 units; Title 30, section 4956, the subdivision law  
19 and local subdivision ordinances or regulations  
20 adopted pursuant thereto; local zoning ordinances  
21 adopted pursuant to Title 30, section 4962; the Great  
22 Ponds Act, Title 38, sections 386 to 396; the Altera-  
23 tion of Coastal Wetlands Act, Title 38, sections 471  
24 to 476 and 478; and the Site Location of Development  
25 Act, Title 38, sections 481 to 485 and 488 to 490.

26 Actions for divorce, annulment or separation may  
27 be remanded, upon agreement of the parties, from the  
28 Superior Court to the District Court in accordance  
29 with rules promulgated by the Supreme Judicial Court.  
30 An action so remanded shall remain in the District  
31 Court, which shall have exclusive jurisdiction there-  
32 after, subject to the rights of appeal to the Superi-  
33 or Court as to matters of law.

34 The District Court shall possess the criminal ju-  
35 risdiction exercised by all trial justices and munic-  
36 ipal courts in the State on September 16, 1961, ex-  
37 cept as provided in Title 29, section 2302.

38 The District Court shall also possess, concurrent  
39 with the Superior Court, original jurisdiction to re-  
40 ceive pleas of guilty in criminal cases in which the  
41 maximum term of imprisonment to which the defendant  
42 may be sentenced upon conviction of that crime is one  
43 year or more in which the defendant has in writing  
44 waived his right to indictment by grand jury and his

1 right to appearance and trial in the Superior Court  
2 and has indicated his intention to enter a plea of  
3 guilty to the charges pending against him. When exer-  
4 cising such jurisdiction, the District Court shall  
5 possess all of the powers of the Superior Court. That  
6 jurisdiction shall be exercised in the manner which  
7 the Supreme Judicial Court shall by rule provide. Any  
8 person sentenced under this section shall be entitled  
9 to the rights provided by Title 15, chapter 306.

10       Sec. 2. 12 MRSA §4811-A, sub-§§5 and 6 are en-  
11 acted to read:

12       5. Structure. "Structure" means anything built  
13 for the support, shelter or enclosure of persons, an-  
14 imals, goods or property of any kind, exclusive of  
15 fences. All structures shall meet the set-back re-  
16 quirements from normal high watermark of any water  
17 body, except structures which require direct access  
18 to the water as an operational necessity, such as  
19 piers, docks and retaining walls.

20       6. Timber harvesting. "Timber harvesting" means  
21 the cutting and removal of trees from their growing  
22 site and the attendant operation of cutting and  
23 skidding machinery but not the construction or crea-  
24 tion of roads. Timber harvesting does not include  
25 the clearing of land for approved construction.  
26 Within the strip extending 50 feet inland from the  
27 normal high watermark, a cleared opening or openings  
28 not greater than 30 feet in width for every 100 feet  
29 of shoreline may be created, provided that when open-  
30 ings are combined, there shall be no single opening  
31 along the shore wider than 60 feet, and there shall  
32 be no more than one 60-foot opening along 200 feet of  
33 shoreline.

34       Sec. 3. 12 MRSA §4812-C is enacted to read:

35       §4812-C. Certification, permits and records

36       1. Appointment. In every municipality, the mu-  
37 nicipal officers shall annually appoint or reappoint  
38 a code enforcement officer, whose job may include be-  
39 ing a local plumbing inspector or a building inspec-  
40 tor, who may or may not be a resident of the municipi-  
41 ality for which he is appointed, who may serve at

1 the pleasure of the municipal officers and who may  
2 continue in that capacity after the term has expired  
3 or until replaced. Every municipality shall, within  
4 30 days of that appointment, notify the Division of  
5 Local-State Coordination within the Department of En-  
6 vironmental Protection of the appointment, address  
7 and telephone number of the appointee.

8 2. Certification. No person may serve as code  
9 enforcement officer, unless he is currently certified  
10 by the coordination division. The division shall es-  
11 tablish certification standards and certification  
12 shall be for a period of 3 years, unless sooner re-  
13 voked or suspended by the Administrative Court upon  
14 complaint of the division on grounds of fraud, negli-  
15 gence, misconduct or incompetence in the performance  
16 of duties. All code enforcement officers shall be  
17 certified within 3 years of the enactment of this  
18 provision. Upon written authorization by the municipi-  
19 pal officers, a code enforcement officer may serve  
20 civil process on persons whom he determines to be in  
21 violation of ordinances adopted pursuant to this  
22 chapter, and if authorized by the municipal officers  
23 may represent the municipality in District Court, in  
24 the prosecution of violations of ordinances adopted  
25 pursuant to this chapter.

