

MAINE STATE LEGISLATURE

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L.D. 1475
(Filing No. S-307)

STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 540, L.D. 1475, Bill, "An Act to Implement, Administer and Enforce the United States Emergency Planning and Community Right-to-Know Act of 1986"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 5 MRSA §12004-G, sub-§13-A is enacted to read:

13-A. Environ- State Emergency Not 37-B MRSA §792
ment/Natural Response Authorized
Resources Commission

Sec. 2. 22 MRSA c. 271, sub-c. III, as enacted by PL 1987, c. 763, §2, is repealed.

Sec. 3. 37-B MRSA c. 13, sub-c. III-A is enacted to read:

SUBCHAPTER III-A
COORDINATION AND ADMINISTRATION
OF THE SUPERFUND AMENDMENTS AND
REAUTHORIZATION ACT OF 1986

§791. General provisions

1. Purpose. This subchapter is intended to be consistent with and facilitate implementation of the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499.

1 2. Definitions. As used in this subchapter, unless the
2 context otherwise indicates, the following terms have the
3 following meanings.

5 A. "CERCLA hazardous substance" means a substance on the
6 list defined in the United States Comprehensive
7 Environmental Response, Compensation and Liability Act of
8 1980, Public Law 96-510, Section 101(14), as amended.

9 B. "Extremely hazardous substance" shall have the meaning
10 set forth in the Superfund Amendments and Reauthorization
11 Act of 1986, Public Law 99-499, Title III, Section 302, and
12 listed in 40 Code of Federal Regulations, Part 355.

15 C. "Hazardous chemical" means all hazardous chemicals as
16 defined under 40 Code of Federal Regulations, Part 355.20.

17 D. "Hazardous material" means all chemicals and chemical
18 categories defined as extremely hazardous substances and
19 hazardous chemicals in 40 Code of Federal Regulations, Part
20 355.20 and toxic chemicals in 40 Code of Federal
21 Regulations, Part 372.3.

23 E. "Reportable quantity" means for any CERCLA hazardous
24 substance or extremely hazardous substance, the reportable
25 quantity established in 40 Code of Federal Regulations, Part
26 302, Table 302.4 or in 40 Code of Federal Regulations, Part
27 355, Appendixes A and B, for such substance.

29 F. "Threshold planning quantity" shall have the meaning set
30 forth in the Superfund Amendments and Reauthorization Act of
31 1986, Public Law 99-499, Title III, Section 302, and listed
32 in 40 Code of Federal Regulations, Parts 355, 370 and 372.

35 §792. State Emergency Response Commission

37 1. Composition and terms. The State Emergency Response
38 Commission, referred to in this subchapter as the "commission,"
39 as established by Title 5, section 12004-G, subsection 13-A, to
40 implement effective emergency response to releases of hazardous
41 chemicals. The commission is composed of 14 members as follows:

43 A. The Commissioner of Environmental Protection or the
44 commissioner's permanent designee;

47 B. The Commissioner of Human Services or the commissioner's
48 permanent designee;

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1 C. The Director of the Office of Emergency Medical
3 Services, Department of Human Services, or the director's
 permanent designee;

5 D. The Commissioner of Labor or the commissioner's
7 permanent designee;

9 E. The Commissioner of Transportation or the commissioner's
 permanent designee;

11 F. The Director of the Maine Emergency Management Agency,
13 who shall serve as chair;

15 G. The Chief of the State Police or the chief's permanent
 designee;

17 H. A representative, appointed by the Governor, of
19 municipal government;

21 I. A representative, appointed by the Governor, of the
 Maine Fire Chiefs' Association;

23 J. A representative, appointed by the Governor, of a
25 professional firefighters' union;

27 K. A representative, appointed by the Governor, of private
 commerce and industry;

29 L. A representative, appointed by the Speaker of the House
31 of Representatives, of volunteer firefighters;

33 M. A representative, appointed by the President of the
 Senate, of an environmental organization representative of
35 the general public; and

37 N. A representative, appointed by the Speaker of the House
 of Representatives, of organized labor.

39 The Governor and legislative leadership shall request a list of 3
41 names from organizations covered under paragraphs H to N from
 which to make final appointments. All appointed members shall
43 serve for a term of 4 years from the date appointed. Appointed
 members shall serve the following initial terms: one member for
45 1 year, 2 members for 2 years, 2 members for 3 years and 2
47 members for 4 years. Appointed members shall be allowed to serve
 for 2 consecutive terms.

