

MAINE STATE LEGISLATURE

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ENERGY & NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 731, L.D. 990, Bill, "An Act to Supplement Environmental Enforcement"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 14 MRSA c. 745 is enacted to read:

CHAPTER 745

CITIZENS ENVIRONMENTAL PROTECTION ACT

§8221. Short title

This chapter may be known and cited as the "Citizens Environmental Protection Act."

§8222. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Person. "Person" means an individual, corporation, municipality or quasi-municipal corporation.

COMMITTEE AMENDMENT

§8223. Right of action

2
4 1. Generally. Except as provided in subsection 2 and in
6 section 8224, any person who is a resident of this State may
8 commence a civil action on that person's own behalf for
10 injunctive and declaratory relief against any person who is
12 alleged to be in violation of any provision of Title 38, any rule
14 adopted or order issued pursuant to authority granted by Title
16 38, any zoning or local land use ordinance adopted pursuant to
18 Title 30-A, chapter 187, or any provision of any license or
20 permit issued under Title 38 or Title 30-A, chapter 187.

22 2. Exception. There is no right of action under this
24 chapter against the State, any instrumentality or agency of the
26 State or any political subdivision of the State.

28 3. Dismissal of action. The court may, on the motion of
30 any party or on its own motion, dismiss any action brought
32 pursuant to this chapter that on its face appears to be patently
34 frivolous, harassing or wholly lacking in merit.

36 4. Relief. The court may issue a temporary restraining
38 order or preliminary injunction in accordance with the Maine
40 Rules of Civil Procedure, Rule 65.

42 **§8224. Notice of action**

44 1. Commencement of action; notice. An action may not be
46 commenced under this chapter:

48 A. Prior to 60 days after the plaintiff has given notice of
the violation and an intention to bring suit under this
chapter to:

(1) The commissioner, director or chief administrative
officer of the department or municipality that
administers the law, rule, ordinance, license, permit
or order allegedly being violated;

(2) The Attorney General; and

(3) Each person alleged to be violating the law, rule,
ordinance, license, permit or order;

B. If the commissioner, director or chief administrative
officer of the department or municipality that administers
the law, rule, ordinance, license, permit or order allegedly
being violated reviews the alleged violation and determines
that no violation has occurred and in writing notifies the

2 plaintiff of this determination prior to the end of the
3 60-day period;

4 C. If the Attorney General or the commissioner, director or
5 chief administrative officer of the department or
6 municipality, at any time prior to the end of the 60-day
7 notice period described in paragraph A, has commenced and is
8 diligently prosecuting an action in a court of the United
9 States or of this State or an administrative enforcement
10 proceeding or is diligently pursuing any other remedy that
11 results in correction of the violation; or

12 D. If the Attorney General or the commissioner, director or
13 chief administrative officer of the department or
14 municipality, at any time prior to the end of the 60-day
15 notice period described in paragraph A, has provided written
16 notice to the plaintiff that the person will, within 30
17 days, commence an action in a court of the United States or
18 of this State or an administrative enforcement proceeding or
19 will diligently pursue any other remedy that will result in
20 correction of the violation. If the Attorney General or the
21 commissioner, director or chief administrative officer of
22 the department or municipality fails to commence the
23 judicial or administrative enforcement proceeding within 30
24 days, the plaintiff may commence a civil action under
25 section 8223.

26
27
28 2. Service. A copy of the complaint and other pleadings
29 must be served upon the persons listed in subsection 1, paragraph
30 A, subparagraphs (1) and (2) at the time of service on the
31 defendant. Copies of all answers and other documents
32 accompanying the answers must be served upon the persons listed
33 in subsection 1, paragraph A, subparagraphs (1) and (2) at the
34 time of service on the plaintiff.

35
36 3. Application. The 60-day notice requirement under
37 subsection 1, paragraph A is not applicable when the plaintiff
38 shows that the matter in controversy involves an imminent and
39 substantial endangerment to health or the environment.

40
41 **§8225. Venue**

42
43 Any action brought under this chapter must be brought in the
44 judicial district in which the violation is alleged to have
45 occurred.

46
47 **§8226. Intervention by the State**

48
49 The Attorney General may intervene as a matter of right in
50 any action brought under this chapter.

2 **§8227. Costs and fees**

4 The court, in issuing any final order in any action brought
6 under this chapter, may not award costs of litigation to any
8 party.

8 **§8228. Existing remedies preserved**

10 This chapter may not restrict the right that a person has
12 under any statute or common law to seek enforcement of a law,
14 permit, standard, regulation, ordinance, requirement, condition,
16 limitation or order or to seek other relief.

16 **FISCAL NOTE**

18 This bill may increase the number of jury trials in the
20 courts. Additional General Fund appropriations may be required
22 to fund the increased costs associated with these additional
cases. General Fund revenue may increase by minor amounts as a
result of civil jury trial fees.

24 The Department of Environmental Protection will incur some
26 minor additional costs to respond to citizen-initiated
enforcement actions. These costs can be absorbed within the
department's existing budgeted resources.'

30 **STATEMENT OF FACT**

32 The amendment provides that citizen suits are available only
34 for violation of laws, rules, orders, ordinances, permits and
licenses contained in or issued under the Maine Revised Statutes,
36 Title 38 or Title 30-A, chapter 187, regarding local land use
ordinances. The amendment also prohibits the court from awarding
costs or attorney's fees to any party in a citizen suit. The
38 amendment prohibits the initiation of a citizen suit if the
Department of Environmental Protection, a municipal officer or
40 the Attorney General is pursuing informal action that corrects
the violation. Finally, the amendment deletes a provision
42 permitting intervention in administrative or Attorney General
enforcement actions, as a matter of right, for any affected
44 person.