

MAINE STATE LEGISLATURE

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L.D. 1626

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MINORITY
NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1141, L.D. 1626, Bill, "An Act to Establish the Waste Motor Oil Disposal Site Remediation Program"

Amend the bill by striking out the title and substituting the following:

'An Act to Assist in the Cleanup of the Wells Waste Oil Site'

Further amend the bill by striking out everything after the title and before the enacting clause.

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 10 MRSA §963-A, sub-§47-A is enacted to read:

47-A. Responsible party. "Responsible party" has the same meaning as that set forth in Title 38, section 1362, subsection 2 and has the same meaning as the term "potentially responsible party" as defined in 40 Code of Federal Regulations, Section 304-12(m).

Sec. 1. 10 MRSA §963-A, sub-§49-G is enacted to read:

49-G. Total response costs. "Total response costs" means the total costs that have been or will be paid in association with the Portland-Bangor Waste Oil Services Site in Wells. "Total response costs" includes any payments that either have been made or will be made to the Department of Environmental Protection or any payments that either have been made or will be

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2 made as a total or partial settlement with any entity that
3 assumes that person's liability at that site. "Total response
4 costs" includes costs incurred by the Department of Environmental
5 Protection or 3rd parties in connection with the investigatory,
6 removal or remedial activities related to the Portland-Bangor
7 Waste Oil Services Site in Wells.

8 **Sec. 2. 10 MRSA §963-A, sub-§§51-B and 51-C** are enacted to
9 read:

10 **51-B. Waste oil.** "Waste oil" means a petroleum based oil
11 that, through use or handling, has become unsuitable for its
12 original purpose due to the presence of impurities or loss of
13 original properties. "Waste oil" also includes mixtures of waste
14 oil and water.

15 **51-C. Waste oil disposal site.** "Waste oil disposal site"
16 means the Portland-Bangor Waste Oil Services Site in Wells
17 designated by the Department of Environmental Protection as an
18 uncontrolled hazardous substance site.

19 **Sec. 3. 10 MRSA §1023-D, sub-§2,** as amended by PL 1995, c.
20 399, §1 and affected by §21, is further amended to read:

21 **2. Sources of money.** There must be paid into the fund the
22 following:

23 **A.** All money appropriated for inclusion in the fund or
24 appropriated to the authority for use in providing financial
25 assistance to owners of underground oil storage facilities
26 or tanks, subject to any restrictions applicable to the
27 appropriation;

28 **B.** Subject to any pledge, contract or other obligation, all
29 interest, dividends or other pecuniary gains from investment
30 of money of the fund;

31 **C.** Subject to any pledge, contract or other obligations,
32 any money the authority receives in repayment of advances
33 from the fund; and

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

36 Without limiting the generality of any other power or authority
37 given to or conferred upon the authority in anticipation of the
38 appropriation or transfer of any money for inclusion in the fund,
39 ~~including but not limited to the assessment or transfer of fees~~
40 ~~under Title 38, section 569-A, subsection 6,~~ the authority may
41 borrow funds for application to the fund. All funds borrowed
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pursuant to this authorization, including interest on the borrowed funds, must be repaid from such fees or by other appropriation.

Sec. 4. 10 MRSA §1023-L is enacted to read:

§1023-L. Wells Waste Oil Clean-up Fund

1. Fund established. The Wells Waste Oil Clean-up Fund is created and established under the jurisdiction and control of the authority and is referred to in this section as the "fund."

2. Sources of money. The following money must be paid into the fund:

A. All money appropriated for inclusion in the fund or appropriated to the authority for use in providing financial assistance to responsible parties as defined in section 963-A, subsection 47-A, subject to any restrictions applicable to the appropriation;

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

C. Subject to any pledge, contract or other obligation, any money the authority receives in repayment of advances from the fund;

D. Money transferred from the available balance in the Underground Oil Storage Replacement Fund, subject to the limitations of section 1024-A; and

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

3. Eligibility to participate in loan program. The authority may use money in the fund to carry out any power of the authority under this section or under section 1026-Q, including, but not limited to, the pledge or transfer and deposit of money in the fund as security for, and to apply money in the fund in payment of principal, interest and other amounts due on insured loans. Money in the fund may be used for direct loans or deferred loans for all or part of the waste oil disposal site clean-up project when the authority determines that:

A. The applicant is a responsible party with respect to the waste oil disposal site and the applicant is domiciled or has a principal place of business in the State;

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B. If the applicant is not a unit of local government, the applicant demonstrates financial need for the assistance; and

C. There is a reasonable likelihood that the applicant will be able to repay the loan.

The authority, pursuant to Title 5, chapter 375, subchapter II, shall adopt rules for determining eligibility, feasibility, terms, conditions, security and fees for the loans, including deferred loans. The authority shall adopt rules that provide for a simplified loan application process for loan requests under \$2,000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The authority may charge an interest rate as low as 0% or up to a maximum rate equal to the prime rate of interest as published in the Wall Street Journal, depending on the financial ability of the applicant to pay as determined by the authority. The maximum the authority may loan, or issue as a deferred loan, to any one borrower, including related entities as determined by the authority, is \$50,000. Money in the fund not needed currently to meet the obligations of the authority as provided in this section may be invested as permitted by law. Any costs incurred by the authority in administering this fund may be taken from interest from all sources in the fund.

