

MAINE STATE LEGISLATURE

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No. 1835

H. P. 1459

House of Representatives, February 3, 1970

Reported by Mr. Snow from Committee on Natural Resources. Printed
under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
AND SEVENTY

AN ACT Relating to Coastal Conveyance of Petroleum.

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

Sec. 1. R. S., T. 38, c. 3, sub-c. II-A, additional. Chapter 3 of Title 38 of the Revised Statutes is amended by adding a new subchapter II-A, to read as follows:

SUBCHAPTER II-A

OIL DISCHARGE PREVENTION AND POLLUTION CONTROL

§ 541. Findings; purpose

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and storage of such products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine-related activities; and to the beauty of the Maine coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activities.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Environmental Improvement Commission by conferring upon said commission the exclusive power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from such occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the State's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activities.

§ 542. Definitions

The following words and phrases as used in this subchapter shall, unless a different meaning is plainly required by the context, have the following meaning:

1. Barrel. "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
2. Board. "Board" shall mean the Board of Arbitration.
3. Commission. "Commission" shall mean the Environmental Improvement Commission.
4. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
5. Fund. "Fund" shall mean the Maine Coastal Protection Fund.

6. Oil. "Oil, petroleum products and their by-products" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

7. Oil terminal facility. "Oil terminal facility" means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, petroleum products and their by-products, or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 500 barrels, nor any facility not engaged in the transfer of oil, petroleum products or their by-products to or from tidal waters of the State. A vessel shall be considered an oil terminal facility only in the event of a ship to ship transfer of oil, petroleum products and their by-products, and only that vessel going to or coming from the place of transfer and the oil terminal facility.

8. Operate or operator. "Operate or operator" shall mean any person owning or operating an oil terminal facility whether by lease, contract or any other form of agreement.

9. Person. "Person" shall mean individual, partnership, joint venture, corporation or any group of the foregoing organized or united for a business purpose.

10. Transferred. "Transferred" shall include both onloading and offloading between terminal and vessel and vessel to vessel.

11. Vessel "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise and shall include barges and tugs.

§ 543. Pollution and corruption of waters and lands of the State prohibited

The discharge of oil, petroleum products or their by-products into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into any river, stream, sewer, surface water drain or other waters that drain into the coastal waters of the State is prohibited.

§ 544. Powers and duties of the commission

The powers and duties conferred by this subchapter shall be exercised by the Environmental Improvement Commission and shall be deemed to be an essential governmental function in the exercise of the police power of the State.

1. Jurisdiction. The powers and duties of the commission under this subchapter shall extend to the areas described in section 543 above and to a distance of 12 miles from the coastline of the State.

2. Licenses. Licenses required under this subchapter shall be secured from the commission subject to such terms and conditions as are set forth in this subchapter.

§ 545. Operation without license prohibited

No person shall operate or cause to be operated an oil terminal facility as defined in this subchapter without a license.

1. Expiration of licenses. Licenses shall be issued on an annual basis and shall expire on December 31st annually, subject to such terms and conditions as the commission may determine are necessary to carry out the purposes of this subchapter.

2. Renewal of licenses. As a condition precedent to the issuance or renewal of a license the commission shall require satisfactory evidence that the applicant has or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, petroleum products and their by-products and the abatement thereof when a discharge occurs.

3. Exemptions. The Legislature finds and declares that the likelihood of significant damage to marine, estuarine and terrestrial environment, due to spills of oil, petroleum products and their by-products by the following classes of persons, is remote due to the limited nature of their operations and the small quantities stored, and accordingly exempts the same from the licensing requirements imposed by this section:

A. Marinas. Persons engaged in the business of servicing the fuel requirements of pleasure craft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity and the serviced vessel is 75 feet or less in overall length.

4. Certain vessels included. Licenses issued to any terminal facility shall include vessels used to transport oil, petroleum products and their by-products between the facility and vessels within state waters.

§ 546. Regulatory powers of commission

The commission shall from time to time adopt, amend, repeal and enforce reasonable rules and regulations necessary to carry out the intent of this subchapter.

1. Procedure for adopting rules and regulations. The commission shall post notice of proposed rules and regulations by publishing an attested copy of such notice in the state paper, and such other daily papers published in the State as it believes will bring the proposals to the attention of all interested parties, at least 7 days prior to holding a public hearing.

A. Such notice shall in addition contain the time, date and place of the public hearing.

B. The commission may establish reasonable rules and regulations governing the conduct of public hearings under this subchapter including adjournments and continuations thereof.

C. Rules and regulations adopted by the commission shall become effective 15 days after final adjournment of the public hearing.

D. Rules and regulations of the commission shall be seasonably printed and made available to interested parties.

2. Emergency rules and regulations without hearing. Upon finding by the commission that an emergency exists requiring immediate rules, regulations or orders to effectively deal with such emergency, the commission may without hearing adopt such rules and regulations and issue such orders which shall have the force and effect of law, but any rules, regulations or orders issued under authority of this subsection shall be null and void 30 days thereafter unless sooner adopted in accordance with subsection 1.

