

# MAINE STATE LEGISLATURE

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R. of S

L.D. 1083

(Filing No. H-615 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 797, L.D. 1083, Bill, "An Act to Establish the Fund Insurance Review Board"

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

Sec. 1. 5 MRSA §12004-G, sub-§11-A is enacted to read:

<u>11-A.</u>	<u>Fund</u>	<u>Expenses</u>	<u>38 MRSA</u>
<u>Environ-</u>	<u>Insurance</u>	<u>Only for</u>	<u>§568-B</u>
<u>ment/</u>	<u>Review</u>	<u>Certain</u>	
<u>Natural</u>	<u>Board</u>	<u>Members</u>	
<u>Resources</u>			

Sec. 2. 38 MRSA §562-A, sub-§§1-A and 1-B are enacted to read:

1-A. Aboveground oil storage facility. "Aboveground oil storage facility" also referred to as a "facility" means any aboveground oil storage tank or tanks, together with associated piping, transfer and dispensing facilities located over land or water of the State at a single location for more than 4 months per year and used or intended to be used for the storage or supply of oil. Oil terminal facilities, as defined in section 542, subsection 7 and propane facilities are not included in this definition and are not eligible for coverage by the fund.

1-B. Aboveground oil storage tank. "Aboveground oil storage tank" also referred to as a "tank" means any aboveground container, less than 10% of the capacity of which is beneath the surface of the ground and is used or intended to be used for the

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COMMITTEE AMENDMENT "A" to H.P. 797, L.D. 1083

2 storage or supply of oil. Included in this definition are any  
3 tanks situated upon or above the surface of a floor and in such a  
4 manner that they may be readily inspected.

6 **Sec. 3. 38 MRSA §562-A, sub-§2**, as enacted by PL 1989, c. 865,  
7 §2, is amended to read:

8 **2. Applicant.** "Applicant" means the owner or operator of  
9 an underground oil storage facility or an aboveground oil storage  
10 facility that may have a discharge of oil and who is seeking  
11 coverage of eligible clean-up costs and 3rd-party damage claims  
12 from the fund.

14 **Sec. 4. 38 MRSA §562-A, sub-§9-A** is enacted to read:

16 **9-A. Fund Insurance Review Board.** "Fund Insurance Review  
17 Board" or "review board" means the board created in section 568-B.

18 **Sec. 5. 38 MRSA §562-A, sub-§14**, as enacted by PL 1989, c.  
19 865, §2, is amended to read:

22 **14. Occurrence.** "Occurrence" means a contamination  
23 incident or prohibited discharge associated with one or more  
24 tanks or piping at an underground oil storage facility or an  
25 aboveground oil storage facility within one year.

26 **Sec. 6. 38 MRSA §562-A, sub-§17, ¶¶C and D**, as enacted by PL  
27 1989, c. 865, §2, are amended to read:

30 C. Any person other than those identified in paragraph A or  
31 B who caused the prohibited discharge of oil or who had  
32 custody or control of the oil at the time of the prohibited  
33 discharge; or

34 D. Any person who owned or operated the underground oil  
35 storage facility from the time any oil arrived at that  
36 facility; or

38 **Sec. 7. 38 MRSA §562-A, sub-§17, ¶E** is enacted to read:

40 **E.** With regard to sections 568-A, 569-A and 570, persons  
41 described in paragraphs A to D with regard to aboveground  
42 oil storage facilities.

44 **Sec. 8. 38 MRSA §568-A, sub-§1, ¶A**, as enacted by PL 1989, c.  
45 865, §15 and affected by §§24 and 25 and amended by PL 1991, c.  
46 433, §3 and affected by §7, is repealed and the following enacted  
47 in its place:

50 **A.** The applicant must submit within 180 days of reporting  
51 the discharge a written request to the commissioner to be  
52 covered by the fund. The request must include:

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(1) A description of the discharge and the locations threatened or affected by the discharge, to the extent known;

(2) An agreement that the applicant shall pay the deductible amount specified in subsection 2; and

(3) Documentation that the applicant is in substantial compliance with the requirements of paragraph B.

Within 15 working days of receipt of a request, the commissioner must determine whether the request is complete. If the commissioner determines that the request is incomplete, the commissioner shall, within the 15 working days inform the applicant of the additional information required to complete the request. Within 90 days of receipt of an applicant's completed request for coverage by the fund submitted pursuant to this paragraph the commissioner must issue an order approving or denying the applicant's request. Failure to issue an order within this period constitutes approval of the applicant's request for coverage by the fund.

