

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 761, L.D. 2069)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE  
5

6 Legislative Document

No. 2418

8 S.P.. 900

In Senate, April 3, 1984

9 Reported by Minority Report from the Committee on Energy and  
10 Natural Resources and printed under Joint Rule 2.

11 JOY J. O'BRIEN, Secretary of the Senate  
12

13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-FOUR  
17

18 AN ACT Relating to Enforcement of Land  
19 Use Laws.  
20

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

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24 29, §1 and 447 and as repealed and replaced by PL  
25 1983, c. 583, §1, is repealed and the following en-  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

27 §152. Jurisdiction

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

30 1. Jurisdiction exercised by trial justices and  
31 municipal courts. The civil jurisdiction exercised  
32 by all trial justices and municipal courts in the  
33 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 regulation  
2 or a state land use statute or regulation, which  
3 shall include, but shall not be limited to the fol-  
4 lowing: The laws pertaining to the Maine Land Use  
5 Regulation Commission, Title 12, chapter 206-A; mini-  
6 imum lot size law, Title 12, sections 4807 to 4807-G;  
7 shoreland zoning ordinances adopted pursuant to Title  
8 12, sections 4811 to 4817; the Alteration of Rivers,  
9 Streams and Brooks law, Title 12, sections 7776-7780;  
10 the plumbing and subsurface wastewater disposal rules  
11 adopted by the Department of Human Services pursuant  
12 to Title 22, section 42; laws pertaining to public  
13 water supplies, Title 22, sections 2642, 2647 and  
14 2648; local ordinances pursuant to Title 22, section  
15 2642; local ordinances adopted pursuant to Title 30,  
16 section 1917; local building codes adopted pursuant  
17 to Title 30, sections 1917 and 2151; Title 30, chap-  
18 ter 215, subchapter I, automobile junkyards and sub-  
19 chapter X, regulation and inspection of plumbing; Ti-  
20 tle 30, section 4359, malfunctioning domestic sewage  
21 disposal units; Title 30, section 4956, the subdivi-  
22 sion law, and local subdivision ordinances adopted  
23 pursuant to Title 30, section 1917 and subdivision  
24 regulations adopted pursuant to Title 30, section  
25 4956; local zoning ordinances adopted pursuant to Ti-  
26 tle 30, section 1917 and in accordance with Title 30,  
27 section 4962; the Great Ponds Act, Title 38, sections  
28 386 to 396; the Alteration of Coastal Wetlands Act,  
29 Title 38, sections 471 to 476 and 478; and the Site  
30 Location of Development Act, Title 38, sections 481  
31 to 485 and 488 to 490.

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

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

1        The District Court shall also possess, concurrent  
2 with the Superior Court, original jurisdiction to re-  
3 ceive pleas of guilty in criminal cases in which the  
4 maximum term of imprisonment to which the defendant  
5 may be sentenced upon conviction of that crime is one  
6 year or more in which the defendant has in writing  
7 waived his right to indictment by grand jury and his  
8 right to appearance and trial in the Superior Court  
9 and has indicated his intention to enter a plea of  
10 guilty to the charges pending against him. When exer-  
11 cising such jurisdiction, the District Court shall  
12 possess all of the powers of the Superior Court. That  
13 jurisdiction shall be exercised in the manner which  
14 the Supreme Judicial Court shall by rule provide. Any  
15 person sentenced under this section shall be entitled  
16 to the rights provided by Title 15, chapter 306.

17        Sec. 2. 4 MRSa §807, first ¶, as amended by PL  
18 1983, cc. 126 and 420, is repealed and the following  
19 enacted in its place:

20        Unless duly admitted to the bar of this State, no  
21 person may practice law or any branch thereof, or  
22 hold himself out to practice law or any branch there-  
23 of, within the State or before any court therein, or  
24 demand or receive any remuneration for those services  
25 rendered in this State. Whoever, not being duly ad-  
26 mitted to the bar of this State, shall practice law  
27 or any branch thereof, or hold himself out to prac-  
28 tice law or any branch thereof, within the State or  
29 before any court therein, or demand or receive any  
30 remuneration for those services rendered in this  
31 State, shall be guilty of a Class E crime. This sec-  
32 tion shall not be construed to apply to practice be-  
33 fore any Federal Court by any person duly admitted to  
34 practice therein; nor to a person pleading or manag-  
35 ing his own cause in court; nor to the officer or em-  
36 ployee of a corporation, partnership, sole  
37 proprietorship or governmental entity, who is not an  
38 attorney, but is appearing for that organization in  
39 an action cognizable as a small claim under Title 14,  
40 chapter 738; nor to a person who is not an attorney,  
41 but is representing a municipality under Title 12,  
42 section 4812-C, subsection 2; Title 30, section 3222,  
43 subsection 2; or Title 30, section 4966, subsection  
44 1; nor to a person who is not an attorney, but is  
45 representing the Department of Environmental Protec-

1 tion under Title 38, section 342, subsection 7. In  
2 all proceedings, the fact, as shown by the records of  
3 the Board of Overseers of the Bar, that that person  
4 is not recorded as a member of the bar shall be prima  
5 facie evidence that he is not a member of the bar li-  
6 icensed to practice law in the State.

7       Sec. 3. 12 MRSA §4811-A, sub-§§5 and 6 are en-  
8 acted to read:

9       5. Structure. "Structure" means anything built  
10 for the support, shelter or enclosure of persons, an-  
11 imals, goods or property of any kind, exclusive of  
12 fences. Notwithstanding any provisions in a local  
13 ordinance to the contrary, all structures shall meet  
14 the set-back requirements from normal high watermark  
15 of any water body, except structures which require  
16 direct access to the water as an operational neces-  
17 sity, such as piers, docks and retaining walls.

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

32       Sec. 4. 12 MRSA §4812-C is enacted to read:

33 §4812-C. Code enforcement officers

34       1. Appointment. In every municipality, the mu-  
35 nicipal officers shall annually by July 1st appoint  
36 or reappoint a code enforcement officer, whose job  
37 may include being a local plumbing inspector or a  
38 building inspector and who may or may not be a resi-  
39 dent of the municipality for which he is appointed.  
40 The municipal officers may appoint the planning board  
41 to act as the code enforcement officer. The munici-

1 pal officers may remove a code enforcement officer  
2 for cause, after notice and hearing. This removal  
3 provision shall only apply to code enforcement offi-  
4 cers who have completed a reasonable period of proba-  
5 tion as established by the municipality pursuant to  
6 Title 30, section 2256. If not reappointed by a mu-  
7 nicipality, a code enforcement officer may continue  
8 to serve until a successor has been appointed and  
9 sworn.

10 2. Certification; authorization by municipal of-  
11 icers. No person may serve as a code enforcement  
12 officer who is authorized by the municipal officers  
13 to represent the municipality in District Court un-  
14 less he is currently certified under Title 30, sec-  
15 tion 3222, subsection 2, as being familiar with court  
16 procedures.

17 Upon written authorization by the municipal officers,  
18 a certified code enforcement officer may serve civil  
19 process on persons whom he determines to be in viola-  
20 tion of ordinances adopted pursuant to this chapter  
21 and, if authorized by the municipal officers, may  
22 represent the municipality in District Court in the  
23 prosecution of violations of ordinances adopted pur-  
24 suant to this chapter.

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

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

30 B. Collect a fee, if authorized by a municipali-  
31 ty, for every shoreland permit issued by the code  
32 enforcement officer. The amount of any such fee  
33 shall be set by the municipality. The fee shall  
34 be remitted to the municipality;

35 C. Keep a complete record of all essential  
36 transactions of the office, including applica-  
37 tions submitted, permits granted or denied, vari-  
38 ances granted or denied, revocation actions, rev-  
39 ocation of permits, appeals, court actions, vio-  
40 lations investigated, violations found and fees  
41 collected; and

1           D. Investigate complaints of alleged violations  
2           of local land use laws.

3           Sec. 5. 12 MRSA §4815, as enacted by PL 1983,  
4 cc. 306, §2, and 458, § 5, is repealed and the fol-  
5 lowing enacted in its place:

6           §4815. Enforcement

7           Any person who orders or conducts any activity in  
8           violation of a municipal ordinance adopted under this  
9           chapter shall be penalized in accordance with Title  
10          30, section 4966.

