

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1427

S. P. 442

In Senate March 14, 1973

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Richardson of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Providing a Moratorium on Oil and Heavy Industry Deveolpment
Along the Maine Coast.

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

Whereas, the use of the Maine Coast is of prime importance to the public's general welfare; and

Whereas, the following legislation is vitally necessary if the law relating to oil discharge prevention is declared unconstitutional; 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, Article 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

MORATORIUM

§ 471 Findings and declarations

The Legislature finds and declares that previous study by this Legislature has led to the enactment of several measures which were intended to be part

of a complete system of state and local police power control mechanisms aimed at protecting the coast of Maine and that this system of protective measures is presently in a precarious circumstance. The Legislature has heretofore declared by section 541 that "the highest and best uses of the sea-coast of the State are as sources of public and private recreation and solace from the pressures of an industrialized society, and as 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, that certain heavy industry and petroleum refining facilities may be proposed to be located in the coastal areas of this State at a time when there is no effective means of dealing with major oil spills; and that history and experience 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.

The Legislature further finds and declares that sections 541 to 557, known as the "Oil Discharge Prevention and Pollution Control Law" has been challenged in the Supreme Judicial Court of Maine as being unconstitutional; and there has been no decision rendered by the Supreme Judicial Court of Maine with respect to said "Oil Discharge Prevention and Pollution Control Law" and if the aforesaid law is not upheld as being constitutional, the State of Maine would have no ability to regulate and control industrial development upon its land or within its territorial waters having a significant potential to cause irreparable damage to the public health, welfare and safety.

The Legislature also finds and declares that the Governor's Task Force Report on Energy, Heavy Industry and the Maine Coast has proposed the creation of a Coastal Industrial Development Corporation by legislation and has further proposed that the location of industrial development sites, including oil handling terminals and refineries be regulated by zoning the coast of Maine with respect to the location thereof; and no legislation has as yet been enacted with respect to a Coastal Industrial Development Corporation or with respect to zoning the Maine coast for such heavy industrial locations.

The Legislature in addition finds and declares that Title 12, sections 4811 to 4814, known as the "Mandatory Zoning and Subdivision Control Act" provides a limited time during which municipal units of government must plan, zone and control the subdivision of shoreland areas and if they fail to do so, the State shall adopt suitable ordinances for these municipalities and also that 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.

In the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require legislation for the preservation of the public peace, health and safety because a range of private heavy industrial development activities is presently being considered along the coast of Maine, any one of which, if undertaken in an inappropriate location or without being subject to the complete system of police power regula-

tions now only partially enacted or in force, would do irreparable harm to the coast of Maine.

§ 472 Moratorium on coastal heavy industrial development.

In light of the foregoing, the Legislature hereby declares and establishes a moratorium on all new private heavy industrial developments over, in, on or adjacent to the territorial waters of the State, until such time as the constitutionality of the Oil Discharge Prevention and Pollution Control Law has been resolved, and until such time as the State Legislature and municipalities have enacted legislation which will protect the interests of the people of the State of Maine and the Maine coast. In no case shall the moratorium last more than 18 months, or 180 days after the effective date of the State level coastal zoning and development controls, whichever is shorter.

No agency of state government shall receive any new or process further any pending applications for approval, license, certification or other permit required by any existing provisions of state or federal law for a heavy industrial development in, on, or over the territorial waters of the State and land adjacent to the territorial waters of the State during the time period of this moratorium.

§ 473 Definitions

1 Heavy industrial development. Heavy industrial development for purposes of this Article shall include any and all new drilling or mining; oil, mineral or chemical processing or refining; chemical or petroleum storage tank, drilling platform or refinery construction; the construction of pipelines except water and sewage pipelines; electric or any other manufacturing or processing facility involving a capital investment in excess of \$2 million. It shall not include the construction of new sewage treatment plants or electric generating facilities which have complied with Title 35, section 13-A or the repair, maintenance or programmed expansion of any existing and operating oil transfer, storage, industrial sewage treatment plants except where expansion of the facility would result in its ability to accommodate vessels of substantially greater cargo capacity than can be presently accommodated.

2. Moratorium. Moratorium is the total postponement by statute for a brief, defined period of time of otherwise legal private activities for purposes of achieving a significant public objective and preempting private action inconsistent therewith.

3 Territorial water of the State. The territorial waters of the State shall for the purposes of this Article, include all tidal waters and land areas underlying the territorial waters to mean high tide level.

4 Land adjacent to territorial waters. For the purposes of this Article, land adjacent to the territorial waters of the State shall include all land areas contiguous to tidal waters within one mile of mean high tide.

5 Legislation. For the purposes of this Article, legislation shall include the legislative decisions of both state and local legislative bodies.

§ 474 Enforcement

The Attorney General shall immediately seek injunctive relief in the courts against activities undertaken in violation of this Article and no such activity shall be permitted to commence or continue while any question as to the validity of this Article or the applicability of this Article to the activity sought to be enjoined is pending before any court of competent jurisdiction whether state or federal. For purposes of obtaining a temporary restraining order, violation of this Article shall be deemed an irreparable harm to the Maine coast and the public's interest in preserving the coast. In any action brought under this Article the burden shall be on the defendant to prove that the construction or operation sought to be enjoined is not prohibited by the Article.

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

STATEMENT OF FACT

If the Oil Discharge Prevention and Pollution Control Law is found to be unconstitutional, it will be necessary for the Legislature in regular or special session to enact new laws which are constitutional in order to protect the State's interest in the coast and coastal water of Maine. This legislation, an Act under the state's police power, is intended to give the State Legislature, municipal governments, and, through the State Legislature, appropriate agencies of State Government a specific and limited period of time in which to complete enactment and implementation of a system of regulations designed to protect the Maine coast and prevent its misuse and despoliation.