

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1666

H.P. 1225

House of Representatives, March 15, 2001

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**An Act to Improve the Inspection and Maintenance of Underground Oil  
Storage Tanks.**

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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.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative TOBIN of Windham.  
Cosponsored by Senator MARTIN of Aroostook.

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

2  
4       **Sec. 1. 10 MRSA §963-A, sub-§49-C**, as enacted by PL 1987, c.  
769, Pt. A, §45, is amended to read:

6       **49-C. Underground oil storage facility project.**  
"Underground oil storage facility ~~replacement~~ project" means the  
8       ~~renovation~~, removal, disposal or replacement of all or any part  
of an underground oil storage facility ~~which~~ that is used for  
10       marketing and distribution of oil, petroleum products or their  
by-products to persons or entities other than the owner of the  
12       facility.

14       **Sec. 2. 10 MRSA §963-A, sub-§49-E**, as enacted by PL 1989, c.  
543, §2, is amended to read:

16       **49-E. Underground oil storage tank project.** "Underground  
18       oil storage tank ~~replacement~~ project" or "tank ~~replacement~~  
project" means the ~~renovation~~, removal, disposal or replacement  
20       of all or any part of an underground oil storage tank.

22       **Sec. 3. 10 MRSA §1023-D, sub-§3**, as amended by PL 1997, c.  
613, §1, is further amended to read:

24       **3. Application of fund.** Money in the fund may be applied  
26       to carry out any power of the authority under this section or  
under or in connection with section 1026-F, including, but not  
28       limited to, to pledge or transfer and deposit money in the fund  
as security for and to apply money in the fund in payment of  
30       principal, interest and other amounts due on insured loans.  
Money Except as otherwise prohibited under this subsection, money  
32       in the fund may be used for direct loans or grants for all or  
part of underground oil storage facility ~~replacement~~ projects,  
34       underground oil storage tank ~~replacement~~ projects, aboveground  
oil storage tank or facility construction or replacement projects  
36       or gasoline service station vapor control or petroleum liquids  
transfer vapor recovery projects ~~as described in paragraph-A~~ when  
38       the authority determines that:

40       A. One or more of the following circumstances exists:

42               (1) The underground oil storage facility or tank is  
leaking or has been identified by the Department of  
44               Environmental Protection as posing an environmental  
threat, or removal is required by applicable law;

46               (2) The applicant is required to install equipment  
48               related to the improvement of air quality pursuant to  
requirements for gasoline service station vapor control  
50               and petroleum liquids transfer vapor recovery; ~~or~~

2 (3) The applicant is constructing, replacing or  
4 renovating a tank or facility used for the aboveground  
6 storage of oil and the work is supervised by a  
8 state-registered professional engineer with training  
and experience in aboveground oil storage facility  
installation; or

10 (4) The applicant is renovating an underground oil  
12 storage tank or facility, the work is supervised by an  
14 underground oil storage tank installer certified by the  
Board of Underground Storage Tank Installers under  
Title 32, chapter 104-A and the estimated cost of the  
work exceeds \$1000;

16 B. The applicant, if the applicant is not a unit of local  
18 government, demonstrates financial need for the assistance;  
and

20 C. If the assistance includes a loan, there is a reasonable  
22 likelihood that the applicant will be able to repay the loan.

24 Applicants demonstrating the requirement to install equipment  
26 related to the improvement of air quality pursuant to section  
28 1026-F and who own fewer than 15 service stations, and who are  
not able to repay a loan, are eligible to receive no more than  
\$35,000 per service station in grants for the payment of expenses  
relating to the installation of this equipment.

30 The authority, pursuant to Title 5, chapter 375, subchapter II,  
32 shall adopt rules for determining eligibility, feasibility,  
terms, conditions and security for the loans and grants. In the  
34 case of loans, the authority may charge an interest rate that may  
be as low as 0% and may be greater, depending on the financial  
36 ability of the applicant to pay as determined by the authority,  
up to a maximum of the prime rate of interest charged by major  
38 New York banks. The maximum the authority may loan or grant to  
any one borrower, including related entities as determined by the  
40 authority, is \$600,000. Loans or grants for the purposes listed  
in paragraph A, subparagraph (3) may not exceed \$1,000,000 in a  
42 12-month period. Grants may not be made for the purpose listed  
in paragraph A, subparagraph (4). Money in the fund not needed  
44 currently to meet the obligations of the authority as provided in  
this section may be invested as permitted by law.