11          The Attorney General, the district attorney or  
12          municipal officers or their designee may enforce or-  
13          dinances adopted under this chapter.

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 \$100 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 \$100 and  
35          the maximum penalty shall be \$10,000 for each vi-  
36          olation.



1 C. The violator may be ordered to correct or  
2 abate the violation or violations. Where the  
3 court finds that the violation was wilful, the  
4 violator shall be ordered to correct or abate the  
5 violation unless the abatement or correction  
6 will:

7 (1) Result in a threat or hazard to public  
8 safety;

9 (2) Result in substantial environmental  
10 damage; or

11 (3) Result in substantial injustice.

12 D. The maximum penalty may exceed \$10,000, but  
13 shall not exceed \$25,000 for that violation, when  
14 it can be shown that there has been a previous  
15 conviction under this subchapter of the same party  
16 within the past 5 years.

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

19 (1) Prior violations by the same party;

20 (2) The degree of environmental damage that  
21 cannot be abated or corrected;

22 (3) The extent to which the violation con-  
23 tinued following an order of the department  
24 to correct it; and

25 (4) The importance of setting a fine sub-  
26 stantial enough to deter others from similar  
27 violations.

28 Sec. 7. 12 MRSA §7901, sub-§6 is enacted to  
29 read:

30 6. Violation of chapter 713, subchapter VII. A  
31 violation of chapter 713, subchapter VII, is a civil  
32 penalty, as provided in section 7779.

33 Sec. 8. 22 MRSA §42, sub-§3, as amended by PL  
34 1981, c. 376, §§1-3, are further amended to read:

1           3. Plumbing and subsurface sewage disposal. The  
2 department shall adopt rules ~~and regulations~~ relating  
3 to plumbing and subsurface sewage disposal systems  
4 and the installation and inspection thereof consist-  
5 ent with Title 30, sections 3221 to 3225 and Title  
6 32, sections 3301 to 3507; and shall hold hearings on  
7 the first Tuesday of February of each year for the  
8 purpose of considering changes in the rules ~~and~~  
9 ~~regulations~~ pertaining to plumbing and subsurface  
10 sewage disposal systems and the installation and in-  
11 spection thereof. These rules may regulate the loca-  
12 tion of water supply wells to provide minimum separa-  
13 tion distances from subsurface sewage disposal sys-  
14 tems. The department may require a deed covenant or  
15 deed restriction when determined necessary.

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

43           Sec. 9. 30 MRSA §2458, sub-§1, as amended by PL  
44 1971, c. 593, §22, is further amended to read:

1           1. Penalties. Whoever violates any provision of  
2 this subchapter or the rules and regulation of the  
3 Department of Transportation promulgated under section  
4 2459 shall be guilty of a misdemeanor and shall  
5 be punished by a fine of not less than \$100 nor more  
6 than \$500, or by imprisonment for not more than 90  
7 days, or by both, penalized in accordance with the  
8 provisions of section 4966, and it shall be the duty  
9 of the State Police as well as local and county officers  
10 of the law to enforce this subchapter. Municipal  
11 officers or their designee may also enforce this sub-  
12 chapter. Each day that the violation continues shall  
13 constitute a separate offense.

14           Sec. 10. 30 MRSA §3222, sub-§2, as amended by PL  
15 1979, c. 45, is further amended to read:

16           2. Certification. No person may hold the office  
17 of plumbing inspector unless he is currently certified  
18 as qualified by the Commissioner of Human Services.  
19 Certification of plumbing inspectors shall be  
20 in accordance with the standards set by the commissioner,  
21 and shall be for a period of 3 years, unless  
22 sooner revoked or suspended by the Administrative  
23 Court upon complaint by the commissioner on grounds  
24 of fraud, negligence, misconduct or incompetence in  
25 the performance of his duties. The commissioner may  
26 grant temporary certification for a period not to exceed  
27 6 months. The department shall publish semiannually  
28 a list of certified plumbing inspectors.

