

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "C" 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'Sec. 3. 38 MRSA §349, sub-§1, as amended by PL 1989, c. 820, §9, is repealed and the following enacted in its place: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 hazardous waste or hazardous matter into the waters of the State in violation of this Title, department rules or any significant term or condition of any applicable order, license, permit or approval;

B. Discharges any hazardous waste or hazardous matter into the ambient air in violation of this Title, department rules or any significant term or condition of any applicable order, license, permit or approval;

2 C. Discharges any hazardous waste or hazardous matter onto
3 the land in violation of this Title, department rules or the
4 terms or conditions of any applicable order, license,
5 permit, approval or decision of the department;

6 D. Transports any hazardous substance or special waste
7 without having the proper license or permit as required by
8 this Title or department rules;

10 D-1. Accepts for disposal or storage any hazardous
11 substance or special waste without having the proper license
12 or permit as required by this Title or department rules;

14 E. Transports any hazardous substance or special waste to
15 any location that does not, in fact, have a license or
16 permit for the handling of that waste as required by this
17 Title or department rules;

18 F. Handles any hazardous waste without having obtained a
19 license to do so as required by this Title or department
20 rules;

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

26 H. Establishes, constructs, operates or significantly
27 alters any facility for the handling of hazardous waste
28 without having obtained a proper license or permit as
29 required by this Title or department rules;

32 I. Handles or transports any hazardous waste in a manner
33 that violates any significant term or condition of any
34 applicable order, rule, license, permit, approval or
35 decision of the department with respect to the handling or
36 transporting of hazardous waste;

38 J. Gives over hazardous waste to a 3rd person with the
39 knowledge that that person does not have a license or permit
40 to transport or handle hazardous waste as required by this
41 Title or department rules;

42 K. Transports or causes to be transported any hazardous
43 waste without accurately completing and filing a manifest
44 with the department as required by this Title or department
45 rules; or
46

2 L. Violates the provisions of this Title, department rules
4 or the terms or conditions of any other applicable order,
rule, license, permit, approval or decision of the
department.

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

10 Criminal violation of the environmental laws under paragraphs J
12 and K is a Class D crime except that, notwithstanding Title 17-A,
sections 4-A and 1301, the fine may not exceed \$25,000.

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

18 "Significant," as used in paragraphs A, B and I, or
20 "significantly," as used in paragraph H, means capable of
affecting the discharge of hazardous waste or hazardous matter.

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

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

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

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

44 C. Fails to make any information submittal required by the
commissioner under section 568, subsection 3 or section
46 1364, subsection 3 with intent to deceive the department.

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

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

10 Further amend the bill in section 5 in subsection 3-A in the
11 3rd line (page 3, line 48 in L.D.) by striking out the
12 following: "recklessly" and inserting in its place the
13 following: 'intentionally or knowingly'

14
15 Further amend the bill by inserting after section 5 the
16 following:

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

19
20 Further amend the bill by renumbering the sections to read
21 consecutively.

22
23 Further amend the bill by inserting at the end before the
24 statement of fact the following:

25
26 **FISCAL NOTE**

27
28 Raising the class of crime for violations of certain
29 environmental laws will impact the correctional system.

30
31 Sentences imposed for a Class C crime, unless 9 months or
32 less, must be served in a state correctional institution. The
33 cost per sentence is \$40,640 based upon an average length of stay
34 of one year and 9 months.

35
36 Sentences imposed for Class E offenses must be served in a
37 county jail facility. The cost per sentence for a Class E crime
38 is \$4,020 based upon an average length of stay of 67 days.
39 Sentences imposed for Class D offenses must be served in a county
40 jail facility. The cost per sentence for a Class D crime is
41 \$7,140 based upon an average length of stay of 119 days. The
42 additional costs to the counties for housing each person
43 sentenced under these violations represent a state mandate that
44 must be reimbursed pursuant to the Maine Revised Statutes, Title
45 30-A, section 5684. The General Fund appropriations required to
46 reimburse these costs can not be estimated at this time.

47
48

2 An increase in the maximum fine for criminal violations of
the environmental laws may increase General Fund revenue by an
amount that can not be estimated at this time.

4
6 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.'

