

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1290

S. P. 380

In Senate, March 12, 1969

Referred to the Committee on Natural Resources. Sent down for concurrence and 1,000 copies ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Defining the Powers and Duties of the Water and Air Environmental Improvement Commission and Other State Agencies with Respect to Air Pollution.

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

Sec. 1. R. S., T. 38, §§ 460 - 463, repealed. Sections 460 to 463 of Title 38 of the Revised Statutes, as enacted by section 12 of chapter 475 of the public laws of 1967, are repealed.

Sec. 2. R. S., T. 38, c. 4, additional. Title 38 of the Revised Statutes is amended by adding a new chapter 4, as follows:

CHAPTER 4

PROTECTION AND IMPROVEMENT OF AIR

§ 581. Declaration of findings and intent

The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the State's resources, and is aesthetically unappealing.

The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants into the ambient air of the state to the end that air pollution may be prevented.

Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damage or other relief on account of injury to persons or property due to violation of air quality standards or emission standards and to maintain any action or other appropriate procedure therefor; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.

§ 582. Definitions

As used in this chapter:

1. "Air contaminant" includes, but is not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.
2. "Air contamination source" means any source of emission of air contaminants, whether privately or publicly owned or operated.
3. "Air pollution" means the presence in ambient air of one or more air contaminants, in such quantities and for such duration, as are or tend to be injurious to public health or safety, animal or plant life, property or property values, or which unreasonably interfere with the enjoyment of life or property, or which violate established ambient air quality or emission standards.
4. "Air pollution control apparatus" means and includes any means, method, process or equipment which removes, reduces or renders less noxious the emission of air contaminants into ambient air.
5. "Ambient air" means all air outside of buildings, stacks or exterior ducts.
6. "Commission" means the Water and Air Environmental Improvement Commission.
7. "Emission" means a release of air contaminants into ambient air.
8. "Person" means any individual; partnership; corporation whether private, public or quasi-municipal; municipality; state governmental agency; or other legal entity.
9. "Region" means an air quality region established pursuant to section 584.

Additional words, terms and phrases, whether used in this chapter or not, may be defined for purposes of this chapter by the commission by regulation, but in no case may a definition established by this section be altered by commission regulation.

§ 583. Powers and duties; general

In addition to other powers conferred and duties imposed upon it by law, the commission shall encourage voluntary cooperation among persons to abate air pollution and preserve and protect ambient air quality standards; shall disseminate information at its disposal relating to air pollution, its control and prevention; shall encourage and conduct studies, investigation

and research with respect to sources of air pollution and air contaminants, their causes, effects, control and prevention, in connection with the adoption of ambient air quality and emission standards and upon such other occasions as may to the commission appear necessary or desirable; may provide technical advice and assistance to persons engaged in air pollution studies and control programs; may employ, subject to the Personnel Law, and prescribe the duties of, employees whose formal training and background enable them to deal with air analyses and air pollution control technology; and may contract for the services of consultants in order to carry out its duties under this chapter.

§ 584. Establishment of air quality regions

The commission may establish air quality regions within the State for the purpose of conducting air quality studies, establishing ambient air quality standards, and for any other purpose consistent with this chapter.

§ 585. Establishment of ambient air quality standards

The commission shall establish and may amend standards, herein called "ambient air quality standards," within an air quality region regulating and limiting the amount and types of air contaminants which may exist in the ambient air of such region. Such standards shall be designed to preserve or enhance the quality of ambient air within such region and to prevent air pollution.

Prior to the establishment or amendment of ambient air quality standards, the commission shall conduct a public hearing in some municipality within the region, and shall give public notice of its intent to establish standards for the region and of the date, time and place of the hearing by publication in some newspaper of general circulation throughout the region, or if none, in the state paper; the date of the last publication to be at least 3 days before the date of the hearing.