29 The commissioner shall establish certification stan-  
30 dards and a program to certify plumbing inspectors;  
31 code enforcement officers, as set forth in section  
32 4966 and in Title 12, section 4812-C; and Department  
33 of Environmental Protection employees, set forth in  
34 Title 38, section 342, subsection 7, as being famil-  
35 iar with court procedures. Certification shall be for  
36 a period of 3 years unless sooner revoked or sus-  
37 pended by the Administrative Court upon complaint by  
38 the commissioner on grounds of fraud, negligence,  
39 misconduct or incompetence in the performance of his  
40 duties. After being certified by the commissioner  
41 under this paragraph, a plumbing inspector may serve  
42 civil process on persons who violate the plumbing and  
43 subsurface waste water disposal rules of the depart-  
44 ment, and he may be authorized by the municipal offi-

1 cers to represent the municipality in District Court  
2 pursuant to section 4966.

3 Sec. 11. 30 MRSA §3223, sub-§1-A, as enacted by  
4 PL 1981, c. 376, §4, is amended to read:

5 1-A. Penalties. Any person who installs or or-  
6 ders the installation of any subsurface sewage dis-  
7 posal system without the permit required under this  
8 section ~~commits a civil violation for which a forfei-~~  
9 ~~ture of not less than \$100 nor more than \$1,000 may~~  
10 be adjudged shall be penalized in accordance with  
11 section 4966.

12 Sec. 12. 30 MRSA §3226 is enacted to read:

13 §3226. Right of entry on inspection

14 The department and any duly designated represen-  
15 tative or employee thereof, including the local  
16 plumbing inspector, may enter any property at reason-  
17 able hours, enter any building with the consent of  
18 the property owner, occupant or agent, inspect the  
19 property or structure for compliance with the rules  
20 in force pursuant thereto or investigate alleged con-  
21 ditions which do not comply with the rules. Upon the  
22 request of the occupant of the premises, the depart-  
23 ment's representative or the local plumbing inspector  
24 shall present proper credentials prior to entering  
25 the premises.

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

28 Sec. 13. 30 MRSA §4956, sub-§4, as amended by PL  
29 1981, c. 195, is further amended to read:

30 4. Enforcement. No person, firm, corporation or  
31 other legal entity may sell, lease, develop, build  
32 upon or convey for consideration, offer or agree to  
33 sell, lease, develop, build upon or convey for con-  
34 sideration any land in a subdivision which has not  
35 been approved by the municipal reviewing authority of  
36 the municipality where the subdivision is located and  
37 recorded in the proper registry of deeds, nor shall  
38 such person, firm, corporation or other legal entity  
39 sell or convey any land in such approved subdivision

1 unless at least one permanent marker is set at one  
2 lot corner of the lot sold or conveyed. The term  
3 "permanent marker" includes but is not limited to the  
4 following: A granite monument, a concrete monument,  
5 an iron pin or a drill hole in ledge. No subdivision  
6 plat or plan shall be recorded by any register of  
7 deeds which has not been approved as required. Ap-  
8 proval for the purpose of recording shall appear in  
9 writing on the plat or plan. No public utility, water  
10 district, sanitary district or any utility company of  
11 any kind shall install services to any lot in a sub-  
12 division for which a plan has not been approved.

13 Any person, firm, corporation or other legal entity  
14 who sells, leases, develops, builds upon, or conveys  
15 for consideration, offers or agrees to sell, lease,  
16 develop, build upon or convey for consideration any  
17 land in a subdivision which has not been approved as  
18 required by this section shall be punished by a fine  
19 of not more than \$1,000 for each such occurrence pe-  
20 nalized in accordance with section 4966. The Attor-  
21 ney General, the municipality, or the planning board  
22 of any municipality or the appropriate municipal  
23 officers may institute proceedings to enjoin the vio-  
24 lations of this section and, if a violation is found  
25 by the court, the municipality, municipal planning  
26 board or the appropriate municipal officers may be  
27 allowed attorney fees.

