

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

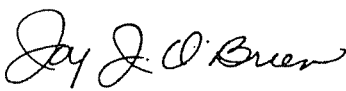
Legislative Document

No. 1475

S.P. 540

In Senate, May 4, 1989

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.


JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TITCOMB of Cumberland.
Cosponsored by Senator ERWIN of Oxford.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Implement, Administer and Enforce the United States Emergency
Planning and Community Right-to-Know Act of 1986.

(EMERGENCY)



1 **Emergency preamble.** Whereas, Acts of the Legislature do not
2 become effective until 90 days after adjournment unless enacted
3 as emergencies; and

5 **Whereas,** hazardous and toxic substances are used in the
6 State which may pose acute and chronic health hazards to
7 individuals who live and work in the State and who are exposed to
8 these substances as a result of fires, spills, industrial
9 accidents or other types of releases or emissions; and

11 **Whereas,** protection of the general public from these
12 potential health hazards must be accomplished through the
13 cooperative efforts of employers, workers, emergency responders
14 and the general public; and

15 **Whereas,** the Legislature recognizes that protection of the
16 individuals who live and work in the State can and should be
17 accomplished without placing unnecessary burdens on employers; and

18 **Whereas,** the United States Congress failed to appropriate
19 sufficient funds for implementing, administering and enforcing
20 the Emergency Planning and Community Right-to-Know Act of 1986 at
21 the state level; and

22 **Whereas,** in the judgment of the Legislature, these facts
23 create an emergency within the meaning of the Constitution of
24 Maine and require the following legislation as immediately
25 necessary for the preservation of the public peace, health and
26 safety; now, therefore,

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

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

29	<u>13-A. Environ-</u>	<u>State Emergency</u>	<u>Not</u>	<u>22 MRSA</u>
30	<u>ment/Natural Resources</u>	<u>Response</u>	<u>Authorized</u>	<u>§1696-H</u>
31		<u>Commission</u>		

32 **Sec. 2.** 22 MRSA §1696-H, sub-§1, as enacted by PL 1987, c.
33 763, §2, is amended to read:

34 **1. Commission established.** The State Emergency Response
35 Commission, referred to in this subchapter as "the commission,"
36 as established by Title 5, section 12004 12004-G, subsection
37 13-A, shall be responsible for overseeing the implementation of a
38 comprehensive program of planning and training for effective
39 emergency response to releases of hazardous chemicals. The
40 commission is composed of 9 15 to ~~11~~ 20 members as follows:

41 **A.** The Commissioner of Environmental Protection or the
42 commissioner's designee;

- 1 B. The Commissioner of Human Services or the commissioner's
3 designee;
- 5 C. The Director of the Division of Disease Control,
7 Department of Human Services;
- 9 D. The Commissioner of Transportation or the commissioner's
11 designee;
- 13 E. The Director of the Maine Emergency Management Agency,
15 who shall serve as chairman;
- 17 F. The Chief of the State Police;
- 19 G. A representative, appointed by the Governor, of the
21 Maine Fire Chiefs Association;
- 23 H. A representative, appointed by the Governor, of
25 municipal government; and
- 27 I. ~~A representative~~ Two representatives, appointed by the
29 Governor, of private commerce and industry, subject to the
31 provisions of the United States Emergency Planning and
33 Community Right-to-Know Act of 1986, Public Law 99-499;
- 35 J. A representative, appointed by the Governor, of
37 volunteer firefighters;
- 39 K. Two representatives, appointed by the Governor,
41 representing 2 environmental advocacy organizations;
- 43 L. A representative, appointed by the Governor, of
45 organized labor; and
- 47 M. A representative, appointed by the Governor, of the
49 general public.

39 The Governor may appoint up to 2 5 additional members to
41 represent the general public or persons from public safety
43 organizations with technical expertise in the field of emergency
45 response. The number of representatives from industry and the
47 number of representatives from environmental advocacy
organizations must be equal. All appointments made by the
Governor are subject to approval by the Senate. All members
appointed by the Governor to serve on the commission shall serve
for a term of 4 years.