At such hearing the commission shall solicit and consider testimony concerning the existing quality of the ambient air within the region; the recreational, industrial and residential uses of land within the region; the effects of existing air contaminants and air pollution upon such uses; the availability and effectiveness of air pollution control apparatus designed to control and reduce such existing air contaminants and air pollution; the expense of purchasing and installing the same, and such other evidence as in the commission's judgment will enable it to determine and establish the standards of air quality necessary to prevent air pollution within the region.

After hearing the commission shall by order establish or may amend ambient air quality standards for the region, regulating and limiting the amount and type of air contaminants which may exist in the ambient air of such region, which standards shall be designed to achieve the purposes set forth in the first paragraph of this section. The order shall state the date upon which such standards, or any of them, become effective.

§ 586. Establishment of emission standards

The commission shall establish and may amend standards, herein called "emission standards", limiting and regulating the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pollution and to achieve and maintain the ambient air quality standards within the region in which applicable.

Prior to the establishment or amendment of emission standards, the commission shall conduct a public hearing in some municipality within the region. Public notice of such hearing shall be given in the same manner as is provided in section 585 for notice of hearings with respect to the establishment of ambient air quality standards. At such hearing the commission shall solicit and consider testimony concerning the ambient air quality standards of the region; the existing emissions of air contaminants within the region, their nature, amount and sources; the effect of such emissions upon the ambient air quality standards of the region; the availability, effectiveness and cost of air pollution control apparatus designed to prevent and control air pollution caused by such emissions, and such other evidence as in the commission's judgment will enable it to determine and establish emission standards for the region which will achieve and maintain the ambient air quality standards therein.

After hearing the commission shall by order establish or may amend emission standards limiting and regulating the amount and type of air contaminants which may be emitted to the ambient air of a region so as to achieve the goals set forth in the first paragraph of this section. The order of establishment or amendment shall state the date upon which such standards, or any of them, become effective.

§ 587. Subpoena power

The commission may issue subpoenas to compel the attendance of persons at hearings held pursuant to sections 585, 586 and 591 for the purpose of eliciting testimony and the production of books, records and other data related to the matters in issue at such hearings.

If any person served with such subpoena claims, at or before the hearing at which his attendance or the production by him of books, records or other data under his control is sought, that such testimony or such production may disclose secret processes, formulae or methods used by him or under his direction, such testimony shall be taken and information from such books, records or other data shall be disclosed at a nonpublic portion of the hearing and the record thereof shall be confidential.

If any person refuses to obey a subpoena issued by the commission under this section, the commission may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena. Such Justice may issue such order and may punish failure to obey the same as a contempt thereof.

§ 588. Transcript to be made

A complete transcript shall be made of all hearings held pursuant to the provisions of this chapter.

§ 589. Registration; penalties

The commission may require the registration with it of persons engaged in activities which emit air contaminants and the filing of reports by them containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of air contaminants, location and type of air pollution control apparatus, and such other information as the commission may by regulation prescribe. Failure to register or to file reports shall render the failing party liable to the penalties prescribed in section 595 for violation of commission orders.

§ 590. Prohibitions

No person shall discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established by the commission pursuant to section 585 or emission standards so established pursuant to section 586.

§ 591. Violations; general procedures

Whenever it appears to the commission after investigation that there is a violation of section 590 which does not create a danger to public health or safety, the commission shall schedule a hearing thereon and shall notify the alleged violator in writing of the date, time and place of such hearing and shall specify the act done or omitted to be done which is claimed to be in violation of this chapter.

At such hearing the alleged violator may appear in person or with attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After consideration of such evidence and argument or in the event of the failure of the alleged violator to appear on the date set for hearing, the commission shall, as soon thereafter as practicable, make findings of fact and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.

§ 592. Violations; emergency procedures

If the commission after investigation finds that a condition of air pollution exists creating a danger to public health or safety, it may order the person or persons causing such condition to immediately reduce or discontinue the emission of the air contaminants causing the same. Service of a copy of the commission's findings and order issued under this section shall be made by the sheriff or some deputy within the county where the person against whom the order runs maintains the source of the air contaminants affected by such order.

