

MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 609, L.D. 819, Bill, "An Act to Require Notification to the Landowner When Land Is Being Considered for Placement in a Resource Protection Zone"

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

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §438-A, sub-§1-B is enacted to read:

1-B. Notification to landowners. This subsection governs notice to landowners whose property is being considered for placement in a resource protection zone.

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons

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2 against whom property tax on each parcel is assessed. The
3 municipal officers shall prepare and file with the municipal
4 clerk a sworn, notarized certificate indicating those
5 persons to whom notice was mailed and at what addresses, and
6 when, by whom and from what location notice was mailed.
7 This certificate constitutes prima facie evidence that
8 notice was sent to those persons named in the certificate.
9 The municipality must send notice not later than 14 days
10 before its planning board first considers adoption or
11 amendment of a zoning ordinance or map that places the
12 landowners' property in the resource protection zone.

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14 B. In addition to the notice required by this Title or by
15 rules adopted pursuant to this Title, the board shall
16 provide written notification to landowners whose property is
17 being considered by the board for placement in a resource
18 protection zone. Notification to landowners must be made by
19 first-class mail to the last known addresses of the persons
20 against whom property tax on each parcel is assessed. The
21 board shall prepare and file with the commissioner a sworn,
22 notarized certificate indicating those persons to whom
23 notice was mailed and at what addresses, and when, by whom
24 and from what location notice was mailed. This certificate
25 constitutes prima facie evidence that notice was sent to
26 those persons named in the certificate. The board must send
27 notice not later than 30 days before the close of the public
28 comment period prior to formal consideration of placement of
29 the property in a resource protection zone by the board.
30 Upon request of the board, the municipality for which the
31 ordinance is being adopted shall provide the board with the
32 names and addresses of persons entitled to notice under this
33 subsection. Notification and filing of a certificate by the
34 department are deemed to be notification and filing by the
35 board for purposes of this section.

36 C. Any action challenging the validity of an ordinance
37 based on failure by the board or municipality to comply with
38 this subsection must be brought in Superior Court within 30
39 days after adoption or amendment of the ordinance or map.
40 The Superior Court may invalidate an amended ordinance or
41 map if the appellant demonstrates that the appellant was
42 entitled to receive notice under this subsection, that the
43 municipality or board failed to send notice as required,
44 that the appellant had no knowledge of the proposed adoption
45 or amendment of the ordinance or map and that the appellant
46 was materially prejudiced by that lack of knowledge. This
47 paragraph does not alter the right of a person to challenge
48 the validity of any ordinance or map based on the failure of
a municipality to provide notice as required by Title 30-A,

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section 4352, subsection 9 or the failure of the board to provide notice as required by this Title.

FISCAL NOTE

This bill requires municipalities to mail notices to landowners whose property is being considered for placement in a resource protection zone. The additional costs of this state mandate can not be determined at this time, but may be significant. Pursuant to the Mandate Preamble, the 2/3 vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional local costs.

The Board of Environmental Protection will incur some minor additional costs to adopt certain rules pertaining to written notification and to mail notification to landowners whose property is being considered by the board for placement in a resource protection zone. These costs can be absorbed within the board's existing budgeted resources.'

STATEMENT OF FACT

This amendment requires a municipality to send notice by first-class mail to landowners whose property is being considered for placement in a resource protection zone. Notice must be sent at least 14 days before the municipal planning board first discusses placing the property in the resource protection zone. If the Board of Environmental Protection adopts an ordinance for a municipality, the municipality must provide the names and addresses of landowners to the board, and the board must provide notice to landowners. The board must send notice at least 30 days before the close of the public comment period before adoption by the board.

The municipality and the board are required to file written certificates indicating the names and addresses of persons they notified, and the list serves as prima facie evidence that notice was sent. A landowner who challenges the validity of an ordinance or map on the grounds that the municipality or the board failed to provide notice as required in this amendment would be required to prove that notice was not sent, that the person did not otherwise have knowledge of the ordinance or map and that the person was materially prejudiced by that lack of knowledge. These provisions are the same as those applying to a municipality's notice of certain changes in commercial, retail and industrial use zones.

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R.O.S.

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The amendment also adds a municipal mandate preamble and a fiscal note to the bill.