

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1603

H. P. 1275

House of Representatives, June 18, 1969

Reported by Committee on Natural Resources pursuant to Joint Order
(H. P. 536). Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

**AN ACT Providing for Regional Referendum on Location of Industry
Substantially Affecting Regional Environment.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment of the Legislature unless enacted as emergencies; and

Whereas, Maine is on the threshold of industrial growth unprecedented in her history with particular possibilities imminent in the fields of mining, metallurgical processing and petroleum refining and oil storage and handling; and

Whereas, Maine is also becoming more conspicuously unique among her sister states of the northeast in the actual and potential value of her natural resources and environment; and

Whereas, certain types of industrial development are or may become incompatible and detrimental to the natural resources and environment of the State because of the unwise location of such development; and

Whereas, at present all planning and zoning matters where they exist are solely municipal functions; and

Whereas, the citizens of the State of Maine should have an active voice in the planning and development of certain types of industry which affect the natural environment of a region as opposed to a single municipality; and

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

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

R. S., T. 30, c. 239, sub-c. VI, additional. Chapter 239 of Title 30 of the Revised Statutes is amended by adding a new subchapter VI, to read as follows:

SUBCHAPTER VI

REGIONAL REFERENDUM ON LOCATION OF INDUSTRY

§ 4961. Industry substantially affecting regional environment

An industry substantially affecting regional environment is any industry, plant or operation which by reason of its manufacturing process, or its use or handling of raw materials or products, may tend to harm or endanger or adversely affect to a significant degree the natural environment of a substantial portion of the municipality in which it is to be located, or substantial portions of municipalities adjacent to the municipality in which it is to be located or of municipalities within 15 miles of the actual location of such industry, if so found by the Water and Air Environmental Improvement Commission.

§ 4962. Considerations

The commission in making a determination of whether an industry is one substantially affecting regional environment shall consider the present and planned land and water uses of the portions of the municipalities which may be so affected, the character and value of their present natural environment, and the nature and degree of the damage or danger of damage which may accrue to the natural environment of such municipalities, as a result of the operations of such industry.

§ 4963. Natural environment

The term "natural environment" includes, but is not limited to, the degree to which the air, the inland waters within and the tidal waters adjoining such municipalities are free nonnaturally occurring contamination; the ecological balance within such municipalities; and the character and uses of land within such municipalities.

§ 4964. Application by industry

Any industry, plant or operation involving:

1. The mining, removal, refining or processing of any metallic mineral or derivative thereof, or

2. The refining, processing or trans-shipment to or from seagoing vessels of petroleum products shall, prior to commencing such activities, apply to the Water and Air Environmental Improvement Commission for a determination as to whether its operations as delineated by it to said commission will constitute it an industry substantially affecting regional environment. Any other industry, plant or operation proposing activity which may constitute it an industry substantially affecting regional environment may also apply to said commission for such determination.

§ 4965. Notice of application by industry

Upon application for such determination, the person, firm or corporation making such application shall cause to be filed with the municipal officers of the municipality in which such industry is located or proposes to locate, and

to the municipal officers of each municipality abutting thereto a true copy of its application together with a description of the nature and extent of the activity in which such industry proposes to engage. The municipal officers shall cause a copy of such application and description to be displayed prominently in the municipal office for a period of 30 days.

§ 4966. Dismissal by commission

Unless within 60 days after an application and notice to municipalities as aforesaid there is filed with the municipal officers of the municipality in which such industry is located or proposes to locate, and with the municipal officers of at least one abutting municipality a petition containing the signatures of at least 100 registered voters of each municipality or 5% of the total vote for all candidates for Governor in said municipality at the next previous gubernatorial election, whichever is less, protesting the location and activity of such industry, the application may be dismissed by the commission with a finding that such industry is not one substantially affecting regional environment.

§ 4967. Application by citizens

Unless an application for determination with respect to the same industry has been previously dismissed by the commission under section 4966, at any time prior to the completion of construction and the commencement of operation of an industry, plant or operation which may be an industry substantially affecting regional environment, application for such determination may be made by any person upon a showing that there has been filed with the municipal officers of the municipality in which such industry is located and with the municipal officers of at least one abutting municipality a petition containing the signatures of registered voters of each municipality numbering 300 or 5% of the total vote for all candidates for Governor in said municipality at the next previous gubernatorial election, whichever is less, protesting the location and activity of such industry. The commission, after hearing, may dismiss such application upon a finding that such industry would be unduly prejudiced by lack of timely application.

§ 4968. Hearing an application for declaratory judgment

Unless sooner dismissed pursuant to sections 4966 or 4967, hearing on application for determination shall be set by the commissioner not less than 45 days nor more than 60 days following the date of application. The commission may hear evidence as to the nature of the industry, plant or operation involved, methods of operation, manufacturing process, use of raw materials, disposition of wastes and any other matters it deems material for a decision pursuant to section 4961. A complete written transcript shall be made of all hearings held by the commission under this section and witnesses shall be sworn by the commission member presiding.

§ 4969. Findings by commission

If the commission finds that the industry, plant or operation is not an industry substantially affecting regional environment it shall dismiss the application. If the commission finds that the industry, plant or operation is an industry substantially affecting regional environment it shall order a public referendum to be held simultaneously in the municipality in which such in-

dustry proposes to be located and in those municipalities adjacent or abutting thereto or within 15 miles of the actual location of such industry which it finds may be substantially affected.

§ 4970. Appeal

An industry determined by the commission to be one substantially affecting regional environment may, within 30 days after notice of such determination, appeal therefrom to the Supreme Judicial Court. Notice of such appeal shall be given by the industry to the commission. The proceedings on appeal shall not be de novo. Review shall be limited to the record of the hearing before and the determination of the commission. The court shall decide whether the commission acted regularly and within the scope of its authority, and whether the commission's determination is supported by substantial evidence; and on the basis of such decision may enter a judgment affirming or nullifying such determination.

§ 4970-A. Referendum

After the time within which an appeal may be taken from the commission's determination has expired without receipt by the commission of notice of such appeal, or if appeal has been taken, after a judgment of the court affirming the commission's determination has become final, the commission shall order such referendum to be held on a day not less than 30 nor more than 45 days thereafter and shall notify the clerk of the municipality in which the industry proposes to be located and the clerks of the municipalities which it has found may be substantially affected by the wording of the question to be voted upon. Such question shall identify the name and nature of the industry and afford the voters the opportunity of voting "Yes" or "No" on whether it may commence operation. The referendum in each participating municipality shall be held within that municipality under the supervision of its election officials.

§ 4970-B. Referendum results

The clerk of each participating municipality shall promptly certify the results of the referendum in that municipality to the Secretary of State, and the total aggregate vote of the participating municipalities shall control. Upon an affirmative vote the industry may proceed to locate and commence operations consistent with the description of the nature and extent of its activity filed pursuant to section 4965. Upon a negative vote, the industry shall cease and desist from further activity of the nature proposed by it in any of the participating municipalities for a period of not less than 5 years.

§ 4970-C. Existing industry

This subchapter shall not apply to any industry, plant or operation which is presently constructed and in operation, nor to any industry, plant or operation not presently in operation but under construction providing it has received all municipal, state and federal governmental permission required for completion of construction and operation. This subchapter shall not apply to expansion of an existing industry, plant or operation provided that such industry, plant or operation is presently operating.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.