49 2. Powers and duties. The general duties of the commission
 are to oversee the implementation of a comprehensive program of
 planning and training for effective emergency response to

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1 releases of hazardous materials. Specifically, the commission
2 shall:

3 A. Advise the director on rules promulgated under this
4 subchapter;

7 B. Designate emergency planning districts to facilitate
8 implementation of emergency response plans;

9 C. Provide for the necessary appointment of local emergency
10 planning committees;

13 D. Supervise and coordinate local emergency planning
14 committee activities;

15 E. Review emergency response plans developed by the
16 committees;

19 F. Receive chemical spill notifications required pursuant
20 to state law and the provisions of the United States
21 Emergency Planning and Community Right-to-Know Act of 1986,
22 Public Law 99-499;

23 G. Provide the public with information upon request,
24 consistent with the provisions of state and federal law, on
25 emergency response plans, potential chemical hazards and
26 safety;

29 H. Rule on trade secrets in cooperation with the United
30 States Environmental Protection Agency;

31 I. Monitor, observe, participate in and review certain
32 emergency drills and exercises;

35 J. Review and monitor hazardous materials training programs
36 in the State;

37 K. Conduct joint emergency operations from the State
38 Emergency Operations Center; and

41 L. Undertake any other actions necessary to accomplish the
42 purposes of this subchapter.

43 3. Voting. All votes require a quorum with at least 8
44 members present.

47 §793. Local emergency planning committees

49 There are established local emergency planning committees,
50 referred to in this subchapter as "committees" for each emergency
51 planning district designated by the commission pursuant to the

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1 Emergency Planning and Community Right-to-Know Act of 1986,
2 Public Law 99-499.

3
4 1. Local committees established. The commission shall, by
5 resolution, appoint the members of the local emergency planning
6 committee of each emergency planning district. The committee
7 shall consist of at least 14 members and, except as provided in
8 subsection 2, shall include representatives from each of the
9 following organizations or groups: elected state and local
10 officials; law enforcement, civil defense, firefighting, first
11 aid, health, local environmental, hospital and transportation
12 personnel; broadcast and print media; citizens living near local
13 facilities; employees working in local facilities; community
14 groups; and owners and operators of facilities subject to the
15 emergency planning requirement of this subchapter.

16
17 2. Modification of committees. Members of the public may,
18 by written petition, request the commission to modify the
19 representation of those groups or organizations on a local
20 emergency planning committee. If the commission reduces or
21 eliminates representation of a group or organization on a
22 committee, it shall declare the position of the member
23 representing that group or organization to be abolished and the
24 person whose position is so abolished shall cease to serve as a
25 member of the committee on the effective date of the
26 commission's declaration. Appointments of members to the
27 committee to fill positions established as a result of
28 modification to the composition of the committee shall be made in
29 the same manner as original appointments under this subchapter.

30 §794. Local emergency response plans

31
32 1. Plan development. The local emergency planning
33 committee of each emergency planning district shall prepare and
34 submit to the commission a local emergency response plan for the
35 district. The district's plan shall contain all of the following
36 in compliance with federal law:

37
38 A. An identification of each facility within the district
39 that:

40
41 (1) Has any extremely hazardous substance present at
42 the facility in an amount that exceeds the threshold
43 planning quantity for the substance; and

44
45 (2) Annually manufactures, processes or otherwise uses
46 an amount of a toxic chemical that exceeds the
47 threshold planning quantity for the substance;

48
49 B. An identification of facilities contributing or
50 subjected to additional risk due to their proximity to
51 facilities identified under paragraph A, subparagraph (1):

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2 C. A copy of the facility emergency response plan as
3 defined in section 795;

5 D. A composite statement of specialized equipment,
6 facilities, personnel and emergency response organizations
7 available within the district to respond to releases of
8 hazardous materials;

9
10 E. An evaluation of the need for resources to develop,
11 implement, and exercise the emergency plan, including
12 recommendations for additional resources and mechanisms for
13 providing those resources;

15 F. An identification of procedures for reliable, effective
16 and timely notification and communication among emergency
17 responders within the district and to the public in the
18 event of a release of an extremely hazardous substance or
19 CERCLA hazardous substance from a facility identified under
20 paragraph A, subparagraph (1);

21
22 G. Designations of community emergency coordinators;