26 3. Powers and duties. The duties of the code  
27 enforcement officer shall include the following:

28 A. Enforce the local shoreland zoning ordinance,  
29 in accordance with the procedures contained  
30 therein;

31 B. Collect a fee for every shoreland permit is-  
32 sued by the code enforcement officer. The mini-  
33 imum fee shall be \$20 per permit. The fee shall  
34 be remitted to the municipal treasurer. If the  
35 code enforcement officer works less than 40 hours  
36 per week as a code enforcement officer, the mu-  
37 nicipal treasurer shall forward 25% of the mini-  
38 imum fee to the coordination division. If he  
39 works 40 hours or more per week as a code en-  
40 forcement officer, the municipal treasurer shall  
41 forward 10% of the fee to the coordination divi-  
42 sion. Where permits are issued by the planning  
43 board or other agency, the planning board or oth-

1 er agency shall collect a minimum fee of \$20 per  
2 permit, and remit the fee to the municipal trea-  
3 surer, who shall forward 25% or 10% of the mini-  
4 imum fee to the coordination division, depending  
5 upon whether or not the code enforcement officer  
6 works less than 40 hours a week as a code en-  
7 forcement officer, or more than 40 hours, respec-  
8 tively. A municipality may charge a fee in ex-  
9 cess of the minimum fee specified by this chap-  
10 ter.

11 C. Keep a complete record of all essential  
12 transactions of the office;

13 D. Forward to the coordination division a copy  
14 of all permits issued and variances granted in  
15 the shoreland districts;

16 E. Report to the coordination division any vio-  
17 lation of any state or local land use law of  
18 which he has knowledge and the action taken by  
19 the municipality; and

20 F. Investigate complaints of alleged violation.

21 Sec. 4. 12 MRSA §4814, first ¶, as repealed and  
22 replaced by PL 1973, c. 564, §6, is amended to read:

23 The Board of Environmental Protection and the  
24 Maine Land Use Regulation Commission, municipalities  
25 and all state agencies shall mutually cooperate to  
26 accomplish the objectives of this chapter. To that  
27 end, the board and the commission shall consult with  
28 the governing bodies of municipalities and to whate-  
29 ver extent necessary with other state agencies to se-  
30 ecure voluntary uniformity of regulations, so far as  
31 practicable, and shall extend all possible assistance  
32 therefor. The ~~State Planning Office~~ Division of  
33 Local-State Coordination in the Department of Envi-  
34 ronmental Protection shall be responsible for coordi-  
35 nating the efforts and responsibilities of the Board  
36 of Environmental Protection and the Maine Land Use  
37 Regulation Commission acting pursuant to this chap-  
38 ter.

39 Sec. 5. 12 MRSA §4815, as enacted by PL 1983, c.  
40 458, §5, is amended to read:

1        §4815. Enforcement

2            Any person who orders or conducts any activity in  
3 violation of a municipal ordinance adopted under this  
4 chapter shall be ~~subject to a civil forfeiture of not~~  
5 ~~less than \$100 nor more than \$1,000 for each offense~~  
6 penalized in accordance with the provisions of Title  
7 30, section 4966.

8            The Attorney General, the district attorney or  
9 the municipal officers may enforce ordinances adopted  
10 under this chapter. ~~The court may award municipali-~~  
11 ~~ties reasonable attorney fees for actions under this~~  
12 ~~section, and ordinances may provide that civil for-~~  
13 ~~feitures shall inure to the municipality.~~

14            No public utility, water district, sanitary dis-  
15 trict or any utility company of any kind may install  
16 services to any new structure located in a shoreland  
17 area, as defined by section 4811, unless written au-  
18 thorization attesting to the validity and currency of  
19 all local permits required under this chapter has  
20 been issued by the appropriate municipal officials.

21            **Sec. 6. 12 MRSA §7779**, as enacted by PL 1979, c.  
22 420, §1, is repealed and the following enacted in its  
23 place:

24        §7779. Penalties

25            1. Civil penalties. Any person who violates any  
26 provision of this subchapter shall be subject to the  
27 following.

28            A. The minimum penalty for starting construction  
29 or undertaking an activity without the required  
30 license, permit or approval shall be \$250 and the  
31 maximum penalty shall be \$10,000 for that viola-  
32 tion.

33            B. The minimum penalty for violations other than  
34 those specified in paragraph A, shall be \$250 and  
35 the maximum penalty shall be \$10,000 for each vi-  
36 olation.