3. Enforcement of rules and regulations. Rules, regulations and orders issued by the commission under this subchapter shall have the force and effect of law.

4. Extent of regulatory powers. The commission shall have the power to adopt rules and regulations including but not limited to the following matters:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter.

B. Procedures and methods of reporting discharges and other occurrences prohibited by this subchapter.

C. Procedures, methods, means and equipment to be used by persons subject to regulations by this subchapter.

D. Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants.

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds.

F. The establishment from time to time of control districts comprising sections of the Maine coast and the establishment of rules and regulations to meet the particular requirements of each such district.

G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries.

H. Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this subchapter.

§ 547. Emergency proclamation; Governor's powers

Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, petroleum products or their by-products, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would

act as Governor if the office of Governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State. A copy of such proclamation shall be filed with the Secretary of State. The Governor shall have general direction and control of the Environmental Improvement Commission and shall be responsible for carrying out the purposes of this subchapter.

In performing his duties under this subchapter, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe.

In performing his duties under this subchapter, the Governor is further authorized and empowered:

1. Orders, rules and regulations. To make, amend and rescind the necessary orders, rules and regulations to carry out this subchapter within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

2. Delegation of authority. To delegate any authority vested in him under this subchapter, and to provide for the subdelegation of any such authority.

Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the State and posted in such places as the Governor, or the person acting in that capacity, deems appropriate.

3. Civil defense. The provisions of Title 25, chapter 61, as they shall apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right of way, enforcement and compensation shall apply to disasters or catastrophes proclaimed by the Governor under this subchapter.

§ 548. Removal of prohibited discharges

Any person discharging oil, petroleum products or their by-products in the manner prohibited by section 543 shall immediately undertake to remove such discharge to the commission's satisfaction. Notwithstanding the above requirement the commission may undertake the removal of such discharge and may retain agents and contracts for such purposes who shall operate under the direction of the commission.

Any unexplained discharge of oil, petroleum products or their by-products within state jurisdiction or discharge of oil, petroleum products or their by-products occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the commission. Any expenses involved in the removal of discharges,

whether by the person causing the same, the person reporting the same or the commission by itself or through its agents or contractors shall be paid in the first instance from the Maine Coastal Protection Fund hereinafter provided for and any reimbursements due said fund shall be collected in accordance with the provisions of section 551.

§ 549. Personnel and equipment

The commission shall establish and maintain at such ports within the State, and other places as it shall determine, such employees and equipment as in its judgment may be necessary to carry out the provisions of this subchapter. The commission may employ, subject to the Personnel Law, and prescribe the duties of such employees. The salaries of such employees and the cost of such equipment shall be paid from the Maine Coastal Protection Fund established by this subchapter. The commission and the Maine Mining Bureau shall periodically consult with each other relative to procedures for the prevention of oil discharges into the coastal waters of the State from offshore drilling production facilities. Inspection and enforcement employees of the commission in their line of duty under this subchapter shall have the powers of a constable.

§ 550. Enforcement, penalties

Whenever it appears after investigation that there is a violation of any rule, regulation, order or license issued by the commission, the commission shall proceed in accordance with the provisions of section 451, subsection 2.

Whoever violates any provisions of this subchapter or any rule, regulation or order of the commission made hereunder shall be punished by a fine of not less than \$100 nor more than \$5000. Each day that any violation shall continue shall constitute a separate offense. The provisions of this section shall not apply to any discharge promptly reported and removed by a licensee in accordance with the rules, regulations and orders of the commission.

§ 551. Maine Coastal Protection Fund

The Maine Coastal Protection Fund is established to be used by the commission as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to the sum of \$4,000,000. To this sum shall be credited all license fees, penalties and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the commission related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and third party damages covered by this subchapter.

Moneys in the fund, not needed currently to meet the obligations of the commission in the exercise of its responsibilities under this subchapter shall be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Maine Coastal Protection Fund.

1. Research and development. The Legislature may allocate not more than \$100,000 per annum of the amount then currently in the fund to be devoted

to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such allocations shall be made in accordance with the provisions of section 555.

2. Third party damages. Any person claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil, petroleum products or their by-products prohibited by section 543 may apply within 6 months after the occurrence of such discharge to the commission stating the amount of damage he claims to have suffered as a result of such discharge. The commission shall prescribe appropriate forms and details for such applications. The commission may, upon petition, and for good cause shown, waive the 6 months limitation for filing damage claims.

A. If the claimant, the commission and the person causing the discharge can agree to the damage claim, the commission shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Petroleum Fund.

B. If the claimant, the commission and the person causing the discharge cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under the provisions of this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

3. Board of Arbitration. The Board of Arbitration shall consist of 3 persons, one to be chosen by the person determined in the first instance by the commission to have caused the discharge, one to be chosen by the commission to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appointment then the commission shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

A. No member of the commission shall serve as an arbitrator.

B. Arbitrators shall be named by their principals within 10 days after the commission receives notice of claims arising from a discharge prohibited by section 543. If either party shall fail to select its arbitrator within the said 10 days the other party shall request the American Arbitration Association to utilize its procedures for the selection of such arbitrator and

the 2 arbitrators shall proceed to select the neutral arbitrator as provided in this section.