49 **Sec. 3. 22 MRSA §§1696-I to 1696-U are enacted to read:**

51 **§1696-I. Local emergency response committees**

1 1. Local committees established. The commission shall, by
2 resolution, appoint the members of the local emergency planning
3 committee of each emergency planning district. The committee
4 shall consist of such number of members as the commission
5 considers appropriate. Each local emergency planning committee
6 shall include, without limitation, representatives from each of
7 the following organizations or groups: elected state and local
8 officials, law enforcement, civil defense, firefighting, first
9 aid, health, local environmental, hospital and transportation
10 personnel, broadcast and print media, citizens living near local
11 facilities, employees working in local facilities, community
12 groups, and owners and operators of facilities subject to the
13 emergency planning requirement of this subchapter.

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

28 **§1696-J. Local emergency response plans**

29 1. Plan development. The local emergency planning
30 committee of each emergency planning district shall prepare and
31 submit to the commission not later than October 17th annually a
32 chemical emergency response and preparedness plan for the
33 district. The district's plan shall contain all of the following
34 in compliance with federal law:

35 A. An identification of each facility within the district
36 that:

37 (1) Has any extremely hazardous substance present at
38 the facility in an amount that exceeds the threshold
39 planning quantity for the substance established by the
40 United States Environmental Protection Agency's List
41 of Extremely Hazardous Substances and their Threshold
42 Planning Quantities, 40 Code of Federal Regulations,
43 Parts 300 and 355; and

44 (2) Annually manufactures, processes or otherwise uses
45 an amount of a toxic chemical that exceeds the
46

- 1 threshold planning quantity for the substance
2 established in rules identified under this paragraph;
- 3
- 4 B. An identification of facilities contributing or
5 subjected to additional risk due to their proximity to
6 facilities identified under paragraph A, subparagraph (1);
- 7
- 8 C. A copy of the facility emergency response plan as
9 defined in section 1696-K;
- 10
- 11 D. A composite statement of specialized equipment,
12 facilities, personnel and emergency response organizations
13 available within the district to respond to releases of
14 extremely hazardous substances and toxic chemicals;
- 15
- 16 E. A plan for mutual aid to other emergency planning
17 districts and for the allocation of emergency response
18 facilities, equipment and personnel for responding to
19 releases of extremely hazardous substances and toxic
20 chemicals;
- 21
- 22 F. An identification of procedures for reliable, effective
23 and timely notification and communication among emergency
24 responders within the district and to the public in the
25 event of a release of an extremely hazardous substance or
26 toxic chemical from a facility identified under paragraph A,
27 subparagraph (1);
- 28
- 29 G. The development of methods for determining the
30 occurrence of a release of an extremely hazardous substance
31 or toxic chemical from each facility identified under
32 paragraph A and for identification of the geographic area or
33 population likely to be affected by such a release;
- 34
- 35 H. The development of evacuation plans including, but not
36 limited to, provisions for precautionary evacuation and
37 alternative traffic routes in the event of a release of an
38 extremely hazardous substance or toxic chemical from a
39 facility identified in paragraph A;
- 40
- 41 I. An identification of routes likely to be used for the
42 transportation of extremely hazardous substances and toxic
43 chemicals identified under paragraph A;
- 44
- 45 J. The development of training programs, seminars and other
46 forms of educational programs for personnel of facilities
47 identified under paragraph A, emergency response personnel
48 of political subdivisions within the district and medical
49 personnel; and
- 50
- 51 K. The development of methods and schedules for exercising
 the plan.

1
2. Plan adoption. After completion of a chemical emergency
3 response and preparedness plan for the district, the emergency
4 planning committee shall submit the plan to the commission for
5 review.

7 A. Prior to the adoption of the chemical emergency response
8 and preparedness plan for the district by the commission,
9 the plan will be subject to a 30-day public comment period.
11 Copies of the plan shall be placed in the town hall of the
12 community within the emergency planning district or any
13 other location designated by the commission. Members of the
14 general public shall have free access to the plan for review.

15 B. At least annually, each committee shall conduct an
16 exercise of its chemical emergency response and preparedness
17 plan. The committee shall notify the commission at least 30
18 days before each such exercise.

19 C. Each committee shall annually, or more frequently as
20 changed circumstances in the emergency planning district or
21 at any facility in the district may require, review the
22 chemical emergency response and preparedness plan of the
23 district. The review shall include, without limitation, an
24 evaluation of the need for funds, personnel, equipment, and
25 facilities to develop, revise, implement, and exercise the
26 plan and recommendations and requests to the commission
27 regarding the additional funds that may be required for
28 those purposes and the means for providing them.

