

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1459

7 H.P. 1106

House of Representatives, April 13, 1983

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

10 EDWIN H. PERT, Clerk

Presented by Representative Jacques of Waterville.

Cosponsors: Senator Kany of Kennebec, Representative Hall of
Sangerville and Representative Dexter of Kingfield.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Relating to Hazardous
18 Waste Management.
19

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

22 Sec. 1. 10 MRSA §151-A, sub-§3, as enacted by PL
23 1981, c. 439, §5, is repealed and the following
24 enacted in its place:

25 3. Department of Public Safety. The Department
26 of Public Safety shall coordinate transportation of
27 radioactive materials.

28 Sec. 2. 22 MRSA §1471-B, sub-§1, as amended by
29 PL 1981, c. 470, Pt. A, §66, is further amended to
30 read:

31 1. Board established. There is established
32 within the Department of Agriculture, Feed and Rural
33 Resources Environmental Protection a Board of Pesti-

1 cides Control. The board shall be composed of 7 mem-
2 bers, appointed by the Governor, subject to approval
3 by the joint standing committee of the Legislature
4 having jurisdiction over the subject of agriculture
5 natural resources and confirmation by the Legis-
6 lature. To provide the knowledge and experience
7 necessary for carrying out the duties of the board,
8 one person shall be appointed who has practical expe-
9 rience and knowledge in chemical use in the field of
10 agriculture, one who has practical experience and
11 knowledge in chemical use in the field of forest man-
12 agement, a commercial applicator, a person from the
13 medical community, a scientist from the University of
14 Maine specializing in agronomy or entomology and 2
15 persons appointed to represent the public. The public
16 members shall be selected to represent different eco-
17 nomic or geographic areas of the State. The term
18 shall be for 4 years, except that of the initial
19 appointees, 2 shall serve 4-year terms, 2 shall serve
20 3-year terms, 2 shall serve 2-year terms and one
21 shall serve a one-year term. Any vacancy shall be
22 filled by an appointment for the remainder of the
23 unexpired term.

24 Sec. 3. 22 MRSA §1471-B, sub-§4, as enacted by
25 PL 1979, c. 644, §3, is amended to read:

26 4. Director. The ~~commissioner~~ Commissioner of
27 Environmental Protection shall appoint a director,
28 with the approval of the board. The director shall be
29 the principal administrative, operational and execu-
30 tive employee of the board. The director shall attend
31 and participate in all meetings of the board, but may
32 not vote. The director, with the approval of the com-
33 missioner and the board, may hire whatever competent
34 professional personnel and other staff he deems
35 necessary. All employees of the board shall be sub-
36 ject to Title 5, Part 2. The director may obtain
37 office space, goods and services as required.

38 Sec. 4. 25 MRSA §2102, sub-§§4-A and 4-B are
39 enacted to read:

40 4-A. Radioactive material. "Radioactive mate-
41 rial" means material or concentration of materials
42 that spontaneously emit ionizing radiation and have
43 specific activity greater than .002 microcuries per
44 gram.

1 4-B. Radioactive waste. "Radioactive waste"
2 means high-level and low-level radioactive wastes as
3 defined under Title 10, section 52.

4 Sec. 5. 25 MRS §2104-A is enacted to read:

5 §2104-A. Transportation of radioactive materials

6 1. Prohibition. It shall be unlawful for any
7 person to transport radioactive material within the
8 State, except in compliance with this section.

9 2. Reports required. Any person transporting
10 radioactive materials within the State shall provide
11 the Department of Public Safety with the following
12 information at least 2 days prior to the transporta-
13 tion:

14 A. The date and time of the shipment;

15 B. The type and amount of material to be trans-
16 ported; and

17 C. The planned itinerary for the shipment.

18 3. Inspections. The Commissioner of Public
19 Safety shall cause all vehicles transporting radio-
20 active wastes to be inspected prior to those vehicles
21 traveling on any public way.

22 4. Authority. The Commissioner of Public Safety
23 may regulate the time and manner of transportation of
24 radioactive materials, if he determines that this is
25 necessary to protect the public health and safety.

