

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47

L.D. 852

(Filing No. H- 361)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 629, L.D. 852, Bill, "An Act to Strengthen and Improve Enforcement of Environmental Laws"

Amend the bill in section 1 in subsection 6 in the 2nd and 3rd lines (page 1, lines 8 and 9 in L.D.) by striking out the following: "except as noted in Title 38, section 348, subsection 1."

Further amend the bill by striking out all of sections 4 and 5 and inserting the following in their place:

Sec. 4. 38 MRSA §§347-A to 347-C are enacted to read:

§347-A. Violations

1. General procedures. Whenever it appears to the department, after investigation, that there is or has been a violation of this Title, of rules promulgated under this Title or of the terms or conditions of any Department of Environmental Protection or Board of Environmental Protection license, permit or order, the department may do one or more of the following, including, but not limited to:

A. Resolve the violation through an administrative agreement approved by the board and the Attorney General;

B. Refer the violation to the Attorney General for prosecution;

C. Schedule and hold an enforcement hearing on the alleged violation pursuant to subsection 2; or

D. With the prior approval of the Attorney General, initiate a civil action pursuant to Title 38, section 342, subsection 7.

COMMITTEE AMENDMENT "A" to H.P. 629, L.D. 852

1 2. Hearings. The commissioner shall give at least 30 days'
2 written notice to the alleged violator of the date, time and
3 place of any hearing held pursuant to subsection 1, paragraph C.
4 The notice shall specify the act or omission which is claimed to
5 be in violation of law or regulation.

7 Any hearing conducted under the authority of this subsection
8 shall be in accordance with the provisions of the Maine
9 Administrative Procedure Act, Title 5, chapter 375, subchapter
10 IV. At the hearing, the alleged violator may appear in person or
11 by attorney and answer the allegations of violation and file a
12 statement of the facts, including the methods, practices and
13 procedures, if any, adopted or used by that person to comply with
14 this chapter and present such evidence as may be pertinent and
15 relevant to the alleged violation.

17 After hearing, or in the event of a failure of the alleged
18 violator to appear on the date set for a hearing, the department
19 shall, as soon as practicable, make findings of fact based on the
20 record and, if it finds that a violation exists, shall issue an
21 order aimed at ending the violation. The person to whom an order
22 is directed shall immediately comply with the terms of that order.

23 3. Emergency orders. Whenever it appears to the
24 commissioner, after investigation, that there is a violation of
25 the laws or regulations which the department administers or of
26 the terms or conditions of any of the department's orders, which
27 is creating or is likely to create a substantial and immediate
28 danger to public health or safety or to the environment, the
29 commissioner may order the person or persons causing or
30 contributing to the hazard to immediately take such actions as
31 are necessary to reduce or alleviate the danger. Service of a
32 copy of the commissioner's findings and order issued under this
33 emergency procedure shall be made by the sheriff or deputy
34 sheriff within the county where the person to whom the order is
35 directed operates or resides. In the event that the persons are
36 so numerous that the specified method of service is a practical
37 impossibility or the commissioner is unable to identify the
38 person or persons causing or contributing to the hazard, the
39 commissioner shall make the order known through prominent
40 publication or announcement in news media serving the affected
41 area.

42 The person to whom the order is directed shall comply with the
43 order immediately. The order may not be appealed to the Superior
44 Court in the manner provided in section 346, but the person may
45 apply to the board for a hearing on the order which shall be held
46 by the board within 48 hours after receipt of application.
47 Within 7 days after the hearing, the board shall make findings of
48 fact and continue, revoke or modify the order. The decision of
49 the board may be appealed to the Superior Court in the manner
50 provided by section 346.

1
3 §347-B. Modification, revocation or suspension of license

5 After written notice and opportunity for a hearing pursuant
7 to the Maine Administrative Procedure Act, Title 5, chapter 375,
9 subchapter IV, the board may modify in whole or in part any
11 license, or issue an order prescribing necessary corrective
13 action, or may act in accordance with the Maine Administrative
15 Procedure Act to revoke or suspend a license, whenever the board
17 finds that:

19 1. Violation of license. The licensee has violated any
21 condition of the license;

23 2. Misrepresentation. The licensee has obtained a license
25 by misrepresenting or failing to disclose fully all relevant
27 facts;

29 3. Threat. The licensed discharge or activity poses a
31 threat to human health or the environment;

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

39 5. Change in condition or circumstance. There has been a
41 change in any condition or circumstance that requires revocation,
43 suspension or a temporary or permanent modification of the terms
45 of the license; or

47 6. Violation of law. The licensee has violated any law
49 administered by the board.

51 For the purposes of this section, the term "license"
includes any license, permit, order, approval or certification
issued by the board and the term "licensee" means the holder of
the license.

All orders of the board or the commissioner may be enforced
by the Attorney General. If any order of the board or the
commissioner is not complied with within the time period
specified, the board or the commissioner, respectively, shall
immediately notify the Attorney General of this fact.

§347-C. Right of inspection and entry

Employees and agents of the Department of Environmental
Protection may enter any property at reasonable hours and enter
any building with the consent of the property owner, occupant or
agent, or pursuant to an administrative search warrant, in order
to inspect the property or structure, take samples and conduct

1 tests as appropriate to determine compliance with any laws
2 administered by the department or the terms and conditions of any
3 order, regulation, license, permit, approval or decision of the
4 Board of Environmental Protection.'

5
6 Further amend the bill by inserting before the statement of
7 fact the following:

8
9 **FISCAL NOTE**

10 Enactment of this legislation would basically broaden the
11 Department of Environmental Protection's enforcement
12 jurisdiction. Nevertheless, the department would absorb all
13 costs associated with this bill utilizing existing resources.
14 Also, the Judicial Department indicates that this legislation
15 could result in an increased number of court filings throughout
16 the State's court system in which any additional costs would be
17 absorbed by the Judicial Department.'

18
19 **STATEMENT OF FACT**

20
21 This amendment makes it clear that any enforcement hearing,
22 held under the Maine Administrative Procedure Act, Maine Revised
23 Statutes, Title 5, chapter 375, on an alleged violation of Title
24 38, of rules promulgated under Title 38, or of the terms of a
25 license, permit or order issued under Title 38 may be held by the
26 Department of Environmental Protection rather than only the Board
27 of Environmental Protection.

28
29 The amendment requires the department to receive prior
30 approval from the Attorney General before the department
31 initiates any civil action in which employees of the department
32 represent the department in District Court to enforce Title 38.

33
34 The amendment deletes provisions of the bill permitting the
35 commissioner to issue cease and desist orders. It replaces these
36 with provisions from existing law permitting the commissioner to
37 issue orders to alleviate hazards.

38
39 The amendment retains the provisions in current law which
40 establish the procedures for revoking or suspending licenses.

41
42 The amendment provides that all orders of the board or the
43 commissioner may be enforced by the Attorney General and that the
44 board or commissioner must immediately notify the Attorney
45 General if an order is not complied with.

46
47 The amendment deletes from the bill provisions restricting
48 the removal to Superior Court of actions brought in District
49 Court to enforce plumbing laws, land use laws and ordinances, and
50 Title 38, chapters 2 to 16.

51
52 Finally, this amendment adds a fiscal note.