37            C. The violator shall be ordered to correct or  
38 abate the violation or violations in all cases  
39 except where the abatement or correction:



1           (1) Results in a threat or hazard to public  
2           safety;

3           (2) Results in substantial environmental  
4           damage; or

5           (3) Results in substantial injustice.

6           D. If the State is the prevailing party, it  
7           shall be awarded reasonable attorney fees, expert  
8           witness fees and costs. If the defendant is the  
9           prevailing party, it may be awarded reasonable  
10           attorney fees, expert witness fees and cost.

11           E. In setting a penalty, the court shall consid-  
12           er, but shall not be limited to, the following:

13           (1) Prior violations on the same premises  
14           or by the same party;

15           (2) The degree of environmental damage that  
16           cannot be abated or corrected;

17           (3) The extent to which the violation con-  
18           tinued following an order of the department  
19           to correct it; and

20           (4) The importance of setting a fine sub-  
21           stantial enough to deter others from similar  
22           violations.

23           F. The maximum penalty may exceed \$10,000, but  
24           shall not exceed \$25,000 for that violation, when  
25           it can be shown that there has been a previous  
26           conviction of the same party within the past 5  
27           years.

28           Sec. 7. 22 MRSA §42, sub-§3, as amended by PL  
29           1981, c. 376, §§1-3, are further amended to read:

30           3. Plumbing and subsurface sewage disposal. The  
31           department shall adopt rules ~~and regulations~~ relating  
32           to plumbing and subsurface sewage disposal systems  
33           and the installation and inspection thereof consist-  
34           ent with Title 30, sections 3221 to 3225 and Title  
35           32, sections 3301 to 3507; and shall hold hearings on  
36           the first Tuesday of February of each year for the

1 purpose of considering changes in the rules and  
2 ~~regulations~~ pertaining to plumbing and subsurface  
3 sewage disposal systems and the installation and in-  
4 spection thereof. These rules may regulate the loca-  
5 tion of water supply wells to provide minimum separa-  
6 tion distances from subsurface sewage disposal sys-  
7 tems. The department may require a deed covenant or  
8 deed restriction when determined necessary.

9 Any person who violates the rules and ~~regulations~~  
10 adopted under this subsection, or who violates a mu-  
11 nicipal ordinance adopted pursuant to Title 30, sec-  
12 tion 3221, or uses a subsurface sewage disposal sys-  
13 tem not in compliance with rules applicable at the  
14 time of installation or modification ~~commits a civil~~  
15 ~~violation for which a forfeiture of not less than~~  
16 ~~\$100 nor more than \$1,000 may be adjudged shall be~~  
17 penalized in accordance with the provisions of Title  
18 30, section 4966. The department or a municipality  
19 may seek to enjoin violations of the rules and  
20 ~~regulations~~ or municipal ordinances. In the prosecu-  
21 tion of a violation by a municipality, the court may  
22 award reasonable attorney's fees to a municipality if  
23 that municipality is the prevailing party. The rules  
24 and ~~regulations~~ adopted by the department shall pro-  
25 vide with respect to the repair and replacement of  
26 any part or parts of existing subsurface sewage dis-  
27 posal systems serving family dwellings inhabited by  
28 no more than 2 individual families that the local  
29 plumbing inspector may waive the site evaluation re-  
30 quirements, provided that the waiver will not result  
31 in violations of other regulations or ordinances  
32 adopted pursuant to the Plumbing Code. He may not  
33 waive the site evaluation requirement for disposal  
34 systems within 100 feet of any pond or river subject  
35 to shoreland zoning laws.

36 Sec. 8. 30 MRS.A §2458, sub-§1, as amended by PL  
37 1971, c. 593, §22, is further amended to read:

38 1. Penalties. Whoever violates any provision of  
39 this subchapter or the rules and ~~regulation~~ of the  
40 Department of Transportation promulgated under sec-  
41 tion 2459 shall be ~~guilty of a misdemeanor and shall~~  
42 ~~be punished by a fine of not less than \$100 nor more~~  
43 ~~than \$500, or by imprisonment for not more than 90~~  
44 ~~days, or by both,~~ penalized in accordance with the

1 provisions of section 4966, and it shall be the duty  
2 of the State Police as well as local and county offi-  
3 cers of the law to enforce this subchapter. Municipal  
4 officers or their designee may also enforce this sub-  
5 chapter. Each day that the violation continues shall  
6 constitute a separate offense.