46 **Sec. 4. 32 MRSA §10001, first ¶.** as amended by PL 1997, c. 364,  
48 §2, is further amended to read:

50 In order to safeguard the public health, safety and welfare,  
to protect the public from incompetent and unauthorized persons,

2 to assure ensure the highest degree of professional conduct on  
the part of underground oil storage tank installers and  
4 inspectors and to assure ensure the availability of underground  
oil storage tank installations and inspections of high quality to  
6 persons in need of those services, it is the purpose of this  
chapter to provide for the regulation of persons offering  
underground oil storage tank installation and inspection services.

8  
10 **Sec. 5. 32 MRSA §10002, sub-§6-A** is enacted to read:

12 **6-A. Underground oil storage tank inspector.** "Underground  
oil storage tank inspector" means a person certified under this  
chapter to inspect underground oil storage tanks.

14  
16 **Sec. 6. 32 MRSA §10003, sub-§1**, as amended by PL 1997, c. 364,  
§4, is further amended to read:

18 **1. Establishment and membership.** There is established  
within the Department of Environmental Protection, the Board of  
20 Underground Storage Tank Installers. The board consists of 7  
members appointed by the Governor as follows: one from the  
22 Department of Environmental Protection; one from either the Maine  
Oil Dealer's Association or the Maine Petroleum Association; one  
24 underground oil storage tank installer; ~~one from either the Oil  
and Solid Fuel Board, the Plumber's Examining Board or the State  
Board of Certification for Geologists and Soil Scientists;~~ one  
26 from the Maine Chamber of Commerce and Industry; one from the  
Maine Fire Chiefs Association; and ~~one~~ 2 public member members.

30 **Sec. 7. 32 MRSA §10004, sub-§2**, as amended by PL 1997, c. 364,  
§5, is further amended to read:

32  
34 **2. Rules.** The board may adopt, in accordance with the  
Maine Administrative Procedure Act, Title 5, chapter 375, rules  
36 relating to professional conduct to carry out the policy of this  
chapter, including, but not limited to, rules relating to  
38 professional regulation and to the establishment of ethical  
standards of practice for persons certified to practice  
underground oil storage tank installation, inspection and removal  
40 and underground gasoline storage tank removal.

42 **Sec. 8. 32 MRSA §10006, sub-§1**, as amended by PL 1997, c. 364,  
§6, is further amended to read:

44  
46 **1. Certification required.** No person may practice, or  
profess to practice, as an underground oil storage tank  
48 installer, underground oil storage tank inspector or underground  
gasoline storage tank remover in this State or use the words  
"underground oil storage tank installer," "underground gasoline  
50 storage tank remover," "underground oil storage tank inspector"

2 or other words or letters to indicate that the person using the  
3 words or letters is a certified underground oil storage tank  
4 installer practitioner, underground oil storage tank inspector  
5 practitioner or underground gasoline storage tank remover  
6 practitioner unless that person is certified in accordance with  
7 this chapter.

8 **Sec. 9. 32 MRSA §10008, first ¶,** as amended by PL 1997, c. 364,  
9 §7, is further amended to read:

10 A person who is a resident of the State and has been  
11 certified in another state as an underground oil storage tank  
12 installer or underground oil storage tank inspector may, upon  
13 payment of a fee as established under section 10012, obtain a  
14 certification as an underground oil storage tank installer or  
15 underground oil storage tank inspector, ~~provided that a~~ if that  
16 person submits satisfactory evidence of certification as an  
17 underground oil storage tank installer or underground oil storage  
18 tank inspector in another state under qualifications equivalent  
19 to those specified in this chapter.

22 **Sec. 10. 32 MRSA §10010, first ¶,** as amended by PL 1997, c.  
23 364, §8, is further amended to read:

24 An applicant ~~applying~~ for certification as an underground  
25 oil storage tank installer or an underground gasoline storage  
26 tank remover or an underground oil storage tank inspector must  
27 file a written application provided by the board, showing to the  
28 satisfaction of the board that that person meets the following  
29 requirements.

