

MAINE STATE LEGISLATURE

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N I N E T Y - F I F T H L E G I S L A T U R E

Legislative Document

No. 535

H. P. 937

House of Representatives, February 8, 1951

Referred to the Committee on Natural Resources. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Bates of Orono.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-ONE

AN ACT Relating to Water Pollution.

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

Sec. 1. R. S., c. 72, repealed and replaced. Chapter 72 of the revised statutes, as amended, is hereby repealed and the following enacted in place thereof:

‘CHAPTER 72.

WATER POLLUTION.

Sec. 1. Water pollution board; organization. The water pollution board, hereinafter in this chapter called the “board,” shall consist of the commissioner of health and welfare, the commissioner of agriculture, the commissioner of inland fisheries and game, chairman of the public utilities commission, who shall serve during their respective terms of office; 4 members appointed by the governor, 2 of whom shall represent manufacturing interests of the state and 2 who shall be representatives of municipalities. The members appointed by the governor shall be initially appointed for terms of 1, 2, 3 and 4 years respectively. At the expiration of the term of original appointment or any subsequent appointment the member shall be appointed for a term of 4 years, and until their successors are appointed and duly qualified.

The members of the board shall receive no compensation for their ser-

vices as members of the board but shall receive necessary travelling expenses for attending meetings of the board, or for any other travel in connection with the official business of the board, and under the specific authority of the board.

Meetings of the board shall be held at such time and place as shall be determined by the board but not less than 2 meetings per year shall be held. The board shall organize by electing one of its members as chairman, but in his absence another member of the board shall be elected to act as chairman. Five members of the board shall constitute a quorum.

The board may employ, subject to the provisions of the personnel law, and prescribe the powers and duties of such officers, employees and consultants, in accordance with the laws of this state, as may be necessary to carry out the provisions of this chapter. Technical services shall be performed, insofar as practicable, by personnel of the department of health and welfare and by other state departments, agencies and offices, and the commissioner of health and welfare shall be ex officio the executive secretary of the board.

The board may delegate to the executive secretary, officers, employees and consultants of the board such functions and duties as are vested in the board by the provisions of this chapter, except the authority to adopt and promulgate standards and rules and regulations, classify waters, revoke permits and issue or modify orders.

Sec. 2. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

“Pollution” means such contamination, or other alteration of the physical, chemical or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

“Wastes” means sewage, industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state.

“Sewerage system” means pipe lines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facili-

ties used for collecting or conducting wastes to a point of ultimate disposal.

“Treatment works” means any plant, disposal field, lagoon, dam, pumping station, incinerator or other works used for the purpose of treating, stabilizing or holding wastes.

“Disposal system” means a system for disposing of wastes, and includes sewerage systems and treatment works.

“Waters of the state” mean all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof and including all coastal and tidal waters that lie within the jurisdiction of the state.

“Person” means the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership or other entity.

Sec. 3. Powers and duties. The board shall have and may exercise the following powers and duties:

I. To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the state;

II. To advise, consult and cooperate with other agencies of the state, the federal government, other states and interstates agencies, and with affected groups, political subdivisions and industries in furtherance of the purposes of this chapter;

III. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions;

IV. To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control and abatement thereof as it may deem advisable and necessary for the discharge of its duties under the provisions of this chapter;

V. To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

VI. To adopt, modify or repeal and promulgate standards of quality of the waters of the state and classify such waters according to their best

uses in the interest of the public under such conditions as the board may prescribe for the prevention, control and abatement of pollution;

VII. To adopt, modify, repeal, promulgate and enforce rules and regulations implementing or effectuating the powers and duties of the board under the provisions of this chapter;

VIII. To issue, modify or revoke orders

A. Prohibiting or abating discharges of wastes into the waters of the state;

B. Requiring the construction of new disposal systems or any parts thereof or the modification, extension or alteration of existing disposal systems or any parts thereof, or the adoption of other remedial measures to prevent, control or abate pollution; and

C. Setting standards of water quality, classifying waters or evidencing any other determination by the board under the provisions of this chapter;

IX. To review plans, specifications or other data relative to disposal systems or any part thereof in connection with the issuance of such permits as are required by this chapter;

X. To issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the discharge of wastes into the waters of the state, and for the installation, modification or operation of disposal systems or any parts thereof;

XI. To exercise all incidental powers necessary to carry out the purposes of this chapter.

Sec. 4. Prohibitions. It shall be unlawful for any person to cause pollution as defined in section 2 of this chapter of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. Any such action is hereby declared to be a public nuisance.

It shall be unlawful for any person to carry on any of the following activities without first securing such permit from the board, as is required by it, for the disposal of all wastes which are or may be discharged thereby into the waters of the state:

I. The construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto;

II. The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

III. The construction, installation or operation of any industrial or commercial establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized;

IV. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.

The board, under such conditions as it may prescribe, may require the submission of such plans, specifications and other information as it deems relevant in connection with the issuance of such permits.

Sec. 5. Classification of waters; standards of water quality. In order to effectuate a comprehensive program for the prevention, control and abatement of pollution of the waters of the state, the board is authorized to group such waters into classes according to their present and future best uses for the purpose of progressively improving the quality of such waters and upgrading them from time to time by reclassifying them, to the maximum extent that is practical and in the public interest. Standards of quality for each such classification consistent with best present and future use of such waters may be adopted by the board and from time to time modified or changed.

