

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1551

H.P. 1062

House of Representatives, April 16, 1991

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

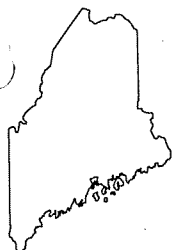
Presented by Representative COLES of Harpswell.

Cosponsored by Representative MARSH of West Gardiner and Representative TREAT of Gardiner.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Supplement State Environmental Enforcement.



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

4 14 MRSA c. 745 is enacted to read:

6 CHAPTER 745

8 CITIZENS ENVIRONMENTAL PROTECTION ACT

10 §8221. Short title

12 This chapter is known and may be cited as the "Citizens Environmental Protection Act."

14 §8222. Definitions

16 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

18 1. Person. "Person" means an individual, corporation, municipality or quasi-municipal corporation.

22 §8223. Right of action

24 1. Generally. Except as provided in subsection 2 and in section 8224, any person who is a resident of this State may commence a civil action on that person's own behalf for injunctive and declaratory relief against any person who is alleged to be in violation of any law, standard, regulation, ordinance, rule, requirement, condition, limitation or order that is designed to prevent or minimize pollution, impairment or destruction of any of the natural resources of the State or of the environment.

34 2. Exception. There is no right of action under this chapter against the State, any instrumentality or agency of the State or any political subdivision of the State.

38 3. Dismissal of action. The court may, on the motion of any party or on its own motion, dismiss any action brought pursuant to this chapter that on its face appears to be patently frivolous, harassing or wholly lacking in merit.

44 4. Relief. The court may issue a temporary restraining order or preliminary injunction in accordance with the Maine Rules of Civil Procedure, Rule 65.

46 §8224. Notice of action

48 1. Commencement of action; notice. An action may not be commenced under this chapter:

2 A. Prior to 60 days after the plaintiff has given notice of
4 the violation and an intention to bring suit under chapter
745 to:

6 (1) The commissioner, director or chief administrative
8 officer of the department or municipality that
10 administers the law, standard, regulation, ordinance,
requirement, condition, limitation or order allegedly
being violated;

12 (2) The Attorney General; and

14 (3) Each person alleged to be violating the law,
16 standard, regulation, ordinance, requirement,
condition, limitation or order;

18 B. If the Attorney General or the commissioner, director or
20 chief administrative officer of the department or
22 municipality, at any time prior to the end of the 60-day
24 notice period described in paragraph A, has commenced and is
26 diligently prosecuting an action in a court of the United
States or of this State, or an administrative enforcement
proceeding commenced pursuant to law that seeks an order or
injunction or other remedy for failure to comply with the
law, standard, regulation, ordinance, requirement,
condition, limitation or order involved;

28 C. If the Attorney General or the commissioner, director or
30 chief administrative officer of the department or
32 municipality, at any time prior to the end of the 60-day
34 notice period described in paragraph A, has provided written
36 notice to the plaintiff that the person will, within 30
38 days, commence an action in a court of the United States or
of this State, or an administrative enforcement proceeding
pursuant to law that seeks an order or injunction or other
remedy for failure to comply with the law, permit, standard,
regulation, ordinance, requirement, condition, limitation or
order involved. If the Attorney General or the
40 commissioner, director or chief administrative officer of
42 the department or municipality fails to commence the
judicial or administrative enforcement proceeding within 30
days, the plaintiff may commence a civil action under
44 section 8223; or

46 D. In any action under this section, any person may
48 intervene as a matter of right if that person has a direct
interest that is or may be adversely affected by the action
and the disposition of the action may, as a practical
50 matter, impair or impede the person's ability to protect
that interest unless the court finds that the person's

2 interest is adequately represented by existing parties in
3 the action.

4 2. Service. A copy of the complaint and other pleadings
5 must be served upon the persons listed in subsection 1, paragraph
6 A, subparagraphs (1) and (2) at the time of service on the
7 defendant. Copies of all answers and other documents
8 accompanying the answers must also be served upon the persons
9 listed in subsection 1, paragraph A, subparagraphs (1) and (2) at
10 the time of service on the plaintiff.

11 3. Application. The 60-day notice requirement of
12 subsection 1, paragraph A is not applicable when the plaintiff
13 shows that the matter in controversy involves an imminent and
14 substantial endangerment of health or the environment.

15 **§8225. Venue**

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17 Any action brought under this chapter must be brought in the
18 judicial district in which the violation takes place.

19 **§8226. Intervention by State**

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

23 **§8227. Costs and fees**

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25 The court, in issuing any final order in any action brought
26 under this chapter, may award costs of litigation, including
27 reasonable attorney's fees and expert witness fees to any party
28 whenever the court determines that the award is appropriate.
29 Such costs, attorney's fees or expert witness fees may not be
30 awarded against the State, any instrumentality or agency of the
31 State or any political subdivision of the State.

32 **§8228. Existing remedies preserved**

33
34 Nothing in this chapter may restrict in any way any right
35 that a person has under any statute or common law to seek
36 enforcement of any law, permit, standard, regulation, ordinance,
37 requirement, condition, limitation or order or to seek any other
38 relief.

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48 **STATEMENT OF FACT**

49 This bill allows a Maine resident to initiate an enforcement
50 action for an alleged violation of laws protecting the
51 environment and the State's natural resources.