32 **Sec. 11. 32 MRSA §10010, sub-§6** is enacted to read:

34 **6. Education and examination for certification of**  
35 **underground oil storage tank inspectors.** An applicant for  
36 certification as an underground oil storage tank inspector must:

38 A. Pass a written or oral examination based on laws  
39 outlined in and any rules adopted under Title 38, chapter 3,  
40 subchapter II-B by the Board of Environmental Protection  
41 regarding underground oil storage tanks, any regulations  
42 promulgated by the federal Environmental Protection Agency  
43 regarding underground oil storage tanks and any technical  
44 concepts necessary to understand and implement those laws,  
45 rules or regulations;

46 B. Demonstrate valid certification or licensing by  
47 manufacturers of ancillary equipment that the applicant  
48 intends to inspect if the manufacturers require any such  
49 certification to maintain equipment warranties; and  
50

2           C. If the applicant intends to inspect cathodic protection  
3           systems, demonstrate valid, nationally recognized  
4           certification or licensing that meets the requirements for a  
5           "cathodic protection tester" as specified in 40 Code of  
6           Federal Regulations, Section 280.12.

8           **Sec. 12. 32 MRSA §10011, sub-§1,** as amended by PL 1997, c.  
9           364, §12, is further amended to read:

10           **1. Requirements; fees.** Only a person satisfying the  
11           requirements of section 10010, subsections 1 and 2 may apply for  
12           examination in the manner prescribed by the board. The  
13           application must be accompanied by the nonrefundable fee  
14           prescribed by section 10012. A person who fails either part of  
15           the applicable examination specified in section 10010, subsection  
16           3 ~~or~~ 5 or 6 may apply for reexamination upon payment of the  
17           prescribed fee.

18           **Sec. 13. 32 MRSA §10011, sub-§2,** as amended by PL 1997, c.  
19           364, §13, is further amended to read:

20           **2. Content.** The written examination must test the  
21           applicant's knowledge of the skills and knowledge relating to  
22           storage tank installation, inspection or removal and such other  
23           subjects as the board requires to determine the applicant's  
24           fitness to practice. The board shall approve examinations  
25           required by this chapter for underground oil storage tank  
26           installers and underground gasoline storage tank removers and  
27           underground oil storage tank inspectors and establish standards  
28           for an acceptable performance.

29           **Sec. 14. 32 MRSA §10012, sub-§2,** as amended by PL 1997, c.  
30           364, §14, is further amended to read:

31           **2. Disposal of fees and civil penalties.** All fees and  
32           civil penalties as authorized by section 10015 received by the  
33           board related to underground oil storage tank installers ~~or~~  
34           underground gasoline storage tank removers or underground oil  
35           storage tank inspectors must be paid to the Treasurer of State to  
36           be deposited into the Ground Water Oil Clean-up Fund and used for  
37           the purpose of carrying out all applicable provisions of this  
38           chapter. Any balance of fees and civil penalties as authorized by  
39           section 10015 does not lapse but must be carried forward as a  
40           continuing account to be expended for the same purposes in the  
41           following fiscal years.

42           **Sec. 15. 32 MRSA §10014, sub-§2,** as amended by PL 1997, c.  
43           364, §15, is further amended to read:

44

2           **2. Inactive status.** Upon request, the board shall grant  
inactive status to certified persons who do not practice or  
4 present themselves as underground oil tank installers ~~or~~,  
underground gasoline storage tank removers or underground oil  
6 storage tank inspectors and maintain any continuing competency  
requirements established by the board.

8           **Sec. 16. 32 MRSA §10015, sub-§2, ¶B,** as amended by PL 1997, c.  
364, §16, is further amended to read:

10           B. Unprofessional conduct, including any gross negligence,  
12 incompetency or misconduct in the certified person's  
performance of the work of underground oil storage tank  
14 installation or removal ~~or~~, underground gasoline storage  
tank removal or underground oil storage tank inspection or  
16 violation of any standard of professional behavior  
established by the board;

18           **Sec. 17. 38 MRSA §563, sub-§9** is enacted to read:

20           **9. Annual compliance inspection.** The department may  
22 establish a program requiring underground oil storage facilities  
to be inspected annually for compliance with the requirements of  
24 this subchapter and with the requirements for gasoline vapor  
control established by rule pursuant to section 585-A. The  
26 inspections must be by an installer or inspector certified by the  
Board of Underground Storage Tank Installers under Title 32,  
28 chapter 104-A.