26 Sec. 6. 38 MRS §1303, sub-§2-A is enacted to
27 read:

28 2-A. Discharge. "Discharge" means introduction
29 into the ambient environment, and includes, but is
30 not limited to, any spilling, leaking, pumping, pour-
31 ing, emitting, disposing, emptying or dumping onto or
32 into land, water or air.

33 Sec. 7. 38 MRS c. 13, sub-c. II-A is enacted to
34 read:

1 (1) Any material or concentration of mate-
2 rials that spontaneously emit ionizing
3 radiation and have specific activity
4 greater than .002 microcuries per gram; and

5 (2) Any toxic material, except chlorine and
6 other materials specifically excepted by the
7 board, that is included in any of the fol-
8 lowing designations:

9 (a) Poison A, Poison B or Irritating
10 Materials, as defined under 49 Code of
11 Federal Regulations 173;

12 (b) Class X or A substances listed
13 under the United States Clean Water
14 Act, Public Law 92-500, Section 311;
15 and

16 (c) Any material identified as a re-
17 stricted or limited use pesticide under
18 Title 7, chapter 103, subchapter II-A.

19 B. Class 2 shall include those materials that
20 pose a significant risk to human life when trans-
21 ported, used or discharged in larger quantities.
22 Class 2 shall include:

23 (1) Chemical pesticides, other than re-
24 stricted or limited use pesticides;

25 (2) Materials, other than materials listed
26 under this section as Class 1, that are
27 identified as Class B under the United
28 States Clean Water Act, Public Law 92-500,
29 Section 311;

30 (3) Class A and B explosives, ORM A,
31 oxidizers and organic peroxides, as defined
32 under 49 Code of Federal Regulations 173;

33 (4) Hexavalent chromium salts; and

34 (5) Chlorinated volatile organic solvents.

35 C. Class 3 shall include materials that are sig-
36 nificantly less hazardous than Class 1 and Class
37 2 materials. Class 3 shall include:

1 (1) Materials identified as Class C and D
2 under the United States Clean Water Act,
3 Public Law 92-500, Section 311;

4 (2) Flammable gas, flammable liquids other
5 than fuels, combustible liquids and
6 corrosives identified under 49 Code of Fed-
7 eral Regulations 173; and

8 (3) Chlorine.

9 D. Class 4 shall include materials, other than
10 those materials identified as Class 1 through
11 Class 3, that warrant control under this subchap-
12 ter.

13 §1316-B. Fees on hazardous materials

14 1. Fees assessed. The first person who receives
15 from a firm or corporation that produces or imports
16 into this State any material identified under section
17 1316-A shall pay a fee as described in this section.

18 2. Fee schedule. The fee schedule shall be as
19 follows.

20 A. The fee for Class 1 shall be .05¢ per pound.

21 B. The fee for Class 2 shall be .002¢ per pound.

22 C. The fee for Class 3 shall be .0002¢ per
23 pound.

24 D. There shall be no fee for Class 4.

25 3. Minimum quantities. Aggregate quantities of
26 materials in lots of 500 pounds or more shall be sub-
27 ject to fees. The board may provide by rule that
28 greater or lesser amounts of particular materials
29 shall be subject to the fee.

30 4. Payment. Fees required by this section shall
31 be paid according to time schedules established by
32 the commissioner, but not more frequently than quar-
33 terly.

1 5. Penalty for late payment. In addition to any
2 other liability or penalty imposed by law, any person
3 liable for any fee imposed by this section shall pay
4 twice the appropriate fee plus interest at 1% per
5 month for any fees not paid within 6 months.

6 6. Materials not subject to fees. No fee may be
7 assessed for any material for which a fee has been
8 paid under section 551.

9 §1316-C. Hazardous Material Control Fund

10 1. Established. There is established a Hazard-
11 ous Material Control Fund, to be used to protect the
12 public and the environment from the dangers presented
13 by the use, transportation and disposal of hazardous
14 materials. All fees, penalties and interest col-
15 lected under this subchapter shall be deposited in
16 this fund. The fund shall be nonlapsing, and any
17 money in the fund not currently necessary to meet the
18 obligations of the department shall be deposited with
19 the Treasurer of State to the credit of the fund, and
20 may be invested as provided by law. Interest received
21 on that investment shall be credited to the fund.

