

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

---

Legislative Document

No. 1563

---

H.P. 1119

House of Representatives, June 6, 1995

**An Act to Address a Shortfall in the Maine Ground Water Oil Clean-up Fund and Change 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 black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative GOULD of Greenville. (GOVERNOR'S BILL)  
Cosponsored by Representatives: DAMREN of Belgrade, MERES of Norridgewock,  
POULIN of Oakland, Senator: RUHLIN of Penobscot.

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

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,

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

8 E. If the fund balance is reduced to \$3,000,000 or less,  
10 the Fund Insurance Review Board may adopt rules increasing  
12 the fees imposed under paragraph A by up to 10¢ per barrel  
14 for gasoline and up to 5¢ per barrel for other petroleum  
16 products as necessary to avoid a shortfall in the fund. The  
board may use the emergency rule-making procedures under  
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.

18  
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  
liquid asphalt and #6 fuel oil, must be transferred by the  
26 department upon receipt as follows to the Finance Authority of  
Maine until an aggregate amount of \$13,000,000 has been  
28 transferred. To avoid a shortfall in the fund, money may not be  
transferred pursuant to this subsection when the fund balance is  
30 \$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~~

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.

16 **Sec. 9. 38 MRSA §569-A, sub-§8, ¶¶B and C,** as enacted by PL  
17 1991, c. 817, §26, are amended to read:

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

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

28 **Sec. 10. 38 MRSA §569-A, sub-§9,** as enacted by PL 1991, c.  
29 817, §26, is amended to read:

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

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

39 The Ground Water Oil Clean-up Fund is established to be used  
40 by the department as a nonlapsing, revolving fund for carrying  
41 out the purposes of this subchapter. To this fund are credited  
42 all registration fees, fees for late payment or failure to  
43 register, penalties, transfer fees, reimbursements and other fees  
44 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  
supplies, related to the discharge of oil, petroleum  
products and their by-products to ground water ~~covered by~~  
28 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.  
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,  
clean-up activities and 3rd-party damage claims. The report must  
44 also include an assessment of the adequacy of the fund to cover  
anticipated expenses and any recommendations for statutory  
46 change. To carry out its responsibility under this section, the  
board may order an independent audit of disbursements from the  
48 fund.

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

4

### STATEMENT OF FACT

6

8           This bill amends the law relating to disbursements from the  
Ground Water Oil Clean-up Fund in accordance with the Maine  
Revised Statutes, Title 38, section 569-A, subsection 9, which  
10 requires the Commissioner of Environmental Protection to submit  
recommendations to revise fund coverage or revenues if the  
12 potential fund liabilities exceed projected fund income.

14           The bill allows the Finance Authority of Maine to borrow  
funds for inclusion in the Underground Oil Storage Replacement  
16 Fund in anticipation of the assessment and transfer of fees  
allocated from the Ground Water Oil Clean-up Fund under Title 38,  
18 section 569-A, subsection 6.

20           The bill clarifies that the Ground Water Oil Clean-up Fund  
may be used for costs incurred by the Department of Environmental  
22 Protection to abate threats to groundwater from the discharge of  
petroleum from aboveground storage tanks.

24

26           The bill authorizes the Fund Insurance Review Board to  
monitor and report income and disbursements from the Ground Water  
Oil Clean-up fund and to adjust fees within specified limits if  
28 the fund balance falls below \$3,000,000.

30           The bill increases by \$3,000,000 the amount transferred from  
the Ground Water Oil Clean-up Fund to the Finance Authority of  
32 Maine. The additional funds will be used by the Finance  
Authority of Maine to help gas station owners meet the cost of  
34 installing vapor recovery equipment. The bill also allows fund  
transfers to the Finance Authority of Maine to be suspended when  
36 the fund balance is \$3,000,000 or less. The bill removes  
statutory language regarding the transfer of \$3,000,000 to the  
38 Maine State Housing Authority because the required transfer has  
already been made.

40

42           The bill allows the suspension of fund disbursements for  
research and development when the fund balance is \$3,000,000 or  
less.