23
24 H. The methods for determining the occurrence of a release
25 of an extremely hazardous substance from each facility
26 identified under paragraph A and for identification of the
27 geographic area or population likely to be affected by such
28 a release;

29
30 I. Evacuation plans including, but not limited to,
31 provisions for precautionary evacuation and alternative
32 traffic routes in the event of a release of an extremely
33 hazardous substance from a facility identified in paragraph
34 A;

35
36 J. An identification of routes likely to be used for the
37 transportation of extremely hazardous substances identified
38 under paragraph A;

39
40 K. The development of training programs, seminars and other
41 forms of educational programs for personnel of facilities
42 identified under paragraph A, emergency response personnel
43 of political subdivisions within the district and medical
44 personnel; and

45
46 L. The development of methods and schedules for exercising
47 the plan.

48
49 2. Plan adoption. After completion of a local emergency
50 response plan for the district, the committee shall submit the
51 plan to the commission for review and recommendations.

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1 A. Prior to the adoption of the local emergency response
3 plan for the district by the commission, the plan shall be
5 subject to a 30-day public comment period. Copies of the
7 plan shall be placed in the town hall of each community
9 included in the plan within the emergency planning district
11 and any other location designated by the committee. Members
13 of the general public shall have free access to the plan for
15 review.

17 B. At least annually, each committee shall conduct an
19 exercise of its local emergency response plan. The
21 committee shall notify the commission at least 30 days
23 before each exercise.

25 3. Plan review. Each committee shall annually, or more
27 frequently as changed circumstances in the emergency planning
29 district or at any facility in the district may require, review
31 the local emergency response plan of the district. The review
33 shall include, without limitation:

35 A. An evaluation of the need for funds, personnel, equipment
37 and facilities to develop, revise, implement and exercise
39 the plan; and

41 B. Recommendations and requests to the commission regarding
43 the additional funds that may be required for those purposes
45 and the means for providing them.

29 §795. Facility emergency response plans

31 The operators of any facility that stores any extremely
33 hazardous substance in a quantity above the threshold planning
35 quantity are subject to the following.

37 1. Written plans. A written plan in accordance with agency
39 guidelines to protect public health and safety in the event of an
41 accidental release must be prepared and submitted by the facility
43 operators to the commission, committee and fire department with
45 jurisdiction over the facility no later than 6 months from the
47 effective date of this subchapter. The plan must satisfy the
49 requirements of the agency and shall, at a minimum:

51 A. Identify the facility emergency coordinator and that
53 person's alternate;

55 B. Describe the emergency warning systems and list nearby
57 emergency and health personnel;

59 C. Describe employee training and testing programs;

61 D. Describe available response equipment and protective
63 garments;

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E. Describe emergency health treatment procedures including notification, facility evacuation and community evacuation and shelter-in-place procedures;

F. Identify transportation routes and transportation methods for extremely hazardous substances;

G. List the names of all companies providing sudden and nonsudden accidental coverage to the facility; and

H. List any mutual aid agreements between the facility and emergency responders or public safety agencies.

Emergency response plans required pursuant to other state or federal laws may be used to fulfill these requirements if the plans contain the provisions required by this section.

2. Annual test. An annual test demonstration and annual review must be held by the facility owners or operators to ensure public health and safety.

3. Emergency response equipment. By October 1, 1989, the operators of facilities covered under this subchapter shall, through mutual aid agreements with a committee or local emergency response officials, provide for use by emergency personnel, primary response equipment which shall at a minimum include protective clothing and breathing apparatus necessary to contain or extinguish releases of substances handled by their facility. Facilities may coordinate the provision of equipment with other facilities in the locality as well as the appropriate municipal public safety agencies.

Any person or facility that provides personnel or equipment through a mutual aid agreement with a committee or local emergency response officials is immune from civil liability to the same extent provided government employees and political subdivisions in Title 14, chapter 741 for acts performed within the scope of the mutual aid agreement.

§796. Material safety data sheets

1. Data sheets. Any person who owns or operates a facility and is required to prepare or have available a material safety data sheet for a hazardous chemical under the United States Occupational Safety and Health Act of 1970, Public Law 91-596, as amended, and regulations promulgated under it shall submit to the local emergency planning committee of the emergency planning district in which the facility is located, the commission and the fire department having jurisdiction over the facility, either data sheets or lists for which data sheets are available of the hazardous chemicals and extremely hazardous substances that are

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1 stored at the facility in an amount that exceeds the threshold
2 planning quantity for those chemicals or substances. The
3 hazardous chemicals and extremely hazardous substances shall be
4 grouped together on any such data sheets by the categories of
5 health and physical hazards. The data sheets shall include,
6 without limitation, all criteria set forth in 29 Code of Federal
7 Regulations, Section 1910.1200.

