

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1579

H.P. 1123

House of Representatives, March 18, 1997

**An Act to Ensure Stable Funding of Pollution Abatement Programs  
Administered by the Department of Environmental Protection.**

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Reference to the Committee on Natural Resources suggested and ordered printed.

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

JOSEPH W. MAYO, Clerk

Presented by Representative ROWE of Portland.  
Cosponsored by Senator TREAT of Kennebec.

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

2  
4       **Sec. 1. 38 MRSA §352, sub-§2-A** is enacted to read:

6       2-A. Fee adjustment. The commissioner may adjust the fees  
8       established in this subchapter on an annual basis according to  
the United States Consumer Price Index established by the federal  
Department of Labor, Bureau of Labor Statistics.

10       **Sec. 2. 38 MRSA §352, sub-§3**, as affected by PL 1989, c. 890,  
Pt. A, §40 and amended by Pt. B, §11, is further amended to read:

12       3. **Maximum fee.** ~~Except as provided in this subsection, no~~  
14       ~~fee may exceed the maximum established in Table I.~~ The  
16       commissioner shall set the actual fees and shall publish a  
18       schedule of all fees by August 1st of each year. If the  
20       commissioner determines that a particular application, by virtue  
of its size, uniqueness, complexity or other relevant factors, is  
likely to require significantly more costs than those listed on  
Table I, the commissioner may designate that application as  
subject to special fees. A special fee may not exceed \$40,000.  
22       Such a designation must be made at, or prior to, the time the  
application is accepted as complete and may not be based solely  
24       on the likelihood of extensive public controversy. All  
department staff who have worked on the review of the application  
26       must shall submit quarterly reports to the commissioner detailing  
the time spent on the application and all expenses attributable  
28       to the application. The processing fee for that application must  
be the actual cost to the department. The applicant shall must  
30       be billed quarterly and all fees paid prior to receipt of the  
permit.

32       **Sec. 3. 38 MRSA §353-A, sub-§2**, as enacted by PL 1991, c. 384,  
34       §8 and affected by §16, is amended to read:

36       2. **Fee adjustment.** The commissioner may adjust the per ton  
38       fees, the annual fee surcharge set forth in subsection 1-A and  
the maximum and minimum fees set forth in subsection 4 on an  
annual basis according to the United States Consumer Price Index  
40       established by the federal Department of Labor, Bureau of Labor  
Statistics.

42       **Sec. 4. 38 MRSA §568-A, sub-§1, ¶B-2** is enacted to read:

44       B-2. An applicant is not eligible for coverage for any  
46       discharge discovered or reported to the commissioner after  
October 1, 1998, if the discharge is from an underground oil  
48       storage facility or tank that is not constructed of  
fiberglass, cathodically protected steel or other

2 noncorrosive material approved by the department, or from an  
4 aboveground oil storage facility that has underground piping  
not constructed of fiberglass, cathodically protected steel  
or other noncorrosive material approved by the department.

6 **Sec. 5. 38 MRSA §568-A, sub-§1, ¶I** is enacted to read:

8 I. Costs incurred to implement a voluntary response action  
10 plan under section 343-E are not eligible for coverage.

12 **Sec. 6. 38 MRSA §568-A, sub-§7** is enacted to read:

14 7. Repeal date. This section is repealed December 31, 2005.

16 **Sec. 7. 38 MRSA §569-A, sub-§5, ¶A**, as amended by PL 1993, c.  
553, §3 and affected by §8, is further amended to read:

18 A. Until December 31, ~~1999~~ 2005, a fee is assessed of 44¢  
20 per barrel of gasoline; 25¢ per barrel of refined petroleum  
22 products and their by-products other than gasoline, liquid  
24 asphalt and #6 fuel oil, including #2 fuel oil, kerosene,  
26 jet fuel and diesel fuel; and 4¢ per barrel of #6 fuel oil.  
28 The fee is assessed on the first transfer of those products  
30 by oil terminal facility licensees, as defined in section  
32 542, subsection 7, and on a person required to register with  
34 the commissioner under section 545-B who first transports  
oil into the State. The fee is not assessed on petroleum  
products that are exported from this State. These fees must  
be paid monthly on the basis of records certified to the  
commissioner. This subsection does not apply to waste oil  
transported into the State in any motor vehicle that has a  
valid license issued by the department for the  
transportation of waste oil pursuant to section 1319-0 and  
is subject to fees established under section 1319-I.

36 **Sec. 8. 38 MRSA §569-A, sub-§13**, as enacted by PL 1991, c.  
817, §26, is amended to read:

38 13. Repeal date. This section is repealed on December 31,  
40 ~~1999~~ 2005.

42 **Sec. 9. 38 MRSA §569-B, sub-§4**, as amended by PL 1995, c. 399,  
§18 and affected by §21, is further amended to read:

44 4. Funding. A fee of 9¢ ~~3¢~~ per barrel of gasoline and 8¢  
46 ~~2¢~~ per barrel of refined petroleum products and their by-products  
48 other than gasoline and liquid asphalt, including #6 fuel oil, #2  
50 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

2 monthly by the oil terminal facility licensees on the basis of  
records certified to the commissioner and credited to the Ground  
4 Water Oil Clean-up Fund upon receipt by the department, ~~except~~  
that ~~the commissioner shall transfer the amount of these fees in~~  
6 ~~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.

8  
10 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.

