

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 1846

H.P. 1329

House of Representatives, December 8, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Clerk of the House on December 8, 1989. Referred to the Committee on Energy and Natural Resources and 1600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative RICHARDS of Hampden.

Cosponsored by Representative STEVENS of Bangor, Representative TUPPER of Orrington and Senator TITCOMB of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Provide for Increased Penalties for Land Use Violations
within Certain Resource Protection Zones.**



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

2 **Sec. 1. 30-A MRSA §4452, sub-§3**, as enacted by PL 1989, c.
4 104, Pt. A, §45 and Pt. C, §10, is amended to read:

6 **3. Civil penalties.** The following provisions apply to
7 violations of the laws and ordinances set forth in subsection 5,
8 except for paragraph Q. All monetary penalties are civil
9 penalties.

10 A. The minimum penalty for starting construction or
11 undertaking a land use activity without a required permit is
12 \$100, and the maximum penalty is \$2,500.

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

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

19 (1) Result in a threat or hazard to public health or
20 safety;

21 (2) Result in substantial environmental damage; or

22 (3) Result in a substantial injustice.

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

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

32 (1) Prior violations by the same party;

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

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

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

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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.

Sec. 2. 30-A MRSA §4452, sub-§3-A is enacted to read:

3-A. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5, paragraph Q. All monetary penalties are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$5,000, and the maximum penalty is \$10,000.

B. The minimum penalty for a specific violation is \$5,000, and the maximum penalty is \$10,000.

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:

- (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.

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;

