

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 919, L.D. 2358, Bill, "An Act to Amend the Underground Oil Storage Facilities and Ground Water Protection Laws and the Uncontrolled Hazardous Substance Sites Laws"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning Liability for Uncontrolled Hazardous Substance Sites'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Whereas, municipalities and regulated lending institutions should not be held liable for uncontrolled hazardous substance sites beyond certain limits if their involvement with the property has been minimal; and

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

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

Sec. 1. 38 MRSA §1362, sub-§§1-A, 1-B and 1-C are enacted to read:

1-A. Federal banking or lending agency. "Federal banking or lending agency" means the Federal Deposit Insurance

2 Corporation, the Resolution Trust Corporation, the Board of
3 Governors of the Federal Reserve System, a federal reserve bank,
4 a federal home loan bank, the United States Comptroller of the
5 Currency, the Office of Thrift Supervision, the National Credit
6 Union Administration, the Farm Credit Administration, the Farm
7 Credit System Insurance Corporation, the Small Business
8 Administration, the Farmers' Home Administration, the Rural
9 Electrification Administration or the RECOLL Management
10 Corporation.

11 1-B. Lender. "Lender" means a financial institution or
12 credit union authorized to do business in this State, as defined
13 in Title 9-B, section 131, subsections 12-A and 17-A, or any
14 federal or state banking or lending agency that provides loans,
15 guarantees or other financial assistance.

16 1-C. Political subdivision. "Political subdivision" means
17 any city, town, plantation, county, administrative entity or
18 instrumentality created pursuant to Title 30-A, chapter 115 or
19 119, or quasi-municipal corporation or special purpose district,
20 including, but not limited to, any water district or sanitary
21 district.

22
23 **Sec. 2. 38 MRSA §1362, sub-§2, ¶D, as enacted by PL 1983, c.**
24 **569, §1, is amended to read:**

25
26 D. Any person who accepted a hazardous substance for
27 transport, provided that the substance arrived at the
28 uncontrolled site. After April 1, 1992, any person who
29 accepts a hazardous substance for transport and delivers
30 that substance to a licensed hazardous waste storage or
31 disposal facility according to the manifest signed by the
32 generator is not a responsible party.

33 **Sec. 3. 38 MRSA §1362, sub-§2-A is enacted to read:**

34
35 2-A. State banking or lending agency. "State banking or
36 lending agency" means any state agency that provides loans,
37 guarantees or other financial assistance, including the Finance
38 Authority of Maine, the Department of Economic and Community
39 Development and the Maine State Housing Authority.

40
41 **Sec. 4. 38 MRSA §§1367-A and 1367-B are enacted to read:**

42
43 **§1367-A. Limited exemption from liability for financial**
44 **institutions and federal and state banking or lending**
45 **agencies**

46
47 1. Limited exemption from liability. Liability under
48 section 1367 does not apply to any lender who, without
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2 participating in the actual management of an uncontrolled
4 hazardous substance site, holds a security interest or acquires
6 ownership primarily to protect a security interest in the
8 uncontrolled site. The exemption from liability provided under
10 this subsection does not apply to a lender that has caused,
12 contributed to or exacerbated a release or threatened release of
14 a hazardous substance on or from the uncontrolled site.

16 2. Reimbursement for department expenses. Notwithstanding
18 the exemption from liability provided in subsection 1, any lender
20 that has or had a security interest in property that encompasses
22 an uncontrolled hazardous substance site and acquires or has
24 acquired ownership of that property to protect its security
26 interest is liable for all costs incurred by the department
28 pursuant to this chapter during the period in which the lender
30 had ownership of or a security interest in the property, up to
32 the amount of proceeds from the sale or disposition of the
34 property minus the out-of-pocket costs of the sale or disposition.

36 **§1367-B. Limited exemption from liability for state or local**
38 **governmental entities**

40 1. Limited exemption from liability. Liability under
42 section 1367 does not apply to the State or any political
44 subdivision that acquired ownership or control of an uncontrolled
46 hazardous substance site through tax delinquency proceedings
48 pursuant to Title 36, or through any similar statutorily created
50 procedure for the collection of governmental taxes, assessments,
expenses or charges, or involuntarily through abandonment, or in
circumstances in which the State or political subdivision
involuntarily acquired ownership or control by virtue of its
function as a sovereign. The exemption from liability provided
under this subsection does not apply to the State or any
political subdivision that has caused, contributed to or
exacerbated a release or threatened release of a hazardous
substance on or from the uncontrolled site.