9 2. Content of lists. The list of chemicals referred to in
10 subsection 1 must include each of the following:

11 A. A list of hazardous chemicals for which material safety
12 data sheets are required under subsection 1 grouped in
13 categories of health and physical hazards;

14 B. The chemical name or the common name of each such
15 chemical as provided on the material safety data sheet; and

16 C. Any hazardous component of each such chemical as
17 provided on the material safety data sheet.

18 3. Revised data sheets. Within 3 months after the
19 discovery of new information about a hazardous chemical or
20 extremely hazardous substance identified in the data sheet
21 required by subsection 1, paragraph A or within 3 months after
22 obtaining a hazardous chemical or extremely hazardous substance
23 for which reporting is required by subsection 1, paragraph A, the
24 owner or operator of a facility shall prepare and submit a
25 revised data sheet or a revised list of chemicals for which data
26 sheets are available that meets the requirements of subsection 1,
27 paragraph A and contains the new information to the local
28 emergency planning committee, the commission, and the fire
29 department having jurisdiction over the facility.

30 §797. Maine chemical inventory reporting form

31 Any person required to submit a facility emergency response
32 plan, material safety data sheet or list of hazardous chemicals
33 and extremely hazardous substances must submit a Maine chemical
34 inventory reporting form to the commission, the local emergency
35 planning committee and the local fire department with
36 jurisdiction over the facility, by March 1st annually. This form
37 shall require information on the inventory of extremely hazardous
38 substances and hazardous chemicals for the previous calendar
39 year. These forms shall state, at a minimum:

40 1. Chemical name. The chemical name of each substance
41 listed:

42 2. Maximum weight. The maximum number of pounds of each
43 substance present at any time during the preceding year:

1
3 3. Average amount. The average daily amount of each
substance present during the preceding year;

5 4. Chemical storage. A brief description of the manner of
the chemical's storage;

7
9 5. Chemical location. The chemical's location at the
facility;

11 6. Information withholding. An indication if the person is
13 electing to withhold information from disclosure under section
800; and

15 7. Transportation. A description of the manner in which
the substance is shipped to the facility.

17
19 §798. Emergency notification

21 1. Immediate notification. In the event of an unlicensed
23 release from any facility where a CERCLA hazardous substance or
25 an extremely hazardous substance is produced, used or stored,
27 that requires reporting under the United States Comprehensive
29 Environmental Response, Compensation and Liability Act of 1980,
31 Section 103 (a) or the Superfund Amendments and Reauthorization
33 Act of 1986, Title III, Section 304(a), the owner or operator of
the facility at which the release occurs must immediately contact
the local fire department with jurisdiction over the site, the
State Police as the designated agent for the commission and the
community emergency coordinator. This oral notification must
contain, to the extent known at the time of notice and so long as
no delay in responding to the emergency results, information
included in the Maine Emergency Management Agency's AR-1 form
including:

35
37 A. The specific location of the release;

39 B. Identification of the chemical released and the
estimated quantity released;

41 C. The time and duration of the release;

43 D. The environmental media into which the chemical was
released;

45
47 E. Any known or anticipated acute or chronic health risks;

49 F. Any precautions that should be taken, including
evacuation or medical surveillance; and

51 G. The names and telephone numbers of parties to be
contacted for further information.

1
2. Transportation releases. For releases of substances
3 covered under this subchapter during transportation, the
responsible party must contact the State Police.

5
3. Follow-up report. Within 14 days of the release, the
7 owner or operator must file with the commission and committee a
follow-up emergency notice, which details all of the information
9 in subsection 1, along with:

11 A. Actions taken to respond to and contain the release;

13 B. The cause of the release and the events leading to it;

15 C. The known or anticipated health risks of the release and
any medical attention needs of exposed persons; and

17 D. The measures taken or to be taken to avoid recurrence.

19 §799. Toxic chemical release forms

21
22 Under this section, every facility with 10 or more employees
23 and within Standard Industrial Classification Codes 20-39 must
24 file toxic chemical release forms for routine releases with the
25 United States Environmental Protection Agency, the commission and
26 the local emergency planning committee by October 1, 1989, and
27 annually thereafter consistent with the Superfund Amendments and
28 Reauthorization Act of 1986, Public Law 99-499, Title III,
29 Section 313, and 40 Code of Federal Regulations, Part 372. Those
30 forms shall be made available to the public by the commission and
31 the local emergency planning committee.

