

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1083

H.P. 797

House of Representatives, March 30, 1993

An Act to Establish the Fund Insurance Review Board.

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.
Cosponsored by Senator CIANCHETTE of Somerset and
Representatives: ANDERSON of Woodland, COLES of Harpswell, GOULD of Greenville,
MITCHELL of Freeport.

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

Whereas, the Legislature needs to ensure that applicants for coverage to the Groundwater Protection Fund's insurance provisions are handled quickly and without undue hardship to the applicants; 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. 5 MRSA §12004-G, sub-§11-A is enacted to read:

<u>11-A.</u>	<u>Fund</u>	<u>Legislative</u>	<u>38 MRSA</u>
<u>Environ-</u>	<u>Insurance</u>	<u>Per Diem</u>	<u>§568-B</u>
<u>ment/</u>	<u>Review</u>	<u>for Legisla-</u>	
<u>Natural</u>	<u>Board</u>	<u>tive Members</u>	
<u>Resources</u>		<u>Only</u>	

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

2. **Applicant.** "Applicant" means the owner or operator of an underground oil storage facility or facility governed by section 570-K that may have a discharge of oil and who is seeking coverage of eligible clean-up costs and 3rd-party damage claims from the fund.

Sec. 3. 38 MRSA §562-A, sub-§9-A is enacted to read:

9-A. Fund Insurance Review Board. "Fund Insurance Review Board" or "review board" means the board created to make determinations regarding the eligibility of applicants to receive benefits from the fund.

Sec. 4. 38 MRSA §562-A, sub-§14, as enacted by PL 1989, c. 865, §2, is amended to read:

14. **Occurrence.** "Occurrence" means a contamination incident or prohibited discharge associated with one or more tanks or piping at an underground oil storage facility or facility governed by section 570-K within one year.

Sec. 5. 38 MRSA §568-A, sub-§1, ¶A, as amended by PL 1991, c. 433, §3 and affected by §7, is further amended to read:

2 A. The applicant must submit within 90 180 days of
reporting the discharge a written request to the
4 ~~commissioner~~ Fund Insurance Review Board to be covered by
the fund. The request must include:

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

10 (2) An agreement that the applicant shall pay the
~~initial costs of cleanup and 3rd party damage claims up~~
12 ~~to the~~ deductible amount specified in subsection 2; and

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

16 Within 14 days of receipt of an application, the Fund
18 Insurance Review Board must determine whether the
application is complete. If the review board determines
20 that the application is incomplete, the review board must,
22 within the 14-day period, inform the applicant of the
additional information required to complete the
24 application. Within 90 days of receipt of an applicant's
completed request for coverage by the fund submitted
pursuant to ~~subsection 1, paragraph A~~ this paragraph, the
26 ~~commissioner~~ review board must issue an order approving or
denying the applicant's request. Failure to issue an order
28 within this period constitutes approval of the applicant's
request for coverage by the fund.

30 **Sec. 6. 38 MRSA §568-A, sub-§1, ¶A**, as enacted by PL 1989, c.
32 865, §15, and affected by §§24 and 25, is amended to read:

34 A. The applicant must submit within 90 180 days of
reporting the discharge, a written request to the
36 ~~commissioner~~ Fund Insurance Review Board to be covered by
the fund. The request must include:

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

42 (2) An agreement that the applicant shall pay the
44 ~~initial costs of cleanup and 3rd party damage claims up~~
~~to the~~ deductible amount specified in subsection 2; and

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

50 **Sec. 6. 38 MRSA §568-A, sub-§1, ¶B**, as amended by PL 1991, c.
52 494, §10, is further amended to read:

2 B. An applicant is in substantial compliance when the
3 ~~commissioner~~ Fund Insurance Review Board finds that the
4 following requirements are met:

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

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

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

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

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

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

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

34 (d) Payment of any fees required under section
35 569, subsection 4-A, paragraph C;

38 (5) For consumptive use heating oil facilities:

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

42 (b) Section 565, subsection 2; and

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

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

- 2 (b) Retrofitting of leak detection and corrosion protection, if applicable;
- 4 (c) Overfill and spill prevention;
- 6 (d) Monitoring of cathodic protection systems;
- 8 (e) Testing requirements for tanks and piping on evidence of a leak;
- 10 (f) Maintenance of a leak detection system; and
- 12 (g) Reporting leaks.