7       Sec. 9. 30 MRSA §3222, sub-§2, as amended by PL  
8 1979, c. 45, is further amended to read:

9       2. Certification. No person may hold the office  
10 of plumbing inspector unless he is currently certi-  
11 fied as qualified by the Commissioner of Human Ser-  
12 vices. Certification of plumbing inspectors shall be  
13 in accordance with the standards set by the commis-  
14 sioner, and shall be for a period of 3 years, unless  
15 sooner revoked or suspended by the Administrative  
16 Court upon complaint by the commissioner on grounds  
17 of fraud, negligence, misconduct or incompetence in  
18 the performance of his duties. The commissioner may  
19 grant temporary certification for a period not to ex-  
20 ceed 6 months. The department shall publish semiannu-  
21 ally a list of certified plumbing inspectors. After  
22 being certified by the Department of Human Services  
23 as being familiar with court procedures, a plumbing  
24 inspector may serve civil process on persons who vio-  
25 late the plumbing and subsurface waste water disposal  
26 rules of the department, and he may be authorized by  
27 the municipal officers to appear in District Court  
28 for the municipality.

29       Sec. 10. 30 MRSA §3223, sub-§1-A, as enacted by  
30 PL 1981, c. 376, §4, is amended to read:

31       1-A. Penalties. Any person who installs or or-  
32 ders the installation of any subsurface sewage dis-  
33 posal system without the permit required under this  
34 section ~~commits a civil violation for which a forfei-~~  
35 ~~ture of not less than \$100 nor more than \$1,000 may~~  
36 ~~be adjudged shall be penalized in accordance with~~  
37 ~~section 4966.~~

38       Sec. 11. 30 MRSA §3226 is enacted to read:

39 §3226. Right of entry on inspection

1           The department and any duly designated represen-  
2 tative or employee thereof, including the local  
3 plumbing inspector, may enter any property at reason-  
4 able hours, enter any building with the consent of  
5 the property owner, occupant or agent, inspect the  
6 property or structure for compliance with the rules  
7 in force pursuant thereto or investigate alleged con-  
8 ditions which do not comply with the rules. Upon the  
9 request of the occupant of the premises, the depart-  
10 ment's representative or the local plumbing inspector  
11 shall present proper credentials prior to entering  
12 the premises.

13           Should entry be denied, entry shall not be at-  
14 tempted until after obtaining an order of the court.

15           Sec. 12. 30 MRSA §4956, sub-§4, as amended by PL  
16 1981, c. 195, is further amended to read:

17           4. Enforcement. No person, firm, corporation or  
18 other legal entity may sell, lease, develop, build  
19 upon or convey for consideration, offer or agree to  
20 sell, lease, develop, build upon or convey for con-  
21 sideration any land in a subdivision which has not  
22 been approved by the municipal reviewing authority of  
23 the municipality where the subdivision is located and  
24 recorded in the proper registry of deeds, nor shall  
25 such person, firm, corporation or other legal entity  
26 sell or convey any land in such approved subdivision  
27 unless at least one permanent marker is set at one  
28 lot corner of the lot sold or conveyed. The term  
29 "permanent marker" includes but is not limited to the  
30 following: A granite monument, a concrete monument,  
31 an iron pin or a drill hole in ledge. No subdivision  
32 plat or plan shall be recorded by any register of  
33 deeds which has not been approved as required. Ap-  
34 proval for the purpose of recording shall appear in  
35 writing on the plat or plan. No public utility, water  
36 district, sanitary district or any utility company of  
37 any kind shall install services to any lot in a sub-  
38 division for which a plan has not been approved.

39           Any person, firm, corporation or other legal entity  
40 who sells, leases, develops, builds upon, or conveys  
41 for consideration, offers or agrees to sell, lease,  
42 develop, build upon or convey for consideration any  
43 land in a subdivision which has not been approved as

1 required by this section shall be punished by a fine  
2 of not more than \$1,000 for each such occurrence pe-  
3 nalized in accordance with section 4966. The Attor-  
4 ney General, the municipality, the planning board of  
5 any municipality or the appropriate municipal offi-  
6 cers may institute proceedings to enjoin the viola-  
7 tions of this section and, if a violation is found by  
8 the court, the municipality, municipal planning board  
9 or the appropriate municipal officers may be allowed  
10 attorney fees.

11 All subdivision plats and plans required by this sec-  
12 tion shall contain the name and address of the person  
13 under whose responsibility the subdivision plat or  
14 plan was prepared.