22 2. Disbursements. Money in the Hazardous Mate-
23 rial Control Fund shall be used for all expenses
24 incurred by the department in carrying out its duties
25 under this subchapter, including administrative
26 expenses and costs of preventing, detecting and
27 removing discharges of hazardous materials.

28 3. Coordination. The commissioner shall coordi-
29 nate the administration of the Hazardous Material
30 Control Fund with the administration of the following
31 funds to ensure optimum utilization of resources and
32 maximum protection to the public:

33 A. The Maine Coastal Protection Fund under
34 section 551;

35 B. The Maine Hazardous Waste Fund under section
36 1319-D; and

37 C. The Board of Pesticide Control Fund under
38 Title 7, section 621.

1 §1316-D. Reports

2 The department shall adopt rules requiring per-
3 sons importing, transporting or manufacturing hazard-
4 ous materials to report the quantity of materials
5 handled each year. These rules shall include stan-
6 dards establishing minimum reportable quantities of
7 materials under this section and section
8 1316-E. Information received by the department under
9 this section may be designated confidential under
10 section 1310-B.

11 §1316-E. Discharge prohibited

12 The discharge of hazardous material into or upon
13 any waters of the State, or into or upon any land
14 within the state's territorial boundaries or into the
15 ambient air is prohibited unless licensed or author-
16 ized under state or federal law.

17 §1316-F. Mitigation of penalties

18 1. Reporting. The immediate reporting of a dis-
19 charge or threatened discharge by the responsible
20 party or by the person causing the discharge may be
21 considered in mitigation of any criminal or civil
22 penalties assessed under this subchapter.

23 2. Removal. If the responsible party or person
24 causing the discharge immediately reports and removes
25 the discharge in accordance with the rules and orders
26 of the board, he shall not be subject to criminal or
27 civil penalties under this subchapter.

28 §1316-G. Recovery by the State for expenditures for
29 removal of discharges

30 1. Responsible party. The responsible party or
31 the person causing the discharge is liable for all
32 acts and omissions of its servants and agents which
33 are committed within the course and scope of their
34 employment.

35 2. State to recover for expenditures for
36 removal. Any person who permits, causes or is
37 responsible for a prohibited discharge shall reim-
38 burse the State for all costs incurred, including

1 personnel costs, in removing the discharge. Funds
2 recovered under this section shall be deposited to
3 the account from which they were expended. Requests
4 for reimbursement, if not paid within 30 days of
5 demand, shall be turned over to the Attorney General
6 for collection.

7 In any suit to enforce claims of the State under
8 this section, it is not necessary for the State to
9 plead or prove negligence in any form or manner on
10 the part of the person, causing, permitting or
11 responsible for the discharge. The State need only
12 plead and prove the fact of the prohibited discharge
13 and that the discharge occurred while the hazardous
14 matter was in the custody or control of the person
15 causing, permitting or responsible for the discharge.

16 §1316-H. Procedures for removal of discharges of
17 hazardous material

18 1. Reporting. The responsible party or the
19 person causing the discharge shall report a discharge
20 immediately to the Department of Public Safety, which
21 shall immediately notify the Department of Environ-
22 mental Protection and the public safety agency of the
23 municipality in which the discharge takes place.

24 2. Preservation of public order. The local
25 public safety agency shall exercise authority for
26 preservation of public order and safety and shall
27 coordinate the response to the spill. The Department
28 of Public Safety shall exercise this authority in
29 those areas of the State without a local public
30 safety agency, or in any situation in which a local
31 public safety agency requests assistance from the
32 Department of Public Safety.

33 3. Department of Environmental Protection to
34 direct removal. The Department of Environmental Pro-
35 tection shall have authority and responsibility to
36 plan, implement and, with the cooperation of the
37 appropriate public safety agency, direct that part of
38 the response to a discharge of hazardous matter which
39 involves removal.

40 A. The responsible party or the person causing
41 the discharge shall immediately undertake removal
42 of the discharge.

1 B. The department may undertake the removal of
2 the discharge and may retain agents and make con-
3 tracts for this purpose.