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

24 When a Fund Insurance Review Board denial is appealed to the Board of Environmental Protection, that appeal must be scheduled to be heard at the next meeting of the Board of Environmental Protection following receipt of the appeal.

30 If the Board of Environmental Protection or subsequent judicial review overturns a denial of an application, the costs of the appellant for the appeal become a part of the amount granted by the fund. This subparagraph does not apply to owners of facilities as defined in section 570-K whose documentation the Fund Insurance Review Board shall develop in consultation with the Maine State Fire Marshal.

38 **Sec. 7. 38 MRSA §568-A, sub-§2**, as amended by PL 1991, c. 817, §23, is further amended to read:

40 **2. Deductibles.** Applicants eligible for coverage by the fund under subsection 1 shall pay the ~~initial~~ deductible costs 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
50 1	\$2,500 <u>\$1,000</u>
52 2 to 5	5,000 <u>2,500</u>
6 to 10	10,000 <u>5,000</u>

11 to 30 50,000 25,000
2 over 30 100,000 50,000

4 The ~~commissioner~~ Fund Insurance Review Board shall pay any
6 eligible additional costs up to \$1,000,000 associated with
8 activities under section 569-A, subsection 8, paragraphs B, D and
10 Fund Insurance Review Board may pay any costs eligible for
12 coverage by the fund above \$1,000,000 from the fund but the
14 ~~commissioner~~ Fund Insurance Review Board shall recover these
16 expenditures from the responsible party pursuant to section 569-A.

18 **Sec. 8. 38 MRSA §568-A, sub-§§3 and 4**, as enacted by PL 1989,
20 c. 865, §15 and affected by §§24 and 25, are amended to read:

22 **3. Exemptions from deductible.** The ~~commissioner~~ Fund
24 Insurance Review Board may waive the deductible requirement for
26 an applicant's personal residence if the ~~commissioner~~ Fund
28 Insurance Review Board determines that the applicant does not
30 have the financial resources to pay the deductible. The ~~board~~
32 Fund Insurance Review Board shall adopt rules to determine the
34 standards to be used to assess an applicant's ability to pay this
36 deductible.

38 **4. Agreements.** Any payments to or on behalf of applicants
40 for clean-up activities undertaken by the applicant must be
42 pursuant to a written agreement between the applicant and the
44 ~~commissioner~~ Fund Insurance Review Board. The agreement must
46 include, but is not limited to:

- 48 A. A plan and schedule for remedial actions;
- 50 B. A provision for enforcement of the agreement and
sanctions for nonperformance;
- C. Provisions for cost accounting and reporting of costs
incurred in remediation activities; and
- D. An agreement to clean up the site to the satisfaction of
the commissioner.

52 **Sec. 9. 38 MRSA §568-A, sub-§5**, as amended by PL 1991, c. 817,
54 §24, is further amended to read:

56 **5. Uncompensated 3rd-party damage claims.** If within 12
58 months of a claim, a person designated as a responsible party by
60 the ~~commissioner~~ Fund Insurance Review Board refuses to pay
3rd-party damage claims not covered by the fund, the ~~commissioner~~
Fund Insurance Review Board may pay these claims from the fund
pursuant to section 569-A, subsection 2 or section 569-B,

2 subsection 2. Any amount paid must be recovered from the
responsible party pursuant to section 569-A or 569-B.

