

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2314

H.P. 1685 House of Representatives, February 19, 1988
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative LORD of Waterboro.

Cosponsored by Representative GREENLAW of Standish,
Senators USHER of Cumberland and CAHILL of Sagadahoc.

STATE OF MAINE

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

1 **AN ACT to Improve and Expedite the**
2 **Enforcement of Environmental Laws.**
3

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

6 **Sec. 1. 4 MRSA §152, sub-§6, as repealed and**
7 **replaced by PL 1987, c. 192, §1, is amended to read:**

8 6. Civil actions to enforce land use laws.

1 Original jurisdiction, concurrent with that of the
2 Superior Court, to grant equitable relief in
3 proceedings involving alleged violations of a local
4 land use ordinance or regulation or a state land use
5 law or regulation, which shall include, but shall not
6 be limited to, the following:

7 A. The law pertaining to the Maine Land Use
8 Regulation Commission, Title 12, chapter 206-A;

9 B. Minimum lot size law, Title 12, sections 4807
10 to 4807-G;

11 C. The plumbing and subsurface wastewater
12 disposal rules adopted by the Department of Human
13 Services pursuant to Title 22, section 42;

14 D. Laws administered by local health officers
15 pursuant to Title 22, chapters 153 and 263;

16 E. Laws pertaining to public water supplies,
17 Title 22, sections 2642, 2647 and 2648;

18 F. Local ordinances pursuant to Title 22, section
19 2642;

20 G. Laws pertaining to fire prevention and
21 protection which require enforcement by local
22 officers pursuant to Title 25, chapter 313;

23 H. Laws pertaining to the construction of public
24 buildings for the physically disabled pursuant to
25 Title 25, chapter 331;

26 I. Local land use ordinances adopted pursuant to
27 Title 30, section 1917;

28 J. Local building codes adopted pursuant to Title
29 30, sections 1917 and 2151;

30 K. Local housing codes adopted pursuant to Title
31 30, sections 1917 and 2151;

32 L. Local ordinances regarding automobile
33 junkyards pursuant to Title 30, chapter 215,

1 subchapter I;

2 M. Local ordinances regarding electrical
3 installations pursuant to Title 30, chapter 215,
4 subchapter III;

5 N. Regulation and inspection of plumbing pursuant
6 to Title 30, chapter 215, subchapter X;

7 O. Local ordinances regarding malfunctioning
8 domestic sewage disposal units pursuant to Title
9 30, section 4359;

10 P. The subdivision law pursuant to Title 30,
11 section 4956; local subdivision ordinances adopted
12 pursuant to Title 30, section 1917; and
13 subdivision regulations adopted pursuant to Title
14 30, section 4956;

15 Q. Local zoning ordinances adopted pursuant to
16 Title 30, section 1917, and in accordance with
17 Title 30, section 4962; and

18 R. The Great Ponds Program, Title 38, sections
19 386-to-396;

20 R-1. All laws administered by the Department of
21 Environmental Protection, Title 38, chapters 2 to
22 16.

23 S. The freshwater wetlands laws, Title 38,
24 sections-405-to-410-D;

25 T. Laws pertaining to the discharge of wastes,
26 Title-38,-sections-413,-414,-417,-418-and-420;

27 U. The alteration of rivers, streams and brooks
28 laws,-Title-38,-sections-425-to-431;

29 V. The alteration of coastal wetlands laws,
30 Title-38,-sections-471-to-478;

31 W. Shoreland zoning ordinances adopted pursuant
32 to-Title-38,-sections-435-to-447;

1 X. The site location of development laws, Title
2 38, sections 481 to 485 and 488 to 490, and

3 Y. The oil discharge prevention and pollution
4 control laws, Title 38, sections 543, 545, 563,
5 564, 565, 566, 567 and 568.

6 Sec. 2. 4 MRSA §152, sub-§7, as enacted by PL
7 1987, c. 419, §1, is repealed.

8 Sec. 3. 4 MRSA §152, 2nd and 3rd ¶¶, as
9 repealed and replaced by PL 1983, c. 796, §1, are
10 repealed.

11 Sec. 4. 4 MRSA §152, sub-§§8 and 9 are enacted
12 to read:

13 8. Divorce, annulments or separations. Actions
14 for divorce, annulment or separation may be remanded,
15 upon agreement of the parties, from the Superior Court
16 to the District Court in accordance with rules
17 promulgated by the Supreme Judicial Court. An action
18 so remanded shall remain in the District Court, which
19 shall have exclusive jurisdiction thereafter, subject
20 to the rights of appeal to the Superior Court as to
21 matters of law.

