

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1419

S. P. 471

In Senate, March 27, 1979

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

Presented by Senator Conley of Cumberland.

Cosponsor: Senator O'Leary of Oxford.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Encourage Location of Certain Coastal Heavy Industry in the
Portland, South Portland and Upper Penobscot Bay Area.**

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

Sec. 1. 38 MRSA § 481-A is enacted to read:

§ 481-A. Findings, purpose and policy with respect to location of certain industry in preferred municipalities on the coast

The Legislature further finds that certain heavy industrial development on the seacoast of the State will have a substantial impact on the economic well-being of the people of the State, the recreational use of the seacoast, the continuation of traditional economic uses such as fin fishing and shell fishing and the general physical, cultural and economic well-being of the coastal area.

The purpose of the heavy industry provisions of this article is: To provide for economic expansion along the coast in an orderly fashion compatible with traditional activities; to provide for the location of certain heavy industrial development so that the character of coastal communities will be maintained; to maximize the efficiency of public investment decision making such as the location, acquisition and development of roads, parks, schools and other public

facilities; to maintain the environmental quality of the coast of Maine, including the maintenance of open space and agriculture and forest land; and to provide generally for the public health, safety and welfare.

It is the policy of the State that heavy industry which is constructed or developed in the coastal area after the effective date of this section shall be located in the municipalities of Portland, South Portland, Searsport, Stockton Springs or Penobscot, provided that this policy will not contravene more restrictive local ordinances in the preferred municipalities. All state agencies shall incorporate this policy in their data collection, planning and administrative activities and shall facilitate the implementation of this policy in the execution of their several responsibilities.

Sec. 2. 38 MRSA § 482, sub-§ 1-A is enacted to read:

1-A. Coastal Area. "Coastal area" means all municipalities, unorganized townships and unorganized coastal islands south of the northernmost boundary of the Town of Calais through which U.S. Route 1 passes and which lie to the south or southwest of Route 1, including all the area within the boundaries of those municipalities, townships and islands, whether land, water or subaqueous land.

Sec. 3. 38 MRSA § 482, sub-§ 2, first ¶, as amended by PL 1975, c. 297, is further amended to read:

"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, which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water where the area affected is in excess of 60,000 square feet, or which is a structure, or which is a heavy industry development; but excluding state highways, state aid highways, and, borrow pits for sand, fill or gravel, of less than 5 acres or when regulated by the Department of Transportation.

Sec. 4. 38 MRSA § 482, sub-§ 2-A is enacted to read:

2-A. Heavy industry development. "Heavy industry development" means a proposed development in the coastal area which, by virtue of its capital investment, employment generation, land use impact or environmental impact, has the potential to adversely and substantially alter coastal area resources. This development consists of: Oil refineries; basic steel manufacturing plants; pulp or paper mills; petro-chemical complexes; liquefaction plants for liquefied natural gas; fossil fuel fired electric power generation facilities with a capacity of 200 megawatts or greater; bulk storage, handling or transfer facilities for coal with an annual average throughput of 1,000 tons or more per day; steel or concrete offshore oil production platform construction yards; oil terminal facilities, meaning any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil,

or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 50,000 barrels, provided that for this clause, the word "oil" shall mean "oil" as defined in section 542, subsection 6, and such other development as the Legislature may from time to time designate.

Heavy industry development does not include nuclear power generating facilities or tidal power generating facilities.

Sec. 5. 38 MRSA § 482, sub-§ 4-A is enacted to read:

4-A. Preferred municipalities. "Preferred municipalities" means the municipalities of Portland, South Portland, Searsport, Stockton Springs or Penobscot.

Sec. 6. 38 MRSA § 484, as last amended by PL 1977, c. 696, § 343, is further amended by adding after the 5th paragraph, a new paragraph to read:

In the case of a heavy industrial development proposed to locate within the coastal area but outside of the preferred municipalities, in addition to meeting the requirements of subsections 1 to 4, the board shall require the developer to demonstrate that the development cannot reasonably be located outside of the coastal area and cannot reasonably be located inside the preferred municipalities. Any municipality may adopt and administer land use regulations, performance standards or zoning ordinances which are more restrictive than the requirements of the heavy industry provisions of this Article.

Sec. 7. 38 MRSA § 488, as last amended by PL 1977, c. 374, § 4; is further amended by adding at the end a new paragraph to read:

The heavy industry provision of this Article shall not apply to any heavy industry development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1980.

STATEMENT OF FACT

This bill requires that certain heavy industry which is to be constructed or developed in the coastal area after the effective date of this bill shall be located in the municipalities of Portland, South Portland, Searsport, Stockton Springs or Penobscot, unless the developer can demonstrate to the satisfaction of the Department of Environmental Protection that the development cannot reasonably be located outside of the coastal area and inside these municipalities. This policy will not contravene more restrictive local ordinances in those municipalities.

Over the past decade, the Maine coast has been the proposed location of a variety of heavy industrial facilities. It is anticipated that, because of its deep harbors and abundant clean water, the Maine coast will continue to be an area where certain industries will seek to locate. The designation of areas for coastal

heavy industry is based on the conviction that planning for orderly future growth is a more responsible and beneficial policy than either attempting to stifle growth or allowing disorganized, unplanned growth.

Presently Maine's citizens and State Government react to individual heavy industry proposals after they have been proposed. The reactive nature of current law results in a difficult, costly and inefficient process for both developers and the people of Maine. Industrial developers cannot know in advance the areas of the coast where industrial development will be most favorably received. Government expenditures for public facilities cannot be targeted to the areas in which they will be most needed in the future. Citizens and organizations concerned with the impact of these industries cannot be sure that developments will not be proposed for highly sensitive or resource-rich areas of the coast.

To address these problems, the State can give increased direction and predictability to the industrial development review process by indicating preferred coastal locations for heavy industries. This approach makes sense from the perspectives of developers, the State and concerned citizens and organizations. The designation of specific areas for coastal heavy industry will guide federal, state and local investments in water supply systems, sewage treatment plants and other necessary facilities. More strategic investments in pollution abatement and other facilities will result in more efficient use of tax dollars and better protection of the environment. The public and private costs of servicing heavy industries can be further reduced if several industries locate in a few areas. The designation of specific areas for coastal heavy industry will also focus research and information-gathering efforts on specific areas. These efforts will allow the State to provide more timely guidance to industry planners and will prevent costly, unnecessary data collection projects. Because of developers and conservationists alike would know the preferred locations for coastal industrial development, some of the costly conflicts which now arise may be avoided.

This bill is the result of work undertaken by the Governor's Advisory Committee on Coastal Development and Conservation in response to a legislative resolve introduced in the 108th Legislature. The committee's recommendation to direct heavy industry to the Portland and Upper Penobscot areas is based on an analysis of the coast to identify the general areas where certain industries should locate in order to minimize adverse impacts on communities, resources and the environment.