The person to whom such order is directed shall comply therewith immediately. Such order may not be appealed to the Superior Court in the manner provided in section 593, but such person may apply to the commission for a hearing on such order, which hearing shall be held by the commission within 48 hours after receipt of application therefor. Within 7 days after such hearing, the commission shall make findings of fact and continue, revoke or modify the order. The decision of the commission may be appealed to the Superior Court in the manner provided by section 593.

§ 593. Appeals

Except as provided in section 592, any person aggrieved by an order or decision of the commission may within 30 days after notice thereof, appeal therefrom to the Superior Court. Such appeal shall set forth fully every ground upon which it is claimed that the decision or order appealed from is unlawful or unreasonable, and no ground not so advanced shall be urged, relied on or considered by the court unless the court for good cause shown shall permit the appellant to specify additional grounds.

Notice of the appeal shall be ordered by the court and the appeal shall be heard without a jury. The proceedings shall not be de novo. Review shall be limited to the record of the hearing before, and the order of, the commission. The court shall determine whether the commission acted regularly and within the scope of its authority, and whether the order or decision appealed from is supported by substantial evidence, and on the basis of such determinations may enter an order affirming, modifying or nullifying such order or decision, or remanding the cause to the commission upon such terms as the court may direct.

§ 594. Enforcement of orders

All orders of the commission shall be enforced by the Attorney General. If any order of the commission is not complied with within the time period specified, the commission shall immediately notify the Attorney General of this fact. Thereafter the Attorney General shall commence an action in the Superior Court of any county where the violation of the commission's order has occurred, seeking both injunctive relief to prohibit further violation thereof, and the civil penalties provided by section 595.

§ 595. Violations of orders; penalties

Any person who violates any order of the commission shall, in addition to any other provision of law, be liable to a civil penalty of not less than \$100 nor more than \$2,500 to be recovered by the Attorney General in a civil action brought in the name of the commission. If the violation is of a continuing nature, each day during which it continues, after the date by which compliance must be had with the order, shall constitute an additional, distinct and separate cause of action.

Penalties recovered under this section shall initially accrue to the commission, and the commission is authorized and empowered to rebate any such penalty paid, to the extent of 90% thereof, where the person liable for

the same satisfies the commission within one year from the date of the imposition of such penalty that the cause of the violation has been eliminated or removed, or that the order has been complied with, as the case may be. Penalties or portions thereof not so rebated shall be paid over by the commission to the Treasurer of State and by him credited to the General Fund.

Sec. 3. R. S., T. 29, § 2123, amended. The 2nd sentence of section 2123 of Title 29 of the Revised Statutes is amended to read as follows:

Whoever violates or fails to comply with any provision of sections 1369, 1370 and 2122 to ~~2126~~ 2127, or any rules or regulations established thereunder, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 90 days, or by both.

Sec. 4. R. S., T. 29, § 2127, additional. Title 29 of the Revised Statutes is amended by adding a new section 2127, as follows:

§ 2127. Maintenance of motor vehicle air pollution control systems

1. Definitions. For purposes of this section, the "air pollution control system" of a motor vehicle includes the exhaust manifolds, crossover pipe, muffler and the vent valve or positive crankcase ventilation valve, so called.

2. Prohibitions. No person shall operate any motor vehicle, except a stock race car, antique motor car or farm tractor, upon any highway of this State if any operational element of the air pollution control system of such vehicle has been removed, dismantled or otherwise rendered inoperative or in other than good working order.

When any person has been convicted of violating this section, the clerk of the court wherein the conviction occurred shall forthwith furnish to the Secretary of State an attested copy of the judgment of conviction and upon receipt of such copy the Secretary shall suspend the registration of the motor vehicle with respect to which the violation occurred. Such suspension may be appealed in the manner provided by, and subject to the provisions of, section 2242.

Unless otherwise ordered by the Superior Court upon appeal, such suspension shall remain in full force and effect until the Secretary has received notice from an official inspection station that all parts and equipment constituting operational elements of the air pollution control system of said vehicle have been restored, replaced or repaired and are in good working order.