

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1641

H. P. 1283

House of Representatives, April 11, 1977

On Motion of Mr. Green of Auburn, referred to the Committee on Natural Resources. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Wilfong of Stow.

Cosponsors: Mrs. Post of Owls Head, Mr. Spencer of Standish and Mrs. Masterton of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend the Oil Pollution Control and Discharge
Prevention Laws.

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

Sec. 1. 38 MRSA § 416, as last amended by PL 1973, c. 450, § 16, is repealed.

Sec. 2. 38 MRSA § 542, sub-§ 6, as enacted by PL 1969, c. 572, § 1, is amended to read:

6. Oil. ~~Oil, petroleum products and their by-products~~ "Oil means oil, petroleum products and their by-products 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.

Sec. 3. 38 MRSA § 542, sub-§ 7, as enacted by PL 1969, c. 572, § 1, is amended to read:

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~~ but only that vessel going to or coming from the place of ship to ship transfer and ~~the~~ a permanent or fixed oil terminal facility.

Sec. 4. 38 MRSA § 542, sub-§ 9, as enacted by PL 1969, c. 572, § 1, is repealed and the following enacted in its place:

9. Person. "Person" shall mean any natural person, firm, association, partnership, corporation, trust, the State of Maine and any agency thereof, governmental entity, quasi-governmental entity, the United States of America and any agency thereof and any other legal entity.

Sec. 5. 38 MRSA § 543, 1st ¶, as enacted by PL 1969, c. 572, § 1, is amended to read:

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.

Sec. 6. 38 MRSA § 545, sub-§ 1, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

1. Expiration of licenses. Licenses shall be issued upon application for a time certain and shall expire no later than 18 months after the date of issuance. Licenses shall be issued subject to such terms and conditions as the board may determine are necessary to carry out the purposes of this subchapter.

Sec. 7. 38 MRSA § 545, sub-§ 4, as enacted by PL 1969, c. 572, § 1, is amended to read:

4. Certain vessels included. Licenses issued to any fixed or permanent oil terminal facility shall include vessels under the direction or control of such facility and used to transport oil, ~~petroleum products and their by-products~~ between the such fixed or permanent facility and vessels within state waters. Any person operating or causing to be operated a vessel used to transport oil between a permanent or fixed oil terminal facility and vessels within state waters, which vessel is not subject to the direction or control of that permanent oil terminal facility, shall obtain a license as required by this section.

Sec. 8. 3 MRSA § 546, sub-§ 1, ¶ C, as last amended by PL 1971, c. 618, § 12, is repealed.

Sec. 9. 38 MRSA § 550, last sentence, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

This section shall not apply to any discharge promptly reported and removed by the person causing or responsible for the discharge in accordance with the rules, regulations and orders of the board.

Sec. 10. 38 MRSA § 551, 1st ¶, last 2 sentences, as amended, are further amended to read:

The fund shall be limited to the sum of ~~\$1,000,000~~ \$50,000,000. To this ~~sum~~ fund 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 board related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and third party damages covered by this subchapter.

Sec. 11. 38 MRSA § 551, sub-§ 2, as last amended by PL 1973, c. 625, § 278, is repealed and the following enacted in its place:

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, prohibited by section 543, hereinafter called the claimant, may apply within 6 months after the occurrence of such discharge to the board stating the amount of damage alleged to be suffered as a result of such discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

A. If the claimant, the board and the person causing the discharge can agree to the damage claim, or in the case where the person causing the discharge is not known, if the claimant and the board can agree to the damage claim, the board 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 Protection Fund.

B. If the claimant, the board and the person causing the discharge cannot agree as to the amount of the damage claim, or in the case where the person causing the discharge is not known, if the claimant and the board 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 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.

E. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

Sec. 12. 38 MRSA § 551, sub-§ 3, ¶ B, as amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

B. A party determined by the board to have caused a discharge shall appoint an arbitrator within such period of time as the board may by regulation prescribe. In the event that the party shall fail to select its arbitrator in a timely manner, the board shall request the American Arbi-

tration Association to select an arbitrator to represent the interest of the party in the arbitration proceedings.

In the case where the person causing the discharge is unknown, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

Sec. 13. 38 MRSA § 551, sub-§ 4, as last amended by PL 1975, c. 379, §§ 1 and 2, is repealed and the following enacted in its place:

4. Funding.

A. License fees shall be determined on the basis of $\frac{1}{2}\text{¢}$ per barrel of oil transferred by the licensee during the licensing period and shall be paid monthly by the licensee on the basis of records certified to the board, provided that during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for such purpose, the license fee shall be determined on the basis of 1.0¢ per barrel. License fees shall be paid to the board 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, provided that the license fees shall continue without reduction during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement thereunder shall be inadequate for such purpose.

C. All sums received by the board when the balance in the fund has reached \$4,000,000 shall, after deduction of administrative expenses and sums allocated to research and development, promptly be remitted to the Treasurer of State to be held distinct from all other moneys of the State for the payment of interest and debt retirement pursuant to the private and special laws of 1969, chapter 239, section 5. When there has been no interest or debt incurred pursuant to the private and special laws of 1969, chapter 239, section 5, or upon payment of all interest and debt so incurred, the Treasurer of State shall credit to the fund all sums received according to this subchapter.

