

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2375

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H.P. 1732 House of Representatives, February 26, 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.

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STATE OF MAINE

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

---

1 AN ACT to Make Improvements to and  
2 Facilitate Prompt Enforcement of  
3 Environmental Laws.  
4

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

7 Sec. 1. 4 MRSA §152, sub-§6, as repealed and  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

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

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

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

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

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

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

19       F. Local ordinances pursuant to Title 22, section  
20 2642;

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

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

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

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

31       K. Local housing codes adopted pursuant to Title  
32 30, sections 1917 and 2151;

33       L. Local ordinances regarding automobile

1 junkyards pursuant to Title 30, chapter 215,  
2 subchapter I;

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

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

8 O. Local ordinances regarding malfunctioning  
9 domestic sewage disposal units pursuant to Title  
10 30, section 4359;

11 P. The subdivision law pursuant to Title 30,  
12 section 4956; local subdivision ordinances adopted  
13 pursuant to Title 30, section 1917; and  
14 subdivision regulations adopted pursuant to Title  
15 30, section 4956;

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

19 R. The Great Ponds Program, Title 38, sections  
20 386-to-396;

21 R-1. All laws administered by the Department of  
22 Environmental Protection, Title 38, chapters 2 to  
23 16.

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

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

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

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

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

1 X. The site location of development laws, Title  
2 387-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, sub-§7-A is enacted to  
9 read:

10 7-A. Civil actions to enforce Title 38, chapters  
11 2 to 16. Original jurisdiction, concurrent with the  
12 Administrative Court, with no rights of removal to  
13 Superior Court, to grant equitable relief involving  
14 alleged violations of all laws and regulations  
15 administered by the Department of Environmental  
16 Protection in those matters prosecuted by the  
17 certified department staff pursuant to Title 38,  
18 section 342, subsections 7 and 8. Appeals from  
19 decisions of the District Court to the Superior Court  
20 shall be limited to matters of law.

21 Sec. 4. 4 MRSA §152, 2nd and 3rd ¶¶, as  
22 repealed and replaced by PL 1983, c. 796, §1, are  
23 repealed.

24 Sec. 5. 4 MRSA §152, sub-§§8 and 9 are enacted  
25 to read:

26 8. Divorce, annulments or separations. Actions  
27 for divorce, annulment or separation may be remanded,  
28 upon agreement of the parties, from the Superior Court  
29 to the District Court in accordance with rules  
30 promulgated by the Supreme Judicial Court. An action  
31 so remanded shall remain in the District Court, which  
32 shall have exclusive jurisdiction thereafter, subject  
33 to the rights of appeal to the Superior Court as to  
34 matters of law.

35 9. Criminal jurisdiction. The District Court  
36 shall possess the criminal jurisdiction exercised by

1 all trial justices and municipal courts in the State  
2 on September 16, 1961, except as provided in Title 29,  
3 section 2302.

4 Sec. 6. 4 MRSA §1151, sub-§2, as repealed and  
5 replaced by PL 1987, c. 141, Pt. B, §1; c. 395, Pt.  
6 A, §15; and c. 402, Pt. A, §9, is repealed.

7 Sec. 7. 4 MRSA §1151, sub-§2-B is enacted to  
8 read:

9 2-B. Environmental jurisdiction and appeal  
10 rights. Jurisdiction over and appeal of laws and  
11 rules administered by the Department of Environmental  
12 Protection are as follows.

13 A. Notwithstanding any other provisions of this  
14 chapter, with respect to all laws and rules  
15 administered by the Department of Environmental  
16 Protection, Title 38, chapters 2 to 16, the  
17 Administrative Court shall have original  
18 jurisdiction concurrent with the District Court,  
19 with no rights to removal to Superior Court, over  
20 those matters prosecuted by the department  
21 certified pursuant to Title 38, section 342,  
22 subsections 7 and 8.

23 The Administrative Court shall have jurisdiction  
24 to resolve all violations of environmental laws  
25 and rules administered by the Department of  
26 Environmental Protection. This jurisdiction  
27 includes, but is not limited to:

28 (1) Modification, revocation or suspension  
29 of permits and licenses issued by the  
30 department;

31 (2) Review of licenses and permits to  
32 determine whether compliance has occurred;

33 (3) Hearing complaints regarding unlicensed  
34 activities;

35 (4) Determining whether renewal or  
36 reissuance of a license may be refused; and

1           (5) Entering remedial orders and granting  
2           equitable relief.

3           B.   Notwithstanding any other provisions of this  
4           chapter, appeals from decisions of the  
5           Administrative Court on matters prosecuted  
6           pursuant to laws administered by the Department of  
7           Environmental Protection shall be to the  
8           Superior Court and shall be limited to matters of  
9           law.