31 §1696-K. Facility emergency response plans

33 Within 30 days of the establishment of the local emergency
34 planning committees, each facility covered under section 1696-J,
35 subsection 1, paragraph A, must designate a facility emergency
36 coordinator to develop the facility emergency response plan.
37 This plan must:

39 1. Emergency coordinator. Identify the facility emergency
40 coordinator and that person's alternate;

41 2. Warning systems; emergency personnel. Describe the
42 emergency warning systems and list nearby emergency and health
43 personnel;

44 3. Employee training. Describe employee training and
45 testing programs;

46 4. Response equipment. Describe available response
47 equipment and protective garments;

1 5. Treatment procedures. Describe emergency health
2 treatment procedures including notification, facility evacuation
3 and community evacuation;

5 6. Transportation routes. Identify transportation routes
6 and methods for hazardous substances;

7
8 7. Annual test. Schedule an annual test demonstration and
9 annual review; and

11 8. Insurer data. List the names of all companies providing
12 sudden and nonsudden accidental coverage to the facility.

13 §1696-L. Material safety data sheets

15
16 1. Data sheets. Any person who owns or operates a facility
17 and is required to prepare or have available a material safety
18 data sheet for a hazardous chemical under the United States
19 Occupational Safety and Health Act of 1970, Public Law 91-596, as
20 amended, and regulations promulgated under it shall, within 30
21 days after the effective date of this section, submit to the
22 local emergency planning committee of the emergency planning
23 district in which the facility is located, the commission, and
24 the fire department having jurisdiction over the facility, either
25 data sheets or lists for which data sheets are available of the
26 hazardous chemicals and extremely hazardous substances that are
27 stored, handled or processed at the facility in an amount that
28 exceeds the threshold quantity applicable to the hazardous
29 chemical or extremely hazardous substances. The hazardous
30 chemicals and extremely hazardous substances shall be grouped
31 together on any such data sheets by the categories of health and
32 physical hazards. The data sheets shall include, without
33 limitation, all of the following:

35 A. A listing of any hazardous chemical or extremely
36 hazardous substance in the manner prescribed under section
37 1696-J, subsection 1, paragraph A, subparagraph (1)
38 including, without limitation, chemical abstract service
39 numbers and alphabetical groupings of any such chemical or
40 substance;

41 B. The chemical name or common name of each such chemical
42 or substance and any hazardous component;

43 C. Any hazardous component of each hazardous chemical on
44 the list that comprises more than one percent by weight of
45 the hazardous chemical; and

46 D. For each hazardous chemical or extremely hazardous
47 substance, an indication as to whether the owner or operator
48 chooses to withhold information about it from disclosure as
49 a trade secret.

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

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

9 B. The chemical name or the common name of each such
11 chemical as provided on the material data safety; and

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

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

29 §1696-M. Emergency and hazardous chemical inventory forms

31 Any person required to submit an emergency response plan or
33 list of hazardous chemicals and extremely hazardous substances
35 must submit an inventory form to the commission, the local
emergency planning committee and the local fire department within
3 months of the effective date of this section and annually
thereafter. These forms must state:

37 1. Chemical name. The chemical name of each substance
39 listed;

41 2. Estimated weight. An estimate of the maximum number of
43 pounds of each substance present at any time during the preceding
year;

45 3. Estimated amount. An estimate of the average amount of
47 each substance present during the preceding year;

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

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

1 6. Information withholding. An indication if the person is
3 electing to withhold information from disclosure under section
 1696-P.

5 §1696-N Emergency notification

7 1. Immediate notification. In the event of a release of an
9 extremely hazardous substance, the owner or operator of the
 facility at which the release occurs must contact the community
11 emergency coordinator, to be named by the committee, and the
 commission within 30 minutes. This oral notification must
 include:

13 A. The specific location of the release;

15 B. Identification of the chemical released and the
17 estimated quantity released;

19 C. The time and duration of the release;

21 D. The environmental media into which the chemical was
23 release;

25 E. Any known or anticipated acute or chronic health risks;

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

29 G. The names and phone numbers of parties to be contacted
31 for further information.

33 2. Follow-up report. Within 30 days of the release, the
 owner or operator must file a follow-up emergency notice, which
 details all of the information in subsection 1, along with:

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

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

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

43 D. The measures taken or to be taken to avoid further
45 recurrence.

47 §1696-O. Toxic chemical release forms

49 Under this section, every facility with 10 or more employees
 and within Standard Industrial Classification Codes 20-39 must
51 file toxic chemical release forms with the commission by July 1,
 1989 and annually thereafter. Those forms, which shall be made

1 available to the public by the commission, must include the
2 following information on each of the covered chemicals:

3 1. Facility information. The name, location and principal
4 business activity of the facility;

5 2. Use of chemical. Whether the chemical is used,
6 manufactured or processed and the general category of use;

7 3. Amount. Estimate of maximum amounts of the chemical
8 present at any time during the year;

9 4. Treatment or disposal method. The waste treatment or
10 disposal methods employed and an estimate of treatment efficiency
11 for each waste stream;

12 5. Annual quantity. The annual quantity of the chemical
13 entering each environmental medium; and

14 6. Certification of accuracy. A certification that the
15 information reported is accurate.

16 §1696-P. Trade secrets

17 1. Withholding information. Information that constitutes a
18 trade secret may be withheld from the local emergency planning
19 committee or fire department, and specific chemical names and
20 identifications may be withheld in accordance with this
21 subchapter if:

22 A. The information has not been disclosed to any other
23 person except the commission, the local emergency planning
24 committee, a public official or a person bound by
25 confidentiality agreement, and reasonable measures have been
26 taken to protect confidentiality;

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

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

30 D. The chemical identity in question is not readily
31 discoverable through reverse engineering.

32 2. Substitute information. If trade secrecy is claimed,
33 the owner or operator of the facility shall substitute on the
34 relevant forms:

35 A. The generic class of the material;

36 B. Sufficient information so that emergency responders will
37 not be hampered; and

1
3 C. Identification of potential adverse health effects posed
by the hazardous chemical or extremely hazardous substance.

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

7 A. The commission or the United States Environmental
Protection Agency so rules;

9 B. Notification is required by a release; or

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

17 §1696-Q. Fees

19 The commission shall establish a state fee schedule within
21 30 days of the effective date of this section to defray the costs
of implementing this subchapter.

23 1. Fixed fees. The following fees shall be assessed:

25 A. The annual filing fee under section 1696-J is \$25;

27 B. The annual filing fee under section 1696-O is \$325;

29 C. The fee for filing a material safety data sheet under
section 1696-L is \$10 per sheet;

31 D. The fee for filing an inventory form under section
33 1696-M is \$10 per form; and

35 E. The fee for filing lists of hazardous chemicals under
section 1696-L is \$40 per list.

37 Total fees assessed under this subsection against a single
39 facility may not exceed \$1,000 in one year.

41 2. Variable fees. The commission shall establish annual
43 fees for the transport of hazardous chemicals. These
45 transportation fees shall be assessed against any facility
47 identified under section 1696-J to which the hazardous chemicals
are delivered. In establishing these fees the commission shall,
at a minimum, consider:

49 A. The annual tonnage or value of the chemicals; and

51 B. The level of toxicity of the chemicals.

§1696-R. Emergency Response Commission Fund

1 The Emergency Response Commission Fund is established to be
3 used by the commission as a nonlapsing revolving fund for
5 carrying out the purposes of this subchapter. All fees collected
7 under this subchapter shall be credited to this fund. All fines
or penalties assessed pursuant to section 1696-U shall be
credited to this fund.

9 **§1696-S. Disbursements from fund**

11 1. Disbursements allowed. The commission shall expend
13 money credited to the Emergency Response Commission Fund only to
15 implement, administer and enforce this subchapter and rules
17 adopted under it and to make grants to local emergency planning
committees and fire departments for the purposes of this
subchapter.

19 2. Guidelines. The commission shall establish guidelines
21 within 90 days of the effective date of this section, for
expending money credited to the Emergency Response Commission
Fund. Those guidelines shall conform to the following conditions:

23 A. Sixty percent of the money credited to the fund shall be
25 distributed to the local emergency planning committees to
support their planning processes;

27 B. Twenty-five percent of the money credited to the fund
29 shall be distributed to local fire departments or other
first responders for equipment and training purposes; and

31 C. Fifteen percent of the money credited to the fund shall
33 be distributed to the commission to support their
administrative and planning costs.