22 9. Criminal jurisdiction. The District Court
23 shall possess the criminal jurisdiction exercised by
24 all trial justices and municipal courts in the State
25 on September 16, 1961, except as provided in Title 29,
26 section 2302, and Title 38, section 348, subsection 1.

27 Sec. 5. 12 MRSA §7053, sub-§1, ¶A, as amended
28 by PL 1981, c. 414, §6, is further amended to read:

29 A. Enforce the following:

30 (1) Chapters 701 to 721;

31 (2) All rules promulgated by the
32 commissioner; and

33 (3) The United States Federal Migratory Bird
34 Treaty Act, Public Law, July 3, 1918, chapter

1 128, as amended, and all rules and
2 regulations promulgated in pursuance thereof;
3 and

4 (4) Title 38, chapters 2 to 16; and

5 **Sec. 6.** 12 MRSA §7053, sub-§2, ¶¶B and C, as
6 enacted by PL 1979, c. 420, §1, is amended to read:

7 B. Serve criminal processes on offenders of the
8 law and serve all processes pertaining to the
9 enforcement of chapters 701 to 721 and Title 38,
10 chapters 2 to 16;

11 C. Accept personal recognizances in accordance
12 with the following procedures:

13 (1) Any game warden making an arrest for any
14 violation of chapters 701 to 721 and Title
15 '38, chapter 37, subchapter I, Article I-A
16 chapters 2 to 16, at a point more than 50
17 miles distant from the nearest District Court
18 having jurisdiction, may accept the personal
19 recognizance of the prisoner in an amount not
20 to exceed \$500 for his the prisoner's
21 appearance before the nearest District Court
22 on a specified date and a deposit in money to
23 the amount of that recognizance;

24 (2) The warden shall report forthwith all
25 those recognizances and forward all those
26 deposits to the court to which the
27 recognizance is returnable; and

28 (3) Recognizances and deposits shall be
29 handled by the court in accordance with
30 section 7910;

31 **Sec. 7.** 12 MRSA §7055, first ¶, as amended by
32 PL 1985, c. 304, §2, is further amended to read:

33 Sheriffs, deputy sheriffs, police officers,
34 constables, marine patrol officers, wardens of the
35 Penobscot Indian Nation within the Penobscot Indian
36 Territory, as defined by Title 30, section 6205,

1 subsection 2, and law enforcement personnel employed
2 by the United States Department of the Interior and
3 employees of the Department of Environmental
4 Protection appointed pursuant to Title 38, section
5 342, subsection 8, shall have the powers of game
6 wardens.

7 **Sec. 8.** 12 MRSA §7056, sub-§5 is enacted to
8 read:

9 5. Environmental laws. Employees of the
10 Department of Environmental Protection who have been
11 certified in accordance with Title 38, section 342,
12 subsections 7 and 8, have the same powers and duties
13 as game wardens to enforce Title 38, chapters 2 to 16.

14 **Sec. 9.** 38 MRSA §342, sub-§3, as enacted by PL
15 1971, c. 618, §8, is repealed.

16 **Sec. 10.** 38 MRSA §342, sub-§3-A is enacted to
17 read:

18 3-A. Granting of licenses; enforcement actions
19 and negotiating agreements. Pursuant to section 344,
20 subsection 2, the commissioner may approve, approve
21 with conditions or disapprove applications for
22 licenses.

23 A. The commissioner may, with the prior approval
24 of the board, disapprove a license if, in addition
25 to any other findings required by this Title, the
26 applicant is the subject of a pending enforcement
27 action by the department or Attorney General
28 resulting from a violation of this Title, including
29 rules adopted under this Title. Prior to disapproving
30 such a license, the commissioner shall consider the
31 applicant's history of compliance with environmental
32 laws and the likelihood of the applicant causing or
33 contributing to a violation of this Title, including
34 rules adopted under this Title, if that license is
35 granted.

