

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1643

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H. P. 1322

House of Representatives, April 12, 1977

On Motion of Mrs. Post of Owls Head, referred to Committee on Marine Resources. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Valentine of York.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Create the Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas.**

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

38 MRSA c. 17 is enacted to read:

CHAPTER 17

DISCHARGE PREVENTION AND POLLUTION CONTROL  
OF NATURAL GAS AND LIQUEFIED NATURAL GAS

§ 1601. 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 natural gas and liquefied natural gas between vessels and vessels and onshore facili-

ties and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of natural gas or liquefied natural gas 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 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 natural gas and liquefied natural gas and related activities.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Board of Environmental Protection by conferring upon the board 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 natural gas and liquefied natural gas and related activities.

#### § 1602. Discharge of natural gas and liquefied natural gas

No person, firm, corporation or other legal entity shall discharge, spill or permit to be discharged natural gas or liquefied natural gas, as defined in section 1603, subsections 6 and 7 into any inland waters of this State. For the purposes of this section, "inland waters of this State" shall mean all waters of this State except those described in section 1604.

Whoever discharges natural gas or liquefied natural gas in violation of this section shall immediately report the fact of such discharge to the board and undertake to remove such discharge to the board's satisfaction. Notwithstanding the requirements of the preceding sentence, the board may undertake to remove such discharge, and may retain agents and contractors for such purpose.

This section shall not apply to any discharge promptly reported and removed in accordance with rules, regulations and orders of the board nor to any discharge licenses under this chapter.

## § 1603. Definitions

The following words and phrases as used in this chapter 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 -259° Fahrenheit.
2. Board. "Board" shall mean the Board of Environmental Protection.
3. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
4. Fund. "Fund" shall mean the Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas.
5. Gas terminal facility. "Gas 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 natural gas or liquefied natural gas, or for the purpose of storing the same, but does not include any facility used or capable of being used to store not more than 500 barrels, nor any facility not engaged in the transfer of natural gas or liquefied natural gas to or from tidal waters of the State. A vessel shall be considered a gas terminal facility only in the event of a ship to ship transfer of natural gas or liquefied natural gas and only that vessel going to or coming from the place of transfer and the gas terminal facility.
6. Liquefied natural gas. Liquefied natural gas is natural gas which has been reduced or converted to a liquid form by reducing the temperature to -259° F.
7. Natural gas. Natural gas is a fossil fuel in a gaseous state composed primarily of methane but also may contain other heavier hydrocarbons.
8. Operate or operator. "Operate or operator" shall mean any person owning or operating a gas 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.

## § 1604. Pollution and corruption of waters and lands of the State prohibited

The discharge of natural gas or liquefied natural gas into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the sea-

coast 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.

Notwithstanding the prohibition of this section, the Board of Environmental Protection may license the discharge of water, refuse or effluent, including natural drainage contaminated by natural gas or liquefied natural gas, into or upon any coastal waters if, and only if, it finds that such discharge will be receiving the best available treatment and that such discharge will not degrade existing water quality nor perceptibly violate the classification of the receiving waters, nor create any visible sheen upon the receiving waters.

In acting upon an application for any such license, the board shall follow the provisions of chapter 3, subchapter I insofar as they are applicable.

#### § 1605. Powers and duties of the board

The powers and duties conferred by this chapter shall be exercised by the Department of Environmental Protection and shall be an essential governmental function in the exercise of the police power of the State.

1. Jurisdiction. The powers and duties of the board under this chapter shall extend to coastal waters, tidal flats, estuaries, beaches and land adjoining to a distance of 12 miles from the coastline of the State.

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

#### § 1606. Operation without license prohibited

No person shall operate or cause to be operated a gas terminal facility as defined in this chapter 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 board may determine are necessary to carry out the purposes of this chapter.

2. Renewal of licenses. As a condition precedent to the issuance or renewal of a license, the board 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 natural gas or liquefied natural gas.

3. Certain vessels included. Licenses issued to any terminal facility shall include vessels used to transport natural gas or liquefied natural gas between the facility and vessels within state waters.

#### § 1607. Regulatory powers of board

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

1. Procedure for adopting rules and regulations. The board 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 deems appropriate.

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

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

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

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

2. Emergency rules and regulations without hearing. Upon finding by the board that an emergency exists requiring immediate rules, regulations or orders to effectively deal with such emergency, the board 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 board under this chapter shall have the force and effect of law.

4. Extent of regulatory powers. The board 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 chapter;

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

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

D. Procedures, methods, means and equipment to be used;

E. Development and implementation of criteria and plans to meet natural gas and liquefied natural gas, and 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, gas terminals and the approach and departure from terminals and facilities; and

H. Such 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 chapter.

§ 1608. Emergency proclamation; Governor's powers

Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of natural gas and liquefied natural gas, 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 Board of Environmental Protection and shall be responsible for carrying out the purposes of this chapter.

In performing his duties under this chapter, 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 chapter, 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 chapter 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; and
2. Delegation of authority. To delegate any authority vested in him under this chapter, 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. The 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 37-A, chapter 3, 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 chapter.

§ 1609. Removal of prohibited discharges

Any person discharging natural gas and liquefied natural gas in the manner prohibited by section 1604 shall immediately undertake to remove such dis-

charge to the board's satisfaction. Notwithstanding this requirement, the board may undertake the removal of such discharge and may retain agents and contracts for such purposes who shall operate under the direction of the board.