33 §800. Trade secrets

35 1. Withholding information. Information that constitutes a
36 trade secret may be withheld from the local emergency planning
37 committee or fire department, and specific chemical names and
38 identifications may be withheld in accordance with this
39 subchapter if:

41 A. The information has not been disclosed to any other
42 person except the commission, the local emergency planning
43 committee, a public official or a person bound by
44 confidentiality agreement, and reasonable measures have been
45 taken to protect confidentiality;

47 B. The information is not required to be disclosed by law;

49 C. Disclosure is likely to cause harm to the business's
50 competitive position; and

1 D. The chemical identity in question is not readily
2 discoverable through reverse engineering.

3 2. Substitute information. If trade secrecy is claimed,
4 the owner or operator of the facility shall substitute on the
5 relevant forms:

6 A. The generic class of the material;

7 B. Sufficient information so that emergency responders will
8 not be hampered; and

9 C. Identification of potential adverse health effects posed
10 by the hazardous chemical or extremely hazardous substance.

11 3. Exception. Trade secrecy cannot be claimed if:

12 A. The commission and the United States Environmental
13 Protection Agency so rule;

14 B. Notification is required by a release; or

15 C. In the event of a life threatening situation, the
16 information is requested by the State Toxicologist or a
17 health professional treating a victim of exposure to the
18 chemical.

19 §801. Fees

20 1. Fees required. The operators of any facility that is
21 required to report to the State Emergency Response Commission
22 under the Superfund Amendments and Reauthorization Act of 1986,
23 Public Law 99-499, Title III, Sections 311, 312 and 313, are
24 subject to the fees adopted pursuant to subsection 2. All fees
25 collected pursuant to this section shall be deposited in the
26 Emergency Response Commission Fund.

27 2. Fees established. The director, with the advice of the
28 commission and subject to the Maine Administrative Procedures
29 Act, Title 5, chapter 375, shall promulgate rules to establish a
30 fee schedule for:

31 A. Registering facilities, not to exceed \$50 per facility;
32 and

33 B. Reporting hazardous materials, on a weight basis per
34 chemical.

35 3. Fee caps. Facility owners and operators shall be
36 subject to maximum fees of \$5,000 per facility for reporting
37 hazardous materials under this section.

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1 4. Fee exemptions. The following operators are exempt from
2 the following requirements under this section.

3 A. Retail marketers of petroleum products with a storage
4 capacity of 75,000 pounds or less per product shall be
5 exempt from the reporting fee.

6 B. Owners and operators of commercial agricultural
7 operations shall be exempt from the fee requirements under
8 this section for registering agricultural facilities and for
9 hazardous materials used in the commercial production of
10 farm products as defined in Title 17, section 2805,
11 subsection 1, paragraph C. Farm product processing
12 facilities are not exempt from the fee requirements. For
13 the purposes of this section, "processing" shall not include
14 the packaging of raw commodities or farm products for resale.

15 §802. Emergency Response Commission Fund

16 The Emergency Response Commission Fund is established to be
17 used by the agency as a nonlapsing fund for carrying out the
18 purposes of this subchapter. All fees collected under this
19 subchapter shall be credited to this fund. All fines or
20 penalties assessed pursuant to section 806 shall be credited to
21 this fund.

22 1. Disbursements allowed. The agency, with the advice of
23 the commission, shall make disbursements from the fund for the
24 following purposes:

25 A. To employ personnel within the agency to manage and
26 coordinate data collected pursuant to this subchapter;

27 B. To fund county training programs for local emergency
28 planning committees;

29 C. To provide training grants; and

30 D. To provide for the resource needs of the local emergency
31 planning committees.

32 §803. Agency responsibilities

33 The Maine Emergency Management Agency has the following
34 responsibilities under this subchapter.

35 1. Review facility emergency plans. The agency shall
36 review facility area emergency plans submitted to the commission
37 and make recommendations to the commission on their acceptance.
38 The agency shall also develop model emergency plans.

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1 2. Manage and coordinate data. The agency shall manage and
coordinate data submitted pursuant to the Superfund Amendments
3 and Reauthorization Act of 1986, Public Law 99-499.