2. Reimbursement for department expenses. Notwithstanding
the exemption from liability provided in subsection 1, the State
or any political subdivision that acquires or has acquired
ownership of property that encompasses an uncontrolled hazardous
substance site pursuant to any of the proceedings referred to in
subsection 1 is liable for any costs incurred by the department
pursuant to this chapter during the period in which the State or
political subdivision had ownership of the property, up to the
amount of the proceeds from the sale or disposition of the
property minus the out-of-pocket costs of the sale or disposition.

Sec. 5. 38 MRSA §1371, sub-§2, ¶A, as enacted by PL 1987, c.
540, is amended to read:

2 A. Any lien filed pursuant to this section on real estate
3 which ~~that~~ encompasses an uncontrolled hazardous substance
4 site ~~shall have~~ has precedence over all encumbrances on the
5 real estate, including liens of the State or any political
6 subdivision, recorded after the--effective--date--of--this
7 section July 7, 1987. The term, "real estate" in this
8 paragraph includes all real estate of a responsible party
9 which ~~that~~ has been included in the property description of
10 the affected real estate within the 3-year period preceding
11 the date of filing of the lien or on or after ~~the effective~~
12 ~~date of this section~~ July 7, 1987, whichever period is
13 shorter.

14 **Sec. 6. 38 MRSA §1371, sub-§5**, as enacted by PL 1987, c. 540,
15 is amended to read:

18 **5. Limitation.** This section does not apply to a unit of
19 real estate which ~~that~~ consists primarily of real estate used or
20 under construction as single or multi-family housing at the time
21 the lien is recorded or to property owned by a ~~municipality~~
22 political subdivision except for the real estate that encompasses
23 an uncontrolled hazardous substance site and that is owned by a
24 political subdivision.

26 **Sec. 7. Application.** Notwithstanding the provisions of the
27 Maine Revised Statutes, Title 1, section 302, and except for that
28 part amending Title 38, section 1362, subsection 2, this Act
29 applies to every action or proceeding pending on or commenced
30 after the date of approval of the Act.

32 **Emergency clause.** In view of the emergency cited in the
33 preamble, this Act takes effect when approved, except as
34 otherwise indicated.

36 **FISCAL NOTE**

38 Amending the uncontrolled hazardous substance site laws to
39 allow certain limitations from liability for lending institutions
40 and municipalities will not significantly affect the amounts
41 recovered by the Department of Environmental Protection for
42 clean-up costs. In practice, the department has not actively
43 pursued recoveries from lending institutions and municipalities
44 when they have not contributed to the release of hazardous
45 substances at the uncontrolled site.'

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STATEMENT OF FACT

This amendment replaces the original bill. It enacts a liability exemption on uncontrolled hazardous substance sites for regulated lenders if their only affiliation to the property is that they hold a security interest or foreclosed on a security interest. The lender remains liable for reimbursing the Department of Environmental Protection for clean-up costs incurred while they owned the property or held a security interest on the property. The exemption is not valid if a lender is responsible in any way for the release of a hazardous substance.

A similar exemption from liability on uncontrolled hazardous substance sites is extended to political subdivisions that may have acquired ownership or control of the site through tax delinquency proceedings or other involuntary methods. These provisions are in part adapted from provisions in federal superfund laws and draft regulations interpreting those laws.

This amendment also clarifies that the superlien laws enacted in 1987 applies to properties owned by municipalities.

The amendment also exempts hazardous substance transporters from being designated responsible parties under the laws for uncontrolled hazardous sites if they deliver hazardous substances to a licensed storage or disposal facility according to the manifest.

Except for the exemption for hazardous substance transporters, this amendment applies to all proceedings that are pending on or commenced after the effective date of this Act.

This amendment also adds a fiscal note to the bill.

Reported by Senator Ludwig for the Committee on Energy & Natural Resources. Distributed pursuant to Senate Rule 12.
(3/23/92) (S-665)