4 **Sec. 10. 38 MRSA §568-B** is enacted to read:

6 **§568-B. Fund Insurance Review Board created**

8 **1. Fund Insurance Review Board.** The Fund Insurance Review
Board, as established by Title 5, section 12004-G, subsection
10 11-A, is created for the purposes of receiving applications for
fund coverage and making determinations regarding the eligibility
12 of applicants to the fund as well as adopting rules and
guidelines necessary to the furtherance of the intent of this
14 subchapter. The review board consists of 7 members appointed for
3-year terms, as follows.

16 **A.** The Governor shall appoint 3 members from
18 recommendations by the Maine Oil Dealers Association who
shall represent petroleum marketers.

20 **B.** The President of the Senate shall appoint one member
22 serving on the joint standing committee of the Legislature
having jurisdiction over energy and natural resources
24 matters.

26 **C.** The Speaker of the House of Representatives shall
appoint one member of the House of Representatives serving
28 on the joint standing committee of the Legislature having
jurisdiction over energy and natural resources matters.

30 **D.** The Commissioner of Environmental Protection or the
32 commissioner's designee is a member.

34 **E.** The Maine State Fire Marshal or the fire marshal's
36 designee is a member.

Members who are members of the Legislature are entitled to
38 legislative per diem for attendance at meetings. Nonlegislative
members receive no compensation.

40 **2. Applications for fund coverage.** The following are
42 eligible to submit applications for fund coverage:

44 **A.** Owners of facilities as defined in section 570-K,
46 subsection 1 and owners of facilities as defined in section
562-A, subsection 22 for discharges reported on or after
48 June 1, 1985.

50 **Sec. 11. 38 MRSA §569-A, 4th ¶,** as enacted by PL 1991, c. 817,
§26, is amended to read:

2 A 3rd-party commercial risk pool account is established
3 within the fund to pay 3rd-party damage claims for claims
4 resulting from discharges from bare steel and noncathodically
5 protected underground storage tanks or tanks as defined in
6 section 570-K, subsection 1 used for commercial purposes up to
7 \$100,000 per claimant including those costs in subsection 8,
8 paragraphs D, E and F associated with those claims. The
9 ~~commissioner~~ Fund Insurance Review Board may retain consultants
10 to administer these funds.

11 **Sec. 12. 38 MRSA §569-A, sub-§§2 to 4,** as enacted by PL 1991,
12 c. 817, §26, are amended to read:

13 **2. Third-party damages.** Any person claiming to have
14 suffered property damage or actual economic damages, including,
15 but not limited to, loss of income and medical expenses directly
16 or indirectly as a result of a discharge of oil to ground water
17 prohibited by section 543, in this subsection called the
18 "claimant," may apply to the ~~commissioner~~ Fund Insurance Review
19 Board within 2 years after the occurrence or discovery of the
20 injury or damage, whichever date is later, stating the amount of
21 damage alleged to have been suffered as a result of that
22 discharge. The ~~commissioner~~ Fund Insurance Review Board shall
23 prescribe appropriate forms and details for the applications.
24 The ~~commissioner~~ Fund Insurance Review Board may contract with
25 insurance professionals to process claims. The commissioner,
26 upon petition and for good cause shown, may waive the 2-year
27 limitation for filing damage claims. For claims made on
28 discharges eligible for coverage by the 3rd-party commercial risk
29 pool account, the ~~commissioner~~ Fund Insurance Review Board shall
30 pay the first \$100,000 per claimant out of the 3rd-party
31 commercial risk pool account as long as funds are available. The
32 ~~commissioner~~ Fund Insurance Review Board shall pay any claims
33 that exceed \$100,000 or available money in the 3rd-party
34 commercial risk pool account from the fund.

