

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1129, L.D. 1654, Bill, "An Act to Facilitate Criminal Enforcement of the Environmental Laws"

Amend the bill by inserting after the enacting clause the following:

Sec. 1. 17 MRSA §2264-A, sub-§3, as enacted by PL 1989, c. 820, §5, is amended to read:

3. Disposal of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose. A person who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose is subject to the penalties for disposal of litter or solid waste under Title 38, section 349.'

Further amend the bill by striking out all of sections 3 and 4 and inserting in their place the following:

Sec. 3. 38 MRSA §349, sub-§1, as amended by PL 1989, c. 820, §9, is repealed and the following enacted in its place:

1. Criminal penalties. A person is guilty of a criminal violation of the environmental laws if that person intentionally or knowingly:

A. Discharges any pollutant into the waters of the State in violation of this Title, department rules or any significant term or condition of any order, license, permit, approval or decision of the department;

B. Emits any air contaminant into the ambient air in violation of this Title, department rules or any significant term or condition of any order, license, permit, approval or decision of the department;

2 C. Disposes of solid waste in a quantity in excess of 500
3 pounds or 100 cubic feet in violation of this Title,
4 department rules or the terms or conditions of any order,
5 license, permit, approval or decision of the department;

6
7 D. Handles special waste in violation of this Title,
8 department rules or any significant term or condition of any
9 order, license, permit, approval or decision of the
10 department;

11 E. Discharges any hazardous waste or hazardous matter onto
12 the land or into the ambient air or waters of the State in
13 violation of this Title, department rules or the terms and
14 conditions of any order, license, permit, approval or
15 decision of the department;

16
17 F. Transports any hazardous waste without having the proper
18 license or permit as required by this Title or department
19 rules;

20
21 G. Transports any hazardous waste to any location that does
22 not have a license or permit for the handling of hazardous
23 waste as required by this Title or department rules;

24
25 H. Handles any hazardous waste without having obtained a
26 license to do so as required by this Title or department
27 rules;

28
29 I. Handles any hazardous waste in any location that does
30 not have a license or permit for the handling of hazardous
31 waste as required by this Title or department rules;

32
33 J. Establishes, constructs, operates or significantly
34 alters any facility for the handling of hazardous waste
35 without having obtained a proper license or permit as
36 required by this Title or department rules;

37
38 K. Handles or transports any hazardous waste in a manner
39 that violates any significant term or condition of any
40 order, rule, license, permit, approval or decision of the
41 department with respect to the handling or transporting of
42 hazardous waste;

43
44 L. Gives over hazardous waste to a 3rd person who does not
45 have a license or permit to transport or handle hazardous
46 waste as required by this Title or department rules;

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2 M. Transports or causes to be transported any hazardous
4 waste without accurately completing and filing a manifest
6 with the department as required by this Title or department
8 rules; or

10 N. Violates the provisions of this Title, department rules
12 or the terms or conditions of any other order, rule,
14 license, permit, approval or decision of the department.

16 Criminal violation of the environmental laws under paragraphs A
18 to D is a Class C crime except that, notwithstanding Title 17-A,
20 sections 4-A and 1301, the fine may not exceed \$25,000.

22 Criminal violation of the environmental laws under paragraphs E
24 to K is a Class C crime except that, notwithstanding Title 17-A,
26 sections 4-A and 1301, the fine may not exceed \$50,000 for each
28 day of violation.

30 Criminal violation of the environmental laws under paragraphs L
32 and M is a Class D crime except that, notwithstanding Title 17-A,
34 sections 4-A and 1301, the fine may not exceed \$25,000.

36 Criminal violation of the environmental laws under paragraph N is
38 a Class E crime except that, notwithstanding Title 17-A, sections
40 4-A and 1301, the fine may not exceed \$25,000.

42 "Significant," as used in paragraphs A, B, D and K, or
44 "significantly," as used in paragraph J, means capable of
46 affecting the discharge of pollutants, emission of air
contaminants or the handling of special waste or hazardous waste.

