

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2163

H.P. 1532

House of Representatives, January 16, 1992

Reported by Representative FARNSWORTH of Hallowell for the Commission to Study Maine's Oil Spill Clean-up Preparedness pursuant to Public Law 1991, chapter 530.

Reference to the Joint Standing Committee on Energy and Natural Resources suggested and printing ordered under Joint Rule 18.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Amend the State's Oil Spill Prevention and Response Provisions.



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

2
4 **Sec. 1. 5 MRSA §12004-I, sub-§24-B** is enacted to read:

6 **24-B.** Oil Spill Expenses and 38 MRSA
 Environment: Advisory Legislative §551-A
8 Natural Committee per diem
 Resources

10 **Sec. 2. 38 MRSA §86**, as amended by PL 1985, c. 389, §32, is
12 further amended to read:

14 **§86. Vessels required to take pilot**

16 Every foreign vessel and every American vessel under
18 register, with a draft of 9 feet or more, entering or departing
20 from any port or harbor within the waters described in section
22 ~~86-A shall take a pilot licensed under this chapter. In case of~~
24 ~~refusal to take such pilot, the master, owner, agent or consignee~~
~~of any such vessel shall pay the established pilot fee as if a~~
~~pilot had been employed. Any master, owner, agent or consignee~~
that fails to take a pilot licensed under this subchapter is
subject to a civil penalty not to exceed \$5,000 per day, payable
to the State. This penalty is recoverable in a civil action.

26 **Sec. 3. 38 MRSA §546, sub-§6**, as enacted by PL 1991, c. 454,
28 §4, is amended to read:

30 **6. Vessel response plans.** Every tank vessel, as defined
32 under 56 United States Code, Section 2101, entering state waters
34 shall ~~file with the department~~ have available for inspection by
36 the commissioner or an agent of the commissioner a copy of any
oil discharge response plan required to be submitted to the
President of the United States under the federal Oil Pollution
Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484, ~~or~~
~~a statement that a plan is not required under federal law.~~

38 **Sec. 4. 38 MRSA §546-A, sub-§3, ¶B**, as enacted by PL 1991, c.
40 454, §5, is amended to read:

42 B. A clear definition of the roles of the department, the
44 oil industry, oil spill response organizations and the
United States Coast Guard in various circumstances, as well
46 as the roles of other state agencies including the Maine
Emergency Management Agency;

48 **Sec. 5. 38 MRSA §546-A, sub-§5**, as enacted by PL 1991, c. 454,
§5, is amended to read:

2 5. ~~Revision. By April 30, 1992, the board shall adopt by~~
3 ~~rule a state marine oil spill contingency plan based upon the~~
4 ~~preliminary plan developed by the commissioner under subsection~~
5 ~~1. The commissioner shall at least annually review and make~~
6 ~~recommendations to revise the plan, and the board shall act on~~
7 ~~these recommendations by rulemaking notify all licensees and~~
8 ~~interested parties requesting to be notified of any substantial~~
9 ~~changes to the plan. Licensees and interested parties may~~
10 ~~request a public hearing on changes to the plan by submitting a~~
11 ~~written request to the commissioner signed by at least 5 persons.~~

12 Sec. 6. 38 MRSA §546-B, sub-§2, as enacted by PL 1991, c. 454,
13 §6, is repealed.

14 Sec. 7. 38 MRSA §551, sub-§5, ¶H, as amended by PL 1989, c.
15 868, §7, is further amended to read:

16 H. Sums, up to \$50,000 each year, which that have been
17 allocated by the Legislature on a contingency basis in
18 accordance with section 555 for payment of costs for damage
19 assessment for specific spills and site-specific studies of
20 the environmental impacts of discharges a particular
21 discharge prohibited by section 543 that may have adverse
22 economic effects and occur subsequent to such an allocation,
23 when those studies are determined necessary by the
24 commissioner; and

25 Sec. 8. 38 MRSA §551-A is enacted to read:

26 §551-A. Oil Spill Advisory Committee

27 The Oil Spill Advisory Committee, as established in Title 5,
28 section 12004-I, subsection 24-B, shall advise the department in
29 carrying out the policies and purposes of this subchapter.

30 1. Membership. The Governor shall appoint the chair of the
31 committee. The committee consists of the following 14 members:

32 A. Three members representing the marine fisheries
33 interest, including the lobster industry, aquaculture
34 industry and sardine industry, 2 appointed by the President
35 of the Senate and one appointed by the Speaker of the House
36 of Representatives;

37 B. Three members representing the general public, one
38 appointed by the President of the Senate and 2 appointed by
39 the Speaker of the House of Representatives;

40 C. Two members representing the petroleum industry
41 appointed by the Governor;

2 D. One member familiar with oil spill technology appointed
3 by the Governor;

4 E. One naval architect appointed by the Governor;

6 F. One member with expertise in coastal geology appointed
8 by the Governor;

10 G. One member with expertise in fisheries biology appointed
12 by the Governor;

14 H. One member with expertise in coastal wildlife habitat
16 appointed by the Governor; and

18 I. One member who is a licensed state pilot or a licensed
20 merchant marine officer appointed by the Governor.

22 2. Terms. All members are appointed for staggered terms of
24 3 years. The Governor shall appoint 2 members for initial
26 one-year terms, 3 members for initial 2-year terms and 3 members
28 for initial 3-year terms. The President of the Senate shall
30 appoint one member for an initial one-year term, one member for
32 an initial 2-year term and one member for an initial 3-year
34 term. The Speaker of the House of Representatives shall appoint
36 one member for an initial one-year term, one member for an
38 initial 2-year term and one member for an initial 3-year term. A
40 vacancy must be filled by the same appointing authority that made
42 the original appointment. No member may serve more than 2
44 consecutive 3-year terms.