10          Sec. 8.   4 MRSA §1156, as amended by PL 1987, c.  
11          339, §4, is further amended to read:

12          §1156. Fines

13          Notwithstanding any other provisions of this  
14          chapter, a judge of the Administrative Court, in his  
15          judicial discretion, may impose a fine of a specific  
16          sum, which shall not be less than \$50 nor more than  
17          \$1,500 for any one offense, or such other limits as  
18          the statutes relating to the licensing question  
19          matter before the court may provide. Such a fine may  
20          be imposed instead of or in addition to any  
21          suspension, revocation or modification of a license by  
22          the court or any remedial order of the court. Section  
23          1057 applies to any fine imposed by this section.

24          The Administrative Court Judge shall maintain a  
25          record of all fines and surcharges received by the  
26          court and shall pay the fines into the General Fund of  
27          the State Treasury and the surcharges into the Jail  
28          Operations Surcharge Fund on or before the 15th day of  
29          each month, except as provided in Title 38, section  
30          349.

31          Sec. 9.   12 MRSA §7053, sub-§1, ¶A, as amended  
32          by PL 1981, c. 414, §6, is further amended to read:

33          A.   Enforce the following:

34                 (1) Chapters 701 to 721;

35                 (2) All rules promulgated by the

1 commissioner; and

2 (3) The United States Federal Migratory Bird  
3 Treaty Act, Public Law, July 3, 1918, chapter  
4 128, as amended, and all rules and  
5 regulations promulgated in pursuance thereof;  
6 and

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

8 Sec. 10. 12 MRSA §7055 as amended by PL 1985,  
9 c. 633, is repealed and the following enacted in its  
10 place:

11 §7055. Officials with powers of game wardens

12 1. Officials with full powers of game wardens.  
13 Sheriffs, deputy sheriffs, police officers,  
14 constables, marine patrol officers, wardens of the  
15 Penobscot Indian Nation within the Penobscot Indian  
16 Territory, as defined by Title 30, section 6205,  
17 subsection 2, and law enforcement personnel employed  
18 by the United States Department of the Interior shall  
19 have the powers of game wardens.

20 2. Officials with limited powers of game  
21 wardens. Certified employees of the Department of  
22 Environmental Protection, pursuant to Title 38,  
23 section 342, subsections 7 and 8, shall have civil  
24 enforcement powers and duties of game wardens to  
25 enforce Title 38, chapters 2 to 16.

26 Sec. 11. 12 MRSA §7056, sub-§5 is enacted to  
27 read:

28 5. Environmental laws. Certified employees of  
29 the Department of Environmental Protection, in  
30 accordance with Title 38, section 342, subsections 7  
31 and 8, have civil enforcement powers and duties  
32 similar to that of game wardens to enforce Title 38,  
33 chapters 2 to 16.

34 Sec. 12. 38 MRSA §342, sub-§3, as enacted by PL  
35 1971, c. 618, §8, is repealed.



1        **Sec. 13. 38 MRSA §342, sub-§3-A** is enacted to  
2 read:

3        3-A. Granting of licenses; enforcement actions  
4 and negotiating agreements. The following procedures  
5 apply to the granting of licenses, enforcement actions  
6 and negotiating agreements.

7        A. Pursuant to section 344, subsection 2, the  
8 commissioner may approve, approve with conditions  
9 or disapprove applications for licenses. The  
10 commissioner may suspend processing of an  
11 application for a license or permit if, in  
12 addition to any other findings required by this  
13 Title, the applicant is the subject of a pending  
14 enforcement action by the department or Attorney  
15 General resulting from a violation of this Title,  
16 including rules adopted under this Title. In  
17 making a determination as to whether a license or  
18 permit should be granted, the commissioner shall  
19 consider the applicant's history of compliance  
20 with environmental laws and the likelihood of the  
21 applicant causing or contributing to a violation  
22 of this Title, including rules adopted under this  
23 Title, if that license or permit is granted.

24        B. The commissioner may initiate enforcement  
25 actions pursuant to this Title or rules adopted  
26 under this Title, negotiate violations of all  
27 environmental laws in this Title and settle any  
28 violations by entering into consent agreements  
29 with the violators, with the concurrence of the  
30 Attorney General. In the event that the  
31 commissioner has included monetary penalties in  
32 excess of \$25,000 in a consent agreement, the  
33 penalties shall be approved by the Board of  
34 Environmental Protection.

35        C. The commissioner may issue administrative  
36 orders requiring remedial actions and time  
37 schedules, as well as monetary penalties, if  
38 settlement negotiations fail to result in a  
39 consent agreement within 60 days, unless an order  
40 is issued pursuant to other sections of this Title

1 or, in the commissioner's discretion, the  
2 violation poses an unreasonable risk of harm to  
3 the environment, in which case, the commissioner  
4 may issue an emergency administrative order  
5 immediately.