Any unexplained discharge of natural gas and liquefied natural gas within the state jurisdiction, or discharge of natural gas and liquefied natural gas occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction, shall be removed by or under the direction of the board. Any expenses involved in the removal of discharges, whether by the person causing the same, the person reporting the same or the board by itself or through its agents or contractors shall be paid in the first instance from the Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas hereinafter provided for and any reimbursements due that fund shall be collected in accordance with section 551.

#### § 1610. Personnel and equipment

The board 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 this chapter. The board, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of this chapter, and shall 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 for Natural Gas and Liquefied Natural Gas established by this chapter. The board and the Maine Mining Bureau shall periodically consult with each other relative to procedures for the prevention of gas discharges into the coastal waters of the State from offshore drilling-producing facilities. Inspection and enforcement employees of the board in their line of duty under this chapter shall have the powers of a constable.

#### § 1611. Enforcement; penalties

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

Whoever violates any provisions of this chapter or any rule, regulation or order of the board made hereunder shall be punished by a fine of not less than \$100 nor more than \$5,000. Each day that any violation shall continue shall constitute a separate offense. 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 board.

#### § 1612. Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas

The Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas is established to be used by the board as a nonlapsing, revolving fund for carrying out the purposes of this chapter. 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 chapter, and to this fund shall be charged any and all expenses of the board related to this chapter, including administrative expenses, costs of removal of discharges of pollutants and 3rd-party damages covered by this chapter.

Moneys in the fund not needed currently to meet the obligations of the board in the exercise of its responsibilities under this chapter 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 fund.

1. Research and development. The Legislature may allocate not more than \$100,000 per year 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 natural gas and liquefied natural gas on the marine environment. Such allocations shall be made in accordance with 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 natural gas and liquefied gas prohibited by section 1604, may apply within 6 months after the occurrence of such discharge to the board, stating the amount of damage he claims to have suffered as a result of such discharge. The board shall prescribe appropriate forms and details for such 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, 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 for Natural Gas and Liquefied Natural Gas.

B. If the claimant, the board 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 chapter.

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 chapter shall be recoverable only in the manner provided under this chapter and the remedies provided in this chapter shall be exclusive.

3. Board of Arbitration. The Board of Arbitration shall consist of 3 persons; one person chosen by the person determined in the first instance by the board to have caused the discharge, one chosen by the board to represent the public interest and one 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 board shall request the

American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

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

B. Arbitrators shall be named by their principals within 10 days after the board receives notice of claims arising from a discharge prohibited by section 543. If either party shall fail to select its arbitrator within the 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 subsection.

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

D. Hearings before Board of Arbitration shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The Board of Arbitration 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 of Arbitration 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  $\frac{1}{2}\text{¢}$  per barrel of liquefied natural gas or  $\frac{1}{2}\text{¢}$  per 3.3 thousand cubic feet of natural gas transferred by the applicant during the licensing period and shall be paid monthly on the basis of records certified to the board.

B. Whenever the balance in the fund has reached the limit provided under this chapter, 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 for Natural Gas and Liquefied Natural Gas shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the board related to the enforcement of this chapter;

B. All costs involved in the abatement of pollution related to the discharge of gas covered by this chapter;

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

D. Payment of the 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; and

G. Payments to the Treasurer of State pursuant to subsection 4, paragraph B.

6. Reimbursements to Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas. The board 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 a pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection Fund for Natural Gas and Liquefied Natural Gas 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 board, and such costs when 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 chapter, 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; and

C. Requests for reimbursement to the fund for the costs listed in paragraphs A and B 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 board may, after hearing, waive the right to reimbursement to the fund if the board 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; or

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 board, immediate credit therefor shall be entered for the party involved. The findings of the board shall be conclusive, since the waiver provided in this subsection is a privilege conferred not a right granted.

**§ 1613. Liabilities of licensee**

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 chapter to provide the means for rapid and effective cleanup and to minimize direct damages as well as indirect damages and the proliferation of 3rd-party claims, any 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 State of Maine for all costs of cleanup 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 chapter.

**§ 1614. Interstate Compact; authority**

In accordance with subchapter II, the Governor 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 chapter.

**§ 1615. Reports to the Legislature**

The board shall include in its recommendations to each Legislature as required by section 361 specific recommendations relating to the operation of this chapter, specifically including a license fee formula to reflect individual licensee experience, and fee schedule based upon volatility and toxicity of natural gas and liquefied natural gas.

**§ 1616. Budget approval**

The board shall submit to each Legislature its budget recommendations for disbursements from the fund in accordance with section 1612. Upon approval thereof, the State Controller shall authorize expenditures therefrom as approved by the board.

**§ 1617. Municipal ordinances; powers limited**

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

**§ 1618. Construction**

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

**STATEMENT OF FACT**

With the development of offshore drilling for oil, as well as other proposed projects, Maine can expect the transfer of natural gas and liquefied natural gas by pipeline and vessels on lands and waters under its jurisdiction. This bill will provide a fund so that money will be immediately available for cleanup costs and damage claims comparable to the Maine Coastal Protection Fund. This bill will provide a fund of up to \$4,000,000 for the purposes of this Act.