

MAINE STATE LEGISLATURE

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ENVIRONMENT AND NATURAL RESOURCES

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

STATE OF MAINE

SENATE

131ST LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 971, L.D. 2253, "An Act to Authorize a Stop-work Order Regarding an Activity That Is Creating a Substantial Adverse Impact to a Protected Natural Resource"

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

'An Act to Authorize a Stop-work Order Regarding an Activity That Is Creating an Immediate and Substantial Adverse Impact to a Protected Natural Resource'

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

'Sec. 1. 12 MRSA §685-C, sub-§8-A is enacted to read:

8-A. Stop-work order. In accordance with the commission's delegated authority under Title 38, sections 480-E-1 and 480-R and notwithstanding any provision of law to the contrary, if the director of the commission finds that an activity located wholly within the jurisdiction of the commission is being performed in a manner that violates a law administered by the commission, a rule adopted by the commission or a term or condition of a permit or order issued by the commission and that the activity is creating an immediate and substantial adverse impact to a protected natural resource, as determined by the director, the director may issue a stop-work order pursuant to this subsection requiring the cessation of the activity in whole or in part. As used in this subsection, "protected natural resource" has the same meaning as in Title 38, section 480-B, subsection 8.

A. A stop-work order under this subsection must be in writing and must identify:

- (1) The portion of the activity that must immediately cease;
(2) The law, rule or term or condition of the permit or order that the activity violates;
(3) The protected natural resource that is being substantially adversely impacted by the activity;
(4) The duration for which the activity must be ceased;

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1 (5) The conditions under which the activity may resume, which must include, at a
 2 minimum, identification of the corrective actions necessary to restore the protected
 3 natural resource or remediate or abate the substantial adverse impacts to the
 4 protected natural resource from the activity and to prevent any further adverse
 5 impacts to the protected natural resource from the activity. Prior to the resumption
 6 of the activity subject to the stop-work order, the commission shall conduct a site
 7 inspection to assess compliance with the conditions and requirements of the order;
 8 and

9 (6) The process by which the person to whom the order is directed may respond
 10 to the order, or request that the director rescind or modify the order, while the order
 11 is in effect.

12 B. The director shall deliver a stop-work order under this subsection to the person
 13 responsible for the activity or, if delivery cannot be made to that person, to that person's
 14 employee, contractor or agent or to the owner of the property on which the activity is
 15 occurring. The director shall also notify the town, plantation or, in the case of a
 16 township, the county commissioners of the county in which the activity is occurring
 17 regarding the issuance of the stop-work order.

18 (1) Upon delivery of the stop-work order, the person to whom the order is directed
 19 shall comply with the order and immediately cease the activity subject to the order.

20 (2) Upon the written request of the person to whom the stop-work order is directed,
 21 the director may rescind or modify the order while the order is in effect.

22 (3) The issuance of a stop-work order or the modification of an order by the
 23 director may be appealed by the person to whom the order is directed to the
 24 Superior Court pursuant to the Maine Administrative Procedure Act. If the
 25 issuance or modification of the stop-work order is appealed to the Superior Court
 26 by the person to whom the order is directed, the order remains in effect and
 27 enforceable during the pendency of the appeal, except as otherwise provided in the
 28 order or by the director or as ordered by the Superior Court.

29 C. If the activity subject to a stop-work order under this subsection is occurring under
 30 a permit or order issued by the commission, the duration of the stop-work order may
 31 not exceed 2 weeks from the date of issuance of the stop-work order. If the person to
 32 whom the stop-work order is directed does not satisfy the conditions set forth in the
 33 stop-work order for the resumption of the activity, as determined by the director, the
 34 director may extend the stop-work order for an additional time period, not to exceed 4
 35 weeks, necessary to satisfy those conditions.

36 D. A person who violates a stop-work order issued under this subsection is subject to
 37 a civil penalty of up to \$5,000 per day, per violation of the order, payable to the State
 38 and recoverable in a civil action, in addition to any other penalties that may be imposed
 39 by the commission by law.

40 E. Nothing in this subsection limits the commission's authority to pursue other
 41 administrative or enforcement actions relating to the activities described in a stop-work
 42 order issued under this subsection.