5 3. Liaison. The agency shall provide liaison to the State
Emergency Response Commission, local emergency planning
7 committees and industrial facilities throughout the State that
manufacture, use, store or process hazardous materials.

9 4. Monitor compliance. The agency shall monitor the
11 compliance of facilities, owners and operators with this
subchapter.

13 §804. Local authority

15 Nothing in this subchapter or rules adopted under it
17 preempts or otherwise affects any ordinance, regulation or rule
of a political subdivision, limits the authority of a political
19 subdivision to adopt or enforce any ordinance, regulation, or
rule that it is authorized to adopt or enforce pursuant to the
21 Constitution of Maine and laws of this State, or limits the
authority of any department or agency of this State to adopt any
23 rule or enforce any law or rule of this State that it is
authorized to adopt or enforce under the laws of this State.
25 This subchapter does not abridge rights of action or remedies in
equity, under common law, or as provided by law.

27 §805. Community right to know

29 1. Availability to public. Each emergency response plan,
31 material safety data sheet, list described in section 796,
subsection 2, Maine chemical inventory reporting form, toxic
33 chemical release form and follow-up emergency notice shall be
made available to the general public, consistent with section
35 800, during normal working hours at the location or locations
designated by the Administrator of the United States
37 Environmental Protection Agency, the Governor, the commission or
the local emergency planning committee, as appropriate. Upon
39 request by an owner or operator of a facility subject to the
requirements of section 797, the commission and the appropriate
41 local emergency planning committee shall withhold from disclosure
under this section the location of any specific chemical required
43 by section 797 to be contained in a Maine chemical inventory
reporting form.

45 2. Notice of public availability. Each committee shall
47 annually publish a notice in local newspapers that the emergency
response plan, material safety data sheets and Maine chemical
49 inventory reporting forms have been submitted under this
section. The notice shall state that follow-up emergency notices
51 may subsequently be issued and announce that members of the
public who wish to review any such plan, sheet, form or follow-up
53 notice may do so at the location designated under subsection 1.

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§806. Enforcement; penalties

1. Commission orders. The commission may issue orders requiring the owner or operator of a facility or other responsible person at a facility to abate a violation of any section of this subchapter or rule adopted under it.

2. Civil penalties. Except as provided in subsection 3 for a violation of section 798, a person who violates any provision of section 795 or 798 shall be subject to a civil penalty not to exceed \$25,000, payable to the Emergency Response Commission Fund, to be recovered in a civil action. A person who violates section 796 or 797 shall be subject to a civil penalty not to exceed \$1,000, payable to the Emergency Response Commission Fund, to be recovered in a civil action. Minimum penalties under this subsection shall be \$100 per day. Each day of violation constitutes a separate violation.

3. Criminal penalties. A person who intentionally, knowingly or recklessly fails to comply with the reporting requirements of section 798, subsection 1, commits a Class C crime and, notwithstanding Title 17-A, section 1301, is subject to a fine of not more than \$25,000 for the first offense and not more than \$50,000 for a subsequent offense. For purposes of determining a subsequent offense, the date of a conviction shall be deemed to be the date the sentence is imposed even though an appeal was taken.

4. Authority to bring civil actions. Civil actions may be brought as follows.

A. Any person may commence a civil action on that person's own behalf against the owner or operator of a facility for failure to do any of the following:

- (1) Submit a follow-up emergency notice under section 798, subsection 3;
- (2) Submit a material safety data sheet or a list under section 796;
- (3) Complete and submit an Maine chemical inventory reporting form under section 797; or
- (4) Complete and submit a toxic chemical release form under section 799.

B. No action may be brought against the owner or operator of a facility if the Federal Government or the State has commenced and is diligently pursuing an administrative

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1 order, civil action or criminal action to enforce the
2 requirement concerned or to impose a civil penalty for an
3 alleged violation of the requirement, either under this
4 subsection or under comparable federal law or rule.

5
6 C. No action may be commenced under this subsection unless
7 the plaintiff has given at least 60 days prior notice to the
8 commission, the Attorney General and the owner or operator
9 of the facility alleged to be in violation that the
10 plaintiff will commence the action.

11
12 D. Action brought against an owner or operator under this
13 section shall be brought in Superior Court for the county in
14 which the alleged violation occurred.