15 Sec. 13. 30 MRSA §4966 is enacted to read:

16 §4966. Enforcement of land use laws and ordinances

17 The following provisions shall apply to enforce-  
18 ment of land use laws and ordinances which are admin-  
19 istered and enforced primarily at the local level,  
20 including shoreland zoning ordinances adopted pursu-  
21 ant to Title 12, sections 4811 to 4817, including  
22 those which were state-imposed; the plumbing and sub-  
23 surface waste water disposal rules adopted by the De-  
24 partment of Human Services pursuant to Title 22, sec-  
25 tion 42, including the land area of the State which  
26 is subject to the jurisdiction of the Maine Land Use  
27 Regulation Commission; local land use ordinances en-  
28 acted pursuant to section 1917; local building codes  
29 adopted pursuant to section 2151; chapter 215, sub-  
30 chapter I, Automobile Junkyards and subchapter x,  
31 Regulation and Inspection of Plumbing; section 4956,  
32 the subdivision law and local ordinances or regula-  
33 tions adopted pursuant thereto; and local zoning or-  
34 dinances adopted pursuant to section 4962.

35 1. Enforcement. A municipal official, such as a  
36 municipal code enforcement officer, local plumbing  
37 inspector or building inspector, who is designated by  
38 ordinance or by the municipal officers with the re-  
39 sponsibility to enforce a particular law or ordinance  
40 set forth in this section, shall have the following  
41 powers and duties:

1           A. To enter any property at reasonable hours and  
2           to enter any building with the consent of the  
3           property owner, occupant or agent, to inspect the  
4           property or structure for compliance with the  
5           laws or ordinances set forth in this section;

6           B. To issue a summons to any person who violates  
7           a law or ordinance which the official is empow-  
8           ered to enforce; and

9           C. When specifically authorized by the municipal  
10          officers to represent the municipality in Dis-  
11          trict Court in the prosecution of alleged viola-  
12          tions of ordinances or laws which the official is  
13          empowered to enforce.

14          2. Liability for violations. Any person, in-  
15          cluding, but not limited to, a landowner, his agent  
16          or a contractor who violates a provision of the laws  
17          or ordinances set forth in this section shall be lia-  
18          ble for the penalties set forth in subsection 3.

19          3. Civil penalties. The following provisions  
20          shall apply to violations of the laws and ordinances  
21          set forth in this section, and all monetary penalties  
22          shall be civil penalties.

23                A. The minimum penalty for starting construction  
24                or undertaking a land use activity without a re-  
25                quired permit shall be \$250, and the maximum pen-  
26                alty shall be \$2,500.

27                B. The minimum penalty for a specific violation  
28                shall be \$250, and the maximum penalty shall be  
29                \$2,500.

30                C. The violator shall be ordered to correct or  
31                abate the violations in all cases, except where  
32                the abatement or correction:

33                        (1) Results in a threat or hazard to public  
34                        health or safety;

35                        (2) Results in substantial environmental  
36                        damage; or

37                        (3) Results in a substantial injustice.

1 D. If the municipality is the prevailing party,  
2 it shall be awarded reasonable attorney fees, ex-  
3 pert witness fees and costs. If the defendant is  
4 the prevailing party, he may be awarded reason-  
5 able attorney fees, expert witness fees and  
6 costs.

7 E. In setting a penalty, the court shall consid-  
8 er, but shall not be limited to, the following:

9 (1) Prior violations on the same premises  
10 or by the same party;

11 (2) The degree of environmental damage that  
12 cannot be abated or corrected;

13 (3) The extent to which the violation con-  
14 tinued following a municipal order to stop;  
15 and

16 (4) The extent to which the municipality  
17 contributed to the violation by providing  
18 the violator with incorrect information or  
19 by failing to take timely action.

20 F. The maximum penalty may exceed \$2,500, but  
21 shall not exceed \$25,000, when it can be shown  
22 that there has been a previous conviction of the  
23 same party within the past 2 years of the same  
24 law or ordinance.

25 All proceedings arising under the provisions of lo-  
26 cally administered laws and ordinances shall be  
27 brought in the name and to the use of the municipali-  
28 ty, and those fines shall be paid to the municipali-  
29 ty.

30 Sec. 14. 38 MRSA §342, sub-§7 is enacted to  
31 read:

32 7. Local-State Coordination Division. The com-  
33 missioner shall create the Division of Local-State  
34 Coordination within the Bureau of Land Quality Con-  
35 trol. In addition to a division chief the staff  
36 shall include one representative in each field office  
37 of the department. The division's responsibilities  
38 shall include: To provide technical assistance

1 needed to enforce these ordinances and related land  
2 use laws to the extent practicable; to train and cer-  
3 tify municipal code enforcement officers responsible  
4 for enforcing shoreland zoning; to monitor permits  
5 issued under these ordinances for compliance determi-  
6 nation; to coordinate enforcement efforts among state  
7 agencies and municipalities; to review shoreland zon-  
8 ing ordinances for conformity with the state guide-  
9 lines; to collect, record and then turn over to the  
10 State Treasurer all fees submitted; to develop public  
11 education programs to increase public awareness and  
12 understanding of shoreland zoning requirements; and  
13 to report to the joint standing committee of the Leg-  
14 islature having jurisdiction over energy and natural  
15 resources once a year, during January.