35
36
37 A. When a responsible party is known, the commissioner
38 shall send by certified mail to the responsible party notice
39 of claim and written notice of the right to join the claims
40 proceeding as an interested party. A responsible party
41 shall provide written notification of intent to join to the
42 department within 10 working days of receipt of this
43 notice. If the responsible party joins as an interested
44 party and formally agrees in writing to the amount of the
45 damage claim, any determination of the amount of the claim
46 and award is binding in any subsequent action for
47 reimbursements to the fund. If a claimant is not
48 compensated for 3rd-party damages by the responsible party
49 or the expenses are above the applicant's deductible and the
50 claimant, the responsible party and the ~~commissioner~~ Fund
51 Insurance Review Board agree as to the amount of the damage
52 claim, or if the responsible party does not join as an

2 interested party or when the responsible party is not known
after the commissioner has exercised reasonable efforts to
4 ascertain the responsible party, and the claimant and the
commissioner Fund Insurance Review Board agree as to the
6 amount of the damage claim, the commissioner Fund Insurance
Review Board shall certify the amount of the claim and the
8 name of the claimant to the Treasurer of State and the
Treasurer of State shall pay the amount of the claim from
the fund.

10
12 B. If the claimant, the responsible party and the
commissioner Fund Insurance Review Board are not able to
14 agree as to the amount of the damage claim, or if the
responsible party does not join as an interested party in a
16 timely manner or when the responsible party is not known
after the commissioner Fund Insurance Review Board has
18 exercised reasonable efforts to ascertain the responsible
party, and the claimant and the commissioner Fund Insurance
20 Review Board are not able to agree as to the amount of the
damage claim, the claim is subject to subsection 4.

22 C. A claimant shall take all reasonable measures to prevent
and minimize damages suffered by the claimant as a result of
24 a discharge of oil. Reasonable measures include title
searches and site assessments for the acquisition of
26 commercial or industrial properties.

28 D. Third-party damage claims must be stated in their
entirety in one application. Damages omitted from any claim
30 at the time the award is made are waived unless the damage
or injury was not known at the time of the claim.

32 E. Awards from the fund on damage claims may not include
34 any amount the claimant has recovered on account of the same
damage by way of settlement with the responsible party or
36 the responsible party's representative or judgment of a
court of competent jurisdiction against the person causing
38 or otherwise responsible for the discharge.

40 F. It is the intent of the Legislature that the remedies
provided for 3rd-party damage claims compensated under this
42 subchapter are nonexclusive. A court awarding damages to a
claimant as a result of a discharge of oil to ground water
44 prohibited by section 543 shall reduce damages awarded by
any amounts received from the fund to the extent these
46 amounts are duplicative.

48 G. Payments from the fund for 3rd-party damage claims may
not exceed \$200,000 per claimant.

50 H. A 3rd-party damage claim for damages to real estate may
52 not include the devaluation of the real estate associated

2 with the loss of a water supply if the ~~commissioner~~ Fund
3 Insurance Review Board finds under section 568, subsection 2
4 that a public or private water supply is available and best
5 meets the criteria of that subsection and the property owner
6 did not agree to be served by that public or private water
supply.

8 I. A responsible party is not eligible for compensation
9 under this subsection for costs, expenses or damages related
10 to the specific discharge for which the responsible party is
11 deemed responsible.

12 J. Prior to forwarding a claim to the hearing examiner
13 under subsection 4, the ~~commissioner~~ Fund Insurance Review
14 Board may require that the amount of the claim be finalized.

15 K. Third-party damage claims may not include expenditures
16 for the preparation and prosecution of the damage claim such
17 as legal fees or real estate appraisal fees.

18
19 **3. Claimant contact.** When the ~~commissioner~~ Fund Insurance
20 Review Board becomes aware of a claimant under subsection 2, the
21 ~~commissioner~~ Fund Insurance Review Board shall send a letter by
22 certified mail to inform that person of the 3rd-party damage
23 claims process under subsection 2. The letter must contain the
24 name and telephone number of a contact person available to
25 explain the claims procedure.

26
27 **4. Determination of disputed 3rd-party damage claims.** The
28 ~~commissioner~~ Fund Insurance Review Board shall establish a
29 disputed claims processing capability ~~within the department~~ to
30 hear and determine claims filed under this subchapter that are
31 not agreed upon by the claimant and the ~~commissioner~~ Fund
32 Insurance Review Board.

