

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 903

S. P. 310

In Senate, February 19, 1971

Referred to Committee on Natural Resources. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Violette of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Defining the Standards of Judicial Review in Appeals from Orders and Decisions of the Environmental Improvement Commission.

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

R. S., T. 38, § 415, repealed and replaced. Section 415 of Title 38 of the Revised Statutes, as repealed and replaced by section 10 of chapter 475 of the public laws of 1967 and as amended by section 3-B of chapter 431 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 415. Appeals

Any person aggrieved by any order or decision of said commission may, within 30 days after notice of the filing of such order or decision, appeal therefrom to the Superior Court. Notice of the appeal shall be ordered by the court without a jury in the manner and with rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive in evidence in any proceeding hereunder a transcript of the proceedings before the commission and a copy of the commission's order. If the court finds that the commission acted regularly and within the scope of its authority, and that the order was not clearly erroneous, it shall affirm the decision of the commission.

STATEMENT OF FACT

The intent of this bill is to provide that the standard for judicial review of Environmental Improvement Commission decisions is the so-called "clearly erroneous" rule. This rule, which presently applies to appeals to the law court

from findings of fact of single justices and Superior Court Judges, is described in 1 Maine Civil Practice (2d. Ed.) § 52.8, to which reference may be had.

Although section 415 is found in the chapter on water pollution, this amendment would cover appeals from commission orders with respect to air pollution as well because of the last sentence of Title 38, section 594, which incorporates the provisions of section 415 by reference. Appeals from commission orders in site location cases are brought under the "clearly erroneous" rule in separate legislation.