

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 768

H. P. 1387

House of Representatives, February 11, 1941.

Referred to Committee on Judiciary and 750 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Goldsmith of Orono, by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

**AN ACT Relating to Remedying and Elimination of Dwellings Unfit for
Human Habitation.**

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

Sec. 1. Unfit dwellings in cities; police power authorized. It is hereby found and declared that the existence and occupation of dwellings in cities of this state which are unfit for human habitation are inimical to the welfare, and dangerous and injurious to the health, safety and morals of the people of this state, and that a public necessity exists for the repair, vacation or elimination of such dwellings. Whenever any city of this state finds that there exist in such city dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fires, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such city, power is hereby conferred upon such city to exercise its police powers to remedy or eliminate the aforesaid conditions in the manner herein provided.

Sec. 2. Ordinance authorized as to repair, closing and demolition; order of public officer. Upon the adoption of an ordinance finding that dwelling

conditions of the character described in section 1 hereof exist within a city, the governing body of such city is hereby authorized to adopt ordinances relating to the dwellings within such city which are unfit for human habitation. Such ordinances shall include the following provisions:

(a) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(b) That whenever a petition is filed with the public officer by a public authority or by at least 5 residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such premises a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed not less than 10 days nor more than 30 days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(c) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order,

(1) if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner (to the extent and within the time specified in the order) to repair, alter or improve the said dwelling to render it fit for human habitation or, at the option of the owner, to vacate and close the dwelling as a human habitation; or,

(2) if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner (within the time specified in the order) to remove or demolish such dwelling.

(d) That, if the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved, or to be vacated and closed; that the public officer may cause to be

posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Any person who shall rent, lease or occupy such for a human habitation shall be liable for such fine as may be prescribed by the ordinances of the city.

(e) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished.

(f) That, the amount of the cost of such repairs, alterations or improvements, or vacating or closing, or removal or demolition, shall be collected as a special tax, which shall be a lien against the real estate upon which such cost was incurred, and only state, county, and city taxes shall be paramount to such lien. If the dwelling is removed or demolished by the public officer, he shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final award or decree of such court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

Sec. 3. Standards. An ordinance adopted by a city under this act shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such city; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness. Such ordinance may provide additional standards to guide the public officer, or his agents, in determining the fitness of a dwelling for human habitation.

Sec. 4. Service of complaints and orders. Complaints or orders issued by a public officer pursuant to an ordinance adopted under this act shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such

complaint or order upon such persons may be made by publishing the same once each week for 2 successive weeks in a newspaper printed and published in the city, or, in the absence of such a newspaper, in one printed and published in the county and circulating in the city in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the dwelling is located and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law.

Sec. 5. Remedies. Any person affected by an order issued by the public officer may petition to the supreme judicial court or the superior court in equity for an injunction restraining the public officer from carrying out the provisions of the order, and such court, or any justice thereof in term time or in vacation, may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause: Provided, however, that within 20 days after the posting and service of the order of the public officer, such person shall give notice, in writing, to the public officer of his intentions so to do, and within 20 days thereafter shall present his petition to the court. Hearings shall be had by the court on such petitions within 20 days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken to carry out any order of the public officer, or because of non-compliance by such person with any order of the public officer.

Sec. 6. Additional powers of public officer. An ordinance adopted by the governing body of the city may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted: (a) to investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitation; (b) to administer oaths, affirmations, examine witnesses and receive evidence; (c) to enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in pos-

session; (d) to appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and (e) to delegate any of his functions and powers under the ordinance to such officers and agents as he may designate.

Sec. 7. Administration of ordinance. The governing body of any city adopting an ordinance under the act shall as soon as possible thereafter prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in such city for the purpose of determining the fitness of such dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this act; and any such city is authorized to make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances.

Sec. 8. Definitions. The following terms whenever used or referred to in this act shall have the following respective meanings for the purposes of this act, unless a different meaning clearly appears from the context:

(a) "City" shall mean any city or town.

(b) "Governing body" shall mean the city council, board of selectmen, or other legislative body, charged with governing the city or town.

(c) "Public officer" shall mean the officer or officers who are authorized by ordinance adopted hereunder to exercise the powers prescribed by such ordinance and by this act.

(d) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the city or town or state relating to health, fire, building regulations, or to other activities concerning dwellings in the city or town.

(e) "Owner" shall mean the holder of the title in fee, or a mortgagee or trustee, or any person in control of a dwelling, or the agent of any such person, or any 2 or more of these.

(f) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(g) "Dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Sec. 9. Supplemental nature of act. Nothing in this act shall be construed to abrogate or impair the powers of the courts or of any department

of any city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

Sec. 10. Severability. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.