

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1834

H. P 1458

House of Representatives, February 3, 1970

Reported by Mr. Hardy from Committee on Natural Resources and
printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

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 prevent diminution of the highest and best use of the 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 wellbeing of the citizens of the State of Maine depend upon the location of commercial and industrial developments with respect to the natural environment of the State; that many 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 developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, 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 which may substantially affect environment. "Development which may substantially affect environment" means any commercial or industrial development which requires a license from the Environmental Improvement Commission, or which occupies a land area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

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 the environment or pose a threat to the public's health, safety or general welfare.

The commission shall approve a development proposal whenever it finds that:

1. Financial capacity. The proposed development has the financial capacity and technical ability to meet state air and water pollution control standards, has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.

2. Traffic movement. The proposed development has made adequate provision for loading, parking and traffic movement from the development area onto public roads.

3. No adverse affect on natural environment. The proposed development has made adequate provision for fitting itself harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the municipality or in adjoining municipalities.

4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that each of the criteria for approval listed in the preceding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

The commission shall adopt, and may 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 conditions as the commission may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

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 in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970 or to any development the construction and operation of which has been specifically authorized by the Legislature prior to the effective date hereof, or to public service corporation transmission lines, nor shall it apply with respect to any development proposing to locate in the appropriate zoned area of any municipality which had adopted a municipal plan and zoning and subdivision ordinances based thereon.

Sec. 3. Appropriation. There is appropriated from the General Fund the sum of \$20,000 to the Environmental Improvement Commission to carry out the purposes of this Act. Any unexpended balance at the end of June 30, 1970 shall be carried forward to June 30, 1971. The breakdown shall be as follows:

	1969-70
ENVIRONMENTAL IMPROVEMENT COMMISSION	
Personal Services	\$ 4,000
All Other	16,000
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	\$20,000