46 3. Compensation. Members are entitled to compensation as
48 specified in Title 5, section 12004-I, subsection 24-B.

50 4. Quorum. A quorum is 8 members of the committee. An
52 affirmative vote of the majority of the members present is
54 required for any action. Action may not be considered unless a
56 quorum is present.

58 5. Chair. The Governor shall appoint a person to serve as
60 chair of the committee.

62 6. Meetings. The committee meets at least 4 times per year
64 unless the committee decides not to hold a meeting. The
66 committee shall meet at any time at the call of the chair.

68 7. Staff support. The commissioner shall provide the
70 committee with staff support.

2 8. Duties. The committee shall:

4 A. Track implementation of and regulations related to the
6 Federal Oil Pollution Act of 1990 and recommend to the
8 Legislature any statutory changes or to the board any
10 regulatory changes that are appropriate. The committee
12 shall review contingency plan requirements, opportunities
14 and constraints of the federal Oil Spill Liability Trust
16 Fund and oil spill prevention measures;

18 B. Monitor the adequacy of the federal Oil Spill Liability
20 Trust Fund in light of information on the potential risks
22 and costs of an oil spill and the State's exposure and
24 liability under the fund;

26 C. Monitor the effects of the State's oil spill liability
28 laws on oil spill prevention;

30 D. Review expenditures and the priority for expenditures of
32 the Maine Coastal and Inland Surface Oil Clean-up Fund and
34 make recommendations to the commissioner on how the fund
36 should be allocated;

38 E. Review the commissioner's program for identifying areas
40 sensitive to oil spills in the marine environment and the
42 development of resource protection priorities;

44 F. Review and comment on the State's marine oil spill
46 contingency plan;

48 G. Monitor oil spill planning and prevention activities by
50 industry, oil spill response organizations and the United
 States Coast Guard;

H. Monitor the commissioner's assessment of adequate oil
 spill response equipment and vessels for the State;

I. Review the implementation of a plan for rehabilitation
 of wildlife resources including:

 (1) Training programs and opportunities for volunteers
 and state and federal personnel; and

 (2) Preliminary agreements or identification of
 treatment centers or facilities;

J. Monitor scientific, engineering and technical advances
 in oil spill response and prevention techniques and make
 recommendations on their use; and

2 K. Review and monitor issues for oil spill prevention and
3 response and recommend to the Legislature any statutory
4 changes or to the board any regulatory changes that are
5 appropriate.

6 **Sec. 9. 38 MRSA §552, sub-§2**, as amended by PL 1985, c. 746,
7 §23, is further amended to read:

8 **2. State need not plead or prove negligence.** Because it is
9 the intent of this subchapter to provide the means for rapid and
10 effective ~~clean-up~~ cleanup and to minimize direct damages as well
11 as indirect damages and the proliferation of 3rd party claims,
12 any person, vessel, licensee, agent or servant, including
13 carriers destined for or leaving a licensee's facility while
14 within state waters, who permits or suffers a prohibited
15 discharge or other polluting condition to take place ~~shall be~~ is
16 liable to the State ~~of Maine~~ for all disbursements made by it
17 pursuant to section 551, subsection 5, paragraphs B, D and E, H
18 and I, or other damage incurred by the State. In any suit to
19 enforce claims of the State under this section, to establish
20 liability, it ~~shall~~ is not be necessary for the State to plead or
21 prove negligence in any form or manner on the part of the person
22 causing or suffering the discharge or licensee responsible for
23 the discharge. The State need only plead and prove the fact of
24 the prohibited discharge or other polluting condition and that
25 the discharge occurred at facilities under the control of the
26 licensee or was attributable to carriers or others for whom the
27 licensee is responsible as provided in this subchapter or
28 occurred at or involved any real property, structure, equipment
29 or conveyance under the custody or control of the person causing
30 or suffering the discharge.

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STATEMENT OF FACT

35 This bill is proposed by the Commission to Study Maine's Oil
36 Spill Clean-up Preparedness and represents its interim
37 recommendations.

38 The bill establishes an Oil Spill Advisory Committee within
39 the Department of Environmental Protection. New federal
40 legislation, industry efforts and increased oil spill prevention
41 planning make ongoing review of the State's policies and legal
42 framework essential.

43 Foreign vessels and American vessels with a draft of 9 feet
44 or more are required to take a licensed marine pilot into certain
45 waters. Under current law, if a pilot is not taken, the vessel
46 must pay for one. This bill removes this provision and

2 institutes a penalty for vessels that do not take a required
pilot.

4 The bill revises procedures and requirements for the State
6 marine oil spill contingency plan and the Department of
Environmental Protection's review of federally mandated vessel
contingency plans.

8 The bill repeals a requirement that the Board of
10 Environmental Protection adopt by rule resource protection
12 priorities to be used during a spill. The commission has
developed preliminary priorities and feels that these may change
14 over time as information is developed for oil spill response on
the State's geographic information system.

16 The bill clarifies that certain allocations from the Maine
18 Coastal and Inland Surface Oil Clean-up Fund are for damage
assessment and environmental assessment for specific spills.

20 The bill clarifies that a person causing a discharge is
22 liable to the State for disbursements made from the Maine Coastal
and Inland Surface Oil Clean-up Fund for spill-specific studies
and for collection fees.

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