

MAINE STATE LEGISLATURE

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(Governor's Bill)
(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1883

H.P. 1381 House of Representatives, June 30, 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 President PRAY of Penobscot,
Representative MURPHY of Kennebunk and Senator PERKINS of
Hancock.

STATE OF MAINE

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

1 AN ACT to Clarify the Hazardous Waste Lien
2 Law.
3

4 Emergency preamble. Whereas, Acts of the Legis-
5 lature do not become effective until 90 days after
6 adjournment unless enacted as emergencies; and

7 Whereas, Public Law 1987, chapter 419, was en-
8 acted as emergency legislation and signed by the Gov-
9 ernor on June 24, 1987; and

10 Whereas, Public Law 1987, chapter 419, enacted a
11 hazardous waste superlien law in Maine which if not
12 amended may have adverse effects on lending, develop-
13 ment and the transfer of real estate in Maine; and

1 Whereas, amendments to the law enacted by Public
2 Law 1987, chapter 419, are necessary to clarify its
3 impact on residential lending, remove its retroactive
4 effect and otherwise clarify its scope; and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

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

13 38 MRSA §1371, as enacted by PL 1987, c. 419,
14 §14, is repealed and the following enacted in its
15 place:

16 §1371. Lien established

17 1. Established. All costs incurred by the State
18 for the abatement, cleanup or mitigation of hazards
19 posed by an uncontrolled hazardous substance site and
20 all interest and penalties shall be a lien against
21 the real estate of the responsible party.

22 2. Priority. The priority of a lien filed pursu-
23 ant to this section shall be governed by the follow-
24 ing.

25 A. Any lien filed pursuant to this section on
26 real estate which encompasses an uncontrolled
27 hazardous substance site shall have precedence
28 over all encumbrances on the real estate recorded
29 after the effective date of this section. The
30 term, "real estate" in this paragraph includes
31 all real estate of a responsible party which has
32 been included in the property description of the
33 affected real estate within the 3-year period
34 preceding the date of filing of the lien or on or
35 after the effective date of this section, which-
36 ever period is shorter.

37 B. Any lien filed pursuant to this section on
38 any other real estate of the party responsible

1 for the uncontrolled hazardous substance site
2 shall have precedence over all transfers and en-
3 cumbrances filed after the date that the lien is
4 filed with the registry of deeds.

5 3. Notice. A certificate of lien signed by the
6 Commissioner of Environmental Protection shall be
7 mailed by certified mail, return receipt requested,
8 to all those persons of record holding an interest in
9 the real estate over which the commissioner's lien is
10 entitled to priority under subsection 2, paragraph A.
11 A certificate may be filed for record in the office
12 of the clerk of any municipality in which the real
13 estate is situated.

14 4. Recording. Any lien filed pursuant to this
15 section shall be effective when filed with the regis-
16 try of deeds for the county in which the real estate
17 is located. The lien shall include a description of
18 the real estate, the amount of the lien and the name
19 of the owner as grantor.

20 5. Limitation. This section does not apply to a
21 unit of real estate which consists primarily of real
22 estate used or under construction as single or
23 multi-family housing at the time the lien is re-
24 corded.

25 6. Discharge of lien. When the amount with re-
26 spect to which a lien has been recorded under this
27 section, has been paid or reduced, the commissioner,
28 upon request by any person of record holding interest
29 in the real estate which is the subject of the lien,
30 shall issue a certificate discharging or partially
31 discharging the lien. The certificate shall be re-
32 corded in the registry in which the lien was re-
33 corded. Any action of the foreclosure of the lien
34 shall be brought by the Attorney General in the name
35 of the State in the Superior Court for the judicial
36 district in which the property subject to the lien is
37 situated.

38 Emergency clause. In view of the emergency cited
39 in the preamble, this Act shall take effect when ap-
40 proved.

1 STATEMENT OF FACT

2 The purpose of this bill is to amend the existing
3 hazardous substance lien law to create a 2-tiered
4 system. A priority lien on the affected real estate
5 is authorized to recover cleanup costs. A regular
6 lien on other real estate owned by parties responsi-
7 ble for the hazardous substances is also authorized.

8 The bill also makes several technical corrections
9 to the existing provisions of the hazardous substance
10 lien law.

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