

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1450

H. P. 1059

House of Representatives, March 10, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Vincent of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Imposing Effluent Charges to Abate Water Pollution.

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, EFFLUENT CHARGES

§ 471. Effluent charges

The rivers, lakes, marshes, ponds, coastal flats and other fresh and marine waters of this State constitute a public resource of paramount importance to the people of this State. Discharge into these waters of any waste, refuse, effluent or other harmful or potentially harmful substance, or of heated water, by any person, firm, corporation, municipality or other legal entity may infringe upon this valuable public resource. The State for the protection of this public resource establishes a system of effluent charges. The purpose of this system is primarily to provide economic incentives to polluters by virtue of the cost of these charges to reduce the amount of their pollution, thereby raising the quality of all the waters of this State at least to the minimum requirements of their respective classifications at the earliest possible time, and secondarily to provide funds for the investigation of the sources and causes of pollution, for the enforcement of the laws of this State dealing with pollution abatement; and for the construction of municipal and regional pollution abatement facilities.

1. Definitions. For the purposes of this section the following words and phrases have the meanings indicated after each unless the context clearly requires a different meaning:

- A. **Discharger.** A discharger is any person, firm, corporation or other legal entity who discharges or causes to be discharged into any of the waters of this State any waste, refuse, effluent or other harmful or potentially harmful substance.
- B. **Pollutant.** A pollutant is a substance or thermal energy contained in an effluent discharge on which effluent charges are imposed under this section.
- C. **Effluent quantity.** An effluent quantity is the quantity of a pollutant discharged into the waters of this State during a reporting period.
- D. **Effluent charge.** An effluent charge is the fee paid per unit of an effluent quantity.
- E. **Effluent payments.** Effluent payments are the amounts to be paid to the State to be determined by multiplying the effluent charges by the respective reported effluent quantities.
- F. **Unreported discharge.** An unreported discharge is a discharge of any pollutant for which any of the reports required by subsection 4 has not been submitted.
- G. **Total noncarbonate carbon.** Total noncarbonate carbon is all carbon in elemental or combined form other than that represented by dissolved carbon dioxide or bicarbonate or carbonate ions, measured in pounds.
- H. **Total suspended solids.** Total suspended solids are the total dry weight equivalent of all settleable and colloidal solid material, measured in pounds.
- I. **Thermal energy.** Thermal energy is the energy added to receiving waters in thermal form by any form of discharge, measured in British Thermal Units (B.T.U.).
2. **Effluent charges established.** The effluent charges where not otherwise provided by this section are as follows:
- A. **Total noncarbonate carbons.** The effluent charge for total noncarbonate carbons is 10¢ per pound.
- B. **Total suspended solids.** The effluent charge for total suspended solids is 3¢ per pound.
- C. **Thermal energy.** The effluent charge for thermal energy is 2½¢ per million B.T.U.
3. **Commencement of effluent charges.** Effluent charges commence for all dischargers, except as provided in paragraph A, on the first day of the first quarter year beginning on January 1st, April 1st, July 1st or October 1st, one full year after this section becomes a law.
- A. **Exception for municipalities.** The effluent charges in this section shall not apply to municipalities, sewer districts, regional sewer districts and other quasi-municipal corporations until October 1, 1976.

4. Reports and payments required. All reports required under this subsection must be in writing on forms provided by the commission.

A. Information required in all reports. All reports required under this subsection must contain the name and address of the discharger, the exact location of the discharge, the composition of the discharge and such other information as the commission finds necessary to carry out the purposes of this section.

B. Preliminary estimates of effluent quantities. At least 30 days before the date for commencement of effluent charges and at least 30 days before the beginning of every quarter thereafter, every discharger who at that time maintains a discharge shall report the estimated effluent quantities to be discharged during the next quarter. Any discharger who does not maintain a discharge at the time the report is required, but thereafter finds that he will maintain a discharge during the following quarter shall report the estimated effluent quantities to be discharged during that quarter before the discharge commences.

