

MAINE STATE LEGISLATURE

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(EMERGENCY)
New Draft of S. P. 442, L. D. 1427

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1806

S. P. 588

In Senate, April 12, 1973

Reported by five members in Report "A" from Committee on Natural Resources and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Providing a Moratorium on Oil and Heavy Industry Development 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

§ 47I. 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 the validity of this system of

protective measures is presently uncertain. The Legislature has heretofore declared by section 541 that "the highest and best uses of the seacoast of the State are as sources 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."

The Legislature further finds and declares that certain petroleum refining and transfer 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 indicate 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" have 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 insufficient ability to regulate and control oil development upon its land or within its territorial waters having a significant potential to cause irreparable damage to the public health, welfare and safety.

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 oil development activities are 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 regulations now only partially in force, would do irreparable harm to the coast of Maine.

§ 472. Moratorium on oil refinery or major oil terminal development

The Legislature hereby prohibits oil refinery or major oil terminal development in the State either until 120 days after the expiration of the appeal period following the final decision of a court of competent jurisdiction in the cases of *Portland Pipe Line Corporation v. EIC*, et. al. (Maine Supreme Court docket number 709) and *American Oil Company, et. al. v. EIC*, et. al. (Maine Supreme Court docket number 710), or, if the constitutionality of sections 541 to 557 is completely affirmed only until the expiration of said appeal period. In no event shall this moratorium extend beyond October 1, 1974.

The Department of Environmental Protection shall not issue a permit pursuant to section 483 or 484 for oil refining or major oil terminal construction during this moratorium.

Nothing in this section shall prohibit any state agency from processing, in any way short of the issuance of such a permit, applications for permits for oil refinery or major oil terminal construction.

§ 473. Definitions

As used in this Article, unless the context otherwise indicates, the following words shall have the following meanings.

1. Major oil terminal development. "Major oil terminal development" means the construction of any facility used for the ship to shore or shore to ship transfer of petroleum or liquefied petroleum products on a volume, the annual average of which exceeds 30,000 barrels per day. It shall not include the repair, maintenance or expansion of any existing and operating oil transfer or storage facility, or both, except where expansion of the facility would result in its ability to accommodate vessels of substantially greater cargo capacity than can be presently accommodated.

§ 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.

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 a specific and limited period of time in which to implement a complete system of regulations designed to protect the Maine coast and prevent its misuse and despoliation.