35 **§1696-T. Local authority**

37 Nothing in this subchapter and rules adopted under it
39 preempts or otherwise affects any ordinance, regulation or rule
41 of a political subdivision, limits the authority of a political
43 subdivision to adopt or enforce any ordinance, regulation, or
45 rule that it is authorized to adopt or enforce pursuant to the
47 Constitution and laws of this State, or limits the authority of
any department or agency of this State to adopt any rule or
enforce any law or rule of this State that it is authorized to
adopt or enforce under the laws of this State. This subchapter
does not abridge rights of action or remedies in equity, under
common law, or as provided by law.

49 **§1696-U. Enforcement; penalties; and appeals**

51 1. Commission orders. The commission may issue orders
requiring the owner or operator of a facility or other

1 responsible person at a facility to abate a violation of any
3 section of this subchapter or rule adopted under it, and orders
5 requiring a local emergency planning committee or fire department
7 to comply with this subchapter or rules adopted under it.

9 2. Action by Attorney General or district attorney. Upon
11 the written request of the commission, the local emergency
13 planning committee or the fire department having jurisdiction
15 where the offense has occurred or is occurring, the Attorney
17 General or the appropriate district attorney shall bring an
19 action under this section against any person who has committed or
21 is committing a violation. All civil penalties received under
23 this section shall be credited to the Emergency Response
25 Commission Fund created under this subchapter.

27 3. Specific violations. The following actions constitute
29 specific violations.

31 A. A person who violates section 1696-N commits a civil
33 violation for which a penalty of not less than \$10,000 and
35 not more than \$25,000 shall be adjudged. Each day of
37 violation constitutes a separate violation.

39 B. A person who violates section 1696-K, 1696-L or 1696-M
41 commits a civil violation for which a penalty of not less
43 than \$10,000 shall be adjudged. Each day of violation
45 constitutes a separate violation.

47 C. A person who recklessly violates section 1696-N commits
49 a Class B crime for which a fine of not less than \$10,000
51 and not more than \$25,000 may be imposed and a period of
53 imprisonment for not less than 2 years and not more than 4
55 years may be set.

57 A person who recklessly violates section 1696-N a 2nd or
59 subsequent time commits a Class B crime for which a fine of
61 not less than \$25,000 and nor more than \$50,000 may be
63 imposed and a period of imprisonment for not less than 2
65 years and not more than 4 years may be set.

67 D. A person who recklessly influences, retaliates against,
69 threatens or harasses a member of the State Emergency
71 Response Commission or a local planning committee, an
73 emergency responder or state or local official so as to
75 hinder an attempt to hinder such a person from carrying out
77 a duty under this subchapter commits a Class B crime for
79 which a fine of not less than \$10,000 and not more the
81 \$25,000 may be imposed and a period of imprisonment for not
83 less than 2 years and not more than 4 years may be set.

85 Sec. 4. Application; appointments. Members serving on the State
87 Emergency Response Commission on the effective date of this

1 Act shall continue to serve on the commission until the
2 expiration of their terms. Additional appointments to the
3 commission required pursuant to section 1 of this Act shall be
4 made by the Governor within 30 days of the effective date of this
5 Act.

7 **Emergency clause.** In view of the emergency cited in the
8 preamble, this Act shall take effect when approved.

9
10 **STATEMENT OF FACT**

11 The purpose of this bill is to allow the State to implement,
12 administer and enforce provisions of the federal Emergency
13 Planning and Community Right-to-Know Act of 1986. Primarily, the
14 bill would accomplish the following:

17 1. Provide badly needed funds to the State Emergency
18 Response Commission, the local emergency planning committees and
19 fire departments to implement the federal law through a state fee
20 system;

21 2. Create the Maine Emergency Response Fund and establish
22 expenditure targets for money credited to the fund through the
23 state fee system;

25 3. Improve the quality and quantity of information
26 necessary to adequately protect the general public from exposure
27 to fires, spills, industrial accidents or releases of toxic and
28 hazardous substances;

31 4. Increase compliance with the federal law by allowing
32 citizen suits and civil and criminal penalties when necessary; and

33 5. Expand the memberships of the State Emergency Response
34 Commission and the local emergency planning committees by
35 requiring environmental, public safety organization, labor and
36 citizen representation.

39