12  
14 B. ~~Thirty-seven and one-half percent of the excess must be~~  
transferred to the Maine State Housing Authority for deposit  
16 ~~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  
18 ~~oil storage facilities and tanks that are located on~~  
owner-occupied or residential rental property and have been  
20 ~~identified by the department as leaking or posing an~~  
environmental threat or as having been abandoned.

22  
24 ~~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  
26 ~~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.

28  
30 If the fund balance is reduced to \$3,000,000 or less, the Fund  
Insurance Review Board may adopt rules increasing the fees  
32 imposed under this subsection by up to 10¢ per barrel for  
gasoline and up to 5¢ per barrel for other petroleum products,  
34 except liquid asphalt and #6 fuel oil, as necessary to avoid a  
shortfall in the fund. The board may use the emergency  
36 rule-making procedures under Title 5, section 8054 to ensure that  
the fee increase is instituted in time to avoid a shortfall. Any  
38 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.

40  
42 **Sec. 10. 38 MRSA §569-B, sub-§8,** as enacted by PL 1991, c.  
817, §26, is amended to read:

44 **8. Effective date.** This section takes effect December 31,  
46 ~~1999~~ 2005.

48 **Sec. 11. 38 MRSA §570-A, 2nd ¶,** as enacted by PL 1991, c. 66,  
Pt. A, §32, is amended to read:

50 This section is repealed December 31, ~~1999~~ 2005.

2           **Sec. 12. 38 MRSA §570-B, 2nd ¶**, as enacted by PL 1991, c. 66,  
Pt. A, §33, is amended to read:

4           This section is repealed December 31, 1999 2005.

6           **Sec. 13. 38 MRSA §570-I, 2nd ¶**, as enacted by PL 1991, c. 66,  
8           Pt. C, §2, is amended to read:

10           This section is ~~is--effective~~ takes effect December 31, 1999  
12           2005.

14           **Sec. 14. 38 MRSA §570-J, 2nd ¶**, as enacted by PL 1991, c. 66,  
Pt. C, §2, is amended to read:

16           This section is effective December 31, 1999 2005.

18           **Sec. 15. PL 1989, c. 865, §25** is repealed.

20           **Sec. 16. PL 1991, c. 817, §28** is amended to read:

22           **Sec. 28. Effective date.** That section of this Act that  
24           amends the Maine Revised Statutes, Title 38, section 570, first  
paragraph, as repealed and replaced by Public Law 1987, chapter  
735, section 72, takes effect December 31, 1999 2005.

26           **Sec. 17. PL 1991, c. 817, §30** is amended to read:

28           **Sec. 30. Repeal.** That section of this Act that amends the  
30           Maine Revised Statutes, Title 38, section 570, first paragraph,  
as amended by Public Law 1989, chapter 865, section 17 and  
32           affected by sections 24 and 25, is repealed December 31, 1999  
2005.

34

36                                                   **SUMMARY**

38           This bill does the following.

40           1.   It authorizes the Commissioner of Environmental  
42           Protection to annually adjust all fees within the Maine  
Environmental Protection Fund according to the United States  
44           Consumer Price Index to ensure that Department of Environmental  
Protection programs and initiatives are self-supporting.  
46           Currently, only air emission fees provide for an annual Consumer  
Price Index adjustment.

48           2.   It requires the Commissioner of Environmental  
Protection to publish an annual fee schedule.

2 3. It amends existing law to apply the Consumer Price Index  
3 to the Department of Environmental Protection's minimum and  
4 maximum levels of air emission fees, and to the air quality  
5 surcharge. The federal Clean Air Act Amendments of 1990 require  
6 state air emission fee programs to apply the Consumer Price Index  
7 to annual air emission fees, in order for air programs to keep  
8 pace with inflation. Presently, the department applies the  
9 Consumer Price Index to base fees, but not to the minimum and  
10 maximum levels of fees or to the air quality surcharge. The  
11 additional revenue generated by this bill allows the department  
12 to continue air pollution control activities at current levels.

13  
14 4. It makes discharges from nonconforming underground oil  
15 storage tanks and piping ineligible for coverage by the Ground  
16 Water Oil Clean-up Fund if the discharge is discovered or  
17 reported after October 1, 1998. Continued eligibility is a  
18 disincentive to compliance with the statutory prohibition on  
19 operation of tanks and piping that are not constructed of  
20 fiberglass, cathodically protected steel or other noncorrosive  
21 material.

22 5. It makes costs incurred to implement a voluntary  
23 response action plan ineligible for coverage by the Ground Water  
24 Oil Clean-up Fund. The purpose is to ensure that clean-up work  
25 covered by the fund is subject to cost containment procedures.  
26 Clean-up activities conducted under the voluntary response action  
27 program are conducted without department oversight for cost  
28 containment.

29  
30 6. It extends fund coverage of eligible spill clean-up  
31 costs incurred by owners and operators of oil storage tanks until  
32 December 31, 2005. Under current law, fund coverage ends in  
33 1999, leaving an unfunded clean-up liability of between \$40 and  
34 \$50 million.

35  
36 7. It eliminates from the language that will govern the  
37 Ground Water Oil Clean-up Fund after the fund insurance program  
38 ends provisions for additional fund transfers to the Finance  
39 Authority of Maine and the Maine State Housing Authority.  
40 Existing law provides for the transfer of \$13,000,000 to the  
41 Finance Authority of Maine and \$3,000,000 to the Maine State  
42 Housing Authority, to be used, among other things, to remove and  
43 upgrade oil storage facilities.  
44

45 8. It makes changes that fully effectuate the extension of  
46 the groundwater fund insurance program from December 31, 1999 to  
December 31, 2005.