Sec. 4. 38 MRSA §349, sub-§3, as affected by PL 1989, c. 890,
Pt. A, §40 and amended by Pt. B, §7, is repealed and the
following enacted in its place:

3. Falsification of environmental records. A person is
guilty of criminal falsification of environmental records if that
person intentionally or knowingly:

A. Makes a false material statement, representation or
certification in any document filed with the department
pursuant to this Title, department rules or the terms and
conditions of any order, license, permit, approval or
decision of the department;

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2 B. Makes a false material statement, representation or
4 certification in any document required to be maintained by a
6 person or entity other than the department pursuant to this
8 Title, department rules or the terms and conditions of any
10 order, license, permit, approval or decision of the
12 department;

8 C. Fails to monitor, sample or report any discharges or
10 emissions of pollutants as required by the terms and
12 conditions of any order, license, permit, approval or
14 decision of the department with intent to deceive the
16 department;

14 D. Fails to make any information submittal required by the
16 commissioner under section 568, subsection 3 or section
18 1364, subsection 3 with intent to deceive the department;

18 E. Fails to monitor, sample or report any discharges or
20 emissions of pollutants as required by the terms and
22 conditions of any order, license, permit, approval or
24 decision of the department; or

22 F. Fails to make any information submittal required by the
24 commissioner under section 568, subsection 3 or section
26 1364, subsection 3.

26 Falsification of environmental records under paragraphs A to D is
28 a Class C crime except that, notwithstanding Title 17-A, sections
30 4-A and 1301, the fine may not exceed \$10,000.

30 Falsification of environmental records under paragraphs E and F
32 is a Class E crime except that, notwithstanding Title 17-A,
34 sections 4-A and 1301, the fine may not exceed \$10,000.

34 "Material" as used in paragraphs A and B means capable of
36 affecting the course or outcome of any licensing or other
38 proceeding or capable of affecting the department's ability to
40 monitor compliance under any order, license, permit, approval or
42 decision.'

40 Further amend the bill in section 5 in subsection 3-A in the
42 3rd line (page 3, line 48 in L.D.) by striking out the
44 following: "recklessly" and inserting in its place the
46 following: 'intentionally or knowingly'

46 Further amend the bill by inserting after section 5 the
following:

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'Sec. 6. 38 MRSA §1319-T, as amended by PL 1991, c. 548, Pt. A, §32, is repealed.'

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

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

FISCAL NOTE

Raising the class of crime for violations of certain environmental laws from a Class E crime to a Class C crime and classifying general violations as a Class D crime will have an impact on the correctional system.

Sentences imposed for a Class C crime must be served in a state correctional institution. The cost per sentence is \$40,640 based upon an average length of stay of one year and 9 months.

Sentences imposed for Class D and Class E offenses must be served in county jail facilities. The net additional costs to the counties for housing each person sentenced under these crime reclassifications represent a state mandate that must be reimbursed pursuant to the Maine Revised Statutes, Title 30-A, section 5684. The General Fund appropriations required to reimburse these costs can not be estimated at this time. The cost per sentence for a Class D crime is \$7,140 based upon an average length of stay of 119 days. The cost per sentence for a Class E crime is \$4,020 based upon an average length of stay of 67 days.

An increase in the maximum fine for Class D offenses may increase General Fund revenue by an amount that can not be estimated at this time.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system will be absorbed within the budgeted resources of the Judicial Department.'

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

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STATEMENT OF FACT

6 This amendment deletes the culpable mental state of
8 recklessness as proposed by the bill for all criminal violations
10 of the environmental laws. Remaining in the bill as amended are
12 the 2 highest culpable mental states of "intentional" and
14 "knowing," of which at least one must be proved to establish
16 commission of the enumerated environmental crimes. The Maine
18 Revised Statutes, Title 17-A, section 34, which applies to all
20 crimes outside the Maine Criminal Code, provides that when the
22 definition of a crime specifies the state of mind sufficient for
24 the commission of that crime but does not distinguish among the
26 elements of the crime, the specified state of mind applies to all
the elements of the crime unless a contrary purpose plainly
appears. The bill as amended includes in the definitions of
these crimes the states of mind of "intentional" or "knowing."
By including these culpable mental states without specifying
different application to the various elements of the crimes, this
amendment makes the specified mental states apply to each element
of the crime. This means, for example, that not only must the
person intentionally or knowingly discharge a pollutant into the
waters of the State, but that the person must do so with the
knowledge or intent that the discharge was in violation of the
law, rules or authorization.