C. One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

D. Hearings before Boards of Arbitrators shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The board shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

E. Determinations made by a majority of the board shall be final, and such determinations may be subject to review by a Justice of the Superior Court but only as to matters relating to abuse of discretion by the board.

F. Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

4. Funding.

A. Annual license fees shall be determined on the basis of $\frac{1}{2}$ cent per barrel of oil, petroleum products or their by-products transferred by the applicant during the licensing period and shall be paid monthly on the basis of records certified to the commission. License fees shall be paid to the commission and upon receipt by it credited to the Maine Coastal Protection Fund.

B. Whenever the balance in the fund has reached the limit provided under this subchapter license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development.

5. Disbursements from fund. Moneys in the Maine Coastal Protection Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the commission related to the enforcement of this subchapter.

B. All costs involved in the abatement of pollution related to the discharge of oil, petroleum products and their by-products covered by this subchapter.

C. Sums allocated to research and development in accordance with this section.

D. Payment of 3rd party claims awarded in accordance with this section.

E. Payment of costs of arbitration and arbitrators.

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund.

6. Reimbursements to Maine Coastal Protection Fund. The commission shall recover to the use of the fund all sums expended therefrom, including

overdrafts, for the following purposes; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of such disaster.

A. Costs incurred by the fund in the abatement of a prohibited discharge including 3rd party claims when the person permitting the same shall have failed to promptly report the discharge as required by rules and regulations of the commission, and such costs where the person permitting the prohibited discharge is not a licensee.

B. In the case of a licensee promptly reporting a discharge as required by this article, costs involved in the abatement of any single prohibited discharge including 3rd party claims in excess of \$15,000, over and above payments received under any federal program.

C. Requests for reimbursement to the fund for the above costs if not paid within 30 days of demand shall be turned over to the Attorney General for collection.

7. Waiver of reimbursement. Upon petition of the person determined to be liable for reimbursement to the fund for abatement costs under subsection 6, the commission may, after hearing, waive the right to reimbursement to the fund if the commission finds that the occurrence was the result of any of the following:

A. An act of war.

B. An act of government, either State, Federal or municipal.

C. An act of God, which shall mean an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such finding by the commission immediate credit therefor shall be entered for the party involved. The findings of the commission shall be conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred not a right granted.

§ 552. Liabilities of licensees

1. Licensee shall be liable. A licensee shall be liable for all acts and omissions of its servants and agents, and carriers destined for the licensee's facilities from the time such carrier shall enter state waters until such time as the carrier shall leave state waters.

2. State need not plead or prove negligence. Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of third party claims, any licensee, agent or servant including carriers destined for or leaving a licensee's facility while within state waters permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all costs of clean-up or other damage incurred by the

State. In any suit to enforce claims of the State under this section, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the licensee, the State need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

§ 553. Interstate Compact, authority

In accordance with subchapter II the Governor of this State is authorized and directed to execute supplementary agreements with any one or more of the states comprising the New England Interstate Water Pollution Control Commission and the United States for the purpose of implementing and carrying out the provisions, limitations, qualifications and intent of this subchapter.

§ 554. Reports to the Legislature

The commission shall include in its recommendations to each Legislature as required by section 361 specific recommendations relating to the operation of this subchapter, specifically including a license fee formula to reflect individual licensee experience, and fee schedule based upon volatility and toxicity of petroleum products and their by-products.

§ 555. Budget approval

The commission shall submit to each Legislature its budget recommendations for disbursements from the fund in accordance with the provisions of section 551. Upon approval thereof the State Controller shall authorize expenditures therefrom as approved by the commission.

§ 556. Municipal ordinances; powers limited

Nothing in this subchapter shall be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special act; provided, however, that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety shall be valid unless in direct conflict with the provisions of this subchapter or any rule, regulation or order of the commission adopted under authority of this subchapter.

§ 557. Construction

This subchapter, being necessary for the general welfare, the public health and the public safety of the State and its inhabitants, shall be liberally construed to effect the purposes set forth under this subchapter. No rule, regulation or order of the commission shall be stayed pending appeal under the provisions of this subchapter.

Sec. 2. R. S., T. 38, § 416, amended. The first and 2nd sentences of the 3rd paragraph of section 416 of Title 38 of the Revised Statutes, as enacted by section 4 of chapter 431 of the public laws of 1969, are amended to read as follows:

There shall be no discharge of grease, oil, gasoline, kerosene or related products into the inland waters ~~or into the marginal sea~~ of this State. Any person, corporation or other party that discharges, or permits to be discharged, grease, oil, gasoline, kerosene and related products into the inland waters ~~or marginal sea~~ of this State shall remove same from said waters.

Sec. 3. Expenditures. Moneys not exceeding \$800,000 which accrue to the fund prior to June 30, 1971 from legislative appropriations, license fees, penalties and other fees and charges related to this Act, may be expended by the commission for the purposes described in such legislation.