

MAINE STATE LEGISLATURE

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Date: 5/17/11

L.D. 671
(Filing No. H-274)

ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 501, L.D. 671, Bill, "An Act To Amend the Laws Governing the Ground Water Oil Clean-up Fund"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 38 MRSA §568-A, sub-§2, as amended by PL 2009, c. 501, §9, is further amended to read:

2. Deductibles. Except as provided in subsection 2-A, applicants eligible for coverage by the fund under subsection 1 shall pay on a per occurrence basis the applicable standard deductible amount specified in paragraph A. In addition to the applicable standard deductible amount required under paragraph A, the applicant shall pay on a per occurrence basis one or more of the conditional deductible amounts specified in paragraphs B and C to the extent applicable.

A. Standard deductibles are calculated under this paragraph based on the number of underground storage facilities or the capacity of gallons owned by the aboveground storage facility owner at the time the covered discharge is discovered. Standard deductibles are as follows.

(1) For expenses related to a leaking underground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Number of underground storage facilities owned by the facility owner	Deductible
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

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1 (2) For expenses related to a leaking aboveground oil storage facility, the
2 deductible amount is determined in accordance with the following schedule:

	Deductible
3	
4 Total aboveground oil storage capacity	
5 in gallons owned by the facility owner	
6 Less than 1,320	\$500
7 1,321 to 50,000	2,500
8 50,001 to 250,000	5,000
9 250,001 to 500,000	10,000
10 500,001 to 1,000,000	25,000
11 1,000,001 to 1,500,000	40,000
12 greater than 1,500,000	62,500

13 (3) For facilities with both aboveground and underground tanks when the source
14 of the discharge can not be determined or when the discharge is from both types
15 of tanks, the standard deductible is the applicable amount under subparagraph (1)
16 or (2), whichever is greater.

17 B. Conditional deductibles for underground facilities and tanks are as follows.

18 (1) For nonconforming facilities and tanks, the deductible is \$10,000 for failure
19 to meet the compliance schedule in section 563-A, except that those facilities or
20 tanks required to be removed by October 1, 1989 have until October 1, 1990 to
21 be removed before they are considered out of compliance.

22 (2) For failure to pay registration fees under section 563, subsection 4, the
23 deductible is the total of all past due fees.

24 (3) For motor fuel storage and marketing and retail facilities, the deductibles are:

25 (a) Five thousand dollars for failure to comply with applicable design and
26 installation requirements in effect at the time of the installation or retrofitting
27 requirements for leak detection pursuant to section 564, subsections 1 and
28 1-A;

29 (b) Five thousand dollars for failure to comply with section 564, subsection
30 1-B and any rules adopted pursuant to that subsection;

31 (c) Five thousand dollars for failure to comply with section 564, subsection
32 2-A, paragraphs B to F and I, and any rules adopted pursuant to that
33 subsection; and

34 (d) Ten thousand dollars for failure to comply with section 564, subsection
35 2-A, paragraph H, and any rules adopted pursuant to that subsection.

36 (4) For consumptive use heating oil facilities with an aggregate storage capacity
37 of less than 2,000 gallons, the deductibles are:

38 (a) Two thousand dollars for failure to comply with section 565, subsection
39 1, if applicable;

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- 1 (b) Two thousand dollars for failure to comply with section 565, subsection
- 2 2, regarding monitoring; and
- 3 (c) Two thousand dollars for failure to comply with section 565, subsection
- 4 2, regarding any requirement to report evidence of a possible leak or
- 5 discharge.
- 6 (5) For consumptive use heating oil facilities with an aggregate storage capacity
- 7 of 2,000 gallons or greater, the deductibles are:
 - 8 (a) Five thousand dollars for failure to comply with section 565, subsection
 - 9 1, if applicable;
 - 10 (b) Five thousand dollars for failure to comply with section 565, subsection
 - 11 2, regarding monitoring; and
 - 12 (c) Ten thousand dollars for failure to comply with section 565, subsection 2,
 - 13 regarding any requirement to report evidence of a possible leak or discharge.
 - 14 (6) For waste oil and heavy oil and airport hydrant facilities with discharges that
 - 15 are not contaminated with hazardous constituents, the deductibles for failure to
 - 16 comply with rules adopted by the board are:
 - 17 (a) Five thousand dollars for rules regarding design and installation
 - 18 requirements in effect at the time of the installation;
 - 19 (b) Five thousand dollars for rules regarding retrofitting of leak detection
 - 20 and corrosion protection, if applicable;
 - 21 (c) Five thousand dollars for rules regarding overfill and spill prevention;
 - 22 (d) Five thousand dollars for rules regarding the monitoring of cathodic
 - 23 protection systems;
 - 24 (e) Five thousand dollars for rules regarding testing requirements for tanks
 - 25 and piping on evidence of a leak;
 - 26 (f) Five thousand dollars for rules regarding maintenance of a leak detection
 - 27 system; and
 - 28 (g) Ten thousand dollars for rules regarding the reporting of leaks.
- 29 C. Conditional deductibles for aboveground facilities and tanks are as follows.
 - 30 (1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal
 - 31 pursuant to 16-219 CMR, chapter 34, the deductibles are:
 - 32 (a) Five thousand dollars for failure to obtain a construction permit from the
 - 33 Office of the State Fire Marshal, when required under Title 25, chapter 318
 - 34 and 16-219 CMR, chapter 34 or under prior applicable law;
 - 35 (b) Five thousand dollars for failure to design and install piping in
 - 36 accordance with section 570-K and rules adopted by the department;

