

MAINE STATE LEGISLATURE

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L.D. 215

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DATE: 5/8/95

(Filing No. H-220)

NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 167, L.D. 215, Bill, "An Act to Amend the Laws Regarding Consent Agreements of the Department of Environmental Protection"

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. 4 MRSA §18, sub-§6, as amended by PL 1989, c. 702, Pt. E, §1, is further amended to read:

6. Fees. When the court refers parties to the Court Mediation Service after the filing of a complaint or petition under Title 19, section 214 or 581, or Title 19, chapter 13, the court shall assess the parties a fee to be apportioned equally between the parties, unless the court otherwise directs. The court may not assess the parties any fees beyond the initial fee, unless one or both of the parties files under Title 19, section 214 or 581, or Title 19, chapter 13, a motion to amend a final decree, a motion to enforce a final decree or a motion for contempt. When the court refers the parties to the Court Mediation Service after the filing under Title 19, section 214 or 581, or Title 19, chapter 13, of a motion to amend a final decree, a motion to enforce a final decree or a motion for contempt, the court shall assess the parties another fee to be apportioned equally between the parties, unless the court otherwise directs.

A party may file an in forma pauperis application for waiver of a fee. If the court finds that the party does not have sufficient funds to pay the fee, it shall order the fee waived.

COMMITTEE AMENDMENT

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2 When the court refers parties to the Court Mediation Service
4 pursuant to Title 38, section 347-A, subsection 4, paragraph E,
6 the court shall assess a fee to be apportioned equally among the
8 parties. The fee must be deposited in the dedicated account
10 created in subsection 6-A. The court shall set the fees at a
12 level sufficient to cover the full cost of mediation services
14 provided pursuant to Title 38, section 347-A, subsection 4,
16 paragraph E.

10 **Sec. 2. 4 MRSA §18, sub-§6-A is enacted to read:**

12 **6-A. Environmental Mediation Fund.** The Environmental
14 Mediation Fund is established as a nonlapsing, dedicated fund
16 within the Administrative Office of the Courts. Fees collected
18 for mediation services rendered pursuant to Title 38, section
20 347-A, subsection 4, paragraph E must be deposited in the fund.
The Administrative Office of the Courts shall use resources in
the fund to cover the costs of providing mediation services as
required under that law.

22 **Sec. 3. 38 MRSA §347-A, sub-§4, ¶B,** as enacted by PL 1993, c.
24 204, §2, is amended to read:

26 B. All proposed administrative consent agreements sent to
28 the alleged violator must be accompanied by written
30 correspondence from the department, in language reasonably
32 understandable to a citizen, explaining the alleged
34 violator's rights and responsibilities with respect to the
36 proposed administrative consent agreement. The
38 correspondence must include an explanation of the factors
40 considered by the commissioner in determining the proposed
42 civil penalty, a statement indicating that the
44 administrative consent agreement process is a voluntary
mechanism for resolving enforcement matters without the need
for litigation and an explanation of the department's
procedures for handling administrative consent agreements.
The correspondence must also specify a reasonable time
period for the alleged violator to respond to the proposed
administrative consent agreement and offer the opportunity
for a meeting with department staff to discuss the proposed
agreement. Consent agreements shall, to the greatest extent
possible, clearly set forth all the specific requirements or
conditions with which the alleged violator must comply.

46 **Sec. 4. 38 MRSA §347-A, sub-§4, ¶E** is enacted to read:

48 E. When the department and the alleged violator can not
50 agree to the terms of a consent agreement and the department
elects to bring an enforcement action in District Court

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2 pursuant to section 342, subsection 7, the District Court
3 shall refer the parties to mediation if either party
4 requests mediation at or before the time the alleged
5 violator appears to answer the department's complaint. The
6 parties must meet with a mediator appointed by the Court
7 Mediation Service created in Title 4, section 18 at least
8 once and try in good faith to reach an agreement. After the
9 first meeting, mediation must end at the request of either
10 party. If the parties have been referred to mediation, the
11 action may not be removed to Superior Court until after
12 mediation has occurred.

13 **Sec. 5. Allocation.** The following funds are allocated from
14 Other Special Revenue funds to carry out the purposes of this Act.

15 **1995-96 1996-97**

16 **JUDICIAL DEPARTMENT**

17 **Environmental Mediation Fund**

18 All Other \$1,000 \$1,000

19 Provides funds to pay for
20 environmental mediation
21 services.'

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

24 **FISCAL NOTE**

25 **1995-96 1996-97**

26 **APPROPRIATIONS/ALLOCATIONS**

27 Other Funds \$1,000 \$1,000

28 **REVENUES**

29 Other Funds \$1,000 \$1,000

30 The Judicial Department will incur additional costs
31 associated with the new mediation services. The assessment of
32 fees for the costs of court-ordered environmental mediations
33 requires these fees to be deposited in the Environmental
34 Mediation Fund within the Judicial Department. The estimated
35 increase of dedicated revenue to the Judicial Department is
36 \$1,000 annually beginning in fiscal year 1995-96. Allocations in

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2 this amount for fiscal years 1995-96 and 1996-97 are included to
authorize expenditures from the fund.

4 The Department of Environmental Protection will incur some
6 minor additional costs to pay for court-ordered mediations.
These costs can be absorbed within the department's existing
8 budgeted resources.'

10 **STATEMENT OF FACT**

12 The amendment replaces the bill. It requires the Department
14 of Environmental Protection to set forth in the consent agreement
all requirements and conditions imposed on the alleged violator.
16 It also requires the department and an alleged violator to
participate in mediation before the start of an enforcement
18 action in District Court if either party requests mediation. The
Court Mediation Service provides the mediators, who are paid from
a dedicated account created to hold fees paid by the parties to
20 the mediation. Fees must be set to cover the cost of the
environmental mediation services provided. As in the bill,
22 mediation ends after the first meeting if either party so
requests.

24 The amendment also adds a fiscal note and an allocation
26 section to the bill.