

MAINE STATE LEGISLATURE

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

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

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 further amended to read:

1. Criminal penalties. Any person who intentionally or knowingly violates any provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who intentionally or knowingly disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is guilty of a Class E crime and may be punished accordingly, except notwithstanding Title 17-A, sections ~~4-A and 1301, subsection 1, paragraph C, or subsection 3, paragraph E,~~ the fine for such a violation may ~~not be less than \$100 nor more than~~ exceed \$25,000 ~~for each day of the~~ violation.

This subsection does not apply to actions subject to the criminal penalties set forth in subsection 1-A or section 1319-T.

Sec. 4. 38 MRSA §349, sub-§1-A is enacted to read:

1-A. Criminal penalties; Class C crime. A violation of this subsection is a Class C crime except that, notwithstanding Title 17-A, sections 4-A and 1301, the fine for such a violation may not exceed \$25,000.

2 A. A person is guilty of a criminal violation of the
4 environmental laws if that person intentionally or knowingly:

6 (1) Handles or transports for a commercial purpose any
8 of the following in violation of this Title, department
10 rules or any significant term or condition of any
12 applicable order, license, permit, approval or decision
14 of the department: boiler and incinerator ash,
16 biomedical waste, waste oil, asbestos and
18 asbestos-containing waste, industrial and industrial
20 process waste, wastewater treatment plant sludge, paper
22 mill sludge, other sludge waste, debris and residuals
24 from nonhazardous chemical spills, contaminated soils
26 and dredge spoils, sandblast grit and nonliquid paint
28 waste, high and low-pH waste, spent filter media and
30 residue and construction and demolition debris;

32 (2) Transports or causes to be transported for a
34 commercial purpose any of the following to any location
36 that does not have a license or permit for the handling
38 of these wastes as required by this Title or department
40 rules: boiler and incinerator ash, biomedical waste,
42 waste oil, asbestos and asbestos-containing waste,
44 industrial and industrial process waste, wastewater
46 treatment plant sludge, paper mill sludge, other sludge
48 waste, debris and residuals from nonhazardous chemical
50 spills, contaminated soils and dredge spoils, sandblast
 grit and nonliquid paint waste, high and low-pH waste,
 spent filter media and residue and construction and
 demolition debris;

(3) Excepting agricultural activities conducted in
 accordance with best management practices as set forth
 in Title 17, section 2805, subsection 2 and activities
 associated with the use, construction, maintenance and
 emergency repair activity for forestry and municipally
 maintained roads, discharges any pollutant into the
 waters of the State from any direct discharge for a
 commercial purpose in violation of this Title,
 department rules or any significant term or condition
 of any applicable order, license, permit, approval or
 decision of the department; or

(4) Emits any air contaminant into the ambient air
 from any building, structure, facility or installation
 for a commercial purpose in violation of this Title,
 department rules or any significant term or condition
 of any applicable order, license, permit, approval or
 decision of the department.

2 B. As used in this subsection, the following terms have the
4 following meanings.

6 (1) "For a commercial purpose" means the discharge of
8 pollutants either as part of a business, industrial or
 commercial enterprise or for a fee or other type of
 remuneration.

10 (2) "Significant" means affecting the discharge of
12 water pollutants or emission of air contaminants into
 the environment.

14 C. The department may not present or threaten to present
16 criminal charges under this subsection solely to obtain an
 advantage in a civil or administrative enforcement action.

18 D. The Attorney General has exclusive authority to bring a
20 prosecution under this subsection. With respect to each
22 case in which the Attorney General has initiated a criminal
24 prosecution under this subsection, the Attorney General
26 shall, on February 1, 1993 and on February 1, 1994, and
28 thereafter upon request of either of the joint standing
30 committees described in this paragraph, file a written
32 report with the joint standing committees of the Legislature
 having jurisdiction over energy and natural resources
 matters and over judiciary matters containing the following
 information: a list of cases that have been initiated or
 resolved in the previous 12-month period, a brief synopsis
 of the facts of each case and the results of those cases
 that have been completed or resolved.

34 E. It is an affirmative defense to a prosecution under this
 subsection that:

36 (1) The discharge or emission source has a license for
38 the pollutant or contaminant that was discharged or
40 emitted or does not require a license for the emission
 or discharge of the pollutant or contaminant for normal
 operations;

42 (2) The discharge or emission resulted substantially
44 from an unavoidable malfunction beyond the control of
46 the defendant. There is no affirmative defense under
48 this paragraph if the malfunction was caused
 substantially by poor maintenance, reckless operation
 or any other reasonably preventable condition or
 preventable equipment breakdown;

2 (3) The defendant took reasonable steps under the
4 circumstances to minimize or prevent the discharge or
 emission or has caused such steps to be taken;

6 (4) The defendant terminated the discharge or emission
8 or caused the discharge or emission to be terminated as
 soon as reasonably possible; and

10 (5) The defendant reported the discharge or emission
12 or has caused the discharge or emission to be reported
14 to the department as required by this Title, department
 rules or the terms or conditions of the applicable
 order, license, permit, approval or decision of the
 department.