6 D. Offenders of the environmental laws of this  
7 Title have rights of appeal of administrative  
8 orders, but the rights of appeal shall be limited  
9 to the following, and appellants shall demonstrate  
10 that:

11 (1) No offense of this Title or the rules  
12 adopted under this Title occurred;

13 (2) This Title does not provide authority to  
14 the department to regulate the subject matter  
15 of the offense;

16 (3) The parties named in the offense are not  
17 the proper parties; or

18 (4) The order is unreasonable, arbitrary or  
19 capricious.

20 E. Within 30 days of receipt of an administrative  
21 order, the party to whom the order is directed may  
22 file a petition of appeal, in writing, to the  
23 Board of Environmental Protection setting forth in  
24 detail the findings, conclusions or conditions to  
25 which the appellant objects. Appellate procedures  
26 for appeals from administrative orders issued  
27 pursuant to this subsection shall be in accordance  
28 with the provisions set forth in section 347,  
29 unless the order has been issued pursuant to other  
30 sections of this Title, in which case the  
31 appellate procedures specified in those sections  
32 shall apply.

33 F. The commissioner may enter into agreements  
34 with federal, state and municipal agencies.

35 G. The commissioner shall exercise the duties  
36 delegated by the Board of Environmental Protection.

1       Sec. 14. 38 MRSA §342, sub-§8 is enacted to  
2 read:

3       8. Powers and duties. All employees of the  
4 Department of Environmental Protection who have been  
5 certified by the commissioner pursuant to the  
6 department's procedures to represent the department in  
7 District Court or Administrative Court in the  
8 prosecution of civil infractions of those laws  
9 administered by the department and set forth in Title  
10 4, section 152, subsection 7-A, and section 1151,  
11 subsection 2-B, shall have the powers and duties as  
12 set forth in Title 12, sections 7053, 7055 and 7056,  
13 subsection 5.

14       Sec. 15. 38 MRSA §347, as amended by PL 1985,  
15 c. 746, §11, is repealed.

16       Sec. 16. 38 MRSA §§347-A to 347-C are enacted  
17 to read:

18 §347-A. Violations

19       1. General procedures. When it appears to the  
20 department after investigation that there is or has  
21 been a violation of this Title, or the rules under  
22 this Title, or of the terms or conditions of any of  
23 the department's orders, the department may issue an  
24 order pursuant to this Title or refer the violation to  
25 the Attorney General for enforcement action. Pursuant  
26 to this section, any department orders shall be issued  
27 in accordance with subsection 2.

28       2. Orders. Any administrative order issued  
29 pursuant to this subchapter shall contain findings of  
30 fact describing, insofar as possible, the basis of the  
31 department's belief that a violation of this Title,  
32 the rules adopted under this Title or a license issued  
33 by the department occurred; the specific activity or  
34 violation and the site of the activity or violation;  
35 and the harm to the public or the environment, if any.

36       3. Service. Service of the department's findings  
37 and orders shall be made pursuant to the Maine Rules  
38 of Civil Procedure.

1           4. Appeal. Upon service of an order issued  
2 pursuant to this subchapter, the party to whom the  
3 order is directed may petition the Board of  
4 Environmental Protection for a hearing on the order.  
5 The nature of the hearing shall be an appeal.  
6 Petitions for appeal shall be in writing setting forth  
7 in detail the findings, conclusions or conditions to  
8 which the appellant objects, and shall be filed with  
9 the board within 30 days of service of the order. The  
10 appellate hearing shall be held by the board within 30  
11 days of receipt of the petition. At the hearing, all  
12 witnesses shall be sworn and the department shall  
13 establish the jurisdiction over the subject matter,  
14 the basis for the order and for naming the party to  
15 whom the order is directed. The appellant shall  
16 demonstrate, based upon a preponderance of the  
17 evidence, that the order should be modified or  
18 rescinded because:

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

21           B. This Title does not provide authority to the  
22           department to regulate the subject matter of the  
23           offense;

24           C. The parties named in the order are not the  
25           proper parties; or

26           D. The order is unreasonable, arbitrary or  
27           capricious.

28           Within 7 days after the hearing, the board shall make  
29           findings of fact and shall uphold, revoke or modify  
30           the order. Any person who is aggrieved by the  
31           decision of the board shall be entitled to seek  
32           judicial review in the Superior Court in accordance  
33           with the Maine Administrative Procedure Act, Title 5,  
34           chapter 375, subchapter VII.