4 C. Any unexplained discharge of hazardous mate-
5 rial occurring within state jurisdiction, or on
6 land or in water or air beyond state jurisdiction
7 that for any reason penetrates within state
8 jurisdiction, shall be removed by or under the
9 direction of the department.

10 Sec. 8. 38 MRSA c. 13, sub-c. III, as amended,
11 is repealed.

12 Sec. 9. 38 MRSA §1319-B, 2nd ¶, as enacted by PL
13 1981, c. 478, §7, is amended to read:

14 §1319-B. Findings and purpose

15 The Legislature further finds that it is in the
16 public interest of the State and its citizens to pro-
17 vide the capability for prompt and effective response
18 ~~to~~ and cleanup of spills and unlicensed discharges of
19 hazardous waste and that this state's interest
20 overweighs the economic burdens and any burden of
21 strict liability imposed by this subchapter upon
22 those engaged in generating, transporting and han-
23 dling hazardous waste.

24 Sec. 10. 38 MRSA §1319-C, sub-§1, as enacted by
25 PL 1981, c. 478, §7, is repealed.

26 Sec. 11. 38 MRSA §§1319-D and 1319-E, as enacted
27 by PL 1981, c. 478, §7, are amended to read:

28 §1319-D. Maine Hazardous Waste Fund

29 The Maine Hazardous Waste Fund is established to
30 be used by the department as a nonlapsing, revolving
31 fund for carrying out the department's responsibili-
32 ties under this subchapter. ~~This fund shall not~~
33 ~~exceed \$600,000-~~ All fees, penalties, interest and
34 other charges under this subchapter shall be credited
35 to this fund.

36 Money in the fund not currently needed to meet
37 the obligations of the department in the exercise of

1 its responsibilities for hazardous waste management
2 shall be deposited with the Treasurer of State to the
3 credit of the fund and may be invested as provided by
4 statute. Interest received on that investment shall
5 be credited to the fund.

6 §1319-E. Disbursements from the Maine Hazardous
7 Waste Fund

8 1. Money disbursed. Money in the Maine Hazardous
9 Waste Fund may be disbursed by the department for the
10 following purposes, but for no other:

11 A. Costs incurred in the removal of an unli-
12 icensed any discharge or threatened discharge of
13 hazardous waste. Whenever practical, the depart-
14 ment shall offer the responsible party the oppor-
15 tunity to remove the discharge or threatened dis-
16 charge;

17 ~~B. Notwithstanding paragraph A, disbursements to~~
18 ~~remove discharges of hazardous waste, which are~~
19 ~~not sudden and which involve costs exceeding~~
20 ~~\$10,000, may only be expended in accordance with~~
21 ~~an allocation approved by the Legislature;~~

22 C. Costs incurred for the purchase of necessary
23 hazardous waste response equipment and supplies,
24 response personnel and training of response per-
25 sonnel in accordance with an allocation approved by
26 the Legislature; and

27 D. Amounts necessary to reimburse municipalities
28 as required by section 1305-A, subsection 3-;

29 E. State portion of costs expended under the
30 United States Comprehensive Environmental
31 Response, Compensation and Liability Act of 1980,
32 Public Law 96-510, provided that money in the
33 Maine Hazardous Waste Fund may not be disbursed
34 by the department to the extent that there has
35 been compensation for claims for any costs under
36 the federal Act; and

37 F. Third party damages under this subsection.

1 For the purposes of this subsection, "sudden" means
2 an unexpected or abrupt discharge which occurs after
3 September 1, 1981.

4 ~~2- Limitation: Money in the Maine Hazardous~~
5 ~~Waste Fund may not be disbursed by the department to~~
6 ~~the extent that there has been compensation for~~
7 ~~claims for any costs of response or damages or claims~~
8 ~~which may be compensated under the federal Comprehen-~~
9 ~~sive Environmental Response, Compensation and Liabili-~~
10 ~~ty Act of 1980, Public Law 96-510-~~

11 3. Report. The commissioner shall submit an
12 annual report to the joint standing committee of the
13 Legislature having jurisdiction over natural
14 resources. This report shall include an accounting
15 of all funds received or expended from the fund,
16 sources of revenue and the purposes for which funds
17 were expended.