10
12

STATEMENT OF FACT

14 This amendment is the minority report of the Joint Standing
Committee on Judiciary.

16
18 The amendment deletes the culpable mental state of
recklessness as proposed by the bill for all criminal violations
of the environmental laws. Remaining in the bill as amended are
20 the 2 highest culpable mental states of "intentional" and
"knowing," of which at least one must be proved to establish
22 commission of the enumerated environmental crimes. The Maine
Revised Statutes, Title 17-A, section 34, which applies to all
24 crimes outside the Maine Criminal Code, provides that when the
definition of a crime specifies the state of mind sufficient for
26 the commission of that crime but does not distinguish among the
elements of the crime, the specified state of mind applies to all
28 the elements of the crime unless a contrary purpose plainly
appears. The bill as amended includes in the definitions of
30 these crimes the states of mind of "intentional" or "knowing."
By including these culpable mental states without specifying
32 different application to the various elements of the crimes, this
amendment makes the specified mental states apply to each element
34 of the crime. This means, for example, that not only must the
person intentionally or knowingly discharge hazardous waste into
36 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
38 law, rules or authorization.

40 The Maine Criminal Code provisions governing the "competing
harms" defense apply to all crimes and criminal prosecutions.
42 Title 17-A, section 103 provides that conduct a person believes
necessary to avoid imminent physical harm to that person or
44 others is justifiable if the desirability and urgency of avoiding
that harm outweigh, according to ordinary standards of
46 reasonableness, the desirability and urgency of avoiding the harm
that the statute defining the crime charged seeks to prevent.
48 This means, for example, that a person charged with violating a

2 significant term of a discharge license by intentionally
3 bypassing a specific treatment process can raise the defense that
4 the action was taken because in that specific circumstance not
5 bypassing the process would have put others in danger of imminent
6 physical harm and thus the violation was justifiable.

7
8 The amendment also requires that if the crime to be proved
9 is the discharge of hazardous waste or hazardous matter in
10 violation of any order, license, permit, approval or decision of
11 the Department of Environmental Protection, that discharge must
12 be in violation of a significant term or condition of that
13 authorization. "Significant" is used in the amendment to mean
14 that a violation of a significant term or condition is capable of
15 affecting the discharge of hazardous waste or hazardous matter.
16 This will avoid the fear of felony-level prosecutions for
17 technical violations of licenses and permits when the violation
18 is not the discharge itself.

19
20 The amendment also makes the following a Class C crime:
21 transporting any hazardous substance or special waste without
22 having a required license or permit, transporting any hazardous
23 substance or special waste to a location that does not, in fact,
24 have a required license or permit for handling that waste, and
25 accepting such waste for disposal or storage without a required
26 license or permit.

27
28 The bill increased from Class D to Class C the hazardous
29 waste violation of giving or handing over hazardous waste to a
30 3rd person who is not licensed. The amendment retains the Class
31 D classification.

32
33 The amendment provides for a possible maximum fine of
34 \$25,000 for a Class D offense, which is an increase from the
35 \$10,000 maximum proposed by the original bill.

36
37 The amendment changes the "catch-all" environmental crime
38 provision, encompassing all environmental violations not
39 specifically enumerated, to a Class E crime with a fine of up to
40 \$25,000.

41
42 The amendment also revises the language on falsification of
43 environmental records. The culpable mental state is again
44 limited to "intentionally" or "knowingly" by deleting
45 "recklessly" from the original bill. The false statements must
46 be material false statements to be criminal violations, which are
47 classified as Class C crimes. "Material" is defined for these
48 purposes to mean "capable of affecting the course or outcome of
any licensing or other procedure or capable of affecting the

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2 department's ability to monitor compliance." This definition is
3 adopted from current perjury laws. In addition, failure to
4 monitor, sample, report or make information submittals as
5 required is a Class C crime if there is intent to deceive the
6 department.

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

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

15 The amendment also adds a fiscal note to the bill.

16 The Department of Corrections prepared the following
17 correctional impact statement pursuant to Title 34-A, section
18 1402:

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

23 • **Class C:** A sentence imposed for a Class C offense, unless 9
24 months or less, must be served in a State correctional
25 facility. Because this would be a new offense, there is no
26 basis to predict its specific impact on our correctional
27 system. However, looking at sentences served for Class C
28 offenses in correctional facilities, the average length of
29 stay was found to be 1 year and 9 months. The average cost
30 per day in a correctional facility is \$58. Based on this
31 data, the projected cost to the State for each person
32 sentenced under this new Class C crime would be about
33 \$36,900.

34 • **Class D:** A sentence imposed for a Class D offense must be
35 served in a county jail facility. Because this would be a
36 new offense, there is no basis to predict its specific
37 impact on our county jail system. However, looking at
38 sentences served for Class D offenses in county jails, the
39 average length of stay was found to be about 119 days. The
40 average costs per day in a county jail is \$57. Based on
41 this data, the projected cost to a county for each person
42 sentenced under this new Class D crime would be about
43 \$1,000.

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sentenced under this new Class D crime would be about
\$6,780."

Reported by Report "B" to the Committee on Judiciary
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