

1 L.D. 390
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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION

9 COMMITTEE AMENDMENT “ ” to H.P. 299, L.D. 390, Bill, “An Act To
10 Amend the Laws Governing Dangerous Buildings”

11 Amend the bill by striking out everything after the title and inserting the following:

12 **'Emergency preamble.** Whereas, acts and resolves of the Legislature do not
13 become effective until 90 days after adjournment unless enacted as emergencies; and

14 **Whereas**, a municipality, or a county on behalf of an unorganized or deorganized
15 area, that has adjudged a building to be a nuisance or dangerous does not have clear legal
16 authority to file a writ of attachment in Superior Court to recover the costs incurred by the
17 municipality or the county in abating the nuisance or the dangerous building; and

18 **Whereas**, further delay in permitting a municipality or a county to file a writ of
19 attachment to recoup expenses incurred in remediating a nuisance or dangerous building
20 places a strain on the ability of a municipality or a county to meet its other financial
21 obligations; and

22 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
23 the meaning of the Constitution of Maine and require the following legislation as
24 immediately necessary for the preservation of the public peace, health and safety; now,
25 therefore,

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

27 **Sec. 1.** 17 MRSA §2851, first ¶, as amended by PL 2017, c. 136, §1, is further
28 amended to read:

The municipal officers in the case of a municipality or the county commissioners in the case of the unorganized or deorganized areas in their county may after notice pursuant to section 2857 and hearing adjudge a building to be a nuisance or dangerous, in accordance with subsection 2-A, and may make and record an order, in accordance with subsection 3, prescribing what disposal must be made of that building. The order may allow for delay of disposal if the owner or party in interest has demonstrated the ability and willingness to satisfactorily rehabilitate the building. If an appeal pursuant to section

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1 2852 is not filed or, if an appeal pursuant to section 2852 is filed and the Superior Court
2 does not order, stay or overturn the order to dispose of the building, the municipal
3 officers or the county commissioners shall cause the nuisance to be abated or removed in
4 compliance with the order. After recording an attested copy of the notice required by
5 section 2857 in the registry of deeds located within the county where the building is
6 situated, the municipality or the county may seek a writ of attachment of the property on
7 which the building is located in accordance with Title 14, chapter 507 and the Maine
8 Rules of Civil Procedure.

9 **Sec. 2. 17 MRSA §2851, sub-§4,** as amended by PL 2017, c. 136, §1, is further
10 amended to read:

11 **4. Proceedings in Superior Court.** In addition to proceedings before the municipal
12 officers or the county commissioners, the municipality or the county may seek an order of
13 demolition by filing a complaint in the Superior Court situated in the county where the
14 building is located. The complaint must identify the location of the property and set forth
15 the reasons why the municipality or the county seeks its removal. Service of the
16 complaint must be made upon the owner and parties in interest in accordance with the
17 Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the
18 court shall issue an appropriate order and, if it requires removal of the building, it shall
19 award costs as authorized by this subchapter to the municipality or the county. The
20 municipality or the county may petition the court for a writ of attachment of the property
21 on which the building is located in accordance with Title 14, chapter 507 and the Maine
22 Rules of Civil Procedure. Appeal from a decision of the Superior Court is to the law
23 court in accordance with the Maine Rules of Civil Procedure.

24 **Sec. 3. 17 MRSA §2859, first ¶,** as enacted by PL 1981, c. 43, is amended to
25 read:

26 In cases involving an immediate and serious threat to the public health, safety or
27 welfare, in addition to any other remedies, a municipality or a county may obtain an order
28 of demolition by summary process in Superior Court, in accordance with this section.

29 **Sec. 4. 17 MRSA §2859, sub-§1,** as amended by PL 2017, c. 136, §7, is further
30 amended to read:

31 **1. Commencement of action.** A municipality, acting through its building official,
32 code enforcement officer, fire chief or municipal officers, or the county commissioners
33 shall file a verified complaint setting forth such facts as would justify a conclusion that a
34 building is dangerous, as described in section 2851, and shall state in the complaint that
35 the public health, safety or welfare requires the immediate removal of that building. The
36 municipality or the county may seek a writ of attachment of the property on which the
37 building is located in accordance with Title 14, chapter 507 and the Maine Rules of Civil
38 Procedure.

39 **Sec. 5. 17 MRSA §2859, sub-§4,** as amended by PL 2017, c. 136, §9, is further
40 amended to read:

41 **4. Hearing.** After hearing, the court shall enter judgment. If the judgment requires
42 removal of the building, the court shall award costs to the municipality or the county as

1 authorized by this subchapter. The award of costs may be contested and damages sought
2 in a separate action to the extent permitted by subsection 7.

3 **Sec. 6. 17 MRSA §2859, sub-§7**, as amended by PL 2017, c. 136, §10, is further
4 amended to read:

5 **7. Damages.** Any complaint that either seeks damages for the wrongful removal of a
6 building or challenges the award of costs must be filed no later than 30 days from the date
7 of the judgment or order that is the subject of the appeal. The damages that may be
8 awarded for wrongful demolition are limited to the actual value of the building at the time
9 of its removal. The provisions of Title 14, section 7552 do not apply. If the municipality
10 or the county prevails, the court may award it its costs in defending any appeal, which
11 may include, but are not limited to, reasonable attorney's fees.

12 **Emergency clause.** In view of the emergency cited in the preamble, this
13 legislation takes effect when approved.'

14 **SUMMARY**

15 This amendment replaces the bill. It allows a municipality or county to seek a writ of
16 attachment from the Superior Court when the municipality or county incurs expenses
17 associated with a building found to be a nuisance or dangerous. The amendment adds
18 references to "county" or "county commissioners" where the word or phrase was
19 inadvertently omitted.

20 This amendment also adds an emergency preamble and emergency clause.

21 **FISCAL NOTE REQUIRED**

22 **(See attached)**