36
37 B. The commissioner may initiate enforcement
38 actions pursuant to this Title or rules adopted

1 under this Title, negotiate violations of all
2 environmental laws in this Title and settle any
3 violations by entering into consent agreements
4 with the violators. In the event that the
5 commissioner has included monetary penalties in a
6 consent agreement, the penalties shall be approved
7 by the Board of Environmental Protection.

8 C. The commissioner may issue administrative
9 orders requiring remedial actions and time
10 schedules, as well as monetary penalties, if
11 settlement negotiations fail to result in a
12 consent agreement within 60 days, unless an order
13 is issued pursuant to other sections of this Title
14 or, in the commissioner's discretion, the
15 violation poses an unreasonable risk of harm to
16 the environment, in which case, the commissioner
17 may issue an emergency administrative order
18 immediately.

19 D. Offenders of the environmental laws of this
20 Title have rights of appeal of the administrative
21 orders, but the rights of appeal are limited to
22 the following, and appellants shall bear the
23 burden of establishing that:

24 (1) No offense of this Title or the rules
25 adopted under this Title occurred;

26 (2) This Title does not provide authority to
27 the department to regulate the subject matter
28 of the offense;

29 (3) The parties named in the offense are not
30 the proper parties; or

31 (4) The order is unreasonable, arbitrary or
32 capricious.

33 E. Within 30 days of the violator's receipt of an
34 administrative order, the violator must file a
35 petition of appeal, in writing, to the Board of
36 Environmental Protection setting forth in detail
37 the findings, conclusions or conditions to which
38 the violator objects. Appellate procedures for

1 appeals from administrative orders issued pursuant
2 to this subsection shall be in accordance with the
3 provisions set forth in section 347, unless the
4 order has been issued pursuant to other sections
5 of this Title, in which case the appellate
6 procedures specified in those sections shall apply.

7 F. The commissioner may enter into agreements
8 with federal, state and municipal agencies.

9 G. The commissioner shall exercise the duties
10 delegated by the Board of Environmental Protection.

11 Sec. 11. 38 MRSA §342, sub-§8 is enacted to
12 read:

13 8. Powers and duties. All employees of the
14 Department of Environmental Protection who have been
15 appointed by the commissioner pursuant to the
16 department's enforcement code to represent the
17 department in District Court in the criminal
18 prosecution of violations of those laws administered
19 by the department and set forth in Title 4, section
20 152, subsection 9, shall have the powers and duties as
21 set forth in Title 12, sections 7053, 7055 and 7056,
22 subsection 5.

23 Sec. 12. 38 MRSA §347, as amended by PL 1985,
24 c. 746, §11, is repealed.

25 Sec. 13. 38 MRSA §§347-A to 347-C are enacted
26 to read:

27 §347-A. Violations

28 1. General procedures. When it appears to the
29 department after investigation that there is or has
30 been a violation of this Title, or the rules under
31 this Title, or of the terms or conditions of any of
32 the department's orders, the department may issue an
33 order pursuant to this Title or refer the violation to
34 the Attorney General for enforcement action. Pursuant
35 to this section, any department orders shall be issued
36 in accordance with subsection 2.

1 When any violation has been referred to the Attorney
2 General for enforcement actions, the Attorney General
3 shall institute formal enforcement proceedings by
4 filing a complaint within 90 days from the date of the
5 department's referral for enforcement action. If the
6 Attorney General does not file a complaint within 90
7 days, the commissioner, after consultation with the
8 Attorney General, may utilize the legal services of
9 the district attorneys in whose jurisdiction the
10 action will be brought or may employ independent
11 counsel to bring a civil action in Superior Court.
12 All actions shall be brought in the name of the State.

13 2. Orders. Any order issued pursuant to this
14 subchapter shall contain findings of fact describing,
15 insofar as possible, the basis of the department's
16 belief that a violation of this Title, the rules
17 adopted under this Title or a license issued by the
18 department occurred; the specific activity or
19 violation and the site of the activity or violation;
20 and the harm to the public or the environment, if any.

21 3. Service. Service of the department's findings
22 and orders shall be made pursuant to the Maine Rules
23 of Civil Procedure.