4. Accounts within fund. The authority may divide the fund into separate accounts as it determines necessary or convenient for carrying out this section, including, but not limited to, accounts reserved for direct loan funds for waste oil cleanup.

5. Payments on loans from fund; proceeds from mortgage or security interests. All proceeds of loans and proceeds from mortgage or security interests from the fund must be applied by the authority to the Underground Oil Storage Replacement Fund.

6. Lapse to Ground Water Oil Clean-up Fund upon cleanup of waste oil disposal site. Within 30 days after the Department of Environmental Protection notifies the authority that the waste oil disposal site has been remediated and the total response costs have been paid, the authority shall transfer all amounts remaining in the fund to the Ground Water Oil Clean-up Fund.

7. Determinations relating to eligibility. The authority shall establish a registry of all persons who qualify under this subsection to have a portion of their share of total response costs paid pursuant to this section. The authority shall adopt rules relating to eligibility, including the calculation of an eligible person's proportionate share, procedures to ensure that money paid pursuant to this section is used to settle an eligible

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2 person's liabilities related to the waste oil disposal and
3 repayment of any amounts in excess of that person's share. Rules
4 adopted pursuant to this subsection are routine technical rules
5 as defined in Title 5, chapter 375, subchapter II-A.

6 **Sec. 5. 10 MRSA §1026-Q** is enacted to read:

8 **§1026-Q. Mortgage insurance for waste oil clean-up project**

10 **1. Insurance.** In addition to its other powers under this
11 chapter, subject to the limitations of this subchapter, except
12 sections 1026-B to 1026-D, the authority may insure up to 100% of
13 mortgage payments with respect to mortgage loans for the waste
14 oil disposal site clean-up project when the authority determines
15 that:

16 A. The applicant is a responsible party with respect to the
17 waste oil disposal site and the applicant is domiciled or
18 has a principal place of business in the State;

19 B. The applicant demonstrates a reasonable likelihood that
20 it will not be able to obtain a loan for the project on
21 reasonable terms without insurance pursuant to this section;
22 and
23 and

24 C. The applicant demonstrates a reasonable likelihood that
25 it will be able to repay the insured loan.

26 **2. Limitation on mortgage insurance.** The authority may not
27 at any time have, in the aggregate amount of principal and
28 interest outstanding, mortgage insurance obligations pursuant to
29 this section exceeding \$1,000,000.

30 **3. Mortgage eligibility.** The authority, pursuant to Title
31 5, chapter 375, subchapter II, shall adopt rules for determining
32 eligibility, project feasibility, terms, conditions and security
33 for insured mortgage loans under this section. The authority may
34 accept less than adequate collateral when necessary to ensure the
35 cleanup of the waste oil disposal site under applicable law.
36 Rules adopted pursuant to this subsection are routine technical
37 rules as defined in Title 5, chapter 375, subchapter II-A.

38 **Sec. 6. 38 MRSA §568-B, sub-§2, ¶C**, as amended by PL 1995, c.
39 399, §7, and affected by §21, is further amended to read:

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

43 **Sec. 7. 38 MRSA §568-B, sub-§2, ¶D**, as enacted by PL 1995, c.
44 399, §8 and affected by §21, is amended to read:

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

10 **Sec. 8. 38 MRSA §568-B, sub-§2, ¶E** is enacted to read:

12 E. To consult with the Finance Authority of Maine when
14 necessary, but no less frequently than annually to, review
16 income and disbursements from the Wells Waste Oil Clean-up
18 Fund under Title 10, section 1023-L. The board, at such
20 times and in such amounts as it determines necessary, and in
22 consultation with the Finance Authority of Maine, shall
24 direct the transfer of funds from the Underground Oil
26 Storage Replacement Fund to the Ground Water Oil Clean-up
28 Fund.

30 **Sec. 9. 38 MRSA §569-A, sub-§5, ¶A**, as amended by PL 1997, c.
32 374, §6, is further amended to read:

34 A. Until December 31, 2005, a fee is assessed of ~~44¢~~ 38¢
36 per barrel of gasoline; ~~25¢~~ 19¢ per barrel of refined
38 petroleum products and their by-products other than
40 gasoline, liquid asphalt and #6 fuel oil, including #2 fuel
42 oil, kerosene, jet fuel and diesel fuel; and 4¢ per barrel
44 of #6 fuel oil. The fee is assessed on the first transfer
46 of those products by oil terminal facility licensees, as
48 defined in section 542, subsection 7, and on a person
50 required to register with 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-O and is subject to fees established under
section 1319-I.