15
16 E. Nothing in this subsection may restrict or expand any
17 right which any person or class of persons may have under
18 any federal or state law or common law to seek enforcement
19 of any requirement or to seek any other relief.

20
21 F. In any action under this subsection, the Federal
22 Government or the State, or both, may intervene as a matter
23 of right.

24
25 G. In any action under this subsection, any person may
26 intervene as a matter of right when that person has a direct
27 interest which is or may be adversely affected by the action
28 and the disposition of the action may, as a practical
29 matter, impair or impede the person's ability to protect
30 that interest unless the court determines that the person's
31 interest is adequately represented by existing parties in
32 the action.

33
34 **Sec. 4. Application; appointments.** Members serving on the State
35 Emergency Response Commission on the effective date of this Act
36 shall continue to serve on the commission until the expiration of
37 their terms. Additional appointments to the commission required
38 pursuant to the Maine Revised Statutes, Title 37-B, section 792,
39 subsection 1 shall be made by the Governor and legislative
40 leadership within 30 days of the effective date of this Act.

41
42 **Sec. 5. Allocation.** The following funds are allocated from the
43 Emergency Response Commission Fund to carry out the purposes of
44 this Act.

	1989-90	1990-91
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**DEFENSE AND VETERANS' SERVICES,
DEPARTMENT OF
Maine Emergency Management Agency**

R O'S

COMMITTEE AMENDMENT "A" to S.P. 540, L.D. 1475

1			
	Positions	(1)	(1)
3	Personal Services	\$24,815	\$26,853
	All Other	20,000	18,000
5	Capital Expenditures	7,810	3,000
7	TOTAL	<u>\$52,625</u>	<u>\$47,853</u>

9 Provides funds to manage and
 11 coordinate data base
 information and to provide
 liaisons to the State
 13 Emergency Response
 Commission, local emergency
 15 planning committees and the
 industrial facilities
 17 throughout the State that
 manufacture, use, store or
 19 process extremely hazardous
 substances.

Maine Emergency Management Agency

23	All Other	\$70,175	\$68,147
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25 Provides funds for training
 27 grants, local emergency
 planning committees, and
 29 county-level emergency
 training.

**DEPARTMENT OF DEFENSE AND
VETERANS' SERVICES**

35	TOTAL	<u>\$122,800</u>	<u>\$116,000</u>
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37 **Emergency clause.** In view of the emergency cited in the
 39 preamble, this Act shall take effect when approved.

FISCAL NOTE

This bill will have the following effect on revenues:

		1989-90	1990-91
45	Emergency Response		
47	Commission Fund	\$125,000	\$125,000

49 The fee schedule to be established by the Director of the
 Maine Emergency Management Agency is expected to result in
 51 dedicated revenue of approximately \$125,000, annually to be
 credited to Emergency Response Commission Fund.'

K. O'S

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STATEMENT OF FACT

This amendment builds on the United States Emergency Planning and Community Right-to-Know Act of 1986 in several important ways. Sections 2 and 3 reallocate the current State Emergency Response Commission from the Maine Revised Statutes, Title 22 to Title 37-B. The membership on the State Emergency Response Commission is expanded to include emergency responders, organized labor, environmental groups and private industry. The commission is also given the authority to advise the Director of the Maine Emergency Management Agency on fees and to rule on trade secrets in cooperation with the United States Environmental Protection Agency.

This amendment also establishes local emergency planning committees and details their charge. A formal method of modifying the committee is included. Federal requirements for local emergency response plans are adopted and a formal mechanism for public notice and comment on the plans is established.

In addition to requirements under federal law, this amendment proposes to require facilities to develop emergency response plans. An annual test of the plan must be conducted. Through mutual aid agreements, equipment and personnel may be borrowed from various facilities to help respond to spills.

An emergency notification requirement is proposed that builds on requirements under federal law. A follow-up report is required within 14 days of the occurrence.

Trade secrets are exempted from some of the reporting requirements under this subchapter and a mechanism to determine what constitutes a trade secret is established.

To finance activities of the local emergency response committees, provide training grants and programs and to fund a position within the Maine Emergency Management Agency, a fee system is instituted based on the amount of hazardous materials a facility stores. A \$5,000 cap on fees is instituted with small retailers of gasoline and other petroleum products and agricultural operations exempted.

Civil and criminal penalties are enacted and a citizen suit provision similar to that found in federal law is included. Finally, an appropriation section is included to allocate fees collected under this subchapter.

The amendment also adds a fiscal note.