35           5. Appeal of emergency orders. If the  
36           commissioner issues an emergency order pursuant to  
37           this subchapter, the party to whom the order is  
38           directed shall comply immediately. An emergency order

1 may not be appealed to the Superior Court directly,  
2 but the party to whom it is directed may petition the  
3 Board of Environmental Protection for a hearing on the  
4 order if the petition is made within 48 hours after  
5 service of the order on the party to whom the order  
6 was directed. The nature of the hearing shall be an  
7 appeal. Within 5 working days after receipt of the  
8 petition, the board shall hold a hearing in accordance  
9 with the procedures set forth in subsection 4. The  
10 board shall make findings of fact and uphold, revoke  
11 or modify the order within 48 hours of the hearing.  
12 Any person who is aggrieved by the decision of the  
13 board shall be entitled to seek judicial review in the  
14 Superior Court in accordance with the Maine  
15 Administrative Procedure Act, Title 5, chapter 375,  
16 subchapter VII.

17 §347-B. Modification, revocation or suspension of  
18 license

19 After written notice and opportunity for a  
20 hearing, the board may modify in whole or in part any  
21 license or issue an order prescribing necessary  
22 corrective action or, with or without a hearing, may  
23 act in accordance with the Maine Administrative  
24 Procedure Act, Title 5, chapter 375, to revoke or  
25 suspend a license, whenever the board finds that:

26 1. Violation of license. The licensee has  
27 violated any condition of the license;

28 2. Misrepresentation. The licensee has obtained  
29 a license by misrepresenting or failing to disclose  
30 fully all relevant facts;

31 3. Threat. The licensed discharge poses a threat  
32 to human health or welfare;

33 4. Failure to include standard or limitation.  
34 The license fails to include any standard or  
35 limitation applicable on the date of issuance;

36 5. Change in condition or circumstance. There  
37 has been a change in any condition or circumstance  
38 that requires revocation, suspension or a temporary or

1 permanent modification of the terms of the license; or

2 6. Violation of law. The licensee has violated  
3 any law administered by the board.

4 For the purpose of this section, the terms  
5 "license" and "licensee" include any license, permit,  
6 approval or certification issued by the board and the  
7 holder of the license respectively.

8 §347-C. Right of inspection and entry

9 Employees of and contractors to the Department of  
10 Environmental Protection may enter any property at  
11 reasonable hours and enter any building with the  
12 consent of the property owner, occupant or agent in  
13 order to inspect the property or structure, take  
14 samples and conduct tests, as appropriate, to  
15 determine compliance with any laws administered by the  
16 department or the terms and conditions of any order,  
17 regulation, license, permit, approval or decision of  
18 the Board of Environmental Protection.

19 Sec. 17. 38 MRSA §348, sub-§1, as enacted by PL  
20 1977, c. 300, §9, is amended to read:

21 1. General. In the event of a violation of any  
22 provision of the laws administered by the Department  
23 of Environmental Protection or of any order,  
24 regulation, license, permit, approval or decision of  
25 the Board of Environmental Protection or decree of the  
26 court, as the case may be, the Attorney General may  
27 institute injunction proceedings to enjoin any further  
28 violation thereof, a civil or criminal action or any  
29 appropriate combination thereof without recourse to  
30 any other provision of law administered by the  
31 Department of Environmental Protection.

32 If a certified Department of Environmental Protection  
33 employee, in accordance with section 342, subsections  
34 7 and 8, serves civil process on offenders of  
35 environmental laws administered by the department, the  
36 District Court and the Administrative Court shall have  
37 original and exclusive jurisdiction as set forth in  
38 Title 4, section 152, subsection 7-A and section 1151,



1 Sections 12 and 13 restructure and clarify the  
2 powers and duties of the Commissioner of Environmental  
3 Protection. The commissioner may enter into consent  
4 agreements, issue administrative orders and approve,  
5 approve with conditions or suspend processing a  
6 license if enforcement action is pending against the  
7 applicant.

8 Sections 15 and 16 repeal the Maine Revised  
9 Statutes, Title 38, section 347, and replace it with 3  
10 new sections. The first new section, Title 38,  
11 section 347-A, gives the department, both the board  
12 and the commissioner, the authority to refer matters  
13 to the Attorney General at any time. Previously, most  
14 matters had to be referred to the Attorney General by  
15 the board. This section established procedural  
16 guidelines such as the formal service of process and  
17 appellate procedures of the department's  
18 administrative orders. Title 38, sections 347-B and  
19 347-C, incorporate provisions of the former section  
20 347.

21 Section 17 restructures Title 38, section 348, and  
22 provides enabling legislation for certified Department  
23 of Environmental Protection employees to bring civil  
24 matters to District Court and Administrative Court.

25 Section 18 establishes that penalties collected as  
26 a result of violation of environmental laws shall be  
27 apportioned as follows: Two-thirds to the General  
28 Fund and 1/3 to the Maine Environmental Protection  
29 Fund. The Maine Environmental Protection Fund is a  
30 fund used to finance the licensing and compliance  
31 activities of the department. This funding source  
32 will provide resources necessary to ensure compliance  
33 with environmental laws. This effort will cost money,  
34 best funded by violators.

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