

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 **Legislative Document**

No. 2022

7 H. P. 2088 House of Representatives, February 24, 1982
Submitted by the Joint Standing Committees on Energy and Natu-
ral Resources and Public Utilities pursuant to Joint Rule 18. Authorized
by Legislative Council August 13, 1981.

8 Reported by Representative Hall from the Committee on Energy
and Natural Resources and Public Utilities and printed under Joint
Rules No. 18.

EDWIN H. PERT, Clerk

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 AN ACT to Create a State Set-aside
16 System for Petroleum Products.
17

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

19 5 MRSA §5011 is enacted to read:

20 §5011. State petroleum set-aside

21 1. Definitions. As used in this chapter, unless the
22 context otherwise indicates, the following terms having the
23 following meanings.

24 A. "Assignment" means an action taken by the Office of
25 Energy Resources, designating that a prime supplier of
26 petroleum products supply them to an authorized con-
27 sumer, wholesale purchaser-consumer or wholesale
28 purchaser-reseller to facilitate relief of emergency
29 and hardship needs, pursuant to subsection 2.

1 B. "Consumer" means any individual, trustee, agency,
2 partnership, association, corporation, company, municipi-
3 ality, political subdivision or other legal entity
4 which purchases petroleum products for ultimate con-
5 sumption in Maine.

6 C. "Director" means the director of the Office of
7 Energy Resources.

8 D. "Firm" means any association, company, corporation,
9 estate, individual, joint venture, partnership or sole
10 proprietorship or any entity however organized, includ-
11 ing charitable, educational or eleemosynary insti-
12 tutions and the Federal Government, including federal
13 corporations, departments and agencies and state and
14 local governments.

15 E. "Petroleum products" means propane, gasoline,
16 unleaded gasoline, gasohol, kerosene, #2 heating oil,
17 diesel fuel, kerosene base jet fuel, aviation gasoline,
18 #4, #5 and #6 residual oil for utility and nonutility
19 uses, and Bunker C.

20 F. "Prime supplier" means the supplier which makes the
21 first sale of any petroleum product subject to the
22 state set-aside into the state distribution system for
23 consumption within the State.

24 G. "Purchaser" means a wholesale purchaser and
25 end-user, or both.

26 H. "Set-aside" means, with respect to a particular
27 prime supplier, the amount of a petroleum product, sub-
28 ject to the provisions of this section, which is made
29 available from the total supply of a prime supplier
30 pursuant to subsection 2 for utilization by the Office
31 of Energy Resources to resolve emergencies and hard-
32 ships due to fuel shortages or dislocations in distri-
33 bution systems.

34 I. "Supplier" means any firm or any part or subsidiary
35 of any firm, other than the Department of Defense,
36 which presently supplies, sells, transfers or otherwise
37 furnishes, as by consignment, any product subject to
38 the state set-aside to wholesale purchasers or
39 end-users, including refiners, natural gas processing
40 plants or fractionating plants, importers, resellers,
41 jobbers and retailers.

1 J. "Wholesale purchaser" means a wholesale
2 purchaser-reseller or wholesale purchaser-consumer, or
3 both.

4 K. "Wholesale purchaser-consumer" means any firm that
5 is an ultimate consumer which, as part of its normal
6 business practices, purchases or obtains a product sub-
7 ject to the state set-aside from a supplier and
8 receives delivery of that product into a storage tank
9 substantially under the control of that firm at a fixed
10 location.

11 L. "Wholesale purchaser-reseller" means any firm which
12 purchases, receives through transfers or otherwise
13 obtains, as by consignment, a product subject to the
14 state set-aside and resells or otherwise transfers it
15 to other purchasers without substantially changing its
16 form.

17 2. General provisions. The general provisions of this
18 section are as follows.

19 A. The director shall promulgate rules in accordance
20 with the Maine Administrative Procedure Act, Title 5,
21 chapter 375, establishing a set-aside system for petro-
22 leum products. These rules shall direct prime sup-
23 pliers to set aside a percentage of the amount of
24 petroleum products they expect to deliver to consumers
25 in the State for distribution by the Office of Energy
26 Resources to meet emergency and hardship needs. These
27 rules shall meet the requirements of this section.

28 B. The set-aside system established pursuant to this
29 section shall not be implemented unless:

30 (1) The Federal Government terminates, suspends
31 or fails to implement a national set-aside pro-
32 gram; and

33 (2) The Governor finds that a set-aside system is
34 necessary to manage an energy shortage within the
35 State which threatens the continuation of essen-
36 tial services and the needs of priority users.

37 The Governor will direct the Office of Energy Resources
38 to implement only that portion of the state set-aside
39 program necessary to prevent and alleviate any energy
40 hardships or shortages.

