

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1543

S.P. 569

In Senate, May 23, 1995

An Act to Avoid a Shortfall in the Maine Ground Water Oil Clean-up Fund and Amend the Financial Assistance Program for Owners of Underground Oil Storage Facilities.

(EMERGENCY)

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator RUHLIN of Penobscot. (GOVERNOR'S BILL).
Cosponsored by Representative GOULD of Greenville and
Representatives: MERES of Norridgewock, NICKERSON of Turner, POULIN of Oakland,
SHIAH of Bowdoinham.

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

4
6 **Whereas,** the Ground Water Oil Clean-up Fund is established
to pay clean-up costs and damages associated with leaks and
spills from oil storage facilities; and

8
10 **Whereas,** the Commissioner of Environmental Protection has
determined that the potential liabilities of the fund will exceed
projected fund income unless changes are made in fee collection
and disbursement; and

12
14 **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,

16
18
20 **Be it enacted by the People of the State of Maine as follows:**

22 **Sec. 1. 10 MRSA §1023-D, sub-§2,** as amended by PL 1989, c.
543, §3, is further amended to read:

24 **2. Sources of money.** There shall must be paid into the
26 fund the following:

28 A. All money appropriated for inclusion in the fund or
appropriated to the authority for use in providing financial
30 assistance to owners of underground oil storage facilities
or tanks, subject to any restrictions applicable to the
32 appropriation;

34 B. Subject to any pledge, contract or other obligation, all
interest, dividends or other pecuniary gains from investment
36 of money of the fund;

38 C. Subject to any pledge, contract or other obligations,
any money which the authority receives in repayment of
40 advances from the fund; and

42 D. Any other money available to the authority and directed
by the authority to be paid into the fund.

44
46 Without limiting the generality of any other power or authority
given to or conferred upon the authority in anticipation of the
appropriation or transfer of any money for inclusion in the fund,
48 including but not limited to the assessment or transfer of fees
under Title 38, section 569-A, subsection 6, the authority may
50 borrow funds for application to the fund. All funds borrowed

2 pursuant to this authorization, including interest on the
3 borrowed funds, must be repaid from such fees or by other
4 appropriation.

5 **Sec. 2. 38 MRSA §561, 2nd ¶**, as affected by PL 1989, c. 890,
6 Pt. A, §40 and amended by Pt. B, §129, is further amended to read:

7 The Legislature intends by the enactment of this subchapter
8 to exercise the police power of the State through the department
9 by conferring upon the department the power to deal with the
10 hazards and threats of danger and damage posed by the storage and
11 handling of oil in underground facilities and related activities;
12 to require the prompt containment and removal of pollution
13 occasioned thereby; to provide procedures whereby persons
14 suffering damage from these occurrences may be promptly made
15 whole; to establish a fund to provide for the investigation,
16 mitigation and removal of discharges or threats of discharge of
17 oil from aboveground and underground storage facilities,
18 including the restoration of contaminated water supplies; and to
19 guarantee the prompt payment of reasonable damage claims
20 resulting therefrom.

21 **Sec. 3. 38 MRSA §568-B, sub-§1**, as enacted by PL 1993, c. 363,
22 §12 and affected by §21, is amended to read:

23 **1. Fund Insurance Review Board.** The Fund Insurance Review
24 Board, as established by Title 5, section 12004-G, subsection
25 11-A, is created for the purposes of hearing and deciding appeals
26 from insurance claims-related decisions of the commissioner as
27 well as adopting rules and guidelines necessary to the
28 furtherance of its duties and responsibilities under this
29 subchapter. The review board consists of ~~8~~ 10 members appointed
30 for 3-year terms as follows:

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

38 B. ~~Three~~ Five members of the public who are not employed in
39 the petroleum industry and who do not have a direct and
40 substantial financial interest in the petroleum industry to
41 be appointed by the Governor;

42 C. The commissioner or the commissioner's designee; and
43

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

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

10 **Sec. 4. 38 MRSA §568-B, sub-§2, ¶¶B and C**, as enacted by PL
12 1993, c. 363, §12 and affected by §21, are amended to read:

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

22 C. To contract with the Finance Authority of Maine for such
24 assistance in fulfilling the board's duties as the board may
26 require; and

28 **Sec. 5. 38 MRSA §568-B, sub-§2, ¶D** is enacted to read:

30 D. To monitor income and disbursements from the Ground
32 Water Oil Clean-up Fund under section 569-A and adjust fees
34 pursuant to section 569-A, subsection 5, paragraph E, as
36 required to avoid a shortfall in the fund.