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- 1 (c) Five thousand dollars for failure to comply with an existing consent
 2 decree, court order or outstanding deficiency statement regarding violations
 3 at the aboveground facility;
- 4 (d) Five thousand dollars for failure to implement a certified spill prevention
 5 control and countermeasure plan, if required;
- 6 (e) Five thousand dollars for failure to install any required spill control
 7 measures, such as dikes;
- 8 (f) Five thousand dollars for failure to install any required overflow
 9 equipment;
- 10 (g) Five thousand dollars if the tank is not approved for aboveground use;
 11 and
- 12 (h) Ten thousand dollars for failure to report any leaks at the facility.
- 13 (2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel
 14 Board, the deductibles are:
- 15 (a) One hundred and fifty dollars for failure to install the facility in
 16 accordance with rules adopted by the Oil and Solid Fuel Board and in effect
 17 at the time of installation;
- 18 (b) Two hundred and fifty dollars for failure to comply with the rules of the
 19 Oil and Solid Fuel Board;
- 20 (c) Two hundred and fifty dollars for failure to make a good faith effort to
 21 properly maintain the facility; and
- 22 (d) Five hundred dollars for failure to notify the department of a spill.

23 The commissioner shall make written findings of fact when making a determination of
 24 deductible amounts under this subsection. The commissioner's findings may be appealed
 25 to the Fund Insurance Review Board, as provided in section 568-B, subsection ~~3-A~~ 2-C.
 26 On appeal, the burden of proof is on the commissioner as to which deductibles apply.

27 After determining the deductible amount to be paid by the applicant, the commissioner
 28 shall pay from the fund any additional eligible clean-up costs and 3rd-party damage
 29 claims up to \$1,000,000 associated with activities under section 569-A, subsection 8,
 30 paragraphs B, D and J. The commissioner shall pay the expenses directly, unless the
 31 applicant chooses to pay the expenses and seek reimbursement from the fund. The
 32 commissioner may pay from the fund any eligible costs above \$1,000,000, but the
 33 commissioner shall recover these expenditures from the responsible party pursuant to
 34 section 569-A.

35 An applicant found ineligible for fund coverage for failure to achieve substantial
 36 compliance under former subsection 1, paragraph B or failure to apply within 180 days of
 37 reporting the discharge may, on or before July 1, 1996, make a new application for fund
 38 coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all
 39 applicable deductible amounts in this subsection and the commissioner waives the
 40 180-day filing requirement pursuant to subsection 1.

1 **Sec. 2. 38 MRSA §568-A, sub-§3-A**, as amended by PL 1995, c. 361, §7, is
2 repealed.

3 **Sec. 3. 38 MRSA §568-B**, as amended by PL 2009, c. 319, §13, is further
4 amended to read:

5 **§568-B. Fund Insurance Review Board created**

6 **1. Fund Insurance Review Board.** The Fund Insurance Review Board, as
7 established by Title 5, section 12004-G, subsection 11-A, is created ~~for the purposes of~~
8 ~~hearing and deciding~~ to hear and decide appeals from insurance claims-related decisions
9 ~~of the commissioner as well as adopting rules and guidelines necessary to the furtherance~~
10 ~~of its duties and responsibilities under this subchapter under section 568-A and monitor~~
11 ~~income and disbursements from the Ground Water Oil Clean-up Fund under section~~
12 ~~569-A.~~ The review board consists of 10 members appointed for 3-year terms as follows:

13 A. ~~Three~~ Two persons representing the petroleum industry, appointed by the
14 Governor, one of whom is ~~nominated by the Maine Oil Dealers Association, one of~~
15 ~~whom is a retailer who owns fewer than 5 retail outlets, as defined in Title 10, section~~
16 ~~1672, subsection 6, and one of whom is a retailer who owns 5 or more retail outlets,~~
17 ~~as defined in Title 10, section 1672~~ a representative of a statewide association of
18 energy dealers;

19 A-1. Two persons, appointed by the Governor, who have expertise in oil storage
20 facility design and installation, oil spill remediation or environmental engineering;

21 B. ~~Five~~ Four members of the public ~~who are not employed in the petroleum industry~~
22 ~~and who do not~~, appointed by the Governor, 2 of whom have expertise in biological
23 science, earth science, engineering, insurance or law. ~~The 4 members may not be~~
24 ~~employed in or~~ have a direct and substantial financial interest in the petroleum
25 industry ~~to be appointed by the Governor;~~

26 C. The commissioner or the commissioner's designee; and

27 D. The State Fire Marshal or the fire marshal's designee.

28 Members described in paragraphs A, A-1 and B are entitled to reimbursement for direct
29 expenses of attendance at meetings of the review board or the appeals panel.