33 A. An independent hearing examiner appointed by the
34 ~~commissioner~~ Fund Insurance Review Board shall hear and
35 determine any disputed 3rd-party damage claims. ~~The parties~~
36 ~~to the hearing are the commissioner and the claimant.~~

37 B. To the extent practical, all claims arising from or
38 related to a common discharge must be heard and determined
39 by the same hearing examiner.

40 C. Hearings before the hearing examiner are informal and
41 the rules of evidence prevailing on judicial proceedings are
42 not binding. The hearing examiner may administer oaths and
43 require by subpoena the attendance and testimony of
44 witnesses and the production of books, records and other
45 evidence relative or pertinent to the issues presented to
46 the hearing examiner for determination.

2 D. Determinations made by the hearing examiner are final
and those determinations may be subject to review by a
4 Justice of the Superior Court, but only as to matters
related to abuse of discretion by the hearing examiner. A
6 claimant seeking review of a hearing examiner determination
shall file an appeal in the Superior Court within 30 days of
the determination.

8
10 E. The ~~commissioner~~ Fund Insurance Review Board shall
certify the amount of the damage award, if any, after
12 determination by the hearing examiner and shall certify the
name of the claimant to the Treasurer of State.

14 **Sec. 13. 38 MRSA §569-A, sub-§5, ¶¶A, C and D**, as enacted by PL
1991, c. 817, §26, are amended to read:

16
18 A. Until January 1, 1994 and after January 1, 1998, a fee
is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of
20 refined petroleum products and their by-products other than
gasoline, liquid asphalt and #6 fuel oil, including #2 fuel
22 oil, kerosene, jet fuel and diesel fuel; and 10¢ per barrel
of #6 fuel oil. The fee is assessed on the first transfer
24 of those products by oil terminal facility licensees, as
defined in section 542, subsection 7, and on a person
26 required to register with the ~~commissioner~~ Fund Insurance
Review Board under section 545-B who first transports oil
28 into the State. The fee is not assessed on petroleum
products that are exported from this State. These fees must
30 be paid monthly on the basis of records certified to the
~~commissioner~~ Fund Insurance Review Board. This subsection
32 does not apply to waste oil transported into the State in
any motor vehicle that has a valid license issued by the
34 department for the transportation of waste oil pursuant to
section 1319-O and is subject to fees established under
36 section 1319-I.

38 C. The owner or operator of an underground oil storage
facility that stores motor fuel or is used in the marketing
40 and distribution of oil shall pay an annual fee of \$130 per
tank not constructed of fiberglass, cathodically protected
42 steel or other noncorrosive material. These funds must be
deposited in the 3rd-party commercial risk pool account. If
44 the funds in the account are inadequate to pay the claims,
costs and expenses for which payment from the account is
46 authorized, the board may increase the per tank assessment
up to \$500 per tank. Any shortfall in the account occurring
48 after the maximum assessment has been levied must be paid
out of the fund. Upon payment of the annual fee, the
50 ~~commissioner~~ Fund Insurance Review Board shall issue a
certificate of coverage for the tank.

52

2 D. When the fund balance reaches \$15,000,000, the
collection of fees under paragraphs A and B abates. When
4 the ~~commissioner~~ Fund Insurance Review Board projects that
the fund balance will reach \$15,000,000, the ~~commissioner~~
6 Fund Insurance Review Board must provide a 15-day advance
notice of the abatement to persons assessed the fee under
8 paragraphs A and B. The \$15,000,000 fund limit may be
exceeded to accept transfer fees assessed or received after
10 the 15-day notice has been issued. When the fund balance is
reduced to \$12,500,000, the fees assessed under paragraphs A
12 and B are reimposed. The ~~commissioner~~ Fund Insurance Review
Board shall provide a 15-day advance notice of the
reimposition of those fees.