When the commissioner determines that a site previously remediated to the commissioner's satisfaction requires further remediation, the owner or operator of the site may apply for coverage of eligible clean-up costs and 3rd-party damages claims from the fund, notwithstanding the person's failure to meet the 180-day deadline described in this paragraph.

Sec. 9. 38 MRSA §568-A, sub-§1, ¶B, as amended by PL 1991, c. 494, §§10 and 11, is further amended to read:

B. An applicant is in substantial compliance when the commissioner finds, considering all the relevant circumstances, including but not limited to all reasons for noncompliance submitted by the applicant pursuant to paragraph A, that the following requirements are substantially met:

(1) The compliance schedule, in section 563-A, for nonconforming facilities except that those facilities or tanks required to be removed by October 1, 1989, have until October 1, 1990, to be removed before they are considered out of compliance;

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(2) Any outstanding consent agreement or clean-up order issued by the commissioner under section 568, subsection 3, regarding violations of this subchapter;

(3) Any outstanding court order or consent decree regarding violations of this subchapter;

(4) For motor fuel storage and marketing and retail facilities, the following requirements:

(a) Applicable design and installation requirements in effect at the time of the installation or retrofitting requirements for leak detection as covered by section 564, subsections 1 and 1-A;

(b) Section 564, subsection 1-B, overfill and spill prevention equipment, and any rules adopted pursuant to that subsection;

(c) Section 564, subsection 2-A, paragraphs B to I, not including paragraph G, and any rules adopted pursuant to that subsection; and

(d) Payment of any fees required under section 569, subsection 4-A, paragraph C;

(5) For consumptive use heating oil facilities:

(a) Section 565, subsection 1, if applicable; and

(b) Section 565, subsection 2; and

(6) For waste oil, and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, compliance with rules adopted by the board regarding:

(a) Design and installation requirements in effect at the time of the installation, if applicable;

(b) Retrofitting of leak detection and corrosion protection, if applicable;

(c) Overfill and spill prevention;

(d) Monitoring of cathodic protection systems;

(e) Testing requirements for tanks and piping on evidence of a leak;

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- (f) Maintenance of a leak detection system; and
- (g) Reporting leaks.

The burden of proof is on the department to show a lack of substantial compliance. The commissioner shall make written findings of fact when making a determination under this paragraph. These findings are subject to appeal to the board Fund Insurance Review Board as provided in subsection 3-A. ~~The board's decision is subject to judicial review pursuant to Title 5, chapter 375, subchapter VII.~~

The requirements in subparagraphs (1) to (6) do not apply to owners or operators of aboveground oil storage facilities. The Fund Insurance Review Board shall develop, in consultation with the State Fire Marshal, the documentation requirements for claims submitted by owners of aboveground oil storage facilities.

A finding of lack of substantial compliance does not render an applicant ineligible for coverage by the fund for any future occurrence, if the applicant is in substantial compliance at the time of the future application.

**Sec. 10. 38 MRSA §568-A, sub-§2,** as amended by PL 1991, c. 817, §23, is further amended to read:

**2. Deductibles.** Applicants eligible for coverage by the fund under subsection 1 shall pay up to the initial--costs deductible amount for expenses resulting from cleaning up and compensating eligible 3rd-party damages from a discharge prohibited under section 543 on a per occurrence basis according to the following schedule:

Number of facilities owned by facility owner	Costs paid by applicant
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to <del>30</del> <u>20</u>	<del>50,000</del> <u>25,000</u>
<u>21 to 30</u>	<u>40,000</u>
over 30	<del>100,000</del> <u>62,500</u>

The commissioner shall pay any eligible additional costs up to \$1,000,000 associated with activities under section 569-A, subsection 8, paragraphs B, D and J resulting from a discharge from the fund. The commissioner shall pay the expenses directly, unless the applicant chooses to pay the expenses and seek

# COMMITTEE AMENDMENT

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2 reimbursement from the fund. The commissioner may pay any costs  
eligible for coverage by the fund above \$1,000,000 from the fund  
4 but the commissioner shall recover these expenditures from the  
responsible party pursuant to section 569-A.

