

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

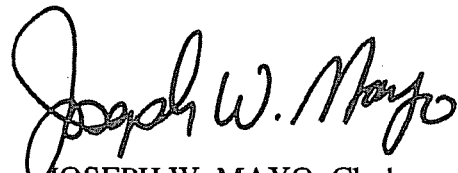
No. 990

H.P. 731

House of Representatives, March 22, 1993

An Act to Supplement Environmental Enforcement.

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


JOSEPH W. MAYO, Clerk

Presented by Representative COLES of Harpswell.
Cosponsored by Representatives: CONSTANTINE of Bar Harbor, MARSH of West Gardiner,
MITCHELL of Freeport, RYDELL of Brunswick, WENTWORTH of Arundel.

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

4 Sec. 1. 14 MRSA c. 745 is enacted to read:

6 CHAPTER 745

8 CITIZENS ENVIRONMENTAL PROTECTION ACT

10 §8221. Short title

12 This chapter may be known and 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, except for the provisions of Title 17, section 2805, 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.

48 §8224. Notice of action

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

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

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

(2) The Attorney General; and

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

B. If the commissioner, director or chief administrative officer of the department or municipality that administers the law, standard, regulation, ordinance, requirement, condition, limitation or order allegedly being violated reviews the alleged violation and determines that no violation has occurred and in writing notifies the plaintiff of this determination prior to the end of the 60-day period;

C. If the Attorney General or the commissioner, director or chief administrative officer of the department or municipality, at any time prior to the end of the 60-day notice period described in paragraph A, has commenced and is 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;

D. If the Attorney General or the commissioner, director or chief administrative officer of the department or municipality, at any time prior to the end of the 60-day notice period described in paragraph A, has provided written notice to the plaintiff that the person will, within 30 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 commissioner, director or chief administrative officer of the department or municipality fails to commence the judicial or administrative enforcement proceeding within 30

2 days, the plaintiff may commence a civil action under
3 section 8223; or

4 E. In any action under this section, any person may
5 intervene as a matter of right if that person has a direct
6 interest that is or may be adversely affected by the action
7 and, as a practical matter, the disposition of the action
8 may impair or impede the person's ability to protect that
9 interest unless the court finds that the person's interest
10 is adequately represented by existing parties in the action.

11 2. Service. A copy of the complaint and other pleadings
12 must be served upon the persons listed in subsection 1, paragraph
13 A, subparagraphs (1) and (2) at the time of service on the
14 defendant. Copies of all answers and other documents
15 accompanying the answers must be served upon the persons listed
16 in subsection 1, paragraph A, subparagraphs (1) and (2) at the
17 time of service on the plaintiff.

18 3. Application. The 60-day notice requirement under
19 subsection 1, paragraph A is not applicable when the plaintiff
20 shows that the matter in controversy involves an imminent and
21 substantial endangerment to health or the environment.

22 §8225. Venue

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

25 §8226. Intervention by the State

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

28 §8227. Costs and fees

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

36 §8228. Existing remedies preserved

37 This chapter may not restrict the right that a person has
38 under any statute or common law to seek enforcement of a law,
39 permit, standard, regulation, ordinance, requirement, condition,
40 limitation or order or to seek other relief.

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STATEMENT OF FACT

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

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