

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1140

H. P. 818

House of Representatives, February 22, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Huber of Falmouth.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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**AN ACT to Amend the Laws Administered by the Department of  
Environmental Protection.**

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

Sec. 1. R. S., T. 38, § 361-A, amended. The first paragraph of section 361-A of Title 38 of the Revised Statutes, as enacted by section 1 of chapter 470 of the public laws of 1971, is repealed and the following enacted in place thereof:

Unless the context otherwise indicates, the following words when used in any statute administered by the Department of Environmental Protection shall have the following meanings:

Sec. 2. R. S., T. 38, § 361-A, sub-§ 7, additional. Section 361-A of Title 38 of the Revised Statutes, as enacted by section 1 of chapter 470 of the public laws of 1971, is amended by adding a new subsection 7, to read as follows:

7. Coastal streams. "Coastal streams" means those waters of the State which drain directly or indirectly into tidal waters, except portions of streams subject to the rise and fall of the tide and those waters listed and classified in sections 368 and 370.

Sec. 3. R. S., T. 38, § 362-A, additional. Title 38 of the Revised Statutes is amended by adding a new section 362-A, to read as follows:

§ 362-A. Experiments and scientific research in the field of pollution and pollution control

Notwithstanding any other law administered or enforced by the department is authorized to permit persons to discharge, emit or place any sub-

stances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the department or its designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section shall be subject to such terms and conditions as the department deems necessary in order to protect the public's health, safety and general welfare, and may be terminated by the department at any time upon 24 hours' written notice.

Sec. 4. R. S., T. 38, § 369, sub-§ 11, additional. That part of section 369 of Title 38 of the Revised Statutes which relates to Other Coastal Streams of Knox County is amended by adding a new subsection 11 to read as follows:

11. Other coastal streams. All coastal streams, direct and indirect segments thereof, draining to the tidal waters of Knox County, not otherwise specified or classified—Class B-1.

Sec. 5. R. S., T. 38, § 369, sub-§ 16, additional. That part of section 369 of Title 38 of the Revised Statutes, which relates to Other Coastal Streams of Lincoln County, as amended, is further amended by adding a new subsection 16, to read as follows:

16. Other coastal streams. All coastal streams, direct and indirect segments thereof, draining to the tidal waters of Lincoln County, not otherwise specified or classified—Class B-1.

Sec. 6. R. S., T. 38, § 369, sub-§ 16, additional. That part of section 369 of Title 38 of the Revised Statutes, which relates to Waldo County, is amended by adding a new subsection 16, to read as follows:

16. Other coastal streams of Waldo County. All coastal streams, direct and indirect segments thereof, draining to the tidal waters of Waldo County, not otherwise specified or classified—Class B-1.

Sec. 7. R. S., T. 38, § 414, sub-§ 1, ¶ A, repealed and replaced. Paragraph A of subsection 1 of section 414 of Title 38 of the Revised Statutes, as enacted by section 4 of chapter 461 of the public laws of 1971 and as amended, is repealed and the following enacted in place thereof:

A. The board shall within 30 days of receipt of an application either approve the application, upon such terms and conditions as are appropriate and reasonable or disapprove the application setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose application the board has issued an order without a hearing may, within 30 days after notice of such order, request a hearing before the board. Such request shall be in writing and shall set forth the findings and conclusions of the board to which such person objects, the bases of such objections and the nature of the relief requested. Upon receipt of such request, the board may schedule and hold a hearing limited to the matters set forth in such request pursuant to paragraph B.

Sec. 8. R. S., T. 38, § 414, sub-§ 1, ¶ B, amended. The first sentence of paragraph B of subsection 1 of section 414 of Title 38 of the Revised Statutes,

as repealed and replaced by section 10 of chapter 499 of the public laws of 1969 and as amended, is repealed and the following enacted in place thereof:

In the event that the board determines to hold a hearing on an application, 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, if any, and 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.

Sec. 9. R. S., T. 38, § 416, amended. The last paragraph of section 416 of Title 38 of the Revised Statutes, as last repealed and replaced by section 1 of chapter 458 of the public laws of 1971 and as amended, is repealed and the following enacted in place thereof:

Whoever violates any provisions of this section or any rule, regulation or order of the board made hereunder shall be punished by a fine of not less than \$500 nor more than \$1,000. This paragraph shall not apply to any discharge promptly reported and removed in accordance with any rules, regulations and orders of the board.

Sec. 10. R. S., T. 38, § 420, sub-§§ 2 and 3, additional. Section 420 of Title 38 of the Revised Statutes, as enacted by section 130 of chapter 544 of the public laws of 1971 and as amended, is further amended by adding 2 new subsections, 2 and 3, to read as follows:

2. Toxic or hazardous substances. Any other toxic substance identified by the board by reasonable regulation, after public hearing, in any hazardous concentration greater than the natural concentration in the receiving waters unless otherwise ordered by the board by rule or regulation or in any license issued pursuant to section 414. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence, degradability, the usual or potential presence of any organism, and the nature and extent of the effect of such substance on such organism. As used in this subsection, "toxic substance" means those substances, or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism including humans, either directly through the environment, or indirectly through ingestion through food chains, will, on the basis of information available to the board, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offspring;

3. Radiological, chemical or biological warfare agents. Radiological, chemical or biological warfare agents or high-level radioactive wastes.