30           A. The department annually shall provide the following to  
the owner or operator of each registered underground oil  
32 storage tank:

34           (1) An inspection checklist with a form for reporting  
the inspection results to the department;

36           (2) A list of installers and inspectors certified by  
38 the Board of Underground Storage Tank Installers or  
directions on how to obtain the list; and

40           (3) Information on the availability of loans and  
42 grants from the Underground Oil Storage Fund  
administered by the Finance Authority of Maine under  
44 Title 10, section 1023-D.

46           The owner or operator shall arrange for the inspection to be  
performed by a certified installer or inspector and shall  
48 ensure that the inspection results are reported to the  
department on the form provided pursuant to this subsection.  
50



2           B. Upon receipt of a completed inspection report form  
3           certifying that an underground oil storage tank and  
4           associated piping meets the requirements of this subchapter  
5           and for gasoline vapor control, the department shall provide  
6           the tank owner with a certificate of inspection. The owner  
7           shall place the certificate in a conspicuous location that  
8           can be readily viewed by any person depositing oil into the  
9           tank. The certificate may include or consist of a tag or  
10           sticker to be affixed by the facility owner or operator to  
11           the tank fill pipe as evidence that the tank has been  
12           inspected.

13           C. A certificate issued under paragraph B is valid for at  
14           least 12 months and, for tanks used to store heating oil for  
15           consumption on the premises, may not expire during the  
16           months of September through April.

17           D. Upon establishment of a tank inspection program pursuant  
18           to this subsection, the tank owner or operator may not  
19           arrange for delivery and a person may not deliver oil to an  
20           underground oil storage tank unless the tank and associated  
21           piping have been inspected in accordance with the program  
22           requirements. Compliance with the inspection requirement  
23           may be verified by:

24                   (1) Viewing a valid certificate of inspection issued  
25                   pursuant to paragraph B;

26                   (2) Viewing a tag or sticker issued by the department  
27                   as evidence that the owner holds a valid certificate of  
28                   inspection for the tank and associated piping; or

29                   (3) Verifying that the tank is on a list of tanks that  
30                   have been issued a certificate of inspection by the  
31                   department.

32           The department shall take reasonable steps, such as targeted  
33           mailings and posting of information on the Internet as  
34           appropriate, to inform a person who may deliver oil to an  
35           underground oil storage tank of the prohibition of this  
36           paragraph and to ensure that such persons can ascertain, by  
37           any of the above actions, if a certificate of inspection has  
38           been issued for the tank. The department may not take  
39           enforcement action against a person for delivery of oil in  
40           violation of this subsection if, prior to delivery, that  
41           person took reasonable steps to verify compliance with the  
42           inspection requirement.

43           **Sec. 18. 38 MRS-A, sub-§1-D is enacted to read:**

44

2 1-D. Prohibition on delivery. Effective May 1, 2002, a  
3 person may not deliver oil to an underground oil storage tank  
4 unless the tank is registered under section 563, subsection 1 and  
5 both the tank and piping are constructed of fiberglass,  
6 cathodically protected steel or other noncorrosive material  
7 approved by the department.

8  
9 **SUMMARY**

10  
11 The purpose of this bill is to prevent discharges from  
12 underground oil storage tanks by prohibiting delivery of oil to  
13 bare steel and other nonconforming tanks that are illegal to  
14 operate under current law and to tanks that do not meet  
15 applicable annual inspection requirements intended to ensure the  
16 tank is properly maintained and functioning. The bill  
17 establishes a program to expand the pool of qualified persons who  
18 can inspect an underground storage tank, and amends the law  
19 governing the Underground Oil Storage Replacement Fund to provide  
20 financial assistance if substantial tank repairs are needed.

21 The bill also revises the law governing the Board of  
22 Underground Tank Installers to eliminate the requirement that one  
23 of the seats on the 7-member board be reserved for a  
24 representative from the Oil and Solid Fuel Board, the Plumbers'  
25 Examining Board or the State Board of Certification for  
26 Geologists and Soil Scientists.