

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1249, L.D. 1747, Bill, "An Act to Protect the Public from Unsafe Industrial and Commercial Facilities"

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

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

SUBCHAPTER III-B

INSPECTION OF HAZARDOUS BUSINESSES

§811. Definitions

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

1. Bureau. "Bureau" means the Department of Labor, Bureau of Labor Standards.

2. Employee. "Employee" means any individual who performs work in the operation of an industrial or commercial facility.

3. Hazardous equipment or machinery. "Hazardous equipment or machinery" means any equipment or machinery used in the operation of an industrial or commercial facility that may cause serious injury to persons or property located outside but in the vicinity of the industrial or commercial facility if the equipment or machinery is operated improperly.

4. Hazardous substance. "Hazardous substance" means any extremely hazardous substance or any toxic chemical in an amount requiring a facility's identification under section 794, subsection 1, paragraph A.

2 5. Initiate or resume operation. "Initiate or resume
3 operation" means:

4 A. The commencement of operation of a facility that has not
5 been operated previously;

6 B. The recommencement of operation of a facility that has
7 ceased operation temporarily if:

8 (1) More than 50% of all employees who will be working
9 during the resumption of operation have worked at that
10 facility for less than 6 consecutive months immediately
11 before the facility ceased operation;

12 (2) More than 50% of the employees who will be
13 regularly assigned to handle hazardous substances at
14 that facility during the resumption of operation have
15 worked in that capacity for less than 6 consecutive
16 months immediately before the facility ceased
17 operation; or

18 (3) The facility has ceased operation for more than
19 one year; or

20 C. The attempted continuous operation of a facility that
21 has been in operation for more than 6 months if:

22 (1) More than 50% of all employees working at the
23 facility have worked at that facility for less than 6
24 consecutive months; or

25 (2) More than 50% of the employees who are regularly
26 assigned to handle hazardous substances at that
27 facility have worked in that capacity for less than 6
28 consecutive months.

29 6. Local emergency planning committee. "Local emergency
30 planning committee" means the local emergency planning committee
31 established under section 793 that has jurisdiction over the area
32 in which an industrial or commercial facility is located.

33 7. New employee. "New employee" means an employee who has
34 worked at a facility or who has been regularly assigned to handle
35 hazardous substances at a facility for less than 6 consecutive
36 months before the initiation or resumption of operations at the
37 facility.

38 8. Operator of facility or facility operator. "Operator of
39 a facility" or "facility operator" means the person, partnership,
40 corporation or other legal entity that operates an industrial or
41 commercial facility.

2 §812. Initiation or resumption of operation prohibited

4 1. Operation prohibited. An industrial or commercial
6 facility that has over 50 full-time employees and where hazardous
8 substances are present or hazardous equipment or machinery is
 used may not initiate or resume operation except as provided in
 section 813.

10 2. Rulemaking; determination of applicability. The bureau
12 shall adopt rules under Title 5, chapter 375, to implement this
14 subchapter, including, but not limited to, the establishment of a
16 procedure under which the operator of a facility, the employees
18 of that facility or their recognized bargaining agent, the county
 commissioners or the municipal officers of the county or
 municipality in which the facility is located or the applicable
 local emergency planning committee may petition the bureau to
 determine whether the facility is subject to this section.

20 A. The bureau may inspect the facility or records of the
22 facility if the inspection is necessary to determine whether
24 the facility is subject to this section. If access to the
26 facility or to records of the facility is denied after a
 bureau request, the bureau shall seek an administrative
 inspection warrant as provided in the Maine Rules of Civil
 Procedure, Rule 80E.

28 B. The Maine Emergency Management Agency shall assist the
30 bureau in identifying facilities where hazardous substances
 are present.

32 C. If the bureau determines that a facility is subject to
34 this section upon petition or on its own motion, the bureau
 shall immediately notify the facility operator of that fact
 and initiate an inspection under section 813.

36 §813. Inspection requirements

38 An industrial or commercial facility subject to the
40 prohibition of section 812, subsection 1, may initiate or resume
42 operation only if the facility operator permits an inspection to
44 be conducted during the initiation or resumption of operations as
 provided in this section.

46 1. Inspection scheduled. Immediately upon determining that
48 a facility is subject to section 812, subsection 1, the bureau
 shall contact the facility operator to arrange a date or dates
 for an inspection of the facility.

50 2. Notice of inspection. Immediately after the inspection
52 date or dates have been established, the bureau shall notify the
 applicable local emergency planning committee of the inspection

and shall publish a notice in a newspaper of general circulation in the area in which the facility is located. The notice must state:

A. That the facility operator is initiating or resuming operation of the facility;

B. The name, address and nature of the business of the facility;

C. The fact of the pending inspection and its purpose;

D. The date or dates of the inspection; and

E. The opportunity for public comment provided under subsection 3.

3. Public comment. During the period immediately preceding the inspection and while an inspection is in progress, the bureau shall accept from any source comments relating to any potential public hazard created by the initiation or resumption of operation of the facility.