14 **Sec. 14. 38 MRSA §569-A, sub-§8, ¶¶A, I and J, as enacted by PL**
16 **1991, c. 817, §26, are amended to read:**

18 A. Administrative expenses, personnel expenses and
equipment costs of the department related to the
20 administration and enforcement of this subchapter and any
loans to the Maine Coastal and Inland Surface Oil Clean-up
22 Fund made pursuant to this section. Administrative
expenses, personnel expenses and equipment costs may not
24 exceed ~~\$1,734,000~~ \$1,434,000 per fiscal year;

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

28 J. Payments to or on behalf of applicants eligible for
30 coverage by the fund under section 568-A, subsection 1 for
expenses above the deductible specified in section 568-A,
32 subsection 2 incurred in ~~commissioner~~-approved clean-up
activities approved by the Fund Insurance Review Board and
34 specified in an agreement under section 568-A, subsection
4+; and

36 **Sec. 15. 38 MRSA §569-A, sub-§8, ¶K is enacted to read:**

38 K. All costs associated with the Fund Insurance Review
40 Board.

42 **Sec. 16. 38 MRSA §569-A, sub-§§9, 10 and 12, as enacted by PL**
44 **1991, c. 817, §26, are amended to read:**

46 **9. Reporting mechanism.** If the potential liabilities of
the fund exceed projected income for the fund, the ~~commissioner~~
48 Fund Insurance Review Board shall notify the joint standing
committee of the Legislature having jurisdiction over energy and
50 natural resources matters within 30 days of determining that a
shortfall will occur and submit recommendations for revising
coverage of the fund or generating the needed income.

2 **10. Reimbursements to fund.** The commissioner Fund
3 Insurance Review Board shall seek recovery for the use of the
4 fund of all sums greater than \$1,000,000 per occurrence expended
5 from the fund pursuant to subsection 8, paragraph J for an
6 applicant for coverage by the fund found by the commissioner Fund
7 Insurance Review Board to be eligible under section 568-A,
8 subsection 1 and all sums expended from the fund when no
9 applicant was found by the commissioner Fund Insurance Review
10 Board to be eligible under section 568-A, subsection 1, including
11 overdrafts, for the purposes described in subsection 8,
12 paragraphs B, D, E, H and J or for other damage incurred by the
13 State, in connection with a prohibited discharge, including
14 interest computed at 15% a year from the date of expenditure,
15 unless the commissioner Fund Insurance Review Board finds the
16 amount involved too small or the likelihood of success too
17 uncertain. If a request for reimbursement to the fund is not
18 paid within 30 days of demand, the commissioner Fund Insurance
19 Review Board shall refer the request to the Attorney General or
20 to a collection agency, agent or attorney retained by the
21 department with the approval of the Attorney General in
22 conformance with Title 5, section 191 for collection.

23 **12. Extinguishing the 3rd-party commercial risk pool**
24 **account.** When all claims against the 3rd-party commercial risk
25 pool account have been extinguished and, in the judgment of the
26 commissioner Fund Insurance Review Board, provision for payment
27 of any potential 3rd-party claims against the account have been
28 made, the commissioner Fund Insurance Review Board shall refund
29 any excess funds in the account to those persons who paid an
30 annual fee into the account. The commissioner Fund Insurance
31 Review Board shall make refunds in the proportion that the
32 owner's or operator's total contribution bears to the total
33 contributions to the fund. Two years after notice to the
34 operator's or owner's last address, unclaimed funds in the
35 3rd-party commercial risk pool account escheat to the State if
36 the party has made no claim for refund.

37 When the State Auditor performs an annual postaudit of the Ground
38 Water Oil Clean-up Fund, the auditor shall prepare a separate
39 audit report of the 3rd-party commercial risk pool account. The
40 report must be maintained by the commissioner Fund Insurance
41 Review Board and made available upon request to participants in
42 the account.

