

MAINE STATE LEGISLATURE

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R 108

L.D. 1961

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1363, L.D. 1961, Bill, "An Act to Amend the Right of Entry Clauses"

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

Sec. 1. 12 MRSA §685-C, sub-§8, as amended by PL 1987, c. 816, Pt. KK, §12, is further amended to read:

8. Enforcement, inspection and penalties for violations. Standards, rules and orders issued by the commission pursuant to this chapter shall have the force and effect of law. No development may be undertaken, except in conformance with this chapter, the standards, rules and orders enacted or issued pursuant to this chapter, and any real estate or personal property existing in violation of such shall-be is a nuisance. For the purposes of inspection and to assure ensure compliance with standards, orders and permits issued or adopted by the commission, authorized commission staff, forest rangers and the state supervisor or consultant personnel may conduct such investigations, examinations, tests and site evaluations deemed considered necessary to verify information presented to it, and may obtain access to any lands and structures regulated pursuant to this chapter as provided in subsection 8-A.

Any person who violates any provision of this chapter, or the terms or conditions of any standards, rules, permits or orders

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adopted or issued pursuant to this chapter, is subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of the violation.

In addition to the other penalties provided, the commission may, in the name of the State of ~~Maine~~, institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation hereof or of the orders or standards or rules ~~promulgated hereunder~~ adopted pursuant to this subsection. This action may include, but is not limited to, proceedings to revoke or suspend any commission permit or approval, taken either before the commission itself in accordance with Title 5, section 10004, before the Administrative Court in accordance with Title 4, sections 1152 to 1157, or, notwithstanding the provisions of Title 4, section 1151, subsection 2, or Title 5, section 10051, before the Superior Court as part of an enforcement action brought by the commission.

In addition to any such penalties or remedies provided in this subsection, the court may order restoration of any area affected by any action or inaction found to be in violation of any of the provisions of this chapter or of any order, standard, rule or permit of the commission, or any decree of the court, to the condition of such that area prior to the violation. When such restoration is not practicable, the court may order other actions to be taken by the person charged with the violation which that are in mitigation of the damage caused by the violation.

A person who willfully or knowingly falsifies any statement contained in a permit application or other information required to be submitted to the commission ~~shall-be~~ is in violation of this chapter and subject to the penalties of this chapter.

Sec. 2. 12 MRSA §685-C, sub-§8-A is enacted to read:

8-A. Restrictions. Authorized commission staff, forest rangers, the state supervisor or consultant personnel who enter private land that is conspicuously posted for limited entry to carry out the duties under subsection 8 shall first obtain:

A. A warrant issued by a court of competent jurisdiction; or

B. The consent of the owner. If the owner has been issued a permit by the commission, the owner is deemed to have given consent for entry under this subsection.

Entry onto private land or waters in violation of this subsection, other than as required as part of an emergency response conducted by the commission, is a trespass.

2 Land is conspicuously posted for limited entry if the posting
3 meets the requirements of Title 17-A, section 402, subsection 4.
4 Signs meeting the requirements of Title 17-A, section 402,
5 subsection 4 may indicate that access by state employees or
6 consultants for the purposes of making inspections, surveys,
7 examinations and evaluations and otherwise ensuring compliance is
8 prohibited without obtaining a warrant or the consent of the
9 owner.

10 **Sec. 3. 12 MRSA §1828**, as enacted by PL 1997, c. 678, §13, is
11 repealed and the following enacted in its place:

12 **§1828. Make surveys; restrictions**

13 **1. Restrictions.** When an authorized agent or employee of
14 the bureau enters private land that is conspicuously posted for
15 limited entry for the purpose of making surveys and examinations,
16 the agent or employee must first obtain:

17 A. A warrant issued by a court of competent jurisdiction; or

18 B. The consent of the owner.

19 **2. Trespass.** Entry onto private land or waters in
20 violation of this section, other than as required as part of an
21 emergency response conducted by the bureau, is a trespass.

22 **3. Consent.** If the owner has been issued a permit by the
23 bureau, the owner is deemed to have given consent for entry under
24 subsection 1.

25 **4. Conspicuously posted for limited entry.** Land is
26 conspicuously posted for limited entry if the posting meets the
27 requirements of Title 17-A, section 402, subsection 4. Signs
28 meeting the requirements of Title 17-A, section 402, subsection 4
29 may indicate that access by state employees or consultants for
30 the purposes of making inspections, surveys, examinations and
31 evaluations and otherwise ensuring compliance is prohibited
32 without obtaining a warrant or the consent of the owner.

33 **Sec. 4. 12 MRSA §1884, 2nd ¶**, as enacted by PL 1997, c. 678,
34 §13, is amended to read:

35 For the purposes of inspection and to ensure compliance with
36 permits issued or adopted by the bureau, authorized bureau staff
37 or consultant personnel may conduct investigations, examinations,
38 tests and site evaluations that are determined to be necessary to
39 verify information presented to the bureau and may obtain access
40 to any lands and structures regulated under this subchapter as
41 provided in section 1884-A.

