

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1740

H.P. 1273 House of Representatives, June 3, 1987  
Reference to the Committee on Energy and Natural  
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk  
Presented by Speaker MARTIN of Eagle Lake.  
Cosponsored by Representatives DEXTER of Kingfield, LORD  
of Waterboro and MICHAUD of East Millinocket.

STATE OF MAINE

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

AN ACT to Improve Enforcement Procedures  
under the Land Use Regulation Law.

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

12 MRSA §685-C, sub-§8, as amended by PL 1977, c.  
694, §235-A, is further amended to read:

8. Enforcement, inspection and penalties for vi-  
olations. Standards, rules, ~~regulations~~ and orders  
issued by the commission pursuant to this chapter  
shall have the force and effect of law. No develop-  
ment may be undertaken, except in conformance with  
this chapter, the standards, rules, ~~regulations~~ and  
orders enacted or issued pursuant to this chapter,  
and any real estate or personal property existing in

1 violation of such shall be a nuisance. For the pur-  
2 poses of inspection and to assure compliance with  
3 standards, orders and permits issued or adopted by  
4 the commission, authorized commission staff or con-  
5 sultant personnel may conduct such investigations,  
6 examinations, tests and site evaluations deemed nec-  
7 essary to verify information presented to it, and may  
8 obtain access to any lands and structures regulated  
9 pursuant to this chapter.

10 ~~A--violation--of--any--provision--of--this--chapter--or--the~~  
11 ~~rules--promulgated--hereunder--is--punishable--by--a--fine~~  
12 ~~of--up--to--but--not--more--than--\$500--for--each--day--of--the~~  
13 ~~violation--~~

14 Any person who violates any provision of this chap-  
15 ter, or the terms or conditions of any standards,  
16 rules, permits or orders adopted or issued pursuant  
17 to this chapter, is subject to a civil penalty, pay-  
18 able to the State, of not more than \$10,000 for each  
19 day of the violation.

20 In addition to the other penalties provided, the com-  
21 mission may, in the name of the State of Maine, in-  
22 stitute any appropriate action, injunction or other  
23 proceeding to prevent, restrain, correct or abate any  
24 violation hereof or of the orders or of the stan-  
25 dards, or rules or regulations promulgated hereunder.  
26 This action may include, but is not limited to, pro-  
27 ceedings to revoke or suspend any commission permit  
28 or approval, taken either before the commission it-  
29 self in accordance with Title 5, section 10004, be-  
30 fore the Administrative Court in accordance with Ti-  
31 tle 4, sections 1152 to 1157, or, notwithstanding the  
32 provisions of Title 4, section 1151, subsection 2, or  
33 Title 5, section 10051, before the Superior Court as  
34 part of an enforcement action brought by the commis-  
35 sion.

36 In addition to any such penalties or remedies pro-  
37 vided in this subsection, the court may order resto-  
38 ration of any area affected by any action or inaction  
39 found to be in violation of any of the provisions of  
40 this chapter or of any order, standard, rule or per-  
41 mit of the commission, or any decree of the court, to  
42 the condition of such area prior to the violation.  
43 When such restoration is not practicable, the court

1 may order other actions to be taken by the person  
2 charged with the violation which are in mitigation of  
3 the damage caused by the violation.

4 A person who willfully or knowingly falsifies any  
5 statement contained in ~~the certification required~~, a  
6 permit application or other information required to  
7 be submitted to the commission shall be ~~punished by a~~  
8 ~~fine--of-up-to-but-not-more-than-\$500~~ in violation of  
9 this chapter and subject to the penalties of this  
10 chapter.

11 STATEMENT OF FACT

12 The current penalty provisions under the land use  
13 regulation law have remained essentially unchanged  
14 since the enactment of the law in 1971. In a recent  
15 case, the Supreme Judicial Court determined that the  
16 \$500 a day penalty specified under the current law is  
17 the maximum which may be assessed for any day of il-  
18 legal operations regardless of the extent and nature  
19 of the operations or the degree of environmental harm  
20 caused by them. Even when the violation might sig-  
21 nificantly damage an environmentally sensitive area,  
22 such as where a forest operation unlawfully destroys  
23 a deer yard or clears an entire lake shore, the court  
24 determined that no more than a \$500 fine could be  
25 levied for any day on which that operation took  
26 place. While the court acknowledged that this level  
27 of fine might well not provide sufficient deterrence  
28 for violators in such instances, the court stated  
29 that it was for the Legislature, and not for the ju-  
30 diciary, to remedy this problem.

1       This bill remedies this problem by establishing a  
2   civil penalty framework for violations of the land  
3   use regulation law, which is the same as that cur-  
4   rently applied under the laws of the Department of  
5   Environmental Protection. In appropriate cases, as  
6   where there is a significant violation having major  
7   environmental impacts, a fine may be set as high as  
8   \$10,000 a day, rather than being limited to the \$500  
9   a day maximum under existing law. In addition, this  
10   bill makes the law clear that, in appropriate cases,  
11   the court may order restoration or mitigation where  
12   the environment has been damaged because of a viola-  
13   tion.

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