18 Sec. 12. 38 MRSA §1319-G, sub-§1, as enacted by
19 PL 1981, c. 478, §7, is amended to read:

20 1. Recovery. The department shall seek recovery
21 to the use of the Maine Hazardous Waste Fund all sums
22 expended therefrom, including overdrafts, for dis-
23 bursements made from the fund under section 1319-E,
24 subsection 1, paragraphs A, B and C, E and F, includ-
25 ing interest computed at 10% a year from the date of
26 expenditure, unless the board finds the amount too
27 small or the likelihood of recovery too uncertain.
28 Requests for reimbursement shall be referred to the
29 Attorney General for collection.

30 The department may file a claim with or otherwise
31 seek money from federal agencies to recover to the
32 use of the fund all disbursements from the fund.

33 Sec. 13. 38 MRSA §1319-G, sub-§1-A is enacted to
34 read:

35 1-A. Penalty for late payment. The board may
36 assess a penalty of 25% of the amount of the dis-
37 bursement plus interest at 2% per month for any claim
38 that has not been received more than 90 days after
39 the issuance of a lawful order requesting reimburse-
40 ment.

1 Sec. 14. 38 MRSA §1319-H, sub-§3, as enacted by
2 PL 1981, c. 478, §7, is amended to read:

3 3. Commercial and on-site treatment facilities.
4 For the purposes of this section, a commercial treat-
5 ment facility is a commercial hazardous waste facil-
6 ity which treats hazardous waste. An on-site treat-
7 ment facility is a licensed hazardous waste treatment
8 facility which uses a noncontinuous treatment process
9 to treat in excess of ~~1,000~~ 200 kilograms of hazard-
10 ous waste in any calendar month.

11 Sec. 15. 38 MRSA §1319-I, sub-§§1 and 2, as
12 enacted by PL 1981, c. 478, §7, are amended to read:

13 1. Fees for actions taken on the site of gener-
14 ation. Any person in the State who generates more
15 than ~~1,000~~ 200 kilograms of hazardous waste in any
16 calendar month shall pay a fee as follows:

17 A. For hazardous waste which is disposed of on
18 the site of generation in a licensed hazardous
19 waste disposal facility, 12¢ a gallon; and

20 B. For hazardous waste which is stored on the
21 site of generation in a licensed hazardous waste
22 storage facility for more than 90 days, but less
23 than 6 calendar months, and for each time period
24 thereafter or 6 calendar months or portion
25 thereof, ~~3¢~~ 6¢ a gallon.

26 2. Fees for action taken off site of generation.
27 Any person in the State who generates more than ~~1,000~~
28 200 kilograms of hazardous waste in any calendar
29 month shall pay a fee for actions taken off the site
30 of generation as follows:

31 A. For hazardous waste which is transported off
32 site to a licensed hazardous waste disposal
33 facility for disposal, 15¢ a gallon;

34 B. For hazardous waste which is transported off
35 site to a licensed hazardous waste treatment
36 facility for treatment, 9¢ a gallon;

37 C. For hazardous waste which is transported off
38 site to a licensed hazardous waste storage facil-

1 nition of radioactive wastes under statutes estab-
2 lishing procedures for waste facility siting.
3 Section 5 requires the following requirements for
4 transportation of reports to the Department of Public
5 Safety at least 2 days prior to any shipment of
6 radioactive materials and inspection of vehicles
7 carrying radioactive wastes as they enter public
8 highways.

9 The section also authorizes the Commissioner of
10 Public Safety to adopt regulations of transportation
11 of radioactive materials if he deems these are neces-
12 sary to protect the public health and safety.

13 Section 6 establishes a uniform statutory defini-
14 tion of the term "discharge," used in several stat-
15 utes administered by the Department of Environmental
16 Protection.

17 Section 7 establishes a new subchapter to control
18 hazardous materials. Some of these provisions are
19 similar to those contained in the present subchapter
20 on hazardous matter, which is repealed by section 8.
21 The subchapter contains 4 major new provisions:

22 1. Identification and classification of hazard-
23 ous materials based on degree of hazard;

24 2. Fees on importation or distribution of
25 hazardous materials;

26 3. A fund containing the fees collection on
27 hazardous materials, to carry out the purposes of
28 the solid waste management provisions; and

29 4. Procedures for reporting shipments of hazard-
30 ous materials.

