

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1597

S. P. 502

In Senate, June 12, 1969

Reported by Senator Reed of Sagadahoc from Committee on Natural Resources. Printed under Joint Rules No. 18.

JERROLD B. SPEERS, Secretary

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, c. 4, additional. Title 38 of the Revised Statutes is amended by adding a new chapter 4, to read 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 to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.

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 it not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.
2. "Air contamination source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores; heating and power plants and stations; building and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings; garages and vending and service locations and stations, railroad locomotives, ships, boats and other water-borne craft; portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles; and all machinery, equipment, stack, conduit, flue, duct, vent, chimney or other apparatus leading out of any of the foregoing.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, however, all air conditions subject to the requirements of employer-employee contracts, and state or local labor laws and industrial codes insofar as these excluded air conditions are confined to and exist solely within the property boundaries of the person giving rise to that air condition.
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. "Municipality" includes, for purposes of enacting an air pollution control ordinance, only cities and organized towns.
9. "Person" means any individual, partnership, corporation, whether private, public or quasi-municipal, municipality, state governmental agency or other legal entity.

10. "Region" means air quality regions established pursuant to section 583.

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. Establishment of air quality regions

The commission may establish reasonable air quality regions within the State for the purposes of conducting air quality studies, and establishing reasonable ambient air quality standards and emission standards therein.

§ 584. Establishment of ambient air quality standards

The commission shall establish and may amend reasonable standards, herein called "ambient air quality standards," within a reasonable 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 first publication to be at least 45, and 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 reasonable 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, and such regions and standards shall thereafter be in effect until 90 days after the date of adjournment of the next regular session of the Legislature unless such next regular session shall adopt by legislative enactment such air quality regions and standards.

In establishing such effective date, the commission shall consider the degree of air pollution existing within the region, the length of time necessary to inform persons affected by the establishment of such standards of their existence, the time needed by the commission to implement effective controls, and the time needed by persons affected to design and install air pollution control apparatus to comply with such standards.

§ 585. Establishment of emission standards

The commission may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner 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 584 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 shall state the date upon which such standards, or any of them, become effective. In establishing such date, the commission shall consider the same factors required by it to be considered in establishing the effective date of ambient air quality standards.

Any emission standard or amendment thereto established by the commission shall thereafter be in effect until 90 days after the date of adjournment of the next regular session of the Legislature unless such next regular session shall adopt by legislative enactment such emission standard or amendment thereto.

§ 586. Subpoena power

The commission may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any commission hearing.

If any person served with such subpoena claims, at or before the hearing that the production by him of books, records or other data under his control is sought, that such production may disclose secret processes, formulae or methods used by him or under his direction, such 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.

§ 587. Variances

Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the commission for a variance from ambient air quality standards or emission standards promulgated under this chapter. The application shall be accompanied by such information and data as the commission may reasonably require. The commission may grant such variance if it finds that:

1. The emissions occurring or proposed to occur do not endanger human health or safety; and
2. Compliance with the rules or regulations from which variance is sought would produce serious hardships.

No variance shall be granted except after a public hearing in the municipality where the applicant maintains the building or business in connection with which the variance is sought. Public notice of such hearing shall be given in the same manner as is provided for notice of hearings with respect to the establishment of ambient air quality standards in section 584.

If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be good only until the necessary means for prevention, abatement or control become known and available and subject to the taking of such reasonable substitute or alternate measures as the commission may prescribe.

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the commission finds is requisite for the taking of the necessary measures.

If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections 1 and 2, it shall be only for such time as the commission considers reasonable.

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint

is made to the commission on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the commission finds that renewal is justified. No renewal shall be granted except on application therefor.

Any person adversely affected by a variance or renewal granted by the commission may obtain judicial review thereof by a proceeding in the Superior Court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious.

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 593 to any person or his property.

§ 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 sections 595 and 596 for violation of commission orders. The contents of such reports shall be confidential.

§ 590. Licensing

After ambient air quality standards and emission standards have been established within a region, the commission may by regulation provide that no person shall operate or maintain therein any additional air contamination source or emit any additional air contaminants therein without an emission license from the commission.

Application for such licenses shall be made in such form and contain such information relating to the proposed air contamination source and emission of additional air contaminants as the commission may by regulation prescribe. Within 30 days of receipt of a properly completed application, the commission shall hold a hearing thereon in the municipality within the region where the proposed source or additional emission is to be located, and shall notify the applicant of the date, time and place thereof at least 14 days in advance. At such hearing, the commission shall solicit and receive testimony concerning the nature of the proposed emissions; their effect on existing ambient air quality standards within the region; the availability and effectiveness of air pollution control apparatus designed to maintain the emission for which license is sought at the levels required by law; and the expense of purchasing and installing such apparatus. If after hearing the commission shall find

that the proposed emission will not violate applicable emission standards, or can be controlled so as not to violate the same, and that such proposed emission, either alone or in conjunction with existing emissions, will not violate or can be controlled so as not to violate applicable ambient air quality standards, it shall grant the license, imposing such appropriate and reasonable condition thereon as may, in the commission's judgment, be necessary to secure compliance with such standards.

§ 591. 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 584 or emission standards so established pursuant to section 585.

Where the commission, pursuant to section 590, has by regulation provided that no person shall operate or maintain within a region any additional air contamination source or emit any additional air contaminants without an emission license from the commission, such operation or maintenance without license is prohibited.

§ 592. Violations ; general procedures

Whenever it appears to the commission, after investigation, that there is a violation of section 591 which does not create a danger to public health or safety, the commission shall, after 30 days' written notice to the alleged violator, 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.

§ 593. Violations ; emergency procedures

If the commission after investigation finds that a condition of air pollution exists creating a substantial and immediate 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 594, 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 594.

§ 594. Appeals

Except as provided in section 593, 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 including any claim that the applicable air quality standard or air quality region 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, and such appeal shall proceed pursuant to section 415.

§ 595. 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 injunctive relief to prohibit further violation thereof.

§ 596. Violations of orders ; penalties

Any person who violates any order of the commission shall be subject to the penalties set forth in section 453.

§ 597. Municipal air pollution control

Nothing in this chapter shall be construed as a preemption of the field of air pollution study and control on the part of the State. Municipalities may study air pollution and adopt and enforce air pollution control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard, order or other action promulgated pursuant to this chapter. Local ordinance provisions which touch on matters not dealt with by this chapter or which are more stringent than this chapter shall bind persons residing in the municipality.

Sec. 2. 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. 3. 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 of State 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 of State 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.