

MAINE STATE LEGISLATURE

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(New Draft of S.P. 735, L.D. 2026)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 2445

S.P. 907 In Senate, April 6, 1984
Reported by Majority Report from the Committee on Judiciary and
printed under Joint Rule 2.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Provide for a Citizens
Environmental Protection Act.

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

14 MRSA c. 743 is enacted to read:

CHAPTER 743

CITIZENS ENVIRONMENTAL PROTECTION ACT

§8151. Title

This chapter shall be cited as the "Citizens Environmental Protection Act."

§8152. Findings and purpose

1 The Legislature finds and declares that each per-
2 son is entitled to the protection, preservation and
3 enhancement of air, water, land and other natural re-
4 sources located within the State and that each person
5 has the responsibility to contribute to the protec-
6 tion, preservation and enhancement of those re-
7 sources. It is in the public interest to provide
8 Maine citizens with an additional remedy to protect
9 air, water, land and other natural resources located
10 within the State pursuant to this chapter.

11 §8153. Definitions

12 As used in this chapter, unless the context indi-
13 icates otherwise, the following terms have the follow-
14 ing meanings.

15 1. Person. "Person" means an individual, corpo-
16 ration, municipality or quasi-municipal corporation.

17 §8154. Right of action

18 1. Except as provided in subsection 2 and in
19 section 8155, any person who is a resident of this
20 State may commence a civil action on his own behalf
21 for injunctive and declaratory relief against any
22 person who is alleged to be in violation of any law,
23 standard, regulation, requirement, limitation or or-
24 der which has become effective under the following
25 laws of this State:

26 A. Site location of development laws, Title 38,
27 sections 481 to 490;

28 B. Alteration of coastal wetlands laws, Title
29 38, sections 471 to 478;

30 C. Great ponds laws, Title 38, sections 386 to
31 396;

32 D. Water pollution control laws, Title 38, sec-
33 tions 411 to 452, but only as to point source
34 sanitary wastewater discharges;

35 E. Alteration of rivers, streams and brooks
36 laws, Title 12, sections 7776 to 7780;

1 F. Minimum lot size law, Title 12, sections 4807
2 to 4807-G; and

3 G. Municipal shoreland zoning ordinances adopted
4 or imposed under the mandatory zoning and subdi-
5 vision control laws, Title 12, sections 4811 to
6 4817.

7 2. There shall be no right of action under this
8 chapter against the State, any instrumentality or
9 agency of the State or any political subdivision of
10 the State.

11 §8155. Notice of action

12 1. Commencement of action; notice. No action
13 may be commenced under this chapter:

14 A. Prior to 60 days after the plaintiff has
15 given notice of the violation and his intention
16 to bring suit under section 8154 to:

17 (1) The commissioner, director or chief ad-
18 ministrative officer of the department or
19 municipality which may administer the law,
20 standard, regulation, requirement, limita-
21 tion or order which allegedly is being vio-
22 lated;

23 (2) The Attorney General; and

24 (3) Each person alleged to be violating the
25 law, standard, regulation, requirement, lim-
26 itation or order;

27 B. If the Attorney General or the commissioner,
28 director or chief administrative officer of the
29 department or municipality, at any time prior to
30 the end of the 60-day notice period described in
31 paragraph A, has commenced an action in a court
32 of the United States or of this State, or an ad-
33 ministrative enforcement proceeding commenced
34 pursuant to law which seeks an order or injunc-
35 tion or other remedy for failure to comply with
36 the law, standard, regulation, condition, re-
37 quirement, limitation or order involved;

1 C. If the Attorney General or the commissioner,
2 director or chief administrative officer of the
3 department or municipality, at any time prior to
4 the end of the 60-day notice period described in
5 paragraph A, has provided written notice to the
6 plaintiff that he will, within 30 days, commence
7 an action in a court of the United States or of
8 this State, or an administrative enforcement pro-
9 ceeding pursuant to law which seeks an order or
10 injunction or other remedy for failure to comply
11 with the law, permit, standard, regulation, con-
12 dition, requirement, limitation or order in-
13 volved. In the event that the Attorney General
14 or the commissioner, director or chief adminis-
15 trative officer of the department or municipality
16 fails to commence the judicial or administrative
17 enforcement proceeding, the plaintiff may com-
18 menace a civil action under section 8154; or

19 D. For injunctive and declaratory relief which
20 alleges a violation of any term, condition or
21 provision of any permit, license or approval by
22 any agency charged with administering the laws
23 set forth in section 8154.

24 2. Service. A copy of the complaint and other
25 pleadings shall be served upon the persons listed in
26 subsection 1, paragraph A, subparagraphs (1) and (2),
27 at the time of service on the defendant. Copies of
28 all answers and other documents accompanying the an-
29 swers shall also be served upon the persons listed in
30 subsection 1, paragraph A, subparagraphs (1) and (2),
31 at the time of service on the plaintiff.

32 3. Application. The 60-day notice requirement
33 of subsection 1, paragraph A, is not applicable when
34 the plaintiff can show that the matter in controversy
35 involves a direct, substantial, imminent and
36 irreversible damage or loss to the interests of the
37 plaintiff.

38 §8156. Venue

39 Any action brought under this chapter shall be
40 brought in the judicial district in which the viola-
41 tion has taken place.

1 §8157. Intervention by State

2 The Attorney General may intervene as a matter of
3 right in any action brought under this chapter.

4 §8158. Costs and fees

5 The court, in issuing any final order in any ac-
6 tion brought under this chapter, may award costs of
7 litigation, reasonable attorneys' fees and expert
8 witness fees to any party whenever the court deter-
9 mines that the award is appropriate. No such costs,
10 attorneys' fees or expert witness fees may be awarded
11 against the State, any instrumentality or agency of
12 the State or any political subdivision of the State.

13 The court may, if a temporary restraining order
14 or preliminary injunction is sought, require the giv-
15 ing of security in accordance with the Maine Rules of
16 Civil Procedure.

17 §8159. Existing remedies preserved

18 Nothing in this chapter may restrict in any way
19 any right which any person may have under any statute
20 or common law to seek enforcement of any law, permit,
21 standard, regulation, condition, requirement, limita-
22 tion or order or to seek any other relief.

23 STATEMENT OF FACT

24 This new draft narrows the scope of the original
25 bill. Under the new draft, a Maine resident may ini-
26 tiate an enforcement action for an alleged violation
27 of laws pertaining to land use, as set forth in the
28 Revised Statutes, Title 14, section 8154, subsection
29 1. Violations of the more major environmental laws
30 that are more likely to receive attention from the
31 State are left to state enforcement. This new draft,
32 then, permits Maine residents to sue to enforce what
33 are primarily land use laws generally enforced or
34 known about at the local level.

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