31 The balance of the section recodifies existing
32 provisions.

33 The identification and classification of hazard-
34 ous materials is based on a number of current state
35 and federal classifications. These include state re-
36 strictions on pesticides, and federal designations
37 under the Water Pollution Control Act and transporta-
38 tion statutes. Four categories are established, with

1 details of the classification implemented by regula-
2 tions adopted under the Maine Administrative Proce-
3 dure Act, Title 5, chapter 375.

4 Fees are assessed on hazardous materials, based
5 on the above classification. The fees range from
6 .05¢ per pound for the most hazardous materials to no
7 fee for the least hazardous category.

8 The following table is an estimate of the money
9 that would be generated.

10 These revenue figures are only approximate
11 because no reporting mechanism currently exists for
12 most of the hazardous materials that would be subject
13 to this subchapter. Hazardous materials have been
14 assigned classes only for purposes of estimates sub-
15 ject to final Board of Environmental Protection
16 approval through rulemaking.

17 ESTIMATED REVENUE TO HAZARDOUS MATERIAL CONTROL FUND

18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
		Examples of Potential Hazardous Class Material	Reason for Inclusion		lb./year												
	I	Pesticides	Title 7, Section 601		6 1.4 x 10												70,000
	I	Other	Rad. Nuc., Poison A & B, CWA														
			Section X, A		5 1.5 x 10												7,500
																	Subtotal 77,500
	II	Ammonia Hydrogen Peroxide	CWA B 49 CFR 173 Oxidizer		7 2.4 x 10 5 5.5 x 10												48,000 1,100
		Chromium Salts			5 1 x 10												200

1	Organic	Chlorinated	7	
2	Feedstocks	Solvents	1×10^7	20,000
3	Other Pes-	Other Pes-	6	
4	ticides	ticides	3.4×10^6	6,800
5	Sodium		6	
6	hydrosulfide	ORMA	2×10^6	4,000
7			Subtotal	80,100
8			8	
9	III Chlorine		2.8×10^8	56,000
10	Sulfuric		8	
11	Acid	CWA C	3×10^8	60,000
12	Phosphoric		6	
13	Acid	CWA D	2×10^6	400
14	Nitric		5	
15	Acid	CWA D	5×10^5	100
16	Aluminum		8	
17	Sulfate	CWA D	2.3×10^8	46,000
18	Sodium		8	
19	Hydroxide	CWA C	3.4×10^8	68,000
20	Solvents	CWA C &	7	
21		49 CFR 173	2×10^7	4,000

1	Other			
2	Organic	CWA C D &	7	
3	Feedstocks	49 CFR 173	1.5 x 10	3,000
4			Subtotal	237,500
5			Total	\$395,100

6 The Hazardous Material Control Fund is estab-
7 lished to finance control of hazardous material.
8 Money in the fund may be used to cover administrative
9 costs, to finance removal of hazardous material
10 spills and to supplement other funds to control
11 hazardous material or waste. The Commission of Envi-
12 ronmental Protection is directed to coordinate the
13 administration of this fund with other similar funds,
14 including the Maine Coastal Protection Fund, the
15 Maine Hazardous Waste Fund and dedicated revenues of
16 the Board of Pesticides Control.

17 The Board of Environmental Protection is author-
18 ized to adopt rules requiring persons importing,
19 transporting or manufacturing hazardous materials to
20 annually report quantities of hazardous materials
21 handled. This information may be designated as con-
22 fidential by the person submitting it.

23 This bill amends the existing provisions dealing
24 with hazardous waste. The bill removes the limit on
25 the Maine Hazardous Waste Fund and broadens the pur-
26 poses for which this fund may be used. Specifically,
27 the fund may be used to clean up any hazardous wastes
28 and to match funds for cleanup under the federal
29 "Superfund." The bill repeals the present \$15,000
30 cap on hazardous wastes fees for any one person,
31 reduces the minimum quantity of reportable wastes
32 from 1000 kilograms to 200 kilograms per month,
33 increases penalties and interest for late payments of
34 fees and doubles fees on storage of hazardous waste.
35 Finally, the present sunset provision on these fees
36 is repealed.

37

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