2 **Sec. 5. 12 MRSA §1884-A** is enacted to read:

4 **§1884-A. Entry on private land**

6 **1. Restrictions.** The bureau, authorized bureau staff or
8 consultant personnel who enter private land that is conspicuously
10 posted for limited entry for the purpose of carrying out the
12 duties in section 1884 may do so only after first obtaining:

14 A. A warrant issued by a court of competent jurisdiction; or

16 B. The consent of the owner.

18 **2. Trespass.** Entry onto private land or waters in
20 violation of this section, other than as required as part of an
22 emergency response conducted by the bureau, is a trespass.

24 **3. Consent.** If the owner has been issued a permit by the
26 bureau, the owner is deemed to have given consent for entry under
28 subsection 1.

30 **4. Conspicuously posted for limited entry.** Land is
32 conspicuously posted for limited entry if the posting meets the
34 requirements of Title 17-A, section 402, subsection 4. Signs
36 meeting the requirements of Title 17-A, section 402, subsection 4
38 may indicate that access by state employees or consultants for
40 the purposes of making inspections, surveys, examinations and
42 evaluations and otherwise ensuring compliance is prohibited
44 without obtaining a warrant or the consent of the owner.

46 **Sec. 6. 12 MRSA §8869, sub-§11**, as amended by PL 1997, c. 694,
48 §1, is further amended to read:

~~11. Right of entry. Agents of the bureau have--rights--of~~
 ~~access--to--all--lands--within--the--State--to--carry--out--the--duties--they~~
 ~~are--authorized--by--law--to--administer--and--enforce.--This--subsection~~
 ~~does--not--authorize--entry--into--any--building--or--structure, who~~
 ~~enter private land that is conspicuously posted for limited entry~~
 ~~for the purpose of making surveys and examinations must first~~
 ~~obtain;~~

A. A warrant issued by a court of competent jurisdiction; or

B. The consent of the owner. If the owner has been issued
 a permit by the bureau, the owner is deemed to have given
 consent for entry under this subsection.

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2 Entry onto private land or waters in violation of this section,
3 other than as required as part of an emergency response conducted
4 by the bureau, is a trespass.

5 Land is conspicuously posted for limited entry if the posting
6 meets the requirements of Title 17-A, section 402, subsection 4.
7 Signs meeting the requirements of Title 17-A, section 402,
8 subsection 4 may indicate that access by state employees or
9 consultants for the purposes of making inspections, surveys,
10 examinations and evaluations and otherwise ensuring compliance is
11 prohibited without obtaining a warrant or the consent of the
12 owner.

13 **Sec. 7. 38 MRSA §347-C, as amended by PL 1997, c. 794, Pt. A,**
14 **§6, is repealed and the following enacted in its place:**

15 **§347-C. Right of inspection and entry; restrictions**

16 **1. Entry and inspection; restrictions.** Employees and
17 agents of the department may not enter any property that is
18 conspicuously posted for limited entry in order to inspect the
19 property or any structure on the property, including the premises
20 of an industrial user of a publicly owned treatment works, to
21 take samples, inspect records relevant to any regulated activity
22 or conduct tests to determine compliance with any laws
23 administered by the department or the terms and conditions of any
24 order, regulation, license, permit, approval or decision of the
25 commissioner or of the board, without first obtaining:

26 A. A warrant issued by a court of competent jurisdiction; or

27 B. The consent of the owner.

28 **2. Trespass.** Entry onto private land or waters in
29 violation of this section, other than as required as part of an
30 emergency response conducted by the department, is a trespass.

31 **3. Consent.** If the owner has been issued a permit by the
32 department, the owner is deemed to have given consent for entry
33 under subsection 1.

34 **4. Conspicuously posted for limited entry.** Property is
35 conspicuously posted for limited entry if the posting meets the
36 requirements of Title 17-A, section 402, subsection 4. Signs
37 meeting the requirements of Title 17-A, section 402, subsection 4
38 may indicate that access by state employees or consultants for
39 the purposes of making inspections, surveys, examinations and
40 evaluations and otherwise ensuring compliance is prohibited
41 without obtaining a warrant or the consent of the owner.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The Department of Conservation and the Department of Environmental Protection will incur some minor additional costs to comply with certain right of entry requirements. These costs can be absorbed within the departments' existing budgeted resources.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.36 per day per prisoner. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

SUMMARY

This amendment replaces the bill to change the prerequisites that apply to entry on private land by Maine Land Use Regulation Commission staff, forest rangers, employees and agents of the Bureau of Parks and Lands, employees and agents of the Bureau of Forestry and employees and agents of the Department of Environmental Protection. Entry on the property may be made only if the person has a warrant issued by a court of competent jurisdiction or if the owner has given consent to the entry. If the landowner has been issued a permit by one of these state agencies, then the owner is deemed to have given consent for the entry. The restrictions apply to land that is conspicuously posted for limited entry. Land is conspicuously posted for limited entry if the posting meets the requirements of the criminal trespass laws in the Maine Revised Statutes, Title 17-A, section 402, subsection 4. Signs meeting the requirements of Title 17-A, section 402, subsection 4 may indicate that access by state employees or consultants for the purposes of making inspections, surveys, examinations and evaluations and otherwise ensuring compliance is prohibited without obtaining a warrant or the consent of the owner.

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Entry onto private land or waters in violation of these requirements is a trespass, unless the entry is part of that agency's emergency response.

This amendment also adds a fiscal note to the bill.