

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 965

H. P. 720

House of Representatives, February 18, 1971

Referred to Committee on Natural Resources. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Susi of Pittsfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT to Provide for Protection of the Air, Water and Other Natural
Resources.**

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

R. S., T. 38, c. 13, additional. Title 38 of the Revised Statutes is amended by adding a new chapter 13 to read as follows:

CHAPTER 13

**PROTECTION OF AIR, WATER AND OTHER NATURAL
RESOURCES**

§ 1261. Actions

The Attorney General, any municipality, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the Superior Court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the State, any political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, damage or destruction.

In granting relief provided by this section where there is involved a standard for pollution or for an antipollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the State or a political subdivision thereof, the court may:

1. **Validity.** Determine the validity, applicability and reasonableness of the standard.

2. Adoption. When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this chapter, the court may order the plaintiff to post a surety bond or cash not to exceed \$5,000.

§ 1262. Evidence

1. Prima facie. When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to cause pollution of or damage to, or the destruction of air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the State's paramount concern for the protection of its natural resources from pollution, damage or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions shall apply to actions brought under this chapter.

2. Master or referee. The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

3. Costs. Costs may be apportioned to the parties if the interests of justice require.

§ 1263. Relief

1. Conditions. The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, damage or destruction.

2. Remitting. If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, damage or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from such pollution, damage or destruction has been afforded.

3. Adjudication. Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this chapter. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this Act.

4. **Jurisdiction.** Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, the court originally taking jurisdiction shall notwithstanding maintain jurisdiction for purposes of judicial review.

§ 1264. **Intervention**

Whenever administrative, licensing or other proceedings, and judicial review thereof are available by law, the agency or the court may in its discretion permit the Attorney General, any political subdivision of the State, any instrumentality or agency of the State or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is likely to have, the effect of significantly polluting, damaging or destroying the air, water or other natural resources or the public trust therein.

In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

§ 1265. **Application**

This chapter shall be supplementary to existing administrative and regulatory procedures provided by law.

STATEMENT OF FACT

Damage to or destruction of air, water and other natural resources is not unlawful and cannot be prevented in Maine except in the specific areas where specific legislation has been enacted for specific purposes. This bill is intended to cover the areas in between by making pollution, damage or destruction of air, water or other natural resources, where not sufficiently controlled by existing legislation, subject to court appraisal and review.