

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1238

H.P. 856

House of Representatives, March 10, 2005

An Act To Ensure Compliance with Safety Regulations

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PINEAU of Jay.
Cosponsored by Senator BRYANT of Oxford and
Representatives: BRYANT of Windham, CLARK of Millinocket, JACKSON of Fort Kent,
WHEELER of Kittery, Senator: MARTIN of Aroostook.

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

4 **Sec. 1. 22 MRSA c. 271, sub-c. 5 is enacted to read:**

6 **SUBCHAPTER 5**

8 **INSPECTION OF HAZARDOUS BUSINESSES**

10 **§1696-J. Definitions**

12 As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. **Bureau of Labor Standards.** "Bureau of Labor Standards" means the Department of Labor, Bureau of Labor Standards.

16 2. **Employee.** "Employee" means any person who performs work in the operation of an industrial or commercial facility.

20 3. **Hazardous equipment or machinery.** "Hazardous equipment or machinery" means any equipment or machinery used in the operation of an industrial or commercial facility that may cause serious injury to persons or property in the vicinity of the industrial or commercial facility if the equipment or machinery is operated improperly.

26 4. **Hazardous substances.** "Hazardous substances" means those extremely hazardous substances listed in 40 Code of Federal Regulations, Part 355.

30 5. **Initiate or resume operation.** "Initiate or resume operation" means:

34 A. The commencement of operation of a facility that has never been operated previously;

36 B. The recommencement of operation of a facility that has ceased operation temporarily; or

40 C. The attempted continuous operation of a facility where more than 50% of the employees currently employed at the facility have worked at that facility for less than 6 consecutive months and the facility has been in operation for more than 6 months.

46 6. **Local emergency planning committee.** "Local emergency planning committee" means a local emergency planning committee established as provided in Title 37-B, section 793.

2 7. Operator of facility or facility operator. "Operator of
3 a facility" or "facility operator" means the person,
4 partnership, corporation or other legal entity that operates an
5 industrial or commercial facility.

6 8. State Emergency Response Commission. "State Emergency
7 Response Commission" means the State Emergency Response
8 Commission described in Title 37-B, section 792.

10 **§1696-K. Initiation or resumption of operation prohibited**

12 1. Operation prohibited. Except as provided in section
13 1696-L, an industrial or commercial facility may not initiate or
14 resume operation if:

16 A. The facility has over 250 full-time employees;

18 B. Hazardous substances or hazardous equipment or machinery
19 is used in the operation of the facility; and

20 C. More than 50% of the employees who will be working
21 during the initiation or resumption of operation have worked
22 at the facility for less than 6 months immediately preceding
23 the initiation or resumption of operations at the facility.

26 2. Rulemaking. The Bureau of Labor Standards shall adopt
27 rules that identify those industrial or commercial operations
28 that use hazardous substances or hazardous equipment or
29 machinery, but the Bureau of Labor Standards need not designate
30 specific facilities. The State Emergency Response Commission
31 shall assist the Bureau of Labor Standards in identifying those
32 operations that use hazardous substances. Rules adopted pursuant
33 to this subsection are routine technical rules as defined in
34 Title 5, chapter 375, subchapter 2-A.

36 A. The rules adopted by the Bureau of Labor Standards must
37 provide a procedure under which the operator of a facility,
38 the employees of that facility or their recognized
39 bargaining agent, public officials of local governmental
40 units located in the vicinity of that facility, a local
41 emergency planning committee or persons who reside in the
42 vicinity of that facility may petition the Bureau of Labor
43 Standards to determine whether the facility is subject to
44 this section. If the Bureau of Labor Standards determines
45 that a facility is subject to this section upon petition or
46 on its own motion, the Bureau of Labor Standards shall
47 immediately notify the facility operator of that fact and,
48 if the facility is currently in operation, order the
49 immediate cessation of that operation.

2 B. The rules adopted by the Bureau of Labor Standards must
3 provide a procedure under which the operator of a facility
4 may obtain a waiver from application of this section. The
5 Bureau of Labor Standards shall waive the application of
6 this section for any facility that provides an essential
7 public service, such as a hospital or public utility, when
8 the prevention of immediate initiation or resumption of
9 operation would clearly result in greater harm to the public
10 than would any hazardous substances or hazardous equipment
11 or machinery used in the facility. Any such facility
12 remains subject to the inspection requirements of section
13 1696-L.

14 **§1696-L. Inspection requirements**

15 An industrial or commercial facility subject to the
16 prohibition under section 1696-K may initiate or resume operation
17 only as provided in this section.

18 1. Notice to Bureau of Labor Standards. After receiving
19 notice from the Bureau of Labor Standards pursuant to rules
20 adopted under section 1696-K, subsection 2, paragraph A, the
21 operator of the facility shall notify the Bureau of Labor
22 Standards if the facility operator intends to initiate or resume
23 operation of the facility. The Bureau of Labor Standards shall
24 determine the form and content of this notice.

25 2. Inspection scheduled. Immediately upon receiving notice
26 from the facility operator under subsection 1, the Bureau of
27 Labor Standards shall arrange a date and time for an inspection
28 of the facility. This date may not be less than 20 days from
29 receipt of the notice.

30 3. Notice of inspection. Immediately upon establishing the
31 date and time for an inspection of a facility, the Bureau of
32 Labor Standards shall notify any appropriate local emergency
33 planning committee of the pending inspection and shall publish on
34 at least 2 separate days a notice in a newspaper of general
35 circulation in the locality in which the facility is located.
36 The notice must state:

37 A. That the Bureau of Labor Standards has received notice
38 of the facility operator's intent to initiate or resume
39 operation of the facility;

40 B. The name, address and nature of the business of the
41 facility;

42 C. The fact of the pending inspection and its purpose;

43

2 D. The date and time of the inspection; and

4 E. The opportunity for public comment provided under
subsection 4.

6 4. Public comment. The Bureau of Labor Standards shall
8 accept public comment from any source relating to any potential
10 hazard created by the initiation or resumption of operation of a
facility during the period immediately preceding an inspection
and for 20 days after an inspection is completed.