38 **Sec. 6. 38 MRSA §569-A, first and 2nd ¶¶**, as enacted by PL 1991,
40 c. 817, §26, are amended to read:

42 The Ground Water Oil Clean-up Fund is established to be used
44 by the department as a nonlapsing, revolving fund for carrying
46 out the purposes of this subchapter. The balance in the fund is
48 limited to \$15,000,000. To this fund are credited all
50 registration fees, fees for late payment or failure to register,
penalties, transfer fees, reimbursements, assessments and other
fees and charges related to this subchapter. To this fund are
charged any and all expenses of the department related to this
subchapter, including administrative expenses, payment of
3rd-party damages covered by this subchapter, costs of removal of
discharges of oil and costs of cleanup of discharges from
aboveground and underground storage facilities, including, but
not limited to, restoration of water supplies and any obligations
of the State pursuant to Title 10, section 1024, subsection 1.

The commissioner may authorize the borrowing of funds by and
between the Maine Coastal and Inland Surface Oil Clean-up Fund
and the Ground Water Oil Clean-up Fund to carry out the
provisions of subchapters II-A and II-B. All funds borrowed
pursuant to this section must be repaid with interest to the fund
of origin, in as prompt a manner as revenues allow and in no
event more than 2 years after the date the funds were

2 transferred, at a rate of interest determined by the Treasurer of
State based on the average rate of interest earned on funds
invested during the period of the loan.

4 **Sec. 7. 38 MRSA §569-A, sub-§5, ¶E** is enacted to read:

6 E. If the fund balance is reduced to \$3,000,000 or less,
8 the Fund Insurance Review Board may adopt rules increasing
10 the fees imposed under paragraph A by up to 10¢ per barrel
12 for gasoline and up to 5¢ per barrel for other petroleum
14 products as necessary to avoid a shortfall in the fund. The
16 board may use the emergency rule-making procedures under
18 Title 5, section 8054 if necessary to ensure that the fee
increase is instituted in time to avoid a shortfall. Any
fee increase adopted pursuant to this paragraph terminates
and the fees imposed under paragraph A apply when the fund
balance reaches \$5,000,000.

20 **Sec. 8. 38 MRSA §569-A, sub-§6,** as repealed and replaced by PL
1993, c. 680, Pt. A, §36, is amended to read:

22 **6. Allocation from Ground Water Oil Clean-up Fund.** From
24 the fees assessed in subsection 5, 6¢ per barrel of gasoline,
refined petroleum products and their by-products, other than
26 liquid asphalt and #6 fuel oil, must be transferred by the
department upon receipt as follows to the Finance Authority of
28 Maine until an aggregate amount of \$13,000,000 has been
30 transferred. To avoid a shortfall in the fund, money may not be
transferred pursuant to this subsection when the fund balance is
\$3,000,000 or less.

32 ~~A.-- Sixty-two and one-half percent of the 6¢ per barrel fee~~
34 ~~must be transferred to the Finance Authority of Maine for~~
deposit in the Underground Oil Storage Replacement Fund, and
36 ~~after \$3,000,000 has been transferred to the Maine State~~
Housing Authority pursuant to paragraph B, 100% of the 6¢
38 ~~per barrel fee must be transferred to the Finance Authority~~
of Maine.

40 ~~B.-- Thirty-seven and one-half percent of the 6¢ per barrel~~
42 ~~fee must be transferred to the Maine State Housing Authority~~
for deposit in the Housing Opportunities for Maine Fund to
44 ~~be used initially for loans and grants to finance the costs~~
of removal, disposal, replacement or abandonment of
46 ~~underground oil storage facilities and tanks located on~~
owner-occupied or residential rental property, which
48 ~~facilities and tanks have been identified by the department~~
as leaking or posing an environmental threat or as having
been abandoned. After \$3,000,000 has been transferred, the

D I V I O N

2 ~~Maine State Housing Authority does not receive a percentage~~
3 ~~of the 6¢ per barrel fee.~~

4 After an aggregate sum of ~~\$10,000,000~~ \$13,000,000 has been
5 transferred to the Finance Authority of Maine ~~and an aggregate~~
6 ~~sum of \$3,000,000 has been transferred to the Maine State Housing~~
7 ~~Authority~~ pursuant to this subsection, the per barrel fee
8 assessed pursuant to subsection 5 must be reduced by 6¢ per
9 barrel. For the purposes of this subsection, the transfers from
10 the Underground Oil Storage Replacement Fund under Public Law
11 1993, chapter 6 and under unified appropriations and allocations
12 for fiscal year 1993-94 and fiscal year 1994-95 are not included
13 in calculating the amount transferred from the Ground Water Oil
14 Clean-up Fund to the Underground Oil Storage Replacement Fund.