30 **2. Powers and duties of review board.** The Fund Insurance Review Board has the
31 following powers and duties:

32 A. To hear appeals from insurance claims-related decisions of the commissioner
33 ~~pursuant to and the State Fire Marshal under section 568-A, subsection 3-A;~~

34 B. To adopt rules in accordance with Title 5, chapter 375, subchapter ~~II~~ establishing
35 ~~criteria for determining substantial compliance for aboveground oil storage facilities~~
36 2 and guidelines necessary for the furtherance of the review board's duties and
37 responsibilities under this subchapter;

38 C. To contract with the Finance Authority of Maine for such assistance in fulfilling
39 the review board's duties as the review board may require;

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

E. To consult with the Finance Authority of Maine at such times as are necessary, but no less than annually, to review income and disbursements from the Waste Oil Clean-up Fund under Title 10, section 1023-L. The review board, at such times and in such amounts as it determines necessary, and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the ~~Groundwater~~ Ground Water Oil Clean-up Fund; and

F. To review department priorities for disbursements from the Ground Water Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated.

2-A. Meetings. The Fund Insurance Review Board shall meet 6 times per year unless the review board votes not to hold a meeting. Action may not be taken unless a quorum is present. A quorum is 6 members.

2-B. Chair. The review board shall annually choose a member to serve as chair of the review board.

2-C. Appeals to review board. An applicant aggrieved by an insurance claims-related decision under section 568-A, including but not limited to decisions on eligibility for coverage, eligibility of costs and waiver and amount of deductible, may appeal that decision to the Fund Insurance Review Board. The appeals panel is composed of the public members appointed under subsection 1, paragraph B. The appeals panel shall hear and decide the appeal. Except as provided in review board rules, the appeal must be filed within 30 days after the applicant receives the decision made under section 568-A. The appeals panel must hear an appeal at its next meeting following receipt of the appeal unless the appeal petition is received less than 30 days before the meeting or unless the appeals panel and the aggrieved applicant agree to meet at a different time. If the appeals panel overturns the decision made under section 568-A, reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney's fees include only those fees incurred from the time of an insurance claims-related decision forward. Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.

2-D. Report; 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 having jurisdiction over natural resources matters on the department's and the review board's experience administering the Ground Water Oil Clean-up Fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this subsection, the review board may order

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1 an independent audit of disbursements from the Ground Water Oil Clean-up Fund, the
2 Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

3 **3. Repeal date.** This section is repealed December 31, 2015.

4 **Sec. 4. 38 MRSA §569-A, sub-§8, ¶A,** as amended by PL 2005, c. 157, §1, is
5 further amended to read:

6 A. Administrative expenses, personal services and equipment costs of the department
7 related to the administration and enforcement of this subchapter, except that total
8 disbursements for personal services may not exceed \$3,700,000 per fiscal year
9 multiplied by an annual adjustment factor of 4% beginning in fiscal year 2005-06 and
10 except that total disbursements for administrative expenses may not exceed
11 \$2,000,000 per fiscal year;

12 **Sec. 5. 38 MRSA §570-H,** as amended by PL 2007, c. 292, §37, is repealed.

13 **Sec. 6. Transition provision.** Members of the Fund Insurance Review Board
14 created under the Maine Revised Statutes, Title 38, section 568-B, subsection 1 serving
15 on the effective date of this Act may continue to serve on the board for the remainder of
16 their terms. When the term of a member expires, that member's successor is appointed in
17 accordance with this Act. At no time may fewer than 4 public members be appointed.'

18 **SUMMARY**

19 This amendment replaces the bill. The amendment changes the membership of the
20 Fund Insurance Review Board by:

- 21 1. Decreasing from 3 to 2 the number of members representing the petroleum
22 industry;
- 23 2. Designating membership of 2 members who have expertise in oil storage facility
24 design and installation, oil spill remediation or environmental engineering; and
- 25 3. Decreasing from 5 to 4 the number of public members.

26 The amendment also alters the duties of the review board to include reviewing
27 Department of Environmental Protection priorities for disbursements from the Ground
28 Water Oil Clean-up Fund and making recommendations to the Commissioner of
29 Environmental Protection on how the fund should be allocated. The amendment also
30 provides for the number of meetings to be held by the review board and for the annual
31 selection of a chair. The amendment also consolidates responsibilities for hearing appeals
32 and reporting to the Legislature in the section of law that deals with the review board.

33 The amendment retains the provision in current law that repeals the review board on
34 December 31, 2015. The amendment also retains the provision in the bill that provides
35 that total disbursements from the Ground Water Oil Clean-up Fund for administrative
36 expenses may not exceed \$2,000,000 per fiscal year.