12 5. Representatives during inspection. The Bureau of Labor
14 Standards shall permit the following persons to accompany the
Bureau of Labor Standards's representatives during an inspection:

16 A. Any designated representative of the facility operator;

18 B. Any designated representative of local government for
20 the county or municipality in which the facility is located;

22 C. Any designated representative of a recognized bargaining
agent for the employees of the facility; and

24 D. Any designated representative of a local emergency
26 planning committee.

28 6. Inspection; standards. The Bureau of Labor Standards
30 shall inspect a facility and consult with the employees of the
facility to determine if:

32 A. All hazardous substances used in the facility are
properly stored and labeled;

34 B. All hazardous equipment or machinery used in the
36 facility is in proper working condition;

38 C. All new employees of the facility who work with
40 hazardous substances or hazardous equipment and machinery
used in the facility are adequately trained to perform their
assigned tasks;

42 D. Adequate safeguards have been taken to reduce the
44 likelihood of injury to persons and property located in the
46 vicinity of the facility caused by mishandling of hazardous
substances or improper operation of hazardous equipment or
machinery used in the facility; and

48 E. All new employees of the facility are aware of the
50 hazardous substances or hazardous equipment or machinery
used in the facility and are knowledgeable regarding proper

2 safety procedures to be taken in the event of an emergency,
3 including any applicable emergency response plans developed
4 by a local emergency planning committee.

5 Upon request, the Department of Environmental Protection and the
6 State Emergency Response Commission shall assist the Bureau of
7 Labor Standards during the inspection when hazardous substances
8 are used in the facility.

10 **7. Bureau of Labor Standards determination.** The Bureau of
11 Labor Standards shall determine whether all of the factors
12 described in subsection 6 have been adequately addressed. This
13 determination may not be made until the close of the period for
14 accepting public comment under subsection 4. The Bureau of Labor
15 Standards shall consider all comments received from the public in
16 making its determination.

18 A. If the Bureau of Labor Standards determines that all of
19 the factors described in subsection 6 have been adequately
20 addressed, the Bureau of Labor Standards shall immediately
21 notify the facility operator of that fact and the operator
22 may initiate or resume operation of the facility.

24 B. If the Bureau of Labor Standards determines that not all
25 of the factors described in subsection 6 have been
26 adequately addressed, the Bureau of Labor Standards shall
27 immediately notify the facility operator of that fact, the
28 specific areas in which a deficiency has been determined and
29 the actions that must be taken to remedy the deficiency.
30 Upon notice from the facility operator that the deficiencies
31 have been remedied, the Bureau of Labor Standards shall
32 follow the provisions of this section relating to initial
33 inspections except that any subsequent inspections are
34 limited to the areas of deficiency determined by the Bureau
35 of Labor Standards under this paragraph.

36 C. All determinations made by the Bureau of Labor Standards
37 under this subsection are deemed to be final agency action
38 and may be appealed as provided in Title 5, chapter 375,
39 subchapter 7. A Bureau of Labor Standards determination
40 under paragraph A is stayed for 30 days after an appeal is
41 filed under this paragraph. During this period, the court
42 shall conduct a preliminary hearing and accept any relevant
43 evidence submitted by the parties upon leave of the court.
44 At the end of the 30-day period, the court shall extend the
45 stay pending a final determination of the appeal unless it
46 finds that the appellants have failed to provide any
47 reasonable evidence demonstrating that not all of the
48 factors described in subsection 6 have been adequately
49 addressed.

2 8. Failure to inspect. If the Bureau of Labor Standards
4 fails to complete an initial inspection of the facility within 60
6 days after receiving notice from the facility operator under
8 subsection 1, the inspection is deemed to have been successfully
10 completed and the facility operator may initiate or resume
12 operation of the facility.

14 §1696-M. Enforcement

16 1. Fine. Any operator of a facility who violates this
18 subchapter is subject to a fine of at least \$10,000 and not more
20 than \$25,000, payable to the State. Each day the violation
22 continues constitutes a separate offense.

24 2. Injunctive relief. The Attorney General, the Bureau of
26 Labor Standards, the municipality or county in which a facility
28 is located or the employees of the facility or their recognized
30 bargaining agent may seek injunctive relief from the Superior
32 Court to enforce this subchapter.

34 SUMMARY

36 This bill is intended to protect public safety by requiring
38 inspections of certain industrial and commercial facilities that
40 use potentially hazardous substances, equipment and machinery to
42 ensure that operations will be undertaken properly.

44 This bill prevents the initiation or resumption of operation
46 of any facility that employs more than 250 persons, uses
48 hazardous substances or hazardous equipment or machinery in its
operations and is being operated by an inexperienced workforce.
The operator of such a facility must notify the Department of
Labor, Bureau of Labor Standards of the impending initiation or
resumption of operation. The Bureau of Labor Standards will
schedule and conduct an inspection of the facility and consult
with the employees of the facility to ensure that the facility
may safely initiate or resume operation. Opportunity is provided
for public comment and input from local government and the
facility's employees to ensure adequate information is obtained
about potential hazards caused by the facility's operation. The
bureau will cooperate with the State Emergency Response
Commission and local emergency planning committees to ensure that
local emergency response plans are understood and followed in the
event of an emergency at the facility. The facility may not
begin or resume operation until it has been inspected by the
Bureau of Labor Standards and found to be safe for operation.