Sec. 10. 38 MRSA §569-A, sub-§6, as amended by PL 1995, c.
399, §12 and affected by §21, is repealed.

Sec. 11. 38 MRSA §570-H, sub-§2, as amended by PL 1995, c.
399, §20 and affected by §21, is further amended to read:

2. **Adequacy of fund.** On or before February 15th of each
year, the Fund Insurance Review Board, with the cooperation of
the commissioner, shall report to the joint standing committee of
the Legislature with jurisdiction over energy--and natural

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resources matters on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report must also include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Wells Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this section, the board may order an independent audit of disbursements from the fund, the Underground Oil Storage Replacement Fund and the Wells Waste Oil Clean-up Fund.

Sec. 12. Transfer of funds to the Wells Waste Oil Clean-up Fund.
The authority shall transfer \$4,000,000 to the Wells Waste Oil Clean-up Fund from the Underground Oil Storage Replacement Fund on the effective date of this section.

Sec. 13. Report. The Department of Environmental Protection shall report to the Joint Standing Committee on Natural Resources on the status of the cleanup and remediation of the Portland-Bangor Waste Oil Services Site in Wells, designated by the Department of Environmental Protection as an uncontrolled hazardous substance site. The department shall evaluate and report on the amounts disbursed from the Wells Waste Oil Clean-up Fund, and whether the loan program should be extended to other uncontrolled hazardous substance sites or federal superfund sites in the State. The department shall evaluate the components and substances at uncontrolled hazardous substance sites, including sites where waste oil constitutes more than 50% by volume of the substances delivered to the site. The department shall evaluate the need and the amount of any adjustment to the maximum balance in the Ground Water Oil Clean-up Fund. The department shall submit a report to the Joint Standing Committee on Natural Resources by December 31, 1999. Following the receipt of this report the Joint Standing Committee on Natural Resources may introduce legislation to the Second Regular Session of the 119th Legislature.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The bill establishes the Wells Waste Oil Clean-up Fund, to be administered by the Finance Authority of Maine to provide loans, deferred loans and payments and guarantees for costs related to the cleanup and remediation of a site in Wells. The fund is capitalized by the transfer of \$4,000,000 from balances

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2 available in the Underground Oil Storage Replacement Fund to the
3 new fund. While this transfer will reduce the amount of funds
4 available for loans for the removal of underground oil tanks, the
5 demand for loans under that program has decreased such that no
6 negative impact is expected.

7 The bill also allows the authority to utilize up to
8 \$1,000,000 of existing mortgage insurance authority to guarantee
9 loans for the clean-up projects. Whether the guarantee of these
10 new loans will increase the exposure of the moral obligation of
11 the State can not be determined.

12 The authority will incur additional costs to adopt rules and
13 administer the loan, deferred loan and guarantee programs. No
14 additional General Fund appropriations will be required for these
15 costs.

16 The Department of Environmental Protection will incur some
17 minor additional costs to submit a required report to the
18 Legislature. These costs can be absorbed within the department's
19 existing budgeted resources.'

22
23
24 **SUMMARY**

25 This minority amendment replaces the bill and creates the
26 Wells Waste Oil Clean-up Fund under the jurisdiction and control
27 of the Finance Authority of Maine. The fund provides low or zero
28 interest loans and loan guarantees of up to \$50,000 to eligible
29 Maine residents and businesses who have been identified as
30 responsible parties at the Wells waste oil disposal site who have
31 demonstrated financial need. The fund also provides for
32 assistance to municipalities identified as responsible parties at
33 the Wells site. In addition, the Finance Authority of Maine may
34 issue deferred loans, which may be converted to a grant. The
35 loan program is funded through a one-time \$4,000,000 transfer
36 from the Underground Storage Tank Fund. Any remaining balance in
37 the fund reverts to the Ground Water Oil Clean-up Fund after the
38 Department of Environmental Protection determines that the waste
39 oil disposal site has been finally cleaned up.

40 The amendment requires the Fund Insurance Review Board and
41 the Finance Authority of Maine to review and make necessary
42 adjustments from the Underground Oil Storage Replacement Fund to
43 the Ground Water Oil Clean-up Fund. Finally, the amendment
44 requires the Department of Environmental Protection to report to
45 the Joint Standing Committee on Natural Resources on the
46 appropriate balance in the Ground Water Oil Clean-up Fund, and
47 the status of the cleanup and remediation of the Portland-Bangor
48 Waste Oil Services Site in Wells.

49 This amendment also adds a fiscal note to the bill.