43 **Sec. 17. 38 MRSA §569-B, sub-§2,** as enacted by PL 1991, c.
44 817, §26, is amended to read:

45 **2. Third-party damages.** Any person claiming to have
46 suffered actual damages to real estate or personal property or
47 loss of income directly or indirectly as a result of a discharge
48 of oil to ground water prohibited by section 543, in this
49 subsection called the "claimant," may apply to the commissioner
50 Insurance Review Board for reimbursement of the amount of the
51 damages suffered by the claimant.

2 Fund Insurance Review Board within 6 months after the occurrence
or discovery of the discharge stating the amount of damage
4 alleged to have been suffered as a result of that discharge. The
~~commissioner~~ Fund Insurance Review Board shall prescribe
6 appropriate forms and details for the applications. The ~~board~~
Fund Insurance Review Board, upon petition and for good cause
shown, may waive the 6-month limitation for filing damage claims.

8
10 A. If the claimant and the ~~commissioner~~ Fund Insurance
Review Board are able to agree as to the amount of the
12 damage claim, the ~~commissioner~~ Fund Insurance Review Board
shall certify the amount of the claim and the name of the
14 claimant to the Treasurer of State and the Treasurer of
State shall pay the amount of the claim from the Ground
16 Water Oil Clean-up Fund.

18 B. If the claimant and the ~~commissioner~~ Fund Insurance
Review Board are not able to agree as to the amount of the
20 damage claim, the ~~commissioner~~ Fund Insurance Review Board
shall forthwith transmit the claim for action to the
22 department as provided in this subchapter.

24 C. A claimant shall take all reasonable measures to
minimize damages suffered by the claimant as a result of a
26 discharge of oil.

28 D. Third-party damage claims must be stated in their
entirety in one application. Damages omitted from any claim
30 at the time the award is made are deemed waived.

32 E. Damage claims arising under this subchapter are
recoverable only in the manner provided under this
34 subchapter. It is the intent of the Legislature that the
remedies provided for such damage claims in this subchapter
36 are exclusive.

38 F. Awards from the fund on damage claims may not include
any amount that the claimant has recovered on account of the
40 same damage by way of settlement with or judgment of a court
of competent jurisdiction against the person causing or
42 otherwise responsible for the discharge.

44 **Sec. 18. 38 MRSA §569-B, sub-§§3 and 4, as enacted by PL 1991,**
c. 817, §26, are amended to read:

46 **3. Determination of disputed 3rd-party damage claims.** The
48 ~~commissioner~~ Fund Insurance Review Board shall establish a claims
processing capability within the department to hear and determine
50 claims filed under this subchapter that are not agreed upon by
the claimant and the ~~commissioner~~ Fund Insurance Review Board.

2 A. An independent hearing examiner appointed by the
3 ~~commissioner~~ Fund Insurance Review Board shall hear and
4 determine any disputed 3rd-party damage claims.

6 B. To the extent practical, all claims arising from or
7 related to a common discharge must be heard and determined
8 by the same hearing examiner.

10 C. Hearings before the hearing examiner are informal and
11 the rules of evidence prevailing on judicial proceedings are
12 not binding. The hearing examiner may administer oaths and
13 require by subpoena the attendance and testimony of
14 witnesses and the production of books, records and other
15 evidence relative or pertinent to the issues presented to
16 the hearing examiner for determination.

18 D. Determinations made by the hearing examiner are final
19 and those determinations may be subject to review by a
20 Justice of the Superior Court, but only as to matters
21 related to abuse of discretion by the hearing examiner. A
22 claimant seeking review of a hearing examiner determination
23 shall file an appeal in the Superior Court within 30 days of
24 the determination.

26 E. The ~~commissioner~~ Fund Insurance Review Board shall
27 certify the amount of the damage award, if any, after
28 determination by the hearing examiner and shall certify the
29 name of the claimant to the Treasurer of State, unless the
30 ~~commissioner~~ Fund Insurance Review Board has determined that
31 the claimant is a responsible party, in which case the
32 ~~commissioner~~ Fund Insurance Review Board shall withhold
33 certification until all claims that the ~~commissioner~~ Fund
34 Insurance Review Board has against the responsible party
with respect to the discharge have been satisfied.