Sec. 14. 38 MRSA § 551, sub-§ 6, as last amended by PL 1973, c. 625, § 279, is repealed and the following enacted in its place:

6. Reimbursements to Maine Coastal Protection Fund. The board shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, unless the board finds the amount involved too small or the likelihood of success too uncertain; 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 the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with a prohibited discharge;

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursement made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including third party claims in excess of \$15,000, but except to the extent that the costs are covered by payments received under any federal program;

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

D. The board may file claims with appropriate federal agencies to recover for the use of the fund all disbursement from the fund in connection with a prohibited discharge.

Sec. 15. 38 MRSA § 551, sub-§ 7, 1st sentence, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

Upon petition of any licensee or owner of a vessel bound for a licensee the board may after hearing waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

Sec. 16. 38 MRSA § 551, sub-§ 7, ¶ B, as enacted by PL 1969, c. 572, § 1, is amended to read:

B. An act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 548;

Sec. 17. 38 MRSA § 552, sub-§ 2, as enacted by PL 1969, c. 572, § 1, is repealed and the following enacted in its place:

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 the third party claims, any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the fund for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State. In any suit to enforce claims upon the fund under this section to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the spiller or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the spiller or licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

Sec. 18. 38 MRSA § 552-A is enacted to read:

§ 552-A. Detention of vessels

Whenever there is probable cause to believe that a vessel has violated or been the means of a violation of this subchapter or any other law which the

Department of Environmental Protection is responsible for administering or any rule, regulation or order of the board or any official of the department made thereunder, the vessel shall be detained in any port of the State until payment of any fine or penalty assessable under the law has been paid or secured to the satisfaction of the Attorney General. Any justice or judge of the Supreme Court or the District Court may issue such orders as are necessary to carry out the purposes of this section.

STATEMENT OF FACT

Section 1. This section repeals Title 38, section 416, which prohibits the discharge of oil into the inland waters of the State and is no longer necessary in view of section 3 of this bill.

Section 2. This section amends the definition of "oil" to eliminate the necessity of repeating the phrase "oil, petroleum products and their by-products" throughout the bill.

Section 3. This section amends the definition of "oil transfer facility" to make it clear that, as to vessels, the definition includes only a ship bunkering another ship.

Section 4. This section strengthens the definition of "person" to include public as well as private entities, since public entities may cause or be damaged by oil spills as easily as their private counterparts.

Section 5. This section makes it clear, consistent with the interpretation of the existing statute by the Department of Environmental Protection, that the application of the bill is statewide and not limited to the coast alone. This amendment will not increase the administrative or operating funds required by the department from either the General Fund or the Oil Conveyance Fund. The bill also renders unnecessary the prohibitions of Title 38, section 416, which is repealed by section 1 of this bill.

Section 6. This section eliminates the requirement that all licenses expire on the same date, a provision which has caused the Department of Environmental Protection some administrative difficulty.

Section 7. This section makes it clear that vessels under the control of a licensee need not obtain a separate license, but that vessels not so controlled shall do so.

Section 8. This section repeals the special provisions for the adoption by the Board of Environmental Protection of regulations under the bill, thus making the adoption of such regulations subject to the requirements of general statutory law only.

Section 9. This section extends the exemption from criminal liability for licensees promptly reporting and removing oil spills to all persons, so as to encourage such notification and immediate clean up by anyone causing an oil spill.

Section 10. This section increases the \$4,000,000 upper limit of the Coastal Protection Fund. Present estimates indicate that $\frac{1}{2}\phi$ per barrel fee generates approximately \$1,000,000 a year. The fund is expected to grow at this rate unless there is a significant change in the amount of oil transferred. This increase of the upper limit has no relationship to sections 1 or 5 of this bill.

Section 11. This section makes it possible for the Board of Environmental Protection to settle claims without the necessity of convening a board of arbitration in the case of mystery spills. The section also adds a provision preventing the double recovery of damages when the claimant has also proceeded successfully in federal court.

Section 12. This section provides a more flexible procedure for the selection of arbitrators than presently exists, in the interest of permitting the board, the claimant and the person causing the discharge, if known, to arrive at a settlement without arbitration.

Section 13. This section makes it clear that the Oil Conveyance Fund shall recover its authorized disbursements immediately when they are made. In addition, whenever bonds are outstanding, the oil industry is required to pay back these moneys at the rate of 1ϕ a barrel rather than $\frac{3}{4}\phi$.

Section 14. This section gives the Board of Environmental Protection the authority to determine not to request the Attorney General to seek recovery of disbursements in certain cases, but makes it clear that all costs to the fund arising out of a particular spill may be recovered. The section also authorizes the board to file claims against any federal fund which may be established for any disbursements from the Maine fund.

Sections 15 and 16. These sections limit the right to petition the Board of Environmental Protection to waive its right of reimbursement to licensees and owners of vessels bound for licensees' facilities, but exempts the acts of the department itself from such waivers.

Section 17. This section extends the elimination of the requirement that the State need not prove negligence against a licensee to anyone causing a discharge.

Section 18. This section enables the Attorney General to detain vessels violating the laws of the State so as to be able to satisfy any judgments obtained against them.