24 4. Appeal. Upon service of an order issued
25 pursuant to this subchapter, the violator may petition
26 the Board of Environmental Protection for a hearing on
27 the order. The nature of the hearing shall be an
28 appeal. Petitions for appeal shall be in writing
29 setting forth in detail the findings, conclusions or
30 conditions to which the violator objects, and shall be
31 filed with the board within 30 days of service of the
32 order on the violator. The appellate hearing shall be
33 held by the board within 30 days of receipt of the
34 petition. At the hearing, all witnesses shall be
35 sworn and the department shall establish the
36 jurisdiction over the subject matter, the basis for
37 the order and for naming the violator. The burden of
38 going forward shall shift to the appellant to
39 demonstrate, based upon a preponderance of the
40 evidence, that the order should be modified or
41 rescinded because:

1 A. No offense of the laws in this Title, or the
2 rules adopted under this Title, occurred;

3 B. This Title does not provide authority to the
4 department to regulate the subject matter of the
5 offense;

6 C. The parties named in the order are not the
7 proper parties; or

8 D. The order is unreasonable, arbitrary or
9 capricious.

10 Within 7 days after the hearing, the board shall make
11 findings of fact and shall uphold, revoke or modify
12 the order. Any person who is aggrieved by the
13 decision of the board shall be entitled to seek
14 judicial review in the Superior Court in accordance
15 with the Maine Administrative Procedure Act, Title 5,
16 chapter 375, subchapter VII. Unless a stay is entered
17 by a Justice of the Superior Court, the order of the
18 board shall be complied with immediately.

19 5. Appeal of emergency orders. If the
20 commissioner issues an emergency order pursuant to
21 this subchapter, the party to whom the order is
22 directed shall comply immediately. An emergency order
23 may not be appealed to the Superior Court directly,
24 but a person to whom it is directed may petition the
25 board for a hearing on the order if the petition is
26 made within 48 hours after service of the order on the
27 party to whom the order was directed. The nature of
28 the hearing shall be an appeal. Within 5 working days
29 after receipt of the petition, the board shall hold a
30 hearing in accordance with the procedures set forth in
31 subsection 4. The board shall make findings of fact
32 and uphold, revoke or modify the order within 48 hours
33 of the hearing. Any person who is agrieved by the
34 decision of the board shall be entitled to seek
35 judicial review in the Superior Court in accordance
36 with the Maine Administrative Procedure Act, Title 5,
37 chapter 375, subchapter VII.

38 Unless a stay is entered by a Justice of the Superior
39 Court, the order of the board shall be complied with

1 immediately.

2 §347-B. Modification, revocation or suspension of
3 license

4 After written notice and opportunity for a
5 hearing, the board may modify in whole or in part any
6 license or issue an order prescribing necessary
7 corrective action or, with or without a hearing, may
8 act in accordance with the Maine Administrative
9 Procedure Act, Title 5, chapter 375, to revoke or
10 suspend a license, whenever the board finds that:

11 1. Violation of license. The licensee has
12 violated any condition of the license;

13 2. Misrepresentation. The licensee has obtained
14 a license by misrepresenting or failing to disclose
15 fully all relevant facts;

16 3. Threat. The licensed discharge poses a threat
17 to human health or welfare;

18 4. Failure to include standard or limitation.
19 The license fails to include any standard or
20 limitation applicable on the date of issuance;

21 5. Change in condition or circumstance. There
22 has been a change in any condition or circumstance
23 that requires revocation, suspension or a temporary or
24 permanent modification of the terms of the license; or

25 6. Violation of law. The licensee has violated
26 any law administered by the board.

27 For the purpose of this section, the terms
28 "license" and "licensee" include any license, permit,
29 approval or certification issued by the board and the
30 holder of the license respectively.

31 §347-C. Right of inspection and entry

32 Employees of the Department of Environmental
33 Protection may enter any property at reasonable hours
34 and enter any building with the consent of the

1 property owner, occupant or agent in order to inspect
2 the property or structure, take samples and conduct
3 tests, as appropriate, to determine compliance with
4 any laws administered by the department or the terms
5 and conditions of any order, regulation, license,
6 permit, approval or decision of the Board of
7 Environmental Protection.

