

L.D.	281
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Date: 6-3-11

MINORITY

(Filing No. S-**239**)

JUDICIARY

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

FIRST REGULAR SESSION

9 COMMITTEE AMENDMENT " A" to S.P. 87, L.D. 281, Bill, "An Act To Create a
 10 5-year Statute of Limitations for Environmental Violations"

Amend the bill by striking out the title and substituting the following:

12 'An Act To Create a 6-year Statute of Limitations for Environmental Violations'

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

15 'Sec. 1. 38 MRSA §347-A, sub-§8, as enacted by PL 2007, c. 337, §1, is 16 repealed.

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Sec. 2. 38 MRSA §347-A, sub-§9 is enacted to read:

18 <u>9. Limitations on enforcement actions.</u> This subsection applies to enforcement
 actions for civil penalties.

A. An enforcement action must be commenced by the commissioner or the Attorney General within 6 years of the following, whichever occurs latest:

(1) The discovery by the commissioner or the Attorney General of an act or
 omission giving rise to a violation;

- 24 (2) The identification by the commissioner or the Attorney General of the person
 25 responsible for the violation; and
 - (3) The last day of an ongoing violation.
- B. For purposes of this subsection, an enforcement action is commenced when any
 of the following occurs:
- 29 (1) The commissioner proposes an administrative consent agreement in writing
 30 to the violator pursuant to subsection 4;

31 (2) The commissioner schedules an enforcement hearing on the alleged violation
 32 pursuant to subsection 2;

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(3) The commissioner, with the prior approval of the Attorney General, files a complaint in District Court pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3; and

(4) The Attorney General files a complaint in District Court or Superior Court.

C. The commencement of an enforcement action by any of the means set forth in paragraph B tolls the running of the 6-year limitation period for the purpose of bringing any other action pursuant to subsection 1, paragraph A.'

SUMMARY

This amendment is the minority report of the Joint Standing Committee on Judiciary. This amendment replaces the bill, which proposes a 5-year statute of limitations for environmental violations.

This amendment establishes a 6-year statute of limitations for actions for civil penalties for violations of laws administered by the Department of Environmental Protection. An action must be commenced within 6 years of when the Commissioner of Environmental Protection or the Attorney General discovers the act or omission giving rise to the violation or identifies the party responsible for the violation, or of the last day of a continuing violation, whichever occurs latest.

18 This amendment specifies that an enforcement action is commenced when any of the 19 following occurs:

The commissioner proposes an administrative consent agreement in writing to the
 violator;

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2. The commissioner schedules an enforcement hearing on the alleged violation;

3. The commissioner, with the prior approval of the Attorney General, files a
 complaint in District Court; and

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4. The Attorney General files a complaint in District Court or Superior Court.

The amendment includes language to ensure that the effect of commencing an action is to toll the statute of limitations.

FISCAL NOTE REQUIRED

(See attached)

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COMMITTEE AMENDMENT



125th MAINE LEGISLATURE

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An Act To Create a 5-year Statute of Limitations for Environmental Violations

Fiscal Note for Bill as Amended by Committee Amendment "A" 5 - 239 Committee: Judiciary Fiscal Note Required: Yes

Fiscal Note

Minor revenue decrease - General Fund

Fiscal Detail and Notes

Requiring enforcement actions for violations of environmental laws to be commenced by the Department of Environmental Protection or the Attorney General within six years of the date of the violation subject to the discovery rule and tolling provisions of the bill is not expected to have a significant impact on fine and penalty revenues to the General Fund.