15 **Sec. 9. 38 MRSA §569-A, sub-§8, ¶¶B and C**, as enacted by PL
16 1991, c. 817, §26, are amended to read:

17 B. All costs involved in the removal of a prohibited
18 discharge, the abatement of pollution and the implementation
19 of remedial measures, including restoration of water
20 supplies, related to the discharge of oil to ground water
21 covered by this subchapter, whether from an aboveground or
22 underground storage facility, not paid by a responsible
23 party or an applicant for coverage by the fund;

24 C. Sums allocated to research and development in accordance
25 with this section, except that money may not be disbursed
26 for this purpose when the fund balance is \$3,000,000 or less;

27 **Sec. 10. 38 MRSA §569-A, sub-§9**, as enacted by PL 1991, c.
28 817, §26, is amended to read:

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

36 **Sec. 11. 38 MRSA §569-B, first and 2nd ¶¶**, as enacted by PL
37 1991, c. 817, §26, are amended to read:

38 The Ground Water Oil Clean-up Fund is established to be used
39 by the department as a nonlapsing, revolving fund for carrying
40 out the purposes of this subchapter. To this fund are credited
41 all registration fees, fees for late payment or failure to
42 register, penalties, transfer fees, reimbursements and other fees
43 and charges related to this subchapter. To this fund are charged

any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd-party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

The commissioner may authorize the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to carry out the provisions of subchapters II-A and II-B. All funds borrowed pursuant to this section must be repaid ~~with interest~~ to the fund of origin in as prompt a manner as revenues allow at a rate of interest determined by the Treasurer of State based on the average rate of interest earned on funds invested during the period of the loan and in no event more than 2 years after the date the funds were transferred.

Sec. 12. 38 MRSA §569-B, sub-§4, as enacted by PL 1991, c. 817, §26, is amended to read:

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

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.

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 initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks that are located on owner-occupied or residential rental property, ~~---which facilities and tanks~~ have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

2 After an aggregate sum of \$5,000,000 has been transferred to the
4 Finance Authority of Maine and an aggregate sum of \$3,000,000 has
6 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.

8 If the fund balance is reduced to \$3,000,000 or less, the Fund
10 Insurance Review Board may adopt rules increasing the fees
12 imposed under this subsection by up to 10¢ per barrel for
14 gasoline and up to 5¢ per barrel for other petroleum products as
16 necessary to avoid a shortfall in the fund. The board may use
18 the emergency rule-making procedures under Title 5, section 8054
to ensure that the fee increase is instituted in time to avoid a
shortfall. Any fee increase adopted pursuant to board rules
terminates and the original fees imposed by this subsection apply
when the fund balance reaches \$5,000,000.

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

22 B. All costs involved in the removal of a prohibited
24 discharge, the abatement of pollution and the implementation
26 of remedial measures, including restoration of water
28 supplies, related to the discharge of oil, petroleum
products and their by-products to ground water ~~covered by~~
this subchapter from an aboveground or underground storage
facility;

30 C. Sums allocated to research and development in accordance
32 with this section, except that money may not be disbursed
for this purpose when the fund balance is \$3,000,000 or less;

34 **Sec. 14. 38 MRSA §570-H, sub-§2**, as amended by PL 1993, c.
36 363, §15 and affected by §21, is further amended to read:

38 **2. Adequacy of fund.** On or before February 15th of each
year, the ~~commissioner with the cooperation of the~~ Fund Insurance
40 Review Board, with the cooperation of the commissioner, shall
report to the joint standing committee of the Legislature with
42 jurisdiction over energy and natural resources on the
department's and the board's experience administering the fund,
44 clean-up activities and 3rd-party damage claims. The report must
also include an assessment of the adequacy of the fund to cover
46 anticipated expenses and any recommendations for statutory
change. To carry out its responsibility under this section, the
48 board may order an independent audit of disbursements from the
fund.