8 **Sec. 14. 38 MRSA §348, sub-§1, as enacted by PL**
9 **1977, c. 300, §9, is amended to read:**

10 1. General. In the event of a violation of any
11 provision of the laws administered by the Department
12 of Environmental Protection or of any order,
13 regulation, license, permit, approval or decision of
14 the Board of Environmental Protection or decree of the
15 court, as the case may be, the Attorney General may
16 institute injunction proceedings to enjoin any further
17 violation thereof, a civil or criminal action or any
18 appropriate combination thereof without recourse to
19 any other provision of law administered by the
20 Department of Environmental Protection.

21 If a Department of Environmental Protection employee
22 certified and appointed in accordance with section
23 342, subsections 7 and 8, serves criminal process on
24 offenders of environmental laws administered by the
25 department, the District Court shall have original and
26 exclusive jurisdiction as set forth in Title 4,
27 section 152, subsection 9, over these Class E crimes
28 as long as the monetary penalties do not exceed
29 \$5,000. Offenders of these environmental laws have
30 the right of appeal to the Superior Court on matters
31 of law only.

32 **Sec. 15. 38 MRSA §349, sub-§7 is enacted to**
33 **read:**

34 7. Apportionment of penalties. All monetary
35 penalties collected under this Title with the
36 exception of the provisions of this Title that
37 apportion penalties to the Maine Coastal and Inland
38 Surface Oil Clean-up Fund, Ground Water Oil Clean-up
39 Fund, Maine Hazardous Waste Fund and Uncontrolled
40 Sites Fund shall be apportioned as follows:

1 A. Sixty-six and two-thirds percent to the
2 General Fund; and

3 B. Thirty-three and one-third percent to the
4 Maine Environmental Protection Fund.

5 STATEMENT OF FACT

6 Sections 1 to 4 make some format changes and
7 specify that all laws administered by the Department
8 of Environmental Protection may be enforced with
9 actions initiated in District Court. It also grants
10 the District Court original and exclusive jurisdiction
11 for some criminal cases brought under Maine's
12 environmental laws. These Class E crimes carry a
13 potential penalty of less than \$5,000. These matters
14 could be heard in Superior Court only on appeal. This
15 will mean that many minor environmental infractions
16 may be treated as a traffic ticket.

17 Sections 5 and 6 specify that game wardens may
18 enforce environmental laws, including serving process
19 on violators.

20 Sections 7, 8 and 11 specify that the Commissioner
21 of Environmental Protection shall name certain
22 employees of the department to represent the
23 department in court on enforcement work. These
24 employees are authorized to issue summons and have
25 powers similar to but less than game wardens.

26 Sections 9 and 10 restructure the powers and
27 duties of the Commissioner of Environmental
28 Protection. The commissioner may enter into consent
29 agreements, issue administrative orders and approve,
30 approve with conditions or disapprove a license if
31 enforcement action is pending against the applicant.

32 Sections 12 and 13 repeal the Maine Revised
33 Statutes, Title 38, section 347, and replace it with 3
34 new sections. The first new section, Title 38,
35 section 347-A, gives the department, both the board
36 and the commissioner, the authority to refer matters
37 to the Attorney General at any time. Previously, most

1 matters had to be referred to the Attorney General by
2 the board. This new section also requires the
3 Attorney General to take formal legal action within a
4 certain time period and authorizes the department to
5 utilize the services of district attorneys or
6 independent legal counsel if that time limit cannot be
7 met. This section established procedural guidelines
8 such as the formal service of process and appellate
9 procedures of the department's administrative orders.
10 Title 38, sections 347-B and 347-C, incorporate
11 provisions of the former section 347.

12 Section 14 establishes original and exclusive
13 jurisdiction in the District Court for Class E crimes.

14 Section 15, Penalties collected as a result of
15 violation of environmental laws will be apportioned
16 2/3 to the General Fund and 1/3 to the Maine
17 Environmental Protection Fund. The Maine
18 Environmental Protection Fund is a fund used to
19 finance the licensing and compliance activities of the
20 department. This funding source will provide
21 resources necessary to ensure compliance with
22 environmental laws. This effort will cost money, best
23 funded by violators.

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