36 **4. Funding.** A fee of 9¢ per barrel of gasoline and 8¢ per
37 barrel of refined petroleum products and their by-products other
38 than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel
39 oil, kerosene, jet fuel and diesel fuel, is assessed on the
40 transfer of those products by oil terminal facility licensees, as
41 defined in section 542, subsection 7. These fees must be paid
42 monthly by the oil terminal facility licensees on the basis of
43 records certified to the ~~commissioner~~ Fund Insurance Review Board
44 and credited to the Ground Water Oil Clean-up Fund upon receipt
45 by the department, except that the ~~commissioner~~ Fund Insurance
46 Review Board shall transfer the amount of these fees in excess of
47 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum
48 products and their by-products, other than gasoline and liquid
49 asphalt, as follows.

2 A. Sixty-two and one half percent of the excess must be
transferred to the Finance Authority of Maine for deposit in
the Underground Oil Storage Replacement Fund.

4
6 B. Thirty-seven and one half percent of the excess must be
transferred to the Maine State Housing Authority for deposit
in the Housing Opportunities for Maine Fund to be used
8 initially for loans and grants to finance the costs of
removal, disposal, replacement or abandonment of underground
10 oil storage facilities and tanks located on owner-occupied
or residential rental property, which facilities and tanks
12 have been identified by the department as leaking or posing
an environmental threat or as having been abandoned.

14
16 After an aggregate sum of \$5,000,000 has been transferred to the
Finance Authority of Maine and an aggregate sum of \$3,000,000 has
18 been transferred to the Maine State Housing Authority pursuant to
this subsection, the per barrel fee assessed pursuant to this
subsection must be reduced by 6¢ per barrel.

20 **Sec. 19. 38 MRSA §569-B, sub-§5, ¶G,** as enacted by PL 1991, c.
22 817, §26, is amended to read:

24 G. Sums up to \$50,000 each year, which have been allocated
by the Legislature on a contingency basis in accordance with
26 section 570-A for payment of costs for studies of the
environmental impacts of discharges to ground water
28 prohibited by section 543 that may have adverse economic
effects and that occur subsequent to the allocation, when
30 the studies are considered necessary by the ~~commissioner~~
Fund Insurance Review Board; and

32 **Sec. 20. 38 MRSA §569-B, sub-§6,** as enacted by PL 1991, c.
34 817, §26, is amended to read:

36 **6. Reimbursements to fund.** The ~~commissioner~~ Fund Insurance
Review Board shall seek recovery for the use of the fund of all
38 sums expended from the fund, including overdrafts, for the
purposes described in subsection 5, paragraphs B, D, E and G, or
40 for other damage incurred by the State, in connection with a
prohibited discharge, including interest computed at 15% a year
42 from the date of expenditure, unless the ~~commissioner~~ Fund
Insurance Review Board finds the amount involved too small or the
44 likelihood of success too uncertain. Requests for reimbursement
to the fund if not paid within 30 days of demand must be turned
46 over to the Attorney General for collection.

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

50 **2. Adequacy of fund.** On or before February 15, 1992 1994,
52 the ~~commissioner~~ Fund Insurance Review Board with the cooperation

2 of the Bureau of Insurance, shall report to the joint standing
committee of the Legislature with jurisdiction over energy and
4 natural resources on the department's Fund Insurance Review
Board's experience administering the fund, the 3rd-party
6 commercial risk pool account, clean-up activities and 3rd-party
damage claims. The report must also include an assessment of the
8 adequacy of the fund to cover anticipated expenses and any
recommendations for statutory change.

10 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

12
14 **STATEMENT OF FACT**

16 This bill establishes the Fund Insurance Review Board for
the purpose of administering the Ground Water Oil Clean-up Fund.
18 Under current law, the fund is administered by the Department of
Environmental Protection. The bill also contains several changes
20 to existing law that facilitate a more efficient review process
for claims made to the fund.