Prior to classifying waters or setting standards or modifying or repealing such classifications or standards the board shall conduct public hearings in connection therewith. Notice of public hearing for the consideration, adoption or amendment of the classification of waters and standards of purity and quality thereof shall specify the waters concerning which a classification is sought to be made for which standards are sought to be adopted and the time, date and place of such hearing. Such notice shall be published once a week for 3 successive weeks, the last publication to be not less than 5 days prior to the date of the meeting, in newspapers of general circulation in the area affected and shall be mailed at least 20 days before such public hearing to the mayor, town or city manager, or chairman of the board of selectmen of each municipality of the area affected, to each industry having an establishment on the banks of the body of water to be classified, and may be mailed to such other persons as the board has reason to believe may be affected by such classification and the setting of such standards.

The adoption of standards of quality of the waters of the state and classification of such waters or any modification or change thereof shall be effectuated by an order of the board which shall be published in a newspaper of general circulation in the area affected. In classifying waters and setting standards of water quality or making any modification or change thereof, the board shall announce a reasonable time for persons discharging wastes into the waters of the state to comply with such classification or standards, unless such discharges create an actual or potential hazard to public health.

Any discharge in accord with such classification or standards shall not be deemed to be pollution for the purposes of this chapter.

Sec. 6. Proceedings before board.

I. Whenever the board determines there are reasonable grounds to believe that there has been a violation of any of the provisions of this chapter or of any order of the board, it may give written notice to the alleged violators specifying the causes of complaint. Such notice shall require that the matters complained of be corrected or that the alleged violator appear before the board at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violators or violators in accordance with the provisions of subsection V of this section not less than 10 days before the time set for the hearing.

II. The board shall afford an opportunity for a hearing in accordance with the provisions of section 7 to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing the board shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of this chapter and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the board itself, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the board which shall thereupon enter its order on the basis of such record and recommendation. The order of the board shall become final and binding on all parties unless appealed to the courts as provided in section 10 within 30 days after notice has been sent to all parties.

III. Any person who is denied a permit by the board or who has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application within 30 days after receipt of notice from the board of such denial, revocation or modification.

IV. Whenever the board finds that an emergency exists requiring immediate action to protect the public health or welfare, it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Notwithstanding the provisions of subsection II of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the board within 30 days shall be afforded a hearing within 30 days of the application. On the basis of such hearing the board shall continue such order in effect, revoke it or modify it.

V. Except as otherwise expressly provided, any notice, order or other instrument issued by or under authority of the board may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the board; or such service may be made by mailing a copy of the notice, order or other instrument by registered mail, directed to the person affected at his last known post office address as shown by the files or records of the board, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the board.

Every certificate or affidavit of service made and filed as herein provided shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

Sec. 7. Hearings. The hearings herein provided may be conducted by the board itself at a regular or special meeting of the board, or the board may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the board at any time and place. A record or summary of the proceedings of such hearings shall be taken and filed with the board, together with findings of fact and conclusions of law made by the board. In any such hearing a member of the board or a hearing officer designated by it shall have the power to administer oaths, examine witnesses and issue in the name of the board notice of the hearings or subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter involved in such hearing. Witnesses who

are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under the provisions of this section, any justice of the superior court shall have jurisdiction upon application of the board or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

Sec. 8. Inspections and investigations; maintenance of records. The board or its duly authorized representatives shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any waters of the state.

Any authorized representative of the board may examine any records or memoranda pertaining to the operation of disposal systems. The board may require the maintenance of records relating to the operation of disposal systems. Copies of such records must be submitted to the board on request.

Sec. 9. Penalties; injunctions. Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by this chapter or who violates any order or determination of the board promulgated pursuant to this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000, or by imprisonment for a term of not more than 1 year, or by both such fine and imprisonment. In addition thereto such person may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

It shall be the duty of the attorney-general on the request of the board to bring an action for an injunction against any person violating the provisions of this chapter, or violating any order or determination of the board. In any action for an injunction brought pursuant to this section, any finding of the board after hearing or due notice shall be prima facie evidence of the fact or facts found therein.

Sec. 10 Review. An appeal may be taken from any final order or other final determination of the board, by any person who is or may be adversely affected thereby, to any justice of the superior court in any county in the area affected. Within 30 days after receipt of a copy of the order, or other final determination, or after service of notice thereof by registered mail, the appellant or his attorney shall serve a notice of appeal on the

board through its executive secretary, provided that during such 30-day period the court may for good cause shown extend such time for not exceeding an additional 60 days. The notice of appeal shall refer to the action of the board appealed from, shall specify the grounds of appeal, including both points of law and fact which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within 10 days of the service of the notice and thereupon the court shall have jurisdiction of the appeal.

The appellant and the board shall in all cases be deemed the original parties to an appeal. The attorney-general shall represent the board upon all matters requiring legal counsel. If the attorney-general or a member of his staff is not available to represent the board in any particular proceeding, he and the board are empowered to appoint special counsel for such proceeding. No bond or deposit for costs shall be required of the board upon any such appeal or upon any subsequent appeal to the supreme judicial court or other court proceedings pertaining to the matter.

The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules related to a trial in the nature of an appeal in equity of an administrative determination. All findings of fact by the board are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the board at the hearing. In any appeal or other proceeding involving any order, or other determination of the board, the action of the board shall be prima facie reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with. A copy of the proceedings before the board shall be certified to the court in connection with each appeal.

A further appeal may be taken to the supreme judicial court in the same manner as appeals in equity are taken.

Sec. 11 Existing rights and remedies preserved. It is the purpose of this chapter to provide additional and cumulative remedies to prevent, abate and control the pollution of the waters of the state. Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this chapter, or any act done by virtue thereof, be construed as estopping the state, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Sec. 12. Application. All licenses issued by the sanitary water board are hereby continued in effect until specifically modified or revoked by the board after hearing as hereinbefore set forth.'