

MAINE STATE LEGISLATURE

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(New Draft of S.P. 761, L.D. 2069)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2419

S.P.. 901

In Senate, April 3, 1984

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

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT Concerning Enforcement of
Land Use Laws.

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

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29, §1 and 447 and as repealed and replaced by PL
1983, c. 583, §1, is repealed and the following en-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

§152. Jurisdiction

The District Court shall have jurisdiction in the
following matters:

1. Jurisdiction exercised by trial justices and
municipal courts. The civil jurisdiction exercised
by all trial justices and municipal courts in the
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, concu-
18 rent 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, concu-
36 rent 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 MRSAs §807, first ¶, as amended by PL
18 1983, c.c. 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. Certification, permits and records

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 Every municipality shall, within 30 days of the ap-
11 pointment, notify the Unit of Local-State Coordina-
12 tion within the Department of Environmental Protec-
13 tion of the appointment, address and telephone number
14 of the appointee.

15 2. Certification; training; authorization by mu-
16 nicipal officers. No person may serve as a code en-
17 forcement officer who is authorized by the municipal
18 officers to represent the municipality in District
19 Court, unless he is currently certified by the coordi-
20 nation unit as being familiar with court procedu-
21 res. The unit shall establish certification stan-
22 dards. The unit shall coordinate this court procedu-
23 res certification program with that of the Commis-
24 sioner of Human Services for plumbing inspectors un-
25 der Title 30, section 3222, subsection 2, to avoid
26 duplication of effort. Certification shall be for a
27 period of 3 years, unless sooner revoked or suspended
28 by the Administrative Court upon complaint of the
29 unit on grounds of fraud, negligence, misconduct or
30 incompetence in the performance of duties.

31 The coordination unit shall establish a shoreland
32 zoning training program which shall be available to
33 all code enforcement officers.

34 Upon written authorization by the municipal officers,
35 a certified code enforcement officer may serve civil
36 process on persons whom he determines to be in viola-
37 tion of ordinances adopted pursuant to this chapter
38 and, if authorized by the municipal officers, may
39 represent the municipality in District Court in the
40 prosecution of violations of ordinances adopted pur-
41 suant to this chapter.

1 3. Powers and duties. The duties of the code
2 enforcement officer shall include the following:

3 A. Enforce the local shoreland zoning ordinance,
4 in accordance with the procedures contained
5 therein;

6 B. Collect a fee, if authorized by a municipali-
7 ty, for every shoreland permit issued by the code
8 enforcement officer. The amount of any such fee
9 shall be set by the municipality. The fee shall
10 be remitted to the municipality.

11 C. Keep a complete record of all essential
12 transactions of the office, including applica-
13 tions submitted, permits granted or denied, vari-
14 ances granted or denied, revocation actions, rev-
15 ocation of permits, appeals, court actions, vio-
16 lations investigated, violations found and fees
17 collected;

18 D. Forward to the coordination unit a notice of
19 all permits issued and variances granted in the
20 shoreland districts;

21 E. Report to the coordination unit any violation
22 within shoreland areas of any local land use law
23 of which he has knowledge and the action taken by
24 the municipality; and

25 F. Investigate complaints of alleged violation
26 of local land use laws.

27 Sec. 5. 12 MRSA §4814, first ¶, as repealed and
28 replaced by PL 1973, c. 564, §6, is amended to read:

29 The Board of Environmental Protection and the
30 Maine Land Use Regulation Commission, municipalities
31 and all state agencies shall mutually cooperate to
32 accomplish the objectives of this chapter. To that
33 end, the board and the commission shall consult with
34 the governing bodies of municipalities and to whatev-
35 er extent necessary with other state agencies to se-
36 cure voluntary uniformity of regulations, so far as
37 practicable, and shall extend all possible assistance
38 therefor. The State Planning Office Unit of
39 Local-State Coordination in the Department of Envi-

1 ronmental Protection shall be responsible for coordi-
2 inating the efforts and responsibilities of the Board
3 of Environmental Protection and the Maine Land Use
4 Regulation Commission acting pursuant to this chap-
5 ter.

6 Sec. 6. 12 MRSA §4815, as enacted by PL 1983, c.
7 308, §2 and c. 458, §5, is repealed and the following
8 enacted in its place:

9 §4815. Enforcement

10 Any person who orders or conducts any activity in
11 violation of a municipal ordinance adopted under this
12 chapter shall be penalized in accordance with the
13 provisions of Title 30, section 4966.

14 The Attorney General, the district attorney or
15 the municipal officers or their designees may enforce
16 ordinances adopted under this chapter.

