

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 988

S. P. 336

In Senate, February 24, 1971

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Providing a Moratorium on the Construction of Certain Industries.

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

Whereas, the Legislature has heretofore declared (38 M.R.S.A. § 541) that "the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities;" and

Whereas, certain petroleum refining and desulphurization facilities and ore smelting industries, have expressed interest in locating in the coastal areas of this State; and

Whereas, history indicates that such facilities and industries, unless properly regulated, may have catastrophic and irreparable effects upon the environment of the State and the public health, welfare and safety; and

Whereas, the State Planning Office is preparing, in accordance with and as directed by law, the Maine Comprehensive Plan, which plan is designed to guide and carry forward the coordinated and effective economic development of the State in a manner which will best promote the health, safety, order, convenience, welfare and prosperity of the people of Maine; and

Whereas, the constitutionality of the Oil Discharge Prevention and Pollution Control Act, enacted by chapter 572 of the public laws of 1969, has been challenged by a consortium of major oil companies; and

Whereas, the following legislation is vitally necessary to preserve the environmental status quo until the Maine Comprehensive Plan has been prepared and until the constitutionality of the Oil Discharge Prevention and Pollution Control Act has been finally determined judicially; 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. 38, c. 3, sub-c. I, Art. 5, additional. Subchapter I of chapter 3 of Title 38 of the Revised Statutes, as amended, is further amended by adding a new Article 5, to read as follows:

ARTICLE 5. CONSTRUCTION OF CERTAIN FACILITIES AND INDUSTRIES

§ 471. Findings and intent

The Legislature finds and declares that certain petroleum refining and desulphurization facilities and ore smelting industries are looking to the coastal areas of this State as a probable site for plant location and that such facilities and industries, unless properly regulated, possess the potential to degrade the environment of the State in a catastrophic and irreparable manner.

The Legislature further finds and declares that until the Maine Comprehensive Plan has been prepared, and until the constitutionality of subchapter II-A, the Oil Discharge Prevention and Pollution Control Act so called, has been finally judicially determined, the State will be unable to effectively regulate such facilities and industries to the benefit of the health, safety and welfare of all its citizens.

The Legislature intends by the enactment of this Article to exercise the police power of this State by prohibiting the establishment within this State of petroleum refining and desulphurization facilities and ore smelting industries until the Maine Comprehensive Plan has been prepared and the constitutionality of subchapter II-A of this Title has been finally judicially determined, in order to protect the environment, the natural resources and the public health, safety and welfare of the people of this State from the potentially catastrophic and irreparable adverse effects of such facilities and industries.

§ 472. Prohibitions; enforcement

No person, firm, corporation or other legal entity shall commence construction or operation within this State of any petroleum refining or desulphurization facility or any ore smelting industry until the Maine Comprehensive Plan described in Title 5, section 3305, subsection 1, paragraph B has been completed and until final judgment has been rendered in the actions entitled *American Oil Company, et al. v. Environmental Improvement Commission*

and Portland Pipe Line Corporation v. Environmental Improvement Commission, pending at the time of enactment of this Article in the Superior Court for Kennebec County.

The Superior Court shall have jurisdiction to enjoin violations of this section upon civil action therefor brought by the Attorney General. In any such action the burden shall be on the defendant to prove that the construction or operation sought to be enjoined is other than a petroleum refining or desulphurization facility or an ore smelting industry.

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

STATEMENT OF FACT

The purpose of this bill is reflected in the emergency preamble.