16 The board shall adopt regulations, in accordance with  
17 section 343, providing for qualification, certifica-  
18 tion and recertification of persons to serve as mu-  
19 nicipal code enforcement officers. The department  
20 shall investigate or cause to be investigated all  
21 cases or complaints of noncompliance with or viola-  
22 tions of this section and the regulations adopted  
23 pursuant thereto.

24 The department may serve civil process and appear in  
25 court in accordance with the enforcement provisions  
26 of this law and the rules of the District Court per-  
27 taining to land use violations.

28       Sec. 15. 38 MRSAs §347, sub-§7 is enacted to  
29 read:

30       7. Right of entry. Employees of the Department  
31 of Environmental Protection shall have the authority  
32 to enter any property at reasonable hours, and to en-  
33 ter any building with the consent of the property  
34 owner, occupant or agent, to inspect the property or  
35 structure for compliance with the laws administered  
36 by the department.

37       Sec. 16. 38 MRSAs §348, sub-§2, as enacted by PL  
38 1977, c. 300, §9, is amended to read:

39       2. Restoration. The court may shall order resto-  
40 ration of any area affected by any action or inaction  
41 found to be in violation of any provision of law ad-



1 ministered by the Department of Environmental Protec-  
2 tion or of any order, rule, regulation, license, per-  
3 mit, approval or decision of the Board of Environmen-  
4 tal Protection or decree of the court, as the case  
5 may be, to its condition prior to the violation or as  
6 near thereto as may be possible-, except where the  
7 restoration:

8 A. Results in a threat or hazard to public  
9 health or safety;

10 B. Results in substantial environmental damage;  
11 or

12 C. Results in a substantial injustice.

13 **Sec. 17. 38 MRSA §349, as amended by PL 1983, c.**  
14 **566, §9, is further amended to read:**

15 §349. Penalties

16 1. Criminal penalties. Notwithstanding Title  
17 17-A, section 4-A and except as provided in subsec-  
18 tion 4, subsection 5 or section 1306-A, any person  
19 who violates any provision of the laws administered  
20 by the department or the terms or conditions of any  
21 order, regulation, license, permit, approval or deci-  
22 sion of the board shall be subject to a fine, payable  
23 to the State, of not more than \$25,000 for each day  
24 of such violation.

25 2. Civil penalties. Any person who violates any  
26 provision of the laws administered by the department  
27 or terms or conditions of any order, regulation, li-  
28 cense, permit, approval or decision of the board  
29 shall be subject to a civil penalty, payable to the  
30 State, of not less than \$250 nor more than \$10,000  
31 for each day of such that violation or, if the viola-  
32 tion relates to hazardous waste, of not more than  
33 \$25,000 for each day of the violation.

34 3. Falsification and tampering. Notwithstanding  
35 Title 17-A, section 4-A, any person who knowingly  
36 makes any false statement, representation or certifi-  
37 cation in any application, record, report, plan or  
38 other document filed or required to be maintained by  
39 any provision of law administered by the department,

1 or by any rule, regulation, license, permit, approval  
2 or decision of the board, or who tampers with or ren-  
3 ders inaccurate any monitoring devices or method re-  
4 quired by any provision of law, or any rule, regula-  
5 tion, license, permit, approval or decision of the  
6 board shall, upon conviction, be subject to a fine of  
7 not more than \$10,000, or by imprisonment for not  
8 more than 6 months, or both.

9 4. Violations. Any person who violates any of  
10 the following provisions ~~shall be~~ is guilty of a  
11 Class E crime for each day of ~~such~~ that violation:

12 A. Section 419; (high phosphorous detergent);

13 ~~B- Section 391 or regulations under section 394~~  
14 ~~{Great Ponds};~~

15 C. Section 423; (Discharge from watercraft);

16 ~~D- Section 471; {Alteration of wetlands and sand~~  
17 ~~dunes};~~

18 ~~E- Section 1306; {Waste facility};~~

19 G. Title 12, section 4757; (Regulations for  
20 state-held wetlands); and

21 H. Title 12, chapter 421 and orders thereunder;  
22 (Wetlands zoning); and.

23 ~~I- Title 12, chapter 423-A and regulations~~  
24 ~~thereunder {Minimum lot size};~~