28 All subdivision plats and plans required by this sec-  
29 tion shall contain the name and address of the person  
30 under whose responsibility the subdivision plat or  
31 plan was prepared.

32 Sec. 14. 30 MRSA §4966 is enacted to read:

33 §4966. Enforcement of land use laws and ordinances

34 The following provisions shall apply to enforce-  
35 ment of land use laws and ordinances or regulations  
36 which are administered and enforced primarily at the  
37 local level, including shoreland zoning ordinances  
38 adopted pursuant to Title 12, sections 4811 to 4817,  
39 including those which were state-imposed; the plumb-  
40 ing and subsurface waste water disposal rules adopted  
41 by the Department of Human Services pursuant to Title  
42 22, section 42, including the land area of the State

1 which is subject to the jurisdiction of the Maine  
2 Land Use Regulation Commission, laws pertaining to  
3 public water supplies, Title 22, sections 2624, 2647  
4 and 2648; local ordinances adopted pursuant to Title  
5 22, section 2642; local land use ordinances enacted  
6 pursuant to section 1917; local building codes  
7 adopted pursuant to sections 1917 and 2151; chapter  
8 215, subchapter I, Automobile Junkyards and subchap-  
9 ter X, Regulation and Inspection of Plumbing; the  
10 subdivision law and local subdivision ordinances  
11 adopted pursuant to section 1917 and subdivision reg-  
12 ulations adopted pursuant to section 4956; and local  
13 zoning ordinances adopted pursuant to section 1917  
14 and in accordance with section 4962.

15 1. Enforcement. A municipal official, such as a  
16 municipal code enforcement officer, local plumbing  
17 inspector or building inspector, who is designated by  
18 ordinance or statute with the responsibility to en-  
19 force a particular law or ordinance set forth in this  
20 section, shall have the following powers and duties:

21 A. To enter any property at reasonable hours and  
22 to enter any building with the consent of the  
23 property owner, occupant or agent, to inspect the  
24 property or structure for compliance with the  
25 laws or ordinances set forth in this section;

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

29 C. When specifically authorized by the municipal  
30 officers, to represent the municipality in Dis-  
31 trict Court in the prosecution of alleged viola-  
32 tions of ordinances or laws which the official is  
33 empowered to enforce.

34 2. Liability for violations. Any person, in-  
35 cluding, but not limited to, a landowner, his agent  
36 or a contractor who violates a provision of the laws  
37 or ordinances set forth in this section shall be lia-  
38 ble for the penalties set forth in subsection 3.

39 3. Civil penalties. The following provisions  
40 shall apply to violations of the laws and ordinances  
41 set forth in this section, and all monetary penalties  
42 shall be civil penalties.

1 A. The minimum penalty for starting construction  
2 or undertaking a land use activity without a re-  
3 quired permit shall be \$100, and the maximum pen-  
4 alty shall be \$2,500.

5 B. The minimum penalty for a specific violation  
6 shall be \$100, and the maximum penalty shall be  
7 \$2,500.

8 C. The violator may be ordered to correct or  
9 abate the violations. Where the court finds that  
10 the violation was wilful, the violator shall be  
11 ordered to correct or abate the violation unless  
12 the abatement or correction will:

13 (1) Result in a threat or hazard to public  
14 health or safety;

15 (2) Result in substantial environmental  
16 damage; or

17 (3) Result in a substantial injustice.

18 D. If the municipality is the prevailing party,  
19 it may be awarded reasonable attorney fees, ex-  
20 pert witness fees and costs. If the defendant is  
21 the prevailing party, he may be awarded reason-  
22 able attorney fees, expert witness fees and costs  
23 as provided by court rule.

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

26 (1) Prior violations by the same party;

27 (2) The degree of environmental damage that  
28 cannot be abated or corrected;

29 (3) The extent to which the violation con-  
30 tinued following a municipal order to stop;  
31 and

32 (4) The extent to which the municipality  
33 contributed to the violation by providing  
34 the violator with incorrect information or  
35 by failing to take timely action.