6 **Sec. 11. 38 MRSA §568-A, sub-§3-A is enacted to read:**

8 3-A. Appeals to review board. An applicant aggrieved by an  
10 insurance claims-related decision of the commissioner, including  
12 but not limited to decisions on eligibility for coverage,  
14 eligibility of costs and waiver and amount of deductible, may  
16 appeal that decision to the Fund Insurance Review Board. The  
18 public members of the review board shall hear and render a  
20 decision on the appeal. Except as provided in review board  
22 rules, the appeal must be filed within 30 days after the  
24 applicant receives the commissioner's decision on the matter.  
26 The appeals panel must hear an appeal at its next meeting  
28 following receipt of the appeal, unless the appeals panel and the  
aggrieved applicant agree to hear the appeal at a different  
time. If the appeals panel overturns the commissioner's  
decision, reasonable costs, including reasonable attorney fees,  
incurred by the aggrieved applicant in pursuing the appeal to the  
review board must be paid from the fund. Decisions of the  
appeals panel are subject to judicial review pursuant to Title 5,  
chapter 375, subchapter VII. The review board may adopt rules  
determining the timing of filing appeals on questions of  
eligibility of costs for payment by the fund.

30 **Sec. 12. 38 MRSA §568-B is enacted to read:**

32 **§568-B. Fund Insurance Review Board created**

34 1. Fund Insurance Review Board. The Fund Insurance Review  
36 Board, as established by Title 5, section 12004-G, subsection  
38 11-A, is created for the purposes of hearing and deciding appeals  
40 from insurance claims-related decisions of the commissioner as  
well as adopting rules and guidelines necessary to the  
furtherance of its duties and responsibilities under this  
subchapter. The review board consists of 8 members appointed for  
3-year terms as follows:

42 A. Three persons representing the petroleum industry,  
44 appointed by the Governor, one of whom is nominated by the  
Maine Oil Dealers Association, one of whom is nominated by  
46 the Maine Petroleum Association and one of whom is a  
48 retailer who owns fewer than 5 retail outlets, as defined in  
Title 10, section 1672, subsection 6, to be chosen by the  
Governor;

2 B. Three members of the public who are not employed in the  
3 petroleum industry and who do not have a direct and  
4 substantial financial interest in the petroleum industry to  
5 be appointed by the Governor;

6 C. The commissioner or the commissioner's designee; and

8 D. The State Fire Marshal or the fire marshal's designee.

10 Members described in paragraphs A and B are entitled to  
11 reimbursement for direct expenses of attendance at meetings of  
12 the review board or the appeals panel.

14 2. Powers and duties of review board. The Fund Insurance  
15 Review Board has the following powers and duties:

16 A. To hear appeals from insurance claims-related decisions  
17 of the commissioner pursuant to section 568-A, subsection  
18 3-A;

20 B. To adopt rules in accordance with Title 5, chapter 375,  
21 subchapter II establishing criteria for determining  
22 substantial compliance for aboveground oil storage  
23 facilities; and

26 C. To contract with the Finance Authority of Maine for such  
27 assistance in fulfilling the board's duties as the board may  
28 require.

30 **Sec. 13. 38 MRSA §569-A, sub-§8, ¶¶I and J, as enacted by PL**  
31 **1991, c. 817, §26, are amended to read:**

32 I. All costs associated with the Board of Underground Oil  
33 Storage Tank Installers; and

36 J. Payments to or on behalf of applicants eligible for  
37 coverage by the fund under section 568-A, subsection 1 for  
38 expenses above the deductible specified in section 568-A,  
39 subsection 2 incurred in commissioner-approved clean-up  
40 activities and specified in an agreement under section  
41 568-A, subsection 4. ;

42 **Sec. 14. 38 MRSA §569-A, sub-§8, ¶¶ K and L are enacted to**  
43 **read:**

44 K. All costs associated with the Fund Insurance Review  
45 Board; and

48 L. Costs incurred by the Office of the State Fire Marshal to  
49 implement the duties assigned to the State Fire Marshal in  
50 this chapter.



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2           **Sec. 15. 38 MRSA §570-H, sub-§2**, as enacted by PL 1989, c.  
865, §21 and affected by §§24 and 25, is amended to read:

4           **2. Adequacy of fund.** On or before February 15, 1992 15th  
6 of each year, the commissioner with the cooperation of the Bureau  
of Insurance Fund Insurance Review Board, shall report to the  
8 joint standing committee of the Legislature with jurisdiction  
over energy and natural resources on the department's and the  
board's experience administering the fund, the ~~3rd-party~~  
10 ~~commercial-risk-pool-account~~, clean-up activities and 3rd-party  
damage claims. The report must also include an assessment of the  
12 adequacy of the fund to cover anticipated expenses and any  
recommendations for statutory change.

14           **Sec. 16. 38 MRSA §570-K, sub-§1**, as enacted by PL 1991, c.  
16 494, §16, is repealed.