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

24 Sec. 7. 12 MRSA §7779, as enacted by PL 1979, c.
25 420, §1, is repealed and the following enacted in its
26 place:

27 §7779. Penalties

28 1. Civil penalties. Any person who violates any
29 provision of this subchapter shall be subject to the
30 following.

31 A. The minimum penalty for starting construction
32 or undertaking an activity without the required
33 license, permit or approval shall be \$100 and the
34 maximum penalty shall be \$10,000 for that viola-
35 tion.

36 B. The minimum penalty for violations other than
37 those specified in paragraph A shall be \$100 and

1 the maximum penalty shall be \$10,000 for each vi-
2 olation.

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

9 (1) Result in a threat or hazard to public
10 safety;

11 (2) Result in substantial environmental
12 damage; or

13 (3) Result in substantial injustice.

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

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

21 (1) Prior violations by the same party;

22 (2) The degree of environmental damage that
23 cannot be abated or corrected;

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

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

30 Sec. 8. 12 MRSA §7901, sub-§6, is enacted to
31 read:

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

1 Sec. 9. 22 MRSA §42, sub-§3, as amended by PL
2 1981, c. 376, §§1-3, is further amended to read:

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

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

1 Sec. 10. 30 MRSA §2458, sub-§1, as amended by PL
2 1971, c. 593, §22, is further amended to read:

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

16 Sec. 11. 30 MRSA §3222, sub-§2, as amended by PL
17 1979, c. 45, is further amended to read:

18 2. Certification. No person may hold the office
19 of plumbing inspector unless he is currently certifi-
20 fied as qualified by the Commissioner of Human Ser-
21 vices. Certification of plumbing inspectors shall be
22 in accordance with the standards set by the commis-
23 sioner, and shall be for a period of 3 years, unless
24 sooner revoked or suspended by the Administrative
25 Court upon complaint by the commissioner on grounds
26 of fraud, negligence, misconduct or incompetence in
27 the performance of his duties. The commissioner may
28 grant temporary certification for a period not to ex-
29 ceed 6 months. The department shall publish semiannu-
30 ally a list of certified plumbing inspectors. After
31 being certified by the commissioner as being familiar
32 with court procedures, a plumbing inspector may serve
33 civil process on persons who violate the plumbing and
34 subsurface waste water disposal rules of the depart-
35 ment, and he may be authorized by the municipal offi-
36 cers to represent the municipality in District Court
37 pursuant to section 4966.

38 Sec. 12. 30 MRSA §3223, sub-§1-A, as enacted by
39 PL 1981, c. 376, §4, is amended to read:

40 1-A. Penalties. Any person who installs or or-
41 ders the installation of any subsurface sewage dis-
42 posal system without the permit required under this

1 section commits a civil violation for which a forfei-
2 ture of not less than \$100 nor more than \$1,000 may
3 be adjudged shall be penalized in accordance with
4 section 4966.

5 Sec. 13. 30 MRSA §3226 is enacted to read:

6 §3226. Right of entry on inspection

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

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

21 Sec. 14. 30 MRSA §4956, sub-§4, as amended by PL
22 1981, c. 195, is further amended to read:

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

1 district, sanitary district or any utility company of
2 any kind shall install services to any lot in a sub-
3 division for which a plan has not been approved.

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

19 All subdivision plats and plans required by this sec-
20 tion shall contain the name and address of the person
21 under whose responsibility the subdivision plat or
22 plan was prepared.

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

24 §4966. Enforcement of land use laws and ordinances

25 The following provisions shall apply to enforce-
26 ment of land use laws and ordinances or regulations
27 which are administered and enforced primarily at the
28 local level, including shoreland zoning ordinances
29 adopted pursuant to Title 12, sections 4811 to 4817,
30 including those which were state-imposed; the plumb-
31 ing and subsurface waste water disposal rules adopted
32 by the Department of Human Services pursuant to Title
33 22, section 42, including the land area of the State
34 which is subject to the jurisdiction of the Maine
35 Land Use Regulation Commission; laws pertaining to
36 public water supplies, Title 22, sections 2624, 2647
37 and 2648; local ordinances adopted pursuant to Title
38 22, section 2642; local land use ordinances enacted
39 pursuant to section 1917; local building codes
40 adopted pursuant to section 1917 and section 2151;
41 chapter 215, subchapter I, Automobile Junkyards and
42 subchapter X, Regulation and Inspection of Plumbing;

1 the subdivision law and local subdivision ordinances
2 adopted pursuant to section 1917 and subdivision reg-
3 ulations adopted pursuant to section 4956; and local
4 zoning ordinances adopted pursuant to section 1917
5 and in accordance with section 4962.