25 Sec. 18. 38 M RSA §349, sub-§5 is enacted to  
26 read:

27 5. Land use penalties. The following provisions  
28 shall apply to violations of the Great Ponds Act,  
29 sections 386 to 396; the Alteration of Coastal Wet-  
30 lands Act, sections 471 to 476; the Solid Waste Laws,  
31 section 1306; the Site Location of Development Act,  
32 sections 481 to 485 and 488 to 490; and the Minimum  
33 Lot Size Law, Title 12, section 4807 to 4807-G:

34 A. The minimum penalty for starting construction  
35 or undertaking an activity without the required

1 license, permit or approval shall be \$250 and the  
2 maximum penalty shall be \$10,000.

3 B. The minimum penalty for violations other than  
4 those specified in paragraph A shall be \$250 and  
5 the maximum penalty shall be \$10,000 for each vi-  
6 olation.

7 C. The violator shall be ordered to correct or  
8 abate the violations in all cases except where  
9 the abatement or correction:

10 (1) Results in a threat or hazard to public  
11 safety;

12 (2) Results in substantial environmental  
13 damage; or

14 (3) Results in a substantial injustice.

15 D. If the State is the prevailing party, it  
16 shall be awarded reasonable attorney fees, expert  
17 witness fees and costs. If the defendant is the  
18 prevailing party, he may be awarded reasonable  
19 attorney fees, expert witness fees and costs.

20 E. In setting a penalty, the court shall consid-  
21 er, but shall not be limited to, the following:

22 (1) Prior violations on the same premises  
23 or by the same party;

24 (2) The degree of environmental damage that  
25 cannot be abated or corrected;

26 (3) The extent to which the violation con-  
27 tinued following an order of the department  
28 or board to correct it; and

29 (4) The importance of setting a fine sub-  
30 stantial enough to deter others from similar  
31 violations.

32 F. The maximum penalty may exceed \$10,000 for  
33 each day of that violation, but shall not exceed  
34 \$25,000 for each day of the violation, when it  
35 can be shown that there has been a previous con-

1 viction of the same party within the past 5 years  
2 of the same law.

3 **Sec. 19. Appropriation.** The following funds are  
4 appropriated from the General Fund to carry out the  
5 purposes of this Act:

6 1983-84

7 ENVIRONMENTAL PROTECTION,  
8 DEPARTMENT OF

9	Positions	(6)
10	Personnel	\$129,200
11	All Other	<u>27,000</u>
12	Total	\$156,200

13 ATTORNEY GENERAL,  
14 DEPARTMENT OF

15	Positions	(3)
16	Personnel	\$58,500
17	All Other	<u>11,700</u>
18	Total	\$70,200

19 **STATEMENT OF FACT**

20 Public Law 1983, chapter 458 created the Commis-  
21 sion on Local Land Use Violations. This commission  
22 consists of 11 members, 2 of whom were appointed by  
23 the President of the Senate, 2 of whom were appointed  
24 by the Speaker of the House of Representatives and 7  
25 of whom were appointed by the Governor. The commis-  
26 sion was charged with the task of reviewing the use  
27 of the state's court system to resolve suspected vio-  
28 lations of state and local land use laws and ordi-  
29 nances. The rivers law directed the commission to  
30 examine the extent to which local ordinances are not  
31 being enforced, to determine the causes for any prob-  
32 lems uncovered and to evaluate alternatives to the  
33 existing court system for achieving just, swift and  
34 inexpensive resolution of suspected land use viola-  
35 tions.

1           The commission found that violations of state and  
2 local laws are a serious problem, and that there are  
3 many obstacles preventing effective enforcement of  
4 those laws. This bill is the result of the commis-  
5 sion's work to solve some of the problems confronting  
6 enforcement officials. Its major features are the  
7 expansion of the jurisdiction of District Court to  
8 provide equity relief in cases involving land use vi-  
9 olations, the establishment of uniform penalty provi-  
10 sions for land use violations and strengthening the  
11 state's role in the enforcement of shoreland zoning  
12 ordinances and providing for public education of  
13 shoreland zoning requirements by creating a Division  
14 of Local-State Coordination within the Department of  
15 Environmental Protection.

16           Section 1 expands the jurisdiction of District  
17 Court to grant equity relief for violations of state  
18 or local land use laws and ordinances.