18           **Sec. 17. 38 MRSA §570-K, sub-§4** is enacted to read:

20           **4. Exemption.** The following aboveground oil storage  
22 facilities are exempt from the requirements of this section:

24           A. Facilities or portions of facilities that are used  
exclusively for the storage of # 2 and other home heating  
26 oil and consist of an individual tank of 660 gallons or less  
capacity or an aggregate tank capacity of 1320 gallons or  
28 less; and

30           B. Facilities containing only liquefied petroleum gas or  
liquefied natural gas.

32           **Sec. 18. 38 MRSA §570-L** is enacted to read:

34           **§570-L. Budget approval; aboveground tanks program**

36           This section establishes a budget process for expenses of  
38 the State Fire Marshal and the Fund Insurance Review Board.

40           1. Fund Insurance Review Board. The chair of the Fund  
Insurance Review Board shall submit budget recommendations for  
42 disbursements from the fund in accordance with section 569-A,  
subsection 8, paragraph K. The budget must be submitted in  
44 accordance with Title 5, sections 1663 to 1666.

46           2. State Fire Marshal. The State Fire Marshal shall submit  
budget recommendations for disbursement from the fund in  
48 accordance with section 569-A, subsection 8, paragraph L. The  
budget must be submitted [at the time the State Fire Marshal's  
50 budget is otherwise presented.

2           **Sec. 19. Fund Insurance Review Board report on aboveground oil**  
3 **storage facilities.** By January 15, 1994, the Fund Insurance Review  
4 Board shall submit a report to the Joint Standing Committee on  
5 Energy and Natural Resources on the status of review board  
6 activities and coverage of aboveground tanks, including the  
7 following information:

8           1. With regard to aboveground oil storage facilities, the  
9 requirements with which an applicant must be in substantial  
10 compliance;

11           2. Any other rules adopted by the review board or the State  
12 Fire Marshal regarding aboveground storage tanks;

13           3. Any recommendations developed by the review board for  
14 legislation to codify standards and procedures for insurance  
15 coverage for aboveground oil storage facilities; and

16           4. Policy recommendations with regard to the aboveground  
17 oil storage facility program.

18           The review board is authorized to submit legislation with  
19 this report.

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22           **Sec. 20. Interim procedure for determining eligibility for**  
23 **aboveground oil storage facilities.** Until legislation is enacted  
24 specifying a process for determining eligibility for coverage of  
25 aboveground oil storage facilities by the Groundwater Oil  
26 Clean-up Fund, the State Fire Marshal shall make those  
27 determinations. The determinations must be made in accordance  
28 with rules adopted by the Fund Insurance Review Board for  
29 determining substantial compliance. Applications may not be  
30 filed and determinations may not be made until the review board  
31 has adopted rules setting forth the criteria for determining  
32 substantial compliance for aboveground oil storage facilities.  
33 With respect to aboveground oil storage facilities, the State  
34 Fire Marshal has the same powers and duties as the Commissioner  
35 of Environmental Protection in receiving insurance claims,  
36 determining eligibility and waiving deductibles as provided in  
37 the Maine Revised Statutes, Title 38, sections 568-A and 569-A.  
38 The State Fire Marshal may appoint, subject to the Civil Service  
39 Law, such employees as may be necessary to carry out the  
40 responsibilities of the Office of the State Fire Marshal under  
41 the Title 38, chapter 3, subchapter II-B. Any person so employed  
42 is under the administrative and supervisory direction of the  
43 State Fire Marshal.

44           **Sec. 21. Application; retroactivity.** Aboveground oil storage  
45 facilities are eligible for coverage by the Groundwater Oil  
46 Clean-up Fund retroactively to April 1, 1990. An owner or  
47 operator of an aboveground oil storage facility may apply to the

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State Fire Marshal for coverage for a discharge that has not involved the expenditure of state funds for clean-up costs or 3rd-party damage claims prior to April 1, 1990 and has not been the subject of a clean-up order issued prior to April 1, 1990. Applications must be filed no later than 180 days after the Fund Insurance Review Board adopts rules relating to substantial compliance for aboveground oil storage facilities.

Any person denied eligibility for a discharge from an underground oil storage facility after April 1, 1990 may reapply to the Department of Environmental Protection for a new determination of eligibility. The determination of eligibility must be made using the new definition of substantial compliance contained in the Maine Revised Statutes, Title 38, section 568-A.

