

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1782

H. P. 1415

House of Representatives, January 6, 1970

Committee on Natural Resources suggested.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Snow of Caribou.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
AND SEVENTY

**AN ACT to Regulate Site Location of Development Substantially
Affecting Environment.**

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

Sec. 1. R. S., T. 38, § 361, amended. The 6th and 7th paragraphs of section 361 of Title 38 of the Revised Statutes, as amended by section 2 of chapter 475 of the public laws of 1967, are further amended to read as follows :

It shall be the duty of the commission to ~~study, investigate and from time to time recommend to the persons responsible for the conditions, ways and means, so far as practicable and consistent with the public interest, of controlling exercising the police power of the State to control, abate and prevent the pollution of the air, rivers waters, and coastal flats and other natural environment of the State by the deposit therein or thereon of municipal sewage, industrial waste and other substances and materials in so far as the same are detrimental to the public health or to animal, fish or aquatic life, or to the practicable and beneficial use of said air, rivers, waters and coastal flats.~~ The commission shall make recommendations to each subsequent Legislature with respect to the classification of the ~~rivers~~ waters and coastal flats and sections thereof within the State, based upon reasonable standards of quality and use.

The commission shall make recommendations to each Legislature with respect to ~~the control, abatement and prevention of pollution of the air, rivers waters, and coastal flats and sections thereof other aspects of the natural environment within the State for the purpose of raising the classifications or standards thereof to the highest possible classification or standards so far as economically feasible, such recommendations to relate to methods, costs and~~

~~the setting of time limits for compliance~~ for the benefit of the citizens of this State.

Sec. 2. R. S., T. 38, c. 3, sub-c. I, Art. 6, additional. Subchapter I of chapter 3 of Title 38 of the Revised Statutes, as amended, is further amended by adding a new Article 6, to read as follows:

**ARTICLE 6, SITE LOCATION
OF DEVELOPMENT**

§ 481. Findings and purpose

The Legislature finds that the economic and social well-being of the citizens of the State of Maine depend upon the wise location of commercial developments with respect to the natural environment of the State; that municipal planning and zoning can only affect development within municipal boundaries; that many commercial developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such a development is too important to be left only to the determination of the owner of such development or to the municipality in which it may choose to locate; and that discretion must be vested in State authority to guide and regulate the location of commercial developments which may substantially affect local environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

§ 482. Definitions

As used in this subchapter:

1. Commission. "Commission" means the Environmental Improvement Commission.
2. Development substantially affecting local environment. "Development substantially affecting local environment" includes any recreational, commercial, educational, industrial or residential development which by reason of its size, purpose, manufacturing process or use or handling of natural resources or products may tend to harm or adversely affect the natural environment of a locality to a substantial degree.
3. Natural environment of a locality. "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from non-naturally occurring contamination.
4. Person. "Person" means any person, firm, corporation or other legal entity.

§ 483. Notification required

Any person intending to construct or operate a development which may substantially affect local environment shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development. The commission shall within 14 days of receipt of such notification, either approve the proposed location or schedule a hearing thereon in the manner hereinafter provided.

§ 484. Hearings; orders; construction suspended

In the event that the commission determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given to the person intending the development and in addition shall give public notice thereof by causing such notice to be published in some newspaper of general circulation in the proposed locality, or if none, in the state paper; the date of the first publication to be at least 10, and the last publication to be at least 3, days before the date of the hearing.

At such hearing the commission shall solicit and receive testimony to determine whether such development will in fact substantially affect local environment, and if so, whether such development should nevertheless be permitted to construct or operate in such location.

In making such determination, the commission shall consider the degree of the impact of the proposed development upon the character, value and appearance of the locality; the present and any planned land or water uses; the burden to be placed upon the sewer and transportation facilities of the locality by the proposed development; the amount or degree of economic benefit or harm to the locality or to the State as a whole likely to be derived from the proposed development; the degree of importance of the proposed location to the development; the availability of other locations reasonably suitable to the purposes of such development; and the technological and financial ability of the person proposing such development to comply with applicable state and local laws and ordinances relating to environmental protection and land use.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that such development will not substantially affect local environment in an adverse manner.

The commission may adopt, amend and repeal rules for the conduct of hearings held under this section in the same manner as provided for the adoption, amendment and repeal of rules of practice before it. A complete verbatim transcript shall be made of all hearings held pursuant to this section.

Within 45 days after the commission adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and con-

ditions as the commission may deem advisable to protect and preserve the environment of the locality where such development is proposed to be located.

Any person who has notified the commission, pursuant to section 483, of his intent to create a development substantially affecting local environment shall, upon receipt of notice that the commission has determined to hold a hearing under this section, immediately defer or suspend construction or operation with respect to such development until the commission has issued its order after such hearing.

§ 485. Failure to notify commission; hearing; injunctions; orders

The commission may at any time with respect to any person who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, schedule and conduct a public hearing in the manner provided by section 484 with respect to such development.

The commission may request the Attorney General to enjoin any person, who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, from further construction or operation pending such hearing and order. Within 30 days of such request the Attorney General shall bring an appropriate civil action.

In the event that the commission shall issue an order, denying a person commencing construction or operation of any development without first having notified the commission pursuant to section 483, permission to continue such construction or operation, it may further order such person to restore the area affected by such construction or operation to its condition prior thereto or as near as may be, to the satisfaction of the commission.

§ 486. Enforcement

All orders issued by the commission under this subchapter shall be enforced by the Attorney General. If compliance with any order of the commission is not had within the time period therein specified, the commission shall immediately notify the Attorney General of this fact. Within 30 days thereafter the Attorney General shall bring an appropriate civil action designed to secure compliance with such order.

§ 487. Judicial review

Any person, with respect to whose development the commission has issued an order after hearing pursuant to section 484 may within 30 days after notice of such order, appeal therefrom to the Supreme Judicial Court. Notice of such appeal shall be given by the appellant to the commission. 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 decide whether the commission acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgment affirming or nullifying such determination.

§ 488. **Applicability**

This subchapter shall not apply to any development, industry or plant in existence and operating on the effective date hereof.

§ 489. **Efforts to find more appropriate location**

In the event that the commission after hearing shall issue an order denying approval for location of a development, the commission shall, if the person whose development is affected by the order so requests, use its best efforts in consultation and coordination which will not adversely affect the environment of the locality to a substantial degree.