43 Sec. 2. 38 MRSA §347-A, sub-§3-A is enacted to read:

1 3-A. Stop-work order. Notwithstanding any provision of law to the contrary, if the
 2 commissioner finds that an activity is being performed in a manner that violates this Title,
 3 a rule adopted pursuant to this Title or a term or condition of a license, permit or order
 4 issued by the board or the department and that the activity is creating an immediate and
 5 substantial adverse impact to a protected natural resource, as determined by the department,
 6 the commissioner may issue a stop-work order pursuant to this subsection requiring the
 7 cessation of the activity in whole or in part. As used in this subsection, "protected natural
 8 resource" has the same meaning as in section 480-B, subsection 8.

- 9 A. A stop-work order under this subsection must be in writing and must identify:
- 10 (1) The portion of the activity that must immediately cease;
 - 11 (2) The law, rule or term or condition of the license, permit or order that the activity
 12 violates;
 - 13 (3) The protected natural resource that is being substantially adversely impacted
 14 by the activity;
 - 15 (4) The duration for which the activity must be ceased;
 - 16 (5) The conditions under which the activity may resume, which must include, at a
 17 minimum, identification of the corrective actions necessary to restore the protected
 18 natural resource or remediate or abate the substantial adverse impacts to the
 19 protected natural resource from the activity and to prevent any further adverse
 20 impacts to the protected natural resource from the activity. Prior to the resumption
 21 of the activity subject to the stop-work order, the department shall conduct a site
 22 inspection to assess compliance with the conditions and requirements of the order;
 23 and
 - 24 (6) The process by which the person to whom the order is directed may respond
 25 to the order, or request that the commissioner rescind or modify the order, while
 26 the order is in effect.

27 B. The commissioner shall deliver a stop-work order under this subsection to the
 28 person responsible for the activity or, if delivery cannot be made to that person, to that
 29 person's employee, contractor or agent or to the owner of the property on which the
 30 activity is occurring. The commissioner shall also notify the municipality in which the
 31 activity is occurring regarding the issuance of the stop-work order.

- 32 (1) Upon delivery of the stop-work order, the person to whom the order is directed
 33 shall comply with the order and immediately cease the activity subject to the order.
- 34 (2) Upon the written request of the person to whom the stop-work order is directed,
 35 the commissioner may rescind or modify the order while the order is in effect.
- 36 (3) The issuance of a stop-work order or the modification of an order by the
 37 commissioner may be appealed by the person to whom the order is directed to the
 38 Superior Court pursuant to the Maine Administrative Procedure Act. If the
 39 issuance or modification of the stop-work order is appealed to the Superior Court
 40 by the person to whom the order is directed, the order remains in effect and
 41 enforceable during the pendency of the appeal, except as otherwise provided in the
 42 order or by the commissioner or as ordered by the Superior Court.

- 1 C. If the activity subject to a stop-work order under this subsection is occurring under
2 a license, permit or order issued by the board or the department, the duration of the
3 stop-work order may not exceed 2 weeks from the date of issuance of the stop-work
4 order. If the licensee, permittee or person subject to the order does not satisfy the
5 conditions set forth in the stop-work order for the resumption of the activity, as
6 determined by the commissioner, the commissioner may extend the stop-work order
7 for an additional time period, not to exceed 4 weeks, necessary to satisfy those
8 conditions.
- 9 D. A person who violates a stop-work order issued under this subsection is subject to
10 a civil penalty of up to \$5,000 per day, per violation of the order, payable to the State
11 and recoverable in a civil action, in addition to any other penalties that may be imposed
12 under section 349.
- 13 E. Nothing in this subsection limits the department's authority to pursue other
14 administrative or enforcement actions relating to the activities described in a stop-work
15 order issued under this subsection.'
- 16 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
17 number to read consecutively.

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SUMMARY

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This amendment replaces the bill. It authorizes the Department of Environmental Protection to issue a stop-work order whenever the Commissioner of Environmental Protection finds that an activity is being performed in a manner that violates state environmental protection laws or rules or the terms or conditions of a license, permit or order issued by the Board of Environmental Protection or the department and that the activity is creating an immediate and substantial adverse impact to a protected natural resource. The amendment provides similar enforcement authority to the Maine Land Use Planning Commission with respect to activities under its jurisdiction that are creating an immediate and substantial adverse impact to a protected natural resource.

28

FISCAL NOTE REQUIRED

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(See attached)



131st MAINE LEGISLATURE

LD 2253

LR 3113(02)

An Act to Authorize a Stop-work Order Regarding an Activity That Is Creating a Substantial Adverse Impact to a Protected Natural Resource

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-640)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Minor revenue increase – Other Special Revenue Funds

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with the minimal number of new cases does not require additional funding at this time.

The collection of additional fines and filing fees will increase General Fund or other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.