28 The Maine Criminal Code provisions governing the "competing
30 harms" defense apply to all crimes and criminal prosecutions.
32 Title 17-A, section 103 provides that conduct a person believes
34 necessary to avoid imminent physical harm to that person or
36 others is justifiable if the desirability and urgency of avoiding
38 that harm outweigh, according to ordinary standards of
40 reasonableness, the desirability and urgency of avoiding the harm
42 that the statute defining the crime charged seeks to prevent.
This means, for example, that a person charged with violating a
significant term of a discharge license by intentionally
bypassing a specific treatment process can raise the defense that
the action was taken because in that specific circumstance not
bypassing the process would have put others in danger of imminent
physical harm and thus the violation was justifiable.

44 The amendment also requires that if the crime to be proved
46 is the discharge, emission or handling of pollutants,
contaminants, special waste or hazardous waste in violation of
any order, license, permit, approval or decision of the
Department of Environmental Protection, that discharge, emission

2 or handling must be in violation of a significant term or
condition of that authorization. "Significant" or
4 "significantly" is used in the amendment to mean that a violation
of a significant term or condition is capable of affecting the
6 discharge of pollutants, emission of air contaminants or the
handling of special waste or hazardous waste. This will avoid
8 the fear of felony-level prosecutions for technical violations of
licenses and permits when the violation is not the discharge,
emission or handling itself.

10
12 The amendment changes the criminal action involving solid
waste from the term "handles" to the more specific term "disposes
of."

14
16 The amendment adds a reference including as a criminal
offense the handling of special waste in violation of Title 38,
department rules or any significant term or condition of any
18 order, license, permit, approval or decision of the department.

20 The bill increased from Class D to Class C the hazardous
waste violation of giving or handing over hazardous waste to a
22 3rd person who is not licensed. The amendment retains the Class
D classification.

24
26 The amendment provides for a possible maximum fine of
\$25,000 for a Class D offense, which is an increase from the
\$10,000 maximum proposed by the original bill.

28
30 The amendment changes the "catch-all" environmental crime
provision, encompassing all environmental violations not
32 specifically enumerated in the preceding paragraphs, to a Class E
crime with a fine of up to \$25,000.

34 The amendment also revises the language on falsification of
environmental records. The culpable mental state is again
36 limited to "intentional" or "knowing" by deleting "reckless" from
the original bill. The false statements must be material false
38 statements to be criminal violations, which are classified as
Class C crimes. "Material" is defined for these purposes to mean
40 capable of affecting the course and outcome of any licensing
proceeding or capable of affecting the department's ability to
42 monitor compliance. This definition is adapted from current
perjury laws. In addition, failure to monitor, sample, report or
44 make information submittals as required is a Class C crime if
there is intent to deceive the department. If the State is not

2 able to prove the intent to deceive, the offense is a Class E
crime.

4 The amendment changes the culpable mental state for
tampering with a monitoring device from "reckless," as proposed
6 in the original bill, to "intentional" or "knowing." This is in
keeping with the other culpable mental state changes in the
8 amendment.

10 The amendment repeals Title 38, section 1319-T, which
separately sets out criminal activity with regard to hazardous
12 waste.

14 The Department of Corrections prepared the following
correctional impact statement on the original bill pursuant to
16 Title 34-A, section 1402:

18 "[The original bill] would create 13 new criminal
violations of which 11 would be Class C offenses, punishable
20 of up to 5 years imprisonment, and 2 Class D offenses which
are punishable of up to 3 years.

22
24 • **Class C:** A sentence imposed for a Class C offense,
unless 9 months or less, must be served in a State
26 correctional facility. Because this would be a new
offense, there is no basis to predict its specific
28 impact on our correctional system. However, looking at
sentences served for Class C offenses in correctional
30 facilities, the average length of stay was found to be
1 year and 9 months. The average cost per day in a
32 correctional facility is \$58. Based on this data, the
projected cost to the State for each person sentenced
under this new Class C crime would be about \$36,900.

34
36 • **Class D:** A sentence imposed for a Class D offense must
be served in a county jail facility. Because this
38 would be a new offense, there is no basis to predict
its specific impact on our county jail system.
40 However, looking at sentences served for Class D
offenses in county jails, the average length of stay
was found to be about 119 days. The average costs per
42 day in a county jail is \$57. Based on this data, the
projected cost to a county for each person sentenced
44 under this new Class D crime would be about \$6,780."

Reported by the Majority of the Committee on Judiciary
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