

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "A" to H.P. 929, L.D. 1295, Bill, "An Act to Amend the Penalty for Violation of Natural Resource Protection Laws"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Amend the Penalties for Violations of Laws Administered by the Department of Environmental Protection and of Municipal Planning and Zoning Laws'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 30-A MRSA §4506, sub-§3, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106; and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. All-monetary-penalties Monetary penalties shall be assessed on a per day basis and are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500.

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500.

C. The violator may be ordered to correct or abate the violations. Where the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction will:

- (1) Result in a threat or hazard to public health or safety;
- (2) Result in substantial environmental damage; or
- (3) Result in a substantial injustice.

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D. If the municipality is the prevailing party, it shall be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.

E. In setting a penalty, the court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;
- (3) The extent to which the violation continued following a municipal order to stop; and
- (4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action.

F. The maximum penalty may exceed \$2,500, but may not exceed \$25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance.

G. The penalties for violations of waste discharge licenses issued by the municipality pursuant to Title 38, section 413, subsection 8, is as prescribed in Title 38, section 349.

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

Sec. 2. 38 MRSA §349, sub-§1, as amended by PL 1987, c. 517, §3, is further amended to read:

1. Criminal penalties. Any person who violates any provisions of the laws administered by the department ~~or~~, including without limitation a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, is guilty of a Class E

1 crime and may be punished accordingly, except notwithstanding
2 Title 17-A, section 1301, subsection 1, paragraph C, or
3 subsection 3, paragraph E, the fine for such a violation shall
4 not ~~exceed~~ be less than \$100 nor more than \$25,000 for each day
5 of the violation.

7 This subsection does not apply to actions subject to the criminal
8 penalties set forth in section 1319-T.

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10 **Sec. 3. 38 MRSA §349, sub-§2**, as amended by PL 1983, c. 796,
11 §18, is further amended to read:

13 2. **Civil penalties.** Any person who violates any provision
14 of the laws administered by the department ~~or, including without~~
15 limitation a violation of the terms or conditions of any order,
16 ~~regulation rule,~~ license, permit, approval or decision of the
17 board or commissioner, shall be subject to a civil penalty,
18 payable to the State, of not less than \$100 nor more than \$10,000
19 for each day of that violation or, if the violation relates to
20 hazardous waste, of not more than \$25,000 for each day of the
21 violation.

23 **Sec. 4. 38 MRSA §349, sub-§3**, as amended by PL 1987, c. 491,
24 §3, is further amended to read:

25 3. **Falsification and tampering.** Notwithstanding Title
26 17-A, section 4-A, any person who knowingly makes any false
27 statement, representation or certification in any application,
28 record, report, plan or other document filed or required to be
29 maintained by any provision of law administered by the
30 department, or by any order, rule, ~~regulation,~~ license, permit,
31 approval or decision of the board or commissioner, or who tampers
32 with or renders inaccurate any monitoring devices or method
33 required by any provision of law, or any order, rule, ~~regulation,~~
34 license, permit, approval or decision of the board or who fails
35 to comply with any information submittal required by the
36 commissioner pursuant to section 568, subsection 3, or section
37 1364, subsection 3, shall, upon conviction, be subject to a fine
38 of not more than \$10,000, or by imprisonment for not more than 6
39 months, or both.

41 **Sec. 5. 38 MRSA §349, sub-§8** is enacted to read:

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43 **8. Economic benefit.** If the economic benefit resulting
44 from the violation exceeds the applicable penalties under
45 subsection 2, the maximum civil penalties may be increased for
46 each day of the violation. The maximum civil penalty may not
47 exceed an amount equal to twice the economic benefit resulting
48 from the violation. The court shall consider as economic
49 benefit, without limitation, the costs avoided or enhanced value
50 accrued at the time of the violation by the violator not
51 complying with the applicable legal requirements.'

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STATEMENT OF FACT

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This amendment clarifies and makes consistent several provisions of the penalty section for laws administered by the Department of Environmental Protection.

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In addition, it adds a provision for increasing the civil penalties if the violation resulted in a substantial economic benefit to the violator. For example, if a developer cleared the vegetation from the shoreland zone on a parcel of land to enhance the view and thus the market value of the property, the developer could be assessed the difference in value of the property as a result of the clearing.

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This provision is carried over to the penalties section for violations of municipal planning and zoning laws.

Reported by the Committee on Energy and Natural Resources
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House
5/25/89

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