Notwithstanding the Maine Revised Statutes, Title 1, section 302, any application pending before the Department of Environmental Protection on the effective date of this Act is appealable to the Fund Insurance Review Board and any person with an appeal pending before the Board of Environmental Protection on the effective date may elect to withdraw the appeal from the Board of Environmental Protection and file it with the Fund Insurance Review Board.

**Sec. 22. Assistance to Fund Insurance Review Board.** In providing assistance to the Fund Insurance Review Board, the Finance Authority of Maine is authorized to employ professional and nonprofessional staff to serve at the pleasure of the Chief Executive Officer.

**Sec. 23. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
<b>FUND INSURANCE REVIEW BOARD</b>		
<b>Fund Insurance Review Board</b>		
All Other	\$150,000	\$150,000
Provides for the allocation of funds for administrative and general operating costs of the board.		
<b>FUND INSURANCE REVIEW BOARD</b>		
<b>TOTAL</b>	<u>\$150,000</u>	<u>\$150,000</u>
<b>PUBLIC SAFETY, DEPARTMENT OF</b>		

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**Office of the State Fire Marshal**

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Positions	(2.0)	(2.0)
Personal Services	\$54,612	\$55,536
All Other	4,600	3,000
Capital Expenditures	17,500	

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Provides for the allocation of funds for one additional Fire Protection Specialist Assistant position, one additional Clerk Stenographer II position and general operating costs necessary to make eligibility determinations.

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**DEPARTMENT OF PUBLIC SAFETY  
TOTAL**

\$76,712	\$58,536
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**TOTAL ALLOCATIONS**

\$226,712	\$208,536
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**FISCAL NOTE**

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1993-94	1994-95
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**APPROPRIATIONS/ALLOCATIONS**

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Other Funds	\$226,712	\$208,536
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The inclusion of certain aboveground oil storage facilities under the insurance coverages of the Groundwater Oil Clean-up Fund, the decreased costs for clean-up and damages by facility owners and legal costs, which are assignable to the fund, will represent significant additional costs to the fund. The Department of Environmental Protection estimates that there is a retroactive liability total of \$1,250,000 dating to April 1, 1990 and future liabilities of \$600,000 per fiscal year. The exact amounts can not be determined at this time.

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The Fund Insurance Review Board will require Other Special Revenue allocations of \$150,000 for each of the fiscal years 1993-94 and 1994-95 for administrative and general operating costs. The board will contract with the Finance Authority of Maine for all necessary personnel and services. The Groundwater Oil Clean-up Fund has adequate resources to cover these allocations.

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2 The Department of Public Safety will require additional  
4 Other Special Revenue allocations of \$76,712 and \$58,536 in  
6 fiscal years 1993-94 and 1994-95, respectively, for one  
8 additional Fire Protection Specialist Assistant position, one  
additional Clerk Stenographer II position and general operating  
costs. The Groundwater Oil Clean-up Fund has adequate resources  
to cover these allocations.'

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**STATEMENT OF FACT**

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14 This amendment replaces the bill. Compared to the bill, the  
16 amendment changes the role of the Fund Insurance Review Board  
18 from a board that manages all aspects of the Groundwater Oil  
20 Clean-up fund to a board that forms an appeals panel to hear  
22 appeals from decisions of the Department of Environmental  
24 Protection and the State Fire Marshal regarding insurance aspects  
26 of the fund and that recommends policy regarding aboveground oil  
tank coverage under the fund. It also changes the composition of  
the Fund Insurance review board by adding 3 public members,  
removing Legislators as members and changing the membership  
representing the petroleum industry. The amendment changes the  
definition of aboveground oil storage facility to exclude oil  
terminal facilities, mobile tanks and propane tanks and to  
include household tanks.

28 The amendment also changes the manner in which eligibility  
30 for coverage under the fund is determined. Currently, an  
32 underground oil storage tank owner is eligible if the person is  
34 in compliance with a list of criteria in the law. The amendment  
36 provides that the owner of an underground tank is eligible if the  
38 department finds that, considering all relevant circumstances,  
the person has substantially met the criteria contained in the  
law. For aboveground tanks, the review board will establish  
interim rules for determining eligibility, propose a permanent  
policy for determining eligibility and report on the program to  
the Legislature by January 15, 1994.

40 The amendment makes coverage of aboveground tanks  
42 retroactive to April 1, 1990 and permits owners of underground  
44 tanks who were denied coverage under current law to reapply and  
be considered for eligibility under the new standard for  
determining substantial compliance.

46 The amendment also adds an allocation section and a fiscal  
note to the bill.