6 1. Enforcement. A municipal official, such as a
7 municipal code enforcement officer, local plumbing
8 inspector or building inspector, who is designated by
9 ordinance or statute with the responsibility to en-
10 force a particular law or ordinance set forth in this
11 section, shall have the following powers and duties:

12 A. To enter any property at reasonable hours and
13 to enter any building with the consent of the
14 property owner, occupant or agent, to inspect the
15 property or structure for compliance with the
16 laws or ordinances set forth in this section;

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

20 C. When specifically authorized by the municipal
21 officers, to represent the municipality in Dis-
22 trict Court in the prosecution of alleged viola-
23 tions of ordinances or laws which the official is
24 empowered to enforce.

25 2. Liability for violations. Any person, in-
26 cluding, but not limited to, a landowner, his agent
27 or a contractor who violates a provision of the laws
28 or ordinances set forth in this section shall be lia-
29 ble for the penalties set forth in subsection 3.

30 3. Civil penalties. The following provisions
31 shall apply to violations of the laws and ordinances
32 set forth in this section, and all monetary penalties
33 shall be civil penalties.

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

38 B. The minimum penalty for a specific violation
39 shall be \$100, and the maximum penalty shall be
40 \$2,500.

1 C. The violator may be ordered to correct or
2 abate the violations. Where the court finds that
3 the violation was willful, 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 health or safety;

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

10 (3) Result in a substantial injustice.

11 D. If the municipality is the prevailing party,
12 it shall be awarded reasonable attorneys' fees,
13 expert witness fees and costs. If the defendant
14 is the prevailing party, he may be awarded rea-
15 sonable attorneys' fees, expert witness fees and
16 costs as provided by court rule.

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 a municipal order to stop;
24 and

25 (4) The extent to which the municipality
26 contributed to the violation by providing
27 the violator with incorrect information or
28 by failing to take timely action.

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

34 All proceedings arising under the provisions of lo-
35 cally administered laws and ordinances shall be
36 brought in the name of the municipality, and those

1 finances shall be paid to the municipality.

2 Sec. 16. 38 MRSA §342, sub-§7 is enacted to
3 read:

4 7. Local-State Coordination Unit. The commis-
5 sioner shall create the Unit of Local-State Coordi-
6 nation within the Bureau of Land Quality Control. In
7 addition to a unit supervisor the staff shall include
8 representatives in field offices of the department.
9 The unit's responsibilities shall include: To provide
10 technical assistance needed to enforce the
11 shoreland zoning law and related ordinances and land
12 use laws to the extent practicable; to train and cer-
13 tify municipal code enforcement officers responsible
14 for enforcing shoreland zoning; to monitor permits
15 issued under these ordinances for compliance determi-
16 nation; to coordinate enforcement efforts among state
17 agencies and municipalities; to review shoreland zon-
18 ing ordinances for conformity with the state guide-
19 lines; to develop public education programs to in-
20 crease public awareness and understanding of shore-
21 land zoning requirements; and to report to the joint
22 standing committee of the Legislature having juris-
23 isdiction over energy and natural resources once a
24 year, during January.

25 The board shall adopt regulations, in accordance with
26 section 343, providing for qualification, certifica-
27 tion and recertification of persons to serve as mu-
28 nicipal code enforcement officers. The department
29 shall investigate or cause to be investigated all
30 cases or complaints of noncompliance with or viola-
31 tions of this section and the regulations adopted
32 pursuant thereto.

33 The commissioner may authorize certified employees of
34 the department to serve civil process and represent
35 the department in District Court in the prosecution
36 of violations of those laws enforced by the depart-
37 ment and set forth in Title 4, section 152, subsec-
38 tion 6. Certification of these employees shall be
39 provided as under Title 12, section 4812-C for code
40 enforcement officers.

41 Sec. 17. 38 MRSA §347, sub-§7 is enacted to
42 read:

1 7. Right of entry. Employees of the Department
2 of Environmental Protection shall have the authority
3 to enter any property at reasonable hours, and to enter
4 any building with the consent of the property
5 owner, occupant or agent, to inspect the property or
6 structure for compliance with the laws administered
7 by the department.

8 Sec. 18. 38 MRSA §348, sub-§2, as enacted by PL
9 1977, c. 300, §9, is amended to read:

10 2. Restoration. The court may order restoration
11 of any area affected by any action or inaction found
12 to be in violation of any provision of law adminis-
13 tered by the Department of Environmental Protection
14 or of any order, rule, regulation, license, permit,
15 approval or decision of the Board of Environmental
16 Protection or decree of the court, as the case may
17 be, to its condition prior to the violation or as
18 near thereto as may be possible. Where the court
19 finds that the violation was willful, the court shall
20 order restoration under this subsection unless the
21 restoration will:

22 A. Result in a threat or hazard to public health
23 or safety;

24 B. Result in substantial environmental damage;
25 or

26 C. Result in a substantial injustice.

27 Sec. 19. 38 MRSA §349, as amended by PL 1983, c.
28 566, §9, is further amended to read:

29 §349. Penalties

30 1. Criminal penalties. Notwithstanding Title
31 17-A, section 4-A and except as provided in subsec-
32 tion 4, subsection 5 or section 1306-A, any person
33 who violates any provision of the laws administered
34 by the department or the terms or conditions of any
35 order, regulation, license, permit, approval or deci-
36 sion of the board shall be subject to a fine, payable
37 to the State, of not more than \$25,000 for each day
38 of such violation.

