

MAINE STATE LEGISLATURE

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L.D. 845

(Filing No. H-162)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 594, L.D. 845, Bill, "An Act to Reduce Marine Pollution"

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, identifying sources of marine pollution is essential to ensure public health; and

Whereas, this Act must take effect prior to the start of the oyster spawning season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

Further amend the bill by striking out all of section 1 and inserting in its place the following:

'Sec. 1. 12 MRSA §6172, sub-§5 is enacted to read:

5. Private property; right of entry. The commissioner's authority to enter privately owned land or buildings to carry out the purposes of this section is prescribed as follows:

COMMITTEE AMENDMENT "A" to H.P. 594, L.D. 845

2 A. The commissioner, upon presentation of credentials, may
3 enter privately owned land at reasonable times with the
4 owner's permission. If entry to the land is denied by the
5 owner, the commissioner may seek a search warrant in a court
6 of competent jurisdiction to inspect the land for sources of
7 pollution under this section. The commissioner may not
8 request a warrant to search a privately owned domicile,
9 building or structure; and

10 B. The commissioner may enter a privately owned domicile,
11 building or structure only with the owner's permission and
12 only in the presence of the owner or the owner's agent.

13 For the purposes of this subsection, "commissioner" means the
14 Commissioner of Marine Resources or an employee of the department
15 authorized by the commissioner to inspect coastal waters and
16 intertidal zones for sources of pollution.

17 Sec. 2. 12 MRSA §6521, sub-§1, as enacted by PL 1977, c. 661,
18 §5, is amended to read:

19 1. Deposition of dead marine animals; exception. It shall
20 be is unlawful to deposit or discard, in intertidal sene zones or
21 in harbors or rivers below the dividing line between tidewater
22 and fresh water, any dead marine animal or its parts, except that
23 a person may deposit oyster shell cultch in those waters solely
24 to promote growth of oysters with the written permission of the
25 commissioner and under any conditions the commissioner determines
26 appropriate.'

27 Further amend the bill in section 2 in paragraph C in the
28 last paragraph in the 2nd line (page 2, line 5 in L.D.) by
29 striking out the following: "shall" and inserting in its place
30 the following 'may'

31 Further amend the bill in section 2 in paragraph C in the
32 last paragraph by inserting at the end a new sentence to read:
33 'The commissioner is not required to conduct tests on samples not
34 requested by the commissioner.'

35 Further amend the bill by renumbering the sections to read
36 consecutively.

37 Further amend the bill by inserting at the end before the
38 statement of fact the following:

39 'Emergency clause. In view of the emergency cited in the
40 preamble, this Act takes effect when approved.

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FISCAL NOTE

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This bill allows the Commissioner of Marine Resources to utilize the services of municipal shellfish conservation wardens for sample collection and requires the commissioner to conduct tests only on those samples requested by the commissioner. Because these tests and associated costs are discretionary, no additional funding is required.

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Cost associated with the proposed task force to address the identification and removal of marine pollution will be absorbed by the Department of Environmental Protection utilizing existing budgeted resources.'

STATEMENT OF FACT

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This amendment makes the bill an emergency. The amendment clarifies the limited authority granted to the Commissioner of Marine Resources in the original bill to enter private property to carry out the statutory responsibility of the Department of Marine Resources to inspect coastal waters and intertidal zones for pollution sources. The amendment permits the commissioner to inspect privately owned land at reasonable times with the owner's permission and to enter and inspect privately owned buildings only with the owner's permission and only in the presence of the owner. If permission to inspect land is denied, the commissioner is authorized to seek a search warrant to inspect the land for pollution sources. The commissioner is prohibited from requesting a warrant to search any privately owned building for sources of pollution.

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The amendment adds a new section to the bill that permits a person to deposit oyster shell cultch in coastal rivers, harbors and intertidal zones solely to promote the growth of oysters and only with the written permission of the Commissioner of Marine Resources.

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The amendment also clarifies in section 2 of the bill that the commissioner is not required to conduct pollutant or contamination testing on samples that were not requested by the commissioner.

Reported by the Committee on Marine Resources
Reproduced and distributed under the direction of the Clerk of the House
(4/23/91) (Filing No. H-162)

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