

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "A" to H.P. 1329, L.D. 1846, Bill, "An Act to Provide for Increased Penalties for Land Use Violations within Certain Resource Protection Zones"

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

'An Act to Require Mitigation for Land Use Violations within the Shoreland Zone'

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 §4452, sub-§3, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. All Except for paragraph H, monetary penalties may 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. When 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 results in:

(1) ~~Result-in-a~~ A threat or hazard to public health or safety;

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2 (2) ~~Result--in--substantial~~ Substantial environmental
damage; or

4 (3) ~~Result-in-a~~ A substantial injustice.

6 C-1. Notwithstanding paragraph C, for violations of the
7 laws and ordinances set forth in subsection 5, paragraph O,
8 the violator shall be ordered to correct or mitigate the
9 violation unless the correction or mitigation results in:

10 (1) A threat or hazard to public health or safety;

12 (2) Substantial environmental damage; or

14 (3) A substantial injustice.

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

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

28 (1) Prior violations by the same party;

30 (2) The degree of environmental damage that cannot be
abated or corrected;

32 (3) The extent to which the violation continued
34 following a municipal order to stop; and

36 (4) The extent to which the municipality contributed
38 to the violation by providing the violator with
incorrect information or by failing to take timely
40 action.

42 F. The maximum penalty may exceed \$2,500, but may not
44 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.

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

50 H. If the economic benefit resulting from the violation
52 exceeds the applicable penalties under this subsection, the
maximum civil penalties may be increased. The maximum civil
penalty may not exceed an amount equal to twice the economic

2 benefit resulting from the violation. Economic benefit
3 includes, but is not limited to, the costs avoided or
4 enhanced value accrued at the time of the violation as a
5 result of the violator's noncompliance with the applicable
6 legal requirements.

7 **Sec. 2. 30-A MRSA §4506, sub-§3, as amended by PL 1989, c. 6;**
8 **c. 9, §2; c. 104, Pt. C, §§8 and 10; and c. 282, §1, is repealed.'**

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12 **STATEMENT OF FACT**

13 This amendment makes the mitigation of shoreland zoning
14 violations mandatory except under substantial injustice or
15 hazard. The amendment also corrects a conflict and changes
16 economic benefit penalties from per-day assessments to a one-time
17 assessment. The court is given discretion on whether to assess
18 penalties for other violations on a per-day basis.
19
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Reported by the Committee on Energy and Natural Resources
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