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

6           All proceedings arising under the provisions of lo-  
7           cally administered laws and ordinances shall be  
8           brought in the name of the municipality, and those  
9           finest shall be paid to the municipality.

10           Sec. 15. 38 MRSA §342, sub-§7 is enacted to  
11           read:

12           7. Representation in court. The commissioner  
13           may authorize certified employees of the department  
14           to serve civil process and represent the department  
15           in District Court in the prosecution of violations of  
16           those laws enforced by the department and set forth  
17           in Title 4, section 152, subsection 6. Certification  
18           of these employees shall be provided as under Title  
19           30, section 3222, subsection 2.

20           Sec. 16. 38 MRSA §347, sub-§7 is enacted to  
21           read:

22           7. Right of entry. Employees of the Department  
23           of Environmental Protection shall have the authority  
24           to enter any property at reasonable hours, and to en-  
25           ter any building with the consent of the property  
26           owner, occupant or agent, to inspect the property or  
27           structure for compliance with the laws administered  
28           by the department.

29           Sec. 17. 38 MRSA §348, sub-§2, as enacted by PL  
30           1977, c. 300, §9, is amended to read:

31           2. Restoration. The court may order restoration  
32           of any area affected by any action or inaction found  
33           to be in violation of any provision of law adminis-  
34           tered by the Department of Environmental Protection  
35           or of any order, rule, regulation, license, permit,  
36           approval or decision of the Board of Environmental  
37           Protection or decree of the court, as the case may  
38           be, to its condition prior to the violation or as  
39           near thereto as may be possible. Where the court  
40           finds that the violation was wilful, the court shall



1 order restoration under this subsection unless the  
2 restoration will:

3 A. Result in a threat or hazard to public health  
4 or safety;

5 B. Result in substantial environmental damage;  
6 or

7 C. Result in a substantial injustice.

8 **Sec. 18. 38 MRSA §349, as amended by PL 1983, c.**  
9 **566, §9, is further amended to read:**

10 §349. Penalties

11 1. Criminal penalties. Notwithstanding Title  
12 17-A, section 4-A and except as provided in subsec-  
13 tion 4, subsection 5 or section 1306-A, any person  
14 who violates any provision of the laws administered  
15 by the department or the terms or conditions of any  
16 order, regulation, license, permit, approval or deci-  
17 sion of the board shall be subject to a fine, payable  
18 to the State, of not more than \$25,000 for each day  
19 of such violation.

20 2. Civil penalties. Any person who violates any  
21 provision of the laws administered by the department  
22 or terms or conditions of any order, regulation, li-  
23 cense, permit, approval or decision of the board  
24 shall be subject to a civil penalty, payable to the  
25 State, of not less than \$100 nor more than \$10,000  
26 for each day of ~~such~~ that violation or, if the viola-  
27 tion relates to hazardous waste, of not more than  
28 \$25,000 for each day of the violation.

29 3. Falsification and tampering. Notwithstanding  
30 Title 17-A, section 4-A, any person who knowingly  
31 makes any false statement, representation or certifi-  
32 cation in any application, record, report, plan or  
33 other document filed or required to be maintained by  
34 any provision of law administered by the department,  
35 or by any rule, regulation, license, permit, approval  
36 or decision of the board, or who tampers with or ren-  
37 ders inaccurate any monitoring devices or method re-  
38 quired by any provision of law, or any rule, regula-  
39 tion, license, permit, approval or decision of the

1 board shall, upon conviction, be subject to a fine of  
2 not more than \$10,000, or by imprisonment for not  
3 more than 6 months, or both.