Sec. 11. R. S., T. 38, § 422, amended. The 3rd paragraph of section 422 of Title 38 of the Revised Statutes, as enacted by section 10 of chapter 618 of the public laws of 1971, is amended to read as follows:

If the applicant for the permit demonstrates that the proposed activity will not unreasonably interfere with existing recreational, navigational, scenic

and aesthetic uses; nor otherwise unreasonably interfere with or harm the natural environs of the great pond or tributary, river or stream; nor cause unreasonable soil erosion; nor **unreasonably** interfere with the natural flow of any waters; nor create or cause to be created unreasonable noise or traffic of any nature; nor **unreasonably** harm any fish or wildlife habitat; nor lower the quality of any waters, to the satisfaction of the board, the board shall grant the permit upon such terms as it deems necessary to insure that the proposed activity will comply with the foregoing standards.

**Sec. 12. R. S., T. 38, § 451-A, additional.** Title 38 of the Revised Statutes is amended by adding a new section 451-A to read as follows:

**§ 451-A. Time schedule variances**

The Board of Environmental Protection may grant a variance from any statutory water pollution abatement time schedule to any municipality or quasi-municipal entity upon application by it. The board may grant a variance only upon a finding that:

1. Federal funds not available. Federal funds for the construction of municipal waste water treatment facilities are not available for the project, and

2. Compliance. The municipality or quasi-municipal entity has demonstrated that it has otherwise fully complied with this Title.

Variances shall be issued for a term certain, not to exceed 2 years, and may be renewed, except that no variance shall run longer than March 1, 1979.

Variances may be conditioned upon terms relating to appropriate interim measures to be taken by the municipality or quasi-municipal entity to maintain or improve water quality.

**Sec. 13. R. S., T. 38, § 454, amended.** Section 454 of Title 38 of the Revised Statutes, as last repealed and replaced by section 132 of chapter 544 of the public laws of 1971 and as amended, is further amended to read as follows:

**§ 454. Injunctions, civil and criminal actions**

In the event of any violation of any of the provisions of ~~this subchapter~~ the laws which the Department of Environmental Protection is responsible for administering, or of any order, regulation, ~~or~~ decision, license or permit of the ~~board~~ department or decree of the court as the case may be, the Attorney General may institute injunction proceedings to enjoin the further violation thereof, a civil or criminal action ~~under sections 416, 417 and 453~~, or any appropriate combination thereof, without recourse to section 451.

**Sec. 14. R. S., T. 38, § 487, repealed and replaced.** Section 487 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969 and as amended, is repealed and the following enacted in place thereof:

**§ 487. Judicial review**

Any person aggrieved by any order of the Board of Environmental Protection, pursuant to this Article may within 30 days after notice of such

order, appeal therefrom to the Supreme Judicial Court pursuant to the provisions of Rule 73 (f) of the Maine Rules of Civil Procedure. The proceedings shall not be de novo. Review shall be limited to the application, the record of any hearing before and the order of the board. The court shall decide whether the board 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.

**Sec. 15. R. S., T. 38, § 488, amended.** Section 488 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969 and as amended, is further amended to read as follows:

**§ 488. Applicability**

This Article 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 May 9, 1970, or to public service corporation transmission lines, **except** transmission lines carrying 125 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located **as of March 15, 1972.**

**Sec. 16. R. S., T. 38, § 543, amended.** Section 543 of Title 38 of the Revised Statutes, as enacted by section 1 of chapter 572 of the public laws of 1969, is amended by adding at the end 2 new paragraphs to read as follows:

**Notwithstanding the prohibition of this section, the Board of Environmental Protection may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil, petroleum products or their by-products, into or upon any coastal waters if, and only if, it finds that such discharge will be receiving the best available treatment and that such discharge will not degrade existing water quality nor perceptibly violate the classification of the receiving waters, nor create any visible sheen upon the receiving waters.**

**In acting upon an application for any such license, the board shall follow the provisions of sections 413 and 414 insofar as they are applicable.**

**STATEMENT OF FACT**

1. Section 1 of the bill provides that the definitions set forth in the water pollution laws apply to all laws administered by the board.
2. Section 2 of the bill provides a definition of coastal streams in the water pollution laws.
3. Section 3 of the bill enables the board to allow promising experimental studies that would not otherwise be permitted by law.

4. Sections 4, 5 and 6 of the bill provide language that would clarify the classification of certain coastal streams in Knox, Lincoln and Waldo Counties.
5. Section 7 of the bill allows the board to deny an application for a waste water discharge license without incurring the often needless expense of a public hearing prior to such denial. A person whose application is denied without a hearing may request such a hearing either before the board or the courts.
6. Section 8 of the bill is a companion to section 7. It requires the board to hold and publicize hearings in a manner similar to the site location procedure.
7. Section 9 of the bill provides that persons who spill oil into inland waters of the State will not be criminally prosecuted if they report the discharge and remove it. Hopefully this will encourage prompt cleanup.
8. Section 10 of the bill enables the board to define toxic and hazardous substances.
9. Section 11 of the bill makes it clear that in reviewing applications for permits to fill or dredge great ponds the board examines whether the activity will **unreasonably** interfere with the natural flow of any waters and whether the activity will **unreasonably** harm any fish or wildlife habitat, by adding the word "unreasonably" to the statute.
10. Section 12 of the bill would allow the board to grant cities and towns a variance from the statutorily required water pollution abatement schedule when the sole reason for non-compliance is the lack of federal funds.
11. Section 13 of the bill clarifies how all laws administered by the board are to be enforced.
12. Section 14 of the bill clarifies an existing confusion in the laws relating to appeals from site location of development decisions. Presently the developer must appeal to the Supreme Judicial Court, while any other aggrieved party may appeal to the Superior Court. This amendment would require all aggrieved parties to appeal to the Supreme Judicial Court.
13. Section 15 of the bill contains a minor language change.
14. Section 16 of the bill would permit the board to license and allow the discharge of highly treated oil contaminated waste into coastal waters. Presently, all such discharges are prohibited and storm water runoff and drainage from oil tank farms, even if given the best available treatment, are illegal.