19           Section 2 amends the mandatory shoreland zoning  
20 law by requiring that all structures except fences  
21 and those which require direct access to the water as  
22 an operational necessity, meet the shoreline set-back  
23 requirements of municipal ordinances. Currently,  
24 many ordinances require that only the principal  
25 structure meet the set-back requirements. It also  
26 clarifies timber harvesting standards contained in  
27 local ordinances by preventing an interpretation that  
28 allows clear-cut openings larger than 60 feet at the  
29 water's edge where an individual owns more than 200  
30 feet of shoreline.

31           Section 3 requires that all municipalities ap-  
32 point a code enforcement officer who would be certi-  
33 fied by the Department of Environmental Protection.  
34 It also establishes a fee system for shoreland zoning  
35 permits that funds in part a Division of Local-State  
36 Coordination in the Department of Environmental Pro-  
37 tection. In order to encourage the use of either  
38 full-time code enforcement officers or full-time re-  
39 gional code enforcement officers, the municipality  
40 with such a code enforcement officer is required to  
41 return a smaller percentage of the shoreland zoning  
42 fee to the State than the municipality with a part-  
43 time code enforcement officer. This section also  
44 prescribes the powers and duties of municipal code

1 enforcement officers.

2 Section 4 shifts the responsibility for adminis-  
3 tering the shoreland zoning law from the State Plan-  
4 ning Office to the Division of Local-State Coordina-  
5 tion in the Department of Environmental Protection.

6 Section 5 amends the penalty provision of the  
7 mandatory shoreland zoning law by referencing the  
8 uniform penalty provision set forth in section 13.

9 Section 6 amends the penalty provision of the al-  
10 teration of rivers, streams and brooks law to make it  
11 consistent with the penalty provision for the land  
12 use laws administered by the Department of Environ-  
13 mental Protection set forth in section 17

14 Section 7 amends the penalty provision contained  
15 in the Revised Statutes, Title 22, section 42, relat-  
16 ing to plumbing and subsurface waste water disposal,  
17 by referencing the uniform penalty provision set  
18 forth in section 13.

19 Section 8 amends the penalty provision of the law  
20 pertaining to automobile graveyards and junkyards by  
21 referencing the uniform penalty provision set forth  
22 in section 13.

23 Section 9 amends the law pertaining to certifica-  
24 tion of plumbing inspectors by authorizing the plumb-  
25 ing inspector to serve civil process on violators and  
26 appear in District Court on behalf of the municipali-  
27 ty.

28 Section 10 amends the penalty provision in the  
29 law pertaining to improper installation of a subsur-  
30 face sewage disposal system by referencing the uni-  
31 form penalty provision contained in section 13.

32 Section 11 authorizes the Department of Human  
33 Services and local plumbing inspectors to enter pri-  
34 vate property in the performance of their duties.

35 Section 12 amends the penalty provision in the  
36 subdivision law by referencing the uniform penalty  
37 provision contained in section 13.

1 Section 13 establishes a uniform penalty provision  
2 for land use laws administered at the local level.  
3 It provides that local enforcement officials may enter  
4 private property in the performance of their duties,  
5 to issue summonses and to represent the municipality  
6 in court. It also sets minimum and maximum  
7 fines for violations and establishes criteria for  
8 setting them. It also specifies that fines shall be  
9 paid to the municipality.

10 Section 14 establishes a Local-State Coordination  
11 Division within the Department of Environmental Protection.  
12 This division would be directed to provide  
13 legal and technical assistance to local code enforcement  
14 officers, to train and certify code enforcement  
15 officers, to monitor permits, to review shoreland  
16 zoning ordinances and permits and to develop a public  
17 education program.

18 Section 15 authorizes employees of the Department  
19 of Environmental Protection to enter private property  
20 in the performance of their duties.

21 Section 16 amends the enforcement statutes of the  
22 Department of Environmental Protection by requiring  
23 restoration of an area affected by a violation.

24 Sections 17 and 18 amend the enforcement statutes  
25 of the Department of Environmental Protection by establishing  
26 a uniform penalty provision, similar to  
27 the uniform penalty provision set forth in section 13  
28 for municipal enforcement actions, for violations of  
29 the major land use laws administered by the department.  
30

31 Section 19 appropriates funds for the creation of  
32 6 positions within the Division of State-Local Coordination  
33 in the Department of Environmental Protection. These 6  
34 positions consist of a director, 4 field officers and a  
35 clerk typist. This section also creates 3 positions in  
36 the Department of Attorney General, as follows: One to  
37 work full time on shoreland zoning; one to work full  
38 time on enforcement with the Land Quality Bureau at the  
39 Department of En-

1 vironmental Protection; and one to work full time on  
2 enforcement of rules promulgated by the Division of  
3 Health Engineering in the Department of Human Ser-  
4 vices.

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