

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 115

H. P. 85

House of Representatives, January 8, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Mills of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

**AN ACT to Introduce Consideration of Socioeconomic Factors into the
Site Location of Development Act.**

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

Sec. 1. 38 MRSA, c. 3, sub-c. I, Art. 6, as enacted by PL 1969, c. 571, § 2, is amended by striking out all of the first 2 lines and inserting in place thereof the following:

ARTICLE 6.

DEVELOPMENT SITE ACT

Sec. 2. 38 MRSA, § 481, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in place thereof:

§ 481. Findings and purpose

The Legislature finds that the economic and social well-being of the citizens of Maine depends upon the judicious location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the biophysical and socioeconomic environment of the State; that many developments, because of their size or nature, are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left to the unrestricted determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect biophysical and socioeconomic environment.

The purpose of this Article is to provide a flexible and practical means by which the State, acting through the Board of Environmental Protection in

consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a beneficial impact on the biophysical and socioeconomic environment of their surroundings.

Sec. 3. 38 MRSA, § 482, first paragraph, as enacted by PL 1969, c. 571, § 2, is repealed and the following enacted in place thereof:

As used in this subchapter, unless the context otherwise requires, the following words shall have the following meanings:

Sec. 4. 38 MRSA, § 482, sub-§ 2, as last amended by PL 1973, c. 625, § 276, is repealed and the following enacted in place thereof:

2. Development which may substantially affect the environment. "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, but excluding state highways and state aid highways, which requires a license from the board, contemplates drilling for or excavating natural resources on land or under water, excluding borrow pits for sand, fill or gravel regulated by the Department of Transportation and pits of less than 5 acres, or occupies, on a single parcel, a structure or structures in excess of a ground area of 60,000 square feet.

Sec. 5. 38 MRSA, § 482, sub-§ 3, as enacted by PL 1969, c. 571, § 2, is repealed and the following enacted in place thereof:

3. Environmental; biophysical. "Biophysical environment" includes the character and quality of land, air and waters and the degree to which such land, air and waters are free from nonnaturally occurring contamination.

3-A. Environment; socioeconomic. "Socioeconomic environment" includes the uses of human and natural resources and the human condition which results from such uses.

Sec. 6. 38 MRSA, § 483, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in place thereof:

§ 483. Notification required; board action; administrative appeals

Any person intending to construct or operate a development shall, before commencing such construction or operation, notify the board in writing of his intent and of the nature and location of such development, together with such information as the board may by regulation require. The board, within 30 days of receipt of such notification, shall either approve the proposed development upon such terms and conditions as are appropriate and reasonable, disapprove the proposed development, setting forth the reasons therefor, or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the board has issued an order without a hearing may request, in writing, within 30 days after notice, a hearing

before the board. Such request shall set forth, in detail, 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 shall schedule and hold a hearing limited to the matters set forth in such request. Such hearing shall be scheduled in accordance with section 484.

Sec. 7. 38 MRSA, § 484, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in place thereof:

§ 484. Hearings; orders; construction suspended

In the event that the board determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, shall cause notice of the date, time and place thereof to be given to the person intending the development, and shall give public notice thereof by causing such notice to be published in a newspaper of general circulation in the proposed locality or, if none, in the state paper; the first publication shall be at least 10, and the last publication at least 3, days before the date of the hearing.

At such hearing the board shall solicit, receive and consider testimony to determine whether such development will, in fact, substantially affect the biophysical or socioeconomic environment and the extent of such effect or will threaten the public's health, safety or general welfare.

The board shall approve a development proposal whenever it finds that:

1. No threat to public health, safety or general welfare. The proposed development does not threaten the public's health, safety or general welfare.
2. Financial capacity. The developer has the financial capacity and technical ability to meet state air and water pollution control standards and has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.
3. Traffic movement. The developer has made adequate provision for traffic movement of all types out of and into the development area.
4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.
5. Beneficial net effect on the biophysical and socioeconomic environment. The development will not adversely affect either the biophysical or socioeconomic environment in the municipality or in neighboring municipalities, or, if either biophysical or socioeconomic environment is adversely affected, the development will have a net beneficial effect on the biophysical and socioeconomic environment considered as a whole. In weighing the biophysical environmental impact of the proposed development, the board's consideration shall include, but not be limited to, factors of geology, geomorphology, hydrology, climatology, air quality, limnology, water quality, fisheries and wildlife. In weighing the socioeconomic environmental impact of the proposed development, the board's consideration shall include, but not be lim-

ited to, factors of scenic resources, recreation resources, archeological and historical resources and community resources, which shall include land use patterns, economic base, housing and public services. Consideration of economic base shall include, but not be limited to, general economic conditions and the employment, wage rates, tax revenues, purchase of goods and services, and reinvestment of profits generated, both locally and statewide, by the proposed development.

In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 125 kilovolts or more proposed to be erected within this State by an electrical company or companies, the proposed development, in addition to meeting the requirements of subsections 1 to 5, shall also have been approved by the Public Utilities Commission under Title 35, section 13-A.

At hearings held under this section, the burden shall be upon the person proposing the development to affirmatively demonstrate to the board that each of the criteria for approval listed in the preceding paragraphs has been met.

Within 30 days after the board adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed or granting such permission upon such terms and conditions as the board may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

Any person who has notified the board, pursuant to section 483, of his intent to construct or operate a development shall immediately defer or suspend construction or operation with respect to such development until the board has issued its order.

Any person securing approval of the board, pursuant to this Article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until he has complied with such standards.

Sec. 8. 38 MRSA, § 485, last ¶, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in place thereof:

In the event that the board shall issue an order denying permission to continue construction or operation of a development to a person who has commenced such construction or operation without first having notified the board pursuant to section 483, the board may further order such person to restore the area affected by such construction or operation entirely or as near as possible, in the opinion of the board, to its condition prior to such construction or operation.

Sec. 9. 38 MRSA, § 488, as last amended by PL 1973, c. 423, § 10, is repealed and the following enacted in place thereof:

§ 488. Applicability

This Article shall not apply to any development in existence, in possession of applicable state or local licenses to operate under construction on January

1, 1970, to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, to public service corporation transmission lines, except transmission lines carrying 125 kilovolts or more, or 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.

STATEMENT OF FACT

The purpose of this bill is to require the Board of Environmental Protection to consider socioeconomic as well as biophysical environmental factors in reviewing site selection for major developments. Under the proposed bill a proposed development would be approved whenever the net effect of all environmental factors is beneficial. This type of balancing test has been recommended by the American Bar Association as its preferred approach to the problem of industrial site selection.