

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 935

H. P. 729

House of Representatives, February 15, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Brown of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

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, government agency 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, land and other natural resources.

§ 1262. Evidence

1. Prima facie. When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has caused, or is likely to cause pollution of, damage to or destruction of air, water, land or other natural resources, 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 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. Except as to the affirmative defense, the principles of burden of proof and weight of 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.

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

§ 1263. Relief

1. Conditions. The court may grant temporary or permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water, land or other natural resources 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 shall 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, land or other natural resources. In so remitting, the court shall retain jurisdiction of the action, unless otherwise provided by statute pending completion of such proceedings, for the purpose of determining whether adequate protection has been afforded.

3. Standards. 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 determine the validity, and reasonableness of the standard, or its application.

4. Adjudication. Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water, land or other natural resources 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 chapter.

5. 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 unless and until appeal is taken to the law court.

6. Limitations. No action may be brought pursuant to this chapter which challenges the findings and final decision of an administrative, licensing or other proceeding after 30 days following such final decision.

If the court has reasonable grounds to doubt the solvency of the plaintiff or the plaintiff's ability to pay any costs which might be awarded against him

under this chapter, the court may order the plaintiff to post a surety bond or deposit cash not to exceed \$2,500.

§ 1264. Intervention

Whenever administrative, licensing or other proceedings are involved, and judicial review thereof is available by law, 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 in such proceedings or review thereof.

Whenever an action is brought pursuant to this chapter, a copy of the complaint shall be delivered to the Attorney General within 3 days of the filing of the complaint.

In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, damage or destruction of the air, water, land or other natural resources shall be determined, and no conduct shall be authorized or approved which has 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, land 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, land or other natural resources, where not sufficiently controlled by existing legislation, subject to court appraisal and review.