C. Quarterly reports of effluent quantities and payments due. Any discharger who has maintained a discharge during any quarter shall, within 30 days after the end of that quarter, report the effluent quantities actually discharged during that quarter and the effluent payment due. Payment of the full amount due must accompany the report.

D. Reports a matter of public record. All reports submitted under this section are a matter of public record.

5. Regulations governing the determination of effluent quantities by dischargers.

A. Regulations. The commission shall issue regulations governing:

(1) The methods, procedures and equipment to be used by dischargers to determine their effluent quantities;

(2) Standards and specifications for the performance, accuracy, reliability and calibration of such equipment and tests; and

(3) The inspection and certification of such equipment by the staff of the commission, the results of such inspections to be a matter of public record.

B. Different classes of dischargers. The commission may establish classes of dischargers based on the contents, volume and other characteristics of the discharge for the purpose of issuing different regulations governing each class.

6. Commission by regulation to establish higher rates for all waters not meeting their classifications by 1976. The commission shall, by regulation in accordance with the procedure set forth in subsection 7, establish higher effluent charges in all those receiving waters which do not meet their then current classifications on or after October 1, 1976. When the commission establishes those charges it shall consider what reasonable higher effluent

charges will effectively serve to reduce discharges and thereby raise the quality of the receiving waters to their respective then current classifications subject to the following:

A. Maximum charges. The maximum charges the commission may set are as follows:

- (1) The effluent charge for total noncarbonate carbons may not be more than 50¢ per pound;
- (2) The effluent charge for total suspended solids may not be more than 15¢ per pound dry weight;
- (3) The effluent charge for thermal energy may not be more than 12¢ per million B.T.U.

B. Different and graduated charges. The commission may by such regulations establish different levels of charges from time to time for different segments of rivers and other receiving waters and for different seasons and may make graduated schedules of charges.

7. Procedure for issuing regulations. The procedure to adopt any of the regulations authorized by this section is as follows:

A. Studies. The commission shall make such studies and investigations as are necessary, making use of available scientific, technical and economic information to determine appropriate regulations.

B. Public meeting notice. After determination of a proposed set of regulations, the commission shall call a public hearing for the purpose of presenting them to all interested people. It shall give notice of the public hearing in a newspaper or newspapers having state-wide distribution, said notice to appear at least once a week for 3 successive weeks preceding the meeting, the first publication to appear not more than 30 days prior to said meeting and the last publication must be at least 5 days prior to the hearing. The notice must state the time, place and purpose of the hearing. At least 3 members of the commission must attend each such hearing.

C. Public notice of regulation. Within a reasonable time following the hearing, and after considering the results of the hearing, the commission shall give public notice at least once of the regulation adopted in a newspaper or newspapers having state-wide distribution. The regulation becomes effective 30 days after publication.

D. Amendment or revisions. The commission may make amendments or revisions of adopted regulations under the same procedure as provided in this subsection for new regulations.

8. Pollution abatement fund established. There is established a Pollution Abatement Fund. All sums of money received from effluent charges under this section are allocated to the Pollution Abatement Fund.

A. Purposes for which fund may be used. The purposes for which this fund may be used are as follows:

(1) The first \$1,000,000 received each fiscal year is allocated to enforcement of all the provisions of chapter 3, subchapter 1. The purposes for which these funds may be expended include but are not limited to the salary and other expenses of the commission and commission staff, the salary and expense of enforcement officers, the cost of investigations of possible pollution, the cost of scientific tests and of equipment of every type used in determination of possible violations, personnel to make scientific tests and investigations, supervisory personnel, all costs of court litigation and including the cost of collecting such charges, all as the commission may from time to time decide.

(2) The remainder of the money received from effluent charges is to be used to make interest payments on state indebtedness incurred to pre-fund municipal or regional waste water treatment plant construction, to make planning and construction grants to municipal and regional water quality management agencies, for scientific, technical and economic studies concerning pollution and its abatement, and for pollution abatement in general, all as the Legislature may from time to time decide.