1 2. Civil penalties. Any person who violates any
2 provision of the laws administered by the department
3 or terms or conditions of any order, regulation, li-
4 cense, permit, approval or decision of the board
5 shall be subject to a civil penalty, payable to the
6 State, of not less than \$100 nor more than \$10,000
7 for each day of ~~such~~ that violation or, if the viola-
8 tion relates to hazardous waste, of not more than
9 \$25,000 for each day of the violation.

10 3. Falsification and tampering. Notwithstanding
11 Title 17-A, section 4-A, any person who knowingly
12 makes any false statement, representation or certifi-
13 cation in any application, record, report, plan or
14 other document filed or required to be maintained by
15 any provision of law administered by the department,
16 or by any rule, regulation, license, permit, approval
17 or decision of the board, or who tampers with or ren-
18 ders inaccurate any monitoring devices or method re-
19 quired by any provision of law, or any rule, regula-
20 tion, license, permit, approval or decision of the
21 board shall, upon conviction, be subject to a fine of
22 not more than \$10,000, or by imprisonment for not
23 more than 6 months, or both.

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

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

28 ~~B. Section 391 or regulations under section 394~~
29 ~~{Great Ponds};~~

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

31 ~~D. Section 471; {Alteration of wetlands and sand~~
32 ~~dunes};~~

33 E. Section 1306; (Waste facility);

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

36 H. Title 12, chapter 421 and orders thereunder;
37 (Wetlands zoning); and.

1 I. Title 12, chapter 423-A and regulations
2 thereunder (Minimum lot size);

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

5 5. Land use penalties. The following provisions
6 shall apply to violations of the Great Ponds Act,
7 sections 386 to 396; the Alteration of Coastal Wet-
8 lands Act, sections 471 to 476; and the Minimum Lot
9 Size Law, Title 12, section 4807 to 4807-G:

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

14 B. The minimum penalty for violations other than
15 those specified in paragraph A shall be \$100 and
16 the maximum penalty shall be \$10,000 for each vi-
17 olation.

18 C. The violator may be ordered to correct or
19 abate the violations. Where the court finds that
20 the violation was willful, the violator shall be
21 ordered to correct or abate the violation unless
22 the abatement or correction will:

23 (1) Result in a threat or hazard to public
24 safety;

25 (2) Result in substantial environmental
26 damage; or

27 (3) Result in a substantial injustice.

28 D. In setting a penalty, the court shall consid-
29 er, but shall not be limited to, the following:

30 (1) Prior violations by the same party;

31 (2) The degree of environmental damage that
32 cannot be abated or corrected;

33 (3) The extent to which the violation con-
34 tinued following an order of the department
35 or board to correct it; and

1 The addition of language making it clear that,
2 before code enforcement officers, plumbing inspectors
3 or Department of Environmental Protection personnel
4 may serve civil summonses and prosecute land use vio-
5 lations, they must be certified as being familiar
6 with court procedures. This certification will be
7 provided by the Department of Environmental Protec-
8 tion coordination unit in conjunction with the plumb-
9 ing inspector certification done by the Department of
10 Human Services;

11 The deletion of a set \$20 fee for shoreland per-
12 mits. Municipalities will be free to set whatever
13 fee they wish, including no fee;

14 The reduction of the mandatory minimum penalty
15 for a land use violation from \$250 to \$100;

16 The provision that a violator may be ordered by
17 the court to abate or correct the violation, unless
18 the violation was wilful, in which case the court
19 must order abatement or correction, except where the
20 abatement or correction would cause other damage,
21 danger or injustice. The original bill applied this
22 mandatory restoration provision to all cases, whether
23 or not the violation was wilful;

24 The deletion of a provision which would have re-
25 quired an attorney's fees award to the State where
26 the State prevailed in a land use violation prosecu-
27 tion;

28 The clarification of the provisions requiring an
29 award of attorneys' fees to a prevailing municipality
30 in a land use violation case; and

31 The reduction of money appropriated to the De-
32 partment of Environmental Protection and the Attorney
33 General's office in the original bill.

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