4. Representatives during inspection. The bureau shall permit the following persons, if they desire, to accompany the bureau's representatives during the inspection:

A. Any designated representative of the operator of the facility;

B. One representative designated by the county commissioners of the county in which the facility is located;

C. One representative designated by the municipal officers of the municipality in which the facility is located;

D. One designated representative of any recognized bargaining agent for employees of the facility; and

E. One designated representative of the applicable local emergency planning committee.

5. Inspection; standards. The bureau shall have an inspection of the facility conducted and consult with the employees of the facility to determine if:

A. All hazardous substances present at the facility are properly stored and labeled in such a manner as to minimize any risk of injury to persons and property located in the vicinity of the facility;

2 B. All hazardous equipment or machinery used in the
4 facility is in proper working condition so as to minimize
any risk of injury to persons and property located in the
vicinity of the facility;

6 C. All new employees of the facility who work with
8 hazardous substances or hazardous equipment and machinery
are adequately trained to perform their assigned tasks so as
10 to minimize any risk of injury to persons and property
located in the vicinity of the facility;

12 D. Adequate safeguards have been taken to minimize any risk
14 of injury to persons and property located in the vicinity of
the facility caused by the mishandling or accidental release
16 of hazardous substances or improper operation of hazardous
equipment or machinery; and

18 E. All new employees of the facility are aware of the
20 hazardous substances present or hazardous equipment or
machinery used in the facility and are knowledgeable
22 regarding proper safety procedures to be taken in the event
24 of an emergency, including any emergency response plans
developed by the facility operator and the applicable local
emergency planning committee.

26 6. Conduct of inspection; expenses. The bureau may conduct
28 the inspection under this section with its own personnel or may
contract with private parties to perform the inspection under the
30 bureau's supervision. Upon request, the Department of
Environmental Protection and the Maine Emergency Management
32 Agency shall assist the bureau during this inspection when
hazardous substances are present at the facility.

34 The facility operator shall pay all costs associated with the
36 inspection conducted under this section, including, but not
limited to, bureau staff time, contracts with other state
38 agencies and private companies and other administrative costs
directly related to the inspection. Payments from a facility
40 operator must be deposited with the Treasurer of State in a
continuous carrying account, with appropriate subaccounts, solely
42 for the reimbursement of all costs associated with the inspection
of the facility. Any payments by the facility operator in excess
44 of the inspection costs for the facility must be promptly repaid
to the facility operator.

46 7. Bureau determination. The bureau shall determine
48 whether the factors described in subsection 5 have been
adequately addressed. The bureau shall consider all comments
50 received from the public in making its determination.

52 A. If the bureau determines that all of the factors
described in subsection 5 have been adequately addressed,

the bureau shall immediately notify the facility operator of that fact.

B. If the bureau determines that any of the factors described in subsection 5 has not been adequately addressed, the bureau shall order the immediate cessation of any operations at that facility affected by the deficiency. The bureau shall immediately notify the facility operator of the order, the specific areas in which a deficiency has been determined and the actions that must be taken to remedy the deficiency. Upon notice from the facility operator that the deficiencies have been remedied, the bureau shall follow the provisions of this section relating to initial inspections except that any subsequent inspections must be limited to the areas of deficiency determined by the bureau under this paragraph. When the bureau determines that all of the deficiencies have been remedied, the bureau shall immediately rescind its order and notify the facility operator of that fact.

C. All determinations made by the bureau under this subsection are deemed to be final agency action and may be appealed as provided in Title 5, chapter 375, subchapter VII.

§814. Enforcement

1. **Civil penalty.** Any facility operator who violates this subchapter, any rule adopted under this subchapter or any order issued under this subchapter is subject to a civil penalty of \$5,000, payable to the State, to be recovered in a civil action. Each day the violation continues constitutes a separate offense.

2. **Equitable relief.** The Attorney General, the bureau, the county or municipality in which the facility is located, the applicable local emergency planning committee or the employees of the facility or their recognized bargaining agent may seek equitable relief from the Superior Court to enforce this subchapter, any rule adopted under this subchapter or any order issued under this subchapter.

§815. Liability and remedies unaffected

This subchapter does not affect in any way the liability of a facility operator or the remedies of any person, under common law or any other statute, for injury or damage caused by the operation of a facility subject to this subchapter.

FISCAL NOTE

The Bureau of Labor Standards within the Department of Labor will incur some minor additional costs associated with rulemaking

that can be absorbed within existing budgeted resources. In addition, the Bureau of Labor Standards will incur additional costs for the inspection of facilities that will be paid 100% by the facility operator. Neither the timing nor the amount of the additional expenditures and the resulting increase of dedicated revenue can be determined at this time.'