1 C. The director shall notify each prime supplier of
2 the monthly set-aside percentage, not exceed 5%, appli-
3 cable to each product subject to the set-aside program.

4 D. The set-aside volume available to the Office of
5 Energy Resources for a particular month shall be the
6 sum of the amounts calculated by multiplying the state
7 set-aside percentage level by each prime supplier's
8 estimated portion of its total supply for that month
9 which will be sold into the state's distribution system
10 for consumption within the State. The set-aside for a
11 particular month may not be accumulated or deferred,
12 but shall be made available from stocks of prime sup-
13 plies whether directly or through their wholesale
14 purchaser-resellers.

15 E. The director shall calculate the set-aside volume
16 for a particular month from the supplier's monthly
17 report or in accordance with section 5010.

18 F. The director shall establish as part of the rules
19 promulgated in accordance with paragraph A, procedures
20 governing applications for assignment and assignments
21 by the Office of Energy Resources under the state
22 set-aside system. Such procedures shall include cri-
23 teria for approving and disapproving applications and
24 an appeal process.

25 G. The release of set-aside shall be as follows.

26 (1) At any time during the month, the director
27 may order the release of part or all of the prime
28 supplier's set-aside volume through the prime
29 supplier's normal distribution system in the
30 State.

31 (2) The Office of Energy Resources shall release
32 set-aside to meet the emergency and hardship re-
33 quirements of all purchaser-consumers and consum-
34 ers within the State. In order to facilitate
35 relief of the hardship and emergency requirements
36 of wholesale purchaser-consumers and consumers,
37 the Office of Energy Resources may direct that a
38 wholesale purchaser-reseller supply the wholesale
39 purchaser-consumers and consumers experiencing the
40 hardship or emergency.

41 (3) From time to time, the director may designate
42 certain geographical areas within the State as

1 suffering from an intrastate supply imbalance. At
2 any time during the month, the director may order
3 some or all of the prime suppliers with purchasers
4 within such geographical areas to release part or
5 all of their set-aside volume through their normal
6 distribution systems to increase the allocations
7 of all the supplier's purchasers located within
8 such areas.

9 (4) Orders issued pursuant to this section shall
10 be in writing and effective immediately upon pre-
11 sentation to the prime supplier's designated state
12 representative. Those orders shall represent a
13 call on the prime supplier's set-aside volumes for
14 the month of issuance notwithstanding that deliv-
15 ery cannot be made until the following month.

16 H. Each prime supplier shall designate a representa-
17 tive within the State to act for and in behalf of the
18 prime supplier with respect to the state set-aside pro-
19 gram. Each prime supplier for a state shall notify in
20 writing the Office of Energy Resources of that designa-
21 tion.

22 I. Any assignments or order made under this section
23 shall specify that the product be made available to the
24 consumer, wholesale purchaser-consumer or wholesale
25 purchaser-reseller at prices prevailing for similar
26 classes of purchasers in the locality of the consumer,
27 wholesale purchaser-consumer or wholesale
28 purchaser-reseller at the time of the sale of the
29 product.

30 J. The set-aside program shall remain in effect no
31 longer than 180 days without approval from the Legis-
32 lature. In the event that the Governor finds that the
33 set-aside system is no longer necessary to manage an
34 energy shortage, he shall terminate the program.

35 3. Violations; penalties. Violations and penalties of
36 this section are as follows.

37 A. Any person who violates any provision of this
38 section or any rule or order issued pursuant to this
39 section shall be subject to a civil penalty of not more
40 than \$10,000 for each violation.

41 B. The penalty provided for in paragraph A shall be
42 recovered in an action or special proceeding brought by
43 the Attorney General.

1 C. Alternatively, or in addition to the action or pro-
2 ceeding to recover the civil penalty provided by para-
3 graph A, the Attorney General may institute an action
4 or proceeding to enjoin any violation of or to enforce
5 any provision of this section or any rule or order
6 issued under this section.

7 STATEMENT OF FACT

8 The purpose of this bill is to establish a state
9 set-aside system for petroleum products. During the Arab
10 Oil Embargo of 1973-1974 and the gasoline shortage of 1979,
11 the State implemented a federal set-aside program to meet
12 the needs of priority users and to manage localized short-
13 ages. The federal law which authorized the set-aside pro-
14 gram has now expired. Since Maine is highly dependent upon
15 petroleum products, a shortage of oil could threaten the
16 health, safety and welfare of the citizens of the State. A
17 state-enacted set-aside program will enable the State to
18 meet the needs of priority users and ensure the continuation
19 of essential services in the absence of federal action
20 during an energy crisis.

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