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

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

8 ~~B. Section 391 or regulations under section 394~~  
9 ~~(Great Ponds);~~

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

11 ~~D. Section 471; (Alteration of wetlands and sand~~  
12 ~~dunes);~~

13 E. Section 1306; (Waste facility);

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

16 H. Title 12, chapter 421 and orders thereunder;  
17 (Wetlands zoning); and.

18 ~~I. Title 12, chapter 423-A and regulations~~  
19 ~~thereunder (Minimum lot size);~~

20 Sec. 19. 38 MRSA §349, sub-§5 is enacted to  
21 read:

22 5. Land use penalties. The following provisions  
23 shall apply to violations of the Great Ponds Act,  
24 sections 386 to 396; the Alteration of Coastal Wet-  
25 lands Act, sections 471 to 476; and the Minimum Lot  
26 Size Law, Title 12, sections 4807 to 4807-G.

27 A. The minimum penalty for starting construction  
28 or undertaking an activity without the required  
29 license, permit or approval shall be \$100 and the  
30 maximum penalty shall be \$10,000.

31 B. The minimum penalty for violations other than  
32 those specified in paragraph A shall be \$100 and  
33 the maximum penalty shall be \$10,000 for each vi-  
34 olation.

1           C. The violator may be ordered to correct or  
2 abate the violations. Where the court finds that  
3 the violation was wilful, the violator shall be  
4 ordered to correct or abate the violation unless  
5 the abatement or correction will:

6                   (1) Result in a threat or hazard to public  
7 safety;

8                   (2) Result in substantial environmental  
9 damage; or

10                   (3) Result in a substantial injustice.

11           D. The maximum penalty may exceed \$10,000 for  
12 each day of that violation, but shall not exceed  
13 \$25,000 for each day of the violation, when it  
14 can be shown that there has been a previous con-  
15 vicition of the same party within the past 5 years  
16 of the same law.

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

19                   (1) Prior violations by the same party;

20                   (2) The degree of environmental damage that  
21 cannot be abated or corrected;

22                   (3) The extent to which the violation con-  
23 tinued following an order of the department  
24 or board to correct it; and

25                   (4) The importance of setting a fine sub-  
26 stantial enough to deter others from similar  
27 violations.

28                                   STATEMENT OF FACT

29           This new draft retains much of the major provi-  
30 sions in the original bill. The new draft continues  
31 to provide for:

32           Expansion of the equitable jurisdiction of the  
33 District Court to cover violations of state and local  
34 land use laws;

1 Mandatory appointment of code enforcement offi-  
2 cers in all municipalities. A code enforcement offi-  
3 cer may be authorized to serve civil process and  
4 represent a municipality in court, provided that the  
5 officer is certified; and

6 Uniform penalties for all violations of land use  
7 laws.

8 This new draft differs from the original bill by:

9 Deleting provisions establishing a Local-State  
10 Coordination Division within the Department of Envi-  
11 ronmental Protection. State oversight of local  
12 shoreland zoning enforcement will continue to be done  
13 by the State Planning Office. Since the division  
14 will not exist, certification of code enforcement of-  
15 ficers, plumbing inspectors and Department of Envi-  
16 ronmental Protection personnel in familiarity with  
17 court procedures so that they may prosecute land use  
18 law violations will be done by the Department of Hu-  
19 man Services in connection with the current certifi-  
20 cation program for plumbing inspectors;

21 Deleting a set \$20-fee for shoreland permits.  
22 Municipalities will be free to set whatever fee they  
23 wish, including no fee;

24 Reducing the mandatory minimum penalty for a land  
25 use violation from \$250 to \$100;

26 Providing that a violator may be ordered by the  
27 court to abate or correct the violation, unless the  
28 violation was wilful, in which case the court shall  
29 order abatement or correction, except where the  
30 abatement or correction would cause other damage,  
31 danger or injustice. The original bill applied this  
32 mandatory restoration provision to all cases whether  
33 or not the violation was wilful;

34 Deleting a provision which would have required an  
35 attorney's fee award to the State where the State  
36 prevailed in a land use violation prosecution;

37 Permitting an award of attorneys' fees to a pre-  
38 vailing municipality in a land use violation case,  
39 but not mandating such an award as the original bill  
40 did; and

1           Deleting all appropriations contained in the  
2 original bill for the Department of Environmental  
3 Protection and the Attorney General's office.

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