16 **Sec. 5. 38 MRSA §349, sub-§3, as affected by PL 1989; c. 890,**
18 **Pt. A, §40 and amended by Pt. B, §7, is repealed and the**
 following enacted in its place:

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

24 A. Makes a false material statement, representation or
26 certification in any document filed with the department or
28 required to be maintained by a person or entity other than
 the department pursuant to this Title, department rules or
 the terms and conditions of any applicable order, license,
 permit, approval or decision of the department;

30 B. Fails to monitor, sample or report any discharges or
32 emissions of pollutants as required by the terms and
34 conditions of any applicable order, license, permit,
 approval or decision of the department with intent to
 deceive the department; or

36 C. Fails to make any information submittal required by the
38 commissioner under section 568, subsection 3 or section
40 1364, subsection 3 with intent to deceive the department.

42 Falsification of environmental records is a Class C crime except
44 that, notwithstanding Title 17-A, sections 4-A and 1301, the fine
 may not exceed \$10,000.

46 "Material," as used in paragraph A, means capable of affecting
48 the course or outcome of any licensing or other proceeding or
 capable of affecting the department's ability to monitor
 compliance under any order, license, permit, approval or
 decision.'

50

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

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

8
10 Further amend the bill by inserting at the end before the
statement of fact the following:

12 **FISCAL NOTE**

14 Raising the class of crime for violations of certain
16 environmental laws will impact the correctional system.

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

22 Sentences imposed for Class E offenses must be served in a
county jail facility. The cost per sentence for a Class E crime
24 is \$4,020 based upon an average length of stay of 67 days. The
additional costs to the counties for housing each person
26 sentenced under the Class E violations will require full funding
by the State as a state mandate pursuant to the Maine Revised
28 Statutes, Title 30-A, section 5684. The General Fund
appropriations required to reimburse these costs can not be
30 estimated at this time.

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

36 The additional costs associated with filing written reports
38 with the Legislature can be absorbed by the Department of
Attorney General utilizing existing budgeted resources.

40
42 **STATEMENT OF FACT**

44 This bill as amended is intended to clarify the existing
criminal provisions of the environmental laws and to facilitate
46 the enforcement of those provisions by the State. The bill and
the amendment amend the Maine Revised Statutes, Title 38, section
48 349, subsection 1 by expressly stating the culpable mental state

2 required for proof of an environmental crime. The existing
3 provision is silent as to the level of intent required for
4 conviction of a criminal violation under the environmental laws.

5
6 The original bill contained a culpable mental state of
7 "reckless" (a "conscious disregard" of the risk that the actor's
8 conduct will result in an environmental violation) for all
9 environmental crimes. This amendment requires that the State
10 prove that the individual acted either "intentionally" or
11 "knowingly." Under the Maine Criminal Code, Title 17-A, section
12 34, the State will have to prove not only that the defendant
13 intentionally or knowingly engaged in the environmental
14 violation, but that the person did so with the knowledge or
15 intent that the person's conduct was in violation of the law,
16 rules or permit.

17
18 The bill raised the class of crime for many violations of
19 the environmental laws from a Class E crime to a Class C crime.
20 Currently, all environmental crimes, other than specific
21 hazardous waste crimes, are classified only as the State's lowest
22 level misdemeanor. This amendment differs from the bill in that
23 it raises the class of only selected categories of environmental
24 crimes. This amendment makes no changes to the current
25 definition and classification of hazardous waste crimes.

26 This amendment raises the classification for specific
27 intentional and knowing violations of the air pollution, water
28 pollution, biomedical waste and special waste laws from Class E
29 to Class C. The air pollution violations are limited to
30 emissions from stationary sources for commercial purposes, while
31 the water pollution violations are limited to direct or point
32 source discharges for commercial purposes. Violations of only
33 "significant" terms or conditions of orders, rules, licenses,
34 permit, approvals or decisions are elevated to Class C status.
35 The State must prove that the intentional or knowing violation of
36 the license affected the discharge of pollutants, emission of air
37 contaminants or the handling of special waste or biomedical waste.
38

39 This amendment limits prosecutorial discretion in several
40 ways. First, it extends to members of the Department of
41 Environmental Protection the ethical rule prohibiting lawyers
42 from threatening criminal prosecution solely to gain advantage in
43 a civil matter. Second, it limits prosecution of the Class C
44 crimes under Title 38, section 349 to the Attorney General,
45 eliminating the possibility that district attorneys could
46 initiate such actions. Third, it creates an affirmative defense
47 similar to the unavoidable malfunction provision that currently
48 applies to civil penalty actions.

COMMITTEE AMENDMENT "B" to H.P. 1129, L.D. 1654

2 The amendment further revises the language on falsification
of environmental records. The culpable mental state is limited
4 to intentional or knowing conduct, thus deleting the "reckless"
level of intent in the original bill. The amendment classifies
6 the falsification of environmental records as a felony only if
the false statements are "material." "Material" is defined as
8 "capable of affecting the course and outcome of any licensing
proceeding or capable of affecting the department's ability to
10 monitor compliance." This definition is adapted from current
perjury laws. In addition, the failure to provide information as
12 required by the Department of Environmental Protection is a Class
C crime only if there is an intent to deceive the department. If
the intent can not be proved, the offense is a Class E crime.
14

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COMMITTEE AMENDMENT