B. Fund does not lapse. The fund does not lapse and charges collected or allocated in any year may be used in that year or any other year.

9. Lien. If any charge imposed by this section is not paid when due, the commission may cause a written statement of lien to be filed in the office of the registry of deeds of the county where any of the delinquent discharger's real estate is located and for personal property in the office in which a security or financing statement or notice with respect to personal property would be filed.

A. Contents of lien statement must contain the following :

- (1) A statement that the commission claims a lien under this section ;
- (2) The amount of the charge and any penalty and interest due ;
- (3) The name and last known address of the delinquent discharger liable for the amount ;
- (4) The fact that the commission has complied with all the provisions of this section in the assessment of the charge.

B. Effective date of lien. From the time of the filing, the amount set forth in the statement of lien constitutes a lien upon all real estate of the discharger in the county where recorded then owned by him or thereafter acquired by him in the period before the expiration of the lien, and constitutes a like lien on his personal property where the filing of a financing statement would have encumbered same.

C. Priority of lien. In case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances, the lien, when notice has been filed in the proper office, is subject to the prior mortgage unless the commission also notified the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter

created from the mortgagor to the mortgagee is junior to the lien herein provided.

D. Effect of lien. The lien has the same force, effect and priority as a judgment lien and continues for 6 years from the date the last charge there listed was due unless sooner released or otherwise discharged by the commission.

10. License, suspension and penalties.

A. License, suspension revocation, notice and hearing.

(1) Whenever it comes to the attention of the commission that there is a violation of any provision of this section, the commission shall notify the alleged violator in writing at least 10 days prior to the hearing of the time and place of the hearing and shall set forth in writing the alleged act done or omitted in violation of the section. When said notice is placed in the United States mail properly stamped and properly addressed to the discharger's last known address at least 15 days prior to said hearing, the time requirement for the notice is deemed to have been complied with. The commission may grant a continuance to any discharger for reasonable grounds.

(2) At the hearing the alleged violator may appear in person or by an attorney and answer the allegations, file a statement of fact including the methods and procedures, if any, adopted or used by the alleged violator to comply with this section, and present such evidence as may be relevant to the case.

(3) After consideration of the evidence and argument or in the event of the failure of the alleged violator to appear on the day set for the hearing, the commission shall, within 30 days thereafter, make findings of fact on the case, and report same to the violator. If it finds that the violation exists it may suspend or revoke the discharger's license. In making that consideration the commission shall consider any past record of violations on the part of the violator. The commission may also take action under paragraph B.

(4) If any discharger is aggrieved by the decision of the commission in revoking or suspending a license, he may within 30 days thereafter appeal to the Superior Court by filing a complaint. The court shall fix a time and place for the hearing and cause notice thereof to be given to the commission. After hearing, the court may affirm or reverse the decision of the commission, and the decision of the court is final. Pending the judgment of the court the decision of the commission remains in full force and effect.

B. Penalties.

(1) If the discharger willfully fails to report a discharge, or willfully under-reports a discharge, the commission shall take such steps as are necessary to determine the effluent quantities which were discharged during the period, any may bring an action to recover an amount equal

to twice the applicable effluent payment for the period in which the discharge existed.

(2) It is unlawful for any discharger to violate any provision of this section and whoever does so shall be punished by a fine of not less than \$1,000 and not more than \$5,000 for each such violation.

11. No rights granted by this section. Nothing in this section shall be construed to give any discharger the right to discharge any effluent into any of the waters of the State, but any discharger who does so, whether legally licensed to do so or not, is liable for the effluent payments provided in this section.

STATEMENT OF FACT

The purposes of this bill are to provide economic incentives to reduce discharges of polluting substances into the waters of the State so as to restore or maintain the quality of these waters at the minimum requirements of their classifications, and to provide funds for the abatement of water pollution in the State. This bill will not require an appropriation for the 1971-73 biennium because the duties required of the commission will be carried out with present staffing.