STATEMENT OF FACT

This amendment completely redrafts the bill to make several technical drafting changes to update statutory cross-references, correct statutory language usage and clarify certain provisions of the bill. The amendment also makes the following substantive changes and clarifications to the bill.

1. The amendment clarifies that "hazardous equipment" is equipment that creates a risk of injury to persons or property outside of an industrial or commercial facility. Equipment that can cause injury only to employees of the facility is not covered by the amendment. This clarifies the intent to protect members of the public from harmful industrial accidents. The protection of employees is governed by other state and federal laws.

2. The amendment clarifies that it does not apply to an industrial or commercial facility that briefly ceases operation but later resumes operation with the same workforce. This situation poses little additional risk to the public since the same employees who worked before the brief closing will be working during the resumption of operation. If the closing lasts longer than one year however, the facility is subject to the inspection requirements of the amendment. The amendment also ensures inspections of facilities where less than 50% of the entire workforce has been replaced but more than 50% of the employees who are regularly assigned to handle hazardous substances are new employees.

3. The amendment reduces from 250 to 50 the threshold number of employees over which a facility is potentially subject to the amendment. This is done because such medium-sized employers may use hazardous substances or equipment and also experience difficulty in adequately training a new workforce when a facility is opened or when a rapid turnover in employees occurs.

4. The amendment simplifies the general rule-making process and authorizes the Bureau of Labor Standards to inspect the facility if necessary to determine whether it is subject to the amendment.

5. The amendment prevents members of the public from petitioning the Bureau of Labor Standards to determine whether an industrial or commercial facility is subject to the amendment.

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2 Under the amendment, members of the public may seek to work with
officials of local government to obtain a determination but they
4 may not on their own require the bureau to initiate the
determination process. This prevents facilities from being
6 harassed through repeated groundless petitions for bureau
determinations.

8 6. The amendment deletes the requirement that the
inspection be scheduled not less than 20 days after the Bureau of
10 Labor Standards receives notice of a facility operator's intent
to resume operations. It also deletes the requirement for a
12 public comment period for 20 days after the inspection is
completed. After the inspection date is established, the public
14 must be notified of the inspection through publication in local
newspapers. The public retains the opportunity to comment before
16 the inspection begins and while the inspection is in progress.
This provides sufficient opportunity for the public to submit
18 comments regarding potential hazards related to the initiation or
resumption of operation.

20
7. The amendment permits the facility to continue operation
22 while the inspection is in progress. Although an immediate order
to cease operations provides a greater guarantee of safety to the
24 public, permitting continued operation while the inspection is in
progress provides a more reasonable balance of the competing
26 interests of the employees and operator of the facility and the
public. It also enhances the effectiveness of the inspection by
28 permitting an evaluation of the facility while operations are
ongoing.

30
8. The amendment permits the Bureau of Labor Standards to
32 contract with outside parties to conduct the inspection of a
facility under the amendment. Since the amendment may apply in
34 instances where the bureau lacks expertise, this allows the
bureau to seek out such expertise when necessary. The amendment
36 also requires the operator of a facility subject to inspection
under the amendment to pay the costs of the inspection.

38
9. The amendment limits the authority of the Bureau of
40 Labor Standards to order the cessation of operations at a
facility upon determining that a violation exists. Under the
42 amendment, the bureau may order the cessation of only those
operations that are affected by the particular violations
44 determined by the bureau. There is no reason to order the
closing of an entire facility if other facility operations can be
46 conducted with no danger to the public.

48 10. The amendment deletes the provision of the bill that
called for an automatic stay during an appeal of a bureau
50 determination allowing a facility to continue operation.
Although risks to the public may remain even after an inspection,
52 the inspection by the Bureau of Labor Standards provides a

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2 sufficient safeguard to allow the facility to continue
operation. If a particularly egregious case arises, the court
4 remains free to issue a temporary restraining order during an
appeal when it finds such an order to be appropriate under
6 general legal standards. The amendment also deletes the
exception provided to facilities if the bureau fails to complete
its inspection within 60 days. This exception is no longer
8 necessary since, under the amendment, the facility may continue
operations unless the Bureau of Labor Standards finds a safety
10 threat to exist.

12 11. The amendment revises the penalty provisions of the
bill to provide for a uniform penalty of \$5,000 for each day of a
14 violation of the amendment, any rule adopted under the amendment
or any order issued under the amendment.

16 12. Finally, the amendment clarifies that a facility
18 operator's liability for any injury or damage caused by the
initiation or resumption of operations at the facility is not
20 affected by the amendment.

Reported by the Majority of the Committee on Labor.
Reproduced and distributed under the direction of the Clerk of the House.
4/3/90

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