

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 942

6
7 H.P. 733

House of Representatives, March 1, 1983

8 On Motion of Representative Hobbins of Saco referred to the Committee
9 on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Mitchell of Freeport.
Cosponsor: Senator Carpenter of Aroostook.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Clarify Citizen Standing in
18 Environmental Litigation.
19

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

22 Sec. 1. 38 MRSA §344, sub-§5, as amended by PL
23 1977, c. 694, §754, is further amended to read:

24 5. Reconsideration. Within 30 days of the appli-
25 cant's receipt of a board decision, any person
26 ~~aggrieved by the decision~~ may petition the Board of
27 Environmental Protection, in writing, for correction
28 of any part of the decision which the petitioner
29 believes to be in error and not intended by the
30 board, or for an opportunity to present new or addi-
31 tional evidence to secure reconsideration of any part
32 of the decision or challenge any facts of which offi-
33 cial notice was taken. ~~Such~~ The petition shall set

1 forth in detail the findings, conclusions or condi-
2 tions to which the petitioner objects, the basis of
3 the objections, the nature of the relief requested
4 and the nature of any new or additional evidence to
5 be offered.

6 The board shall, within 30 days of receipt of ~~such~~
7 the petition and after appropriate notice, grant the
8 petition in full or in part, order a public hearing
9 or dismiss the petition. Any public hearing held
10 under this section shall be held within 45 days of
11 the board's decision to hold ~~such~~ the hearing and the
12 commissioner shall provide reasonable notice to
13 interested persons. The time for appeal of a final
14 decision of the board on any application shall be
15 computed from the date of receipt by petitioner of
16 the board's decision pursuant to this subsection.

17 The running of the time for appeal is terminated by a
18 timely petition for reconsideration filed pursuant to
19 this subsection, and the full time for appeal com-
20 mences to run and is to be computed from the date
21 upon which notice is received of any administrative
22 action denying the petition or any order or decision
23 of the board as a result of the petition; provided
24 that the filing of a petition for reconsideration
25 shall not be deemed an administrative or judicial
26 prerequisite for the filing of an appeal.

27 Sec. 2. 38 MRSA §346, sub-§1, as repealed and
28 replaced by PL 1977, c. 694, §758, is amended to
29 read:

30 1. Appeal to the Superior Court. Except as pro-
31 vided in section 347, subsection 2, any person
32 ~~aggrieved by any order or decision of the board~~ may
33 appeal there from any order or decision of the board
34 to the Superior Court. These appeals to the Superior
35 Court shall be taken in accordance with Title 5,
36 chapter 375, subchapter VII.

37 Sec. 3. 38 MRSA §348-A is enacted to read:

38 §348-A. Citizen right of action

39 1. Purpose. The Legislature finds and declares
40 that each person is entitled by right to the protec-

1 tion, preservation and enhancement of air, water,
2 land and other natural resources located within the
3 State and that each person has the responsibility to
4 contribute to the protection, preservation and
5 enhancement of those resources. It is in the public
6 interest to provide an adequate civil remedy to pro-
7 tect air, water, land and other natural resources
8 located within the State from pollution, impairment
9 or destruction.

10 2. Civil actions. Any person may initiate a
11 civil action for declaratory or equitable relief
12 against any other person who is alleged to be engaged
13 in conduct which violates any of the following stat-
14 utes, or any rule, order license or permit issued or
15 adopted under those statutes:

16 A. Maine Pesticide Control Act, Title 7, chapter
17 103, subchapter II-A;

18 B. Mandatory Zoning and Subdivision Control,
19 Title 12, chapter 424;

20 C. Alteration of Rivers, Streams and Brooks,
21 Title 12, chapter 713, subchapter VII;

22 D. Board of Pesticides Control, Title 22, chap-
23 ter 258-A; and

24 E. Any statute administered by the Department of
25 Human Services and the Department of Environ-
26 mental Protection, as it relates to the protec-
27 tion of the environment.

28 3. Jurisdiction. Any action under this section
29 shall be brought in the Superior Court for the county
30 in which the alleged violation is occurring or has
31 occurred.

32 4. Notice. Any person initiating such an action
33 shall file notice with the agency that administered
34 the statute which has been violated. This notice
35 shall be filed within one day of the initiation of
36 the civil action.

37 5. Intervention. In any action maintained under
38 this section, the Attorney General may intervene as a

1 matter of right and other interested parties shall be
2 permitted to intervene on those terms as the court
3 may deem just and equitable in order to effectuate
4 the purposes and policies set forth in subsection 1.

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

9 7. Other rights preserved. Nothing in this
10 section may restrict any right which any person or
11 class of persons may have under any statute or common
12 law to seek enforcement of any standard, regulation,
13 condition, requirement, limitation or order, or to
14 seek any other relief, including relief against the
15 administrative agency or department involved.

16 STATEMENT OF FACT

17 All citizens have an interest in the protection
18 of the environment. Two impediments have prevented
19 the people from fully protecting their interests in
20 this common good. First, administrative and judicial
21 tribunals have used strict requirements for "stand-
22 ing." Standing is the demonstration of a particular
23 interest in an issue being adjudicated. Because of
24 the pervasive nature of environmental issues, even
25 though a person has a legitimate interest, it may be
26 difficult to demonstrate a particular injury in a
27 case. Second, enforcement of environmental laws
28 rests solely with the State. Because of manpower
29 limits, priorities, and other limits only a small
30 fraction of violations are prosecuted.

31 This bill addresses both of these problems. The
32 bill removes all barriers to standing in administra-
33 tive and proceedings judicial. It also creates a
34 "right of action," whereby any person may initiate a
35 civil action to prosecute a violation of a statute,
36 rule or order related to the protection of the envi-
37 ronment.

38 The bill is modeled after concepts included in
39 all major federal environmental legislation, and
40 legislation passed in Michigan and 9 other states.

1 More than 12 years of state experience and federal
2 experience have demonstrated that citizen suits have
3 not been frivolous, and have not jammed court
4 dockets. It is a simple, equitable, cost-effective
5 method of allowing all citizens to participate in the
6 protection of the environment.

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