

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 646

H. P. 530

House of Representatives, February 24, 1977

On motion of Mr. Blodgett of Waldoboro, referred to Committee on Natural Resources. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Blodgett of Waldoboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Authorize a Citizen to Initiate Law Suits as a Private Attorney
General to Protect Environmental Quality.**

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

5 MRSA c. 308 is enacted to read:

CHAPTER 308

CITIZEN SUITS TO PROTECT ENVIRONMENTAL QUALITY LAW

§ 2461. Title

This chapter shall be known as the "Citizen Suits to Protect Environmental Quality Law."

§ 2462. In general

1. Nature of actions. Except as provided in subsections 2 or 3, any person may commence a civil action on his own behalf in the Superior Court:

A. Against any person, including any governmental agency or head thereof, who is alleged to be in violation of any law, permit, standard, regulation, condition, requirement, limitation or order which has become effective under the laws of this State relating to the protection of air and water quality, providing for land use restrictions or relating to the protection or conservation of any other natural resources, including energy and, in particular, all those laws and regulations administered by the Department of Environmental Protection, the Board of Environmental Protection, the Department of Conservation, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Transporta-

tion, the Public Utilities Commission and the Department of Human Services; or

B. Against any agency, department or bureau chief, administrator or commissioner where there is alleged a failure of that person to perform any act or duty under the laws and regulations referred to in paragraph A which is not discretionary with him.

Any action under paragraph A shall be brought in the Superior Court for the county in which the alleged violation occurred. Any action brought under paragraph B may be brought in the Superior Court for the County of Kennebec. The Superior Court shall have the jurisdiction, regardless of any other law to the contrary, to enforce that regulation, permit or order, as the case may be, or to order the commissioner or other administrative defendant to perform that act or duty, as the case may be.

2. Actions prohibited. No action may be commenced under subsection 1 :

A. Prior to 60 days after the plaintiff has given notice of the violation to the agency involved and to any alleged violator of that permit, standard, regulation, condition, requirement, limitation or order; or

B. If the administrator of those laws or the State has commenced and is diligently prosecuting a civil or criminal action in a court of law to require compliance with that permit, standard, regulation, condition, requirement, limitation or order, provided that in any such action in a court of law, any person may intervene as a matter of right.

3. Notice. No action may be commenced under subsection 1, paragraph B prior to 60 days after the plaintiff has given notice to the administrative defendant that he will commence that action. Each agency affected by this section shall prescribe by regulation the manner in which that notice shall be given.

4. Intervention. In any action brought by a citizen under this chapter, the head of the agency or department concerned, if not already a party, may intervene as a matter of right.

5. Costs. The court, in issuing any final order in any action brought to this chapter, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security, in accordance with law.

6. Other rights preserved. Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any standard, regulation, condition, requirement, limitation or order heretofore described, or to seek any other relief, including relief against the administrative agency or department involved.

7. Appeals to Supreme Judicial Court. A party aggrieved from a decision of the Superior Court under this chapter may appeal from that decision to the Supreme Judicial Court as in other civil cases.

STATEMENT OF FACT

The purposes of this bill is to encourage respect and increase enforcement of environmental quality loss. This statute is modeled after virtually every federal environmental protection statute of recent years providing for citizen suits to enforce these statutes, as well as several state statutes which have similar provisions.

Due to limitations on personnel, it is often not possible for state agencies to prosecute all violations of laws designed to protect environmental quality. Citizen suits may provide an effective additional deterrant to the violation of environmental laws.