

# MAINE STATE LEGISLATURE

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L.D. 1303

Date: 6/17/15

(Filing No. S-301 )

**ENVIRONMENT AND NATURAL RESOURCES**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**127TH LEGISLATURE**

**FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 468, L.D. 1303, Bill, "An Act To Stabilize and Streamline the Department of Environmental Protection's Ground Water Oil Clean-up Fund and Maine Coastal and Inland Surface Oil Clean-up Fund"

Amend the bill by inserting after the title and before the enacting clause the following:

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the statutorily established Ground Water Oil Clean-up Fund and Maine Coastal and Inland Surface Oil Clean-up Fund support activities related to the cleanup of spills and discharges of oil and other hazardous materials in the State; and

**Whereas,** these funds are funded primarily through fees on the imports of oil into Maine, which have declined in recent years and are projected to decline further; and

**Whereas,** the timely integration of these 2 funds, as proposed in this legislation, will streamline and stabilize the State's oil clean-up programs, allowing the Department of Environmental Protection to effectively manage its prevention, response and remediation activities; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill in section 16 in §551 in the first paragraph in the 4th line (page 4, line 22 in L.D.) by striking out the following: "\$15,000,000" and inserting the following: '\$18,500,000'

Amend the bill in section 16 in §551 in the first paragraph in the 8th line (page 4, line 26 in L.D.) by inserting after the following: "~~and to~~" the following: 'and subchapter 2-B'

**COMMITTEE AMENDMENT**

1 Amend the bill in section 16 in §551 in subsection 4 in paragraph E in the 2nd line  
2 (page 8, line 35 in L.D.) by striking out the following: "\$15,000,000" and inserting the  
3 following: '\$18,500,000'

4 Amend the bill in section 16 in §551 in subsection 4 in paragraph E in the 3rd line  
5 (page 8, line 36 in L.D.) by striking out the following: "\$15,000,000" and inserting the  
6 following: '\$18,500,000'

7 Amend the bill in section 16 in §551 in subsection 4 in paragraph F in the 4th line  
8 (page 9, line 1 in L.D.) by inserting after the following: "except" the following: 'unrefined  
9 crude oil,'

10 Amend the bill in section 16 in §551 by striking out all of subsection 4-B (page 9,  
11 lines 15 to 18 in L.D.) and inserting the following:

12 '4-B. Reimbursement for fees imposed on transfers out of state. Any person who  
13 paid a fee under subsection 4, paragraph A-1, subparagraph (2), (3) or (4) on petroleum  
14 products that were exported from this State must be reimbursed by the department in the  
15 following amounts upon presentation of documentation of that payment and transfer:

16 A. Four cents per barrel of #6 fuel oil;

17 B. Nineteen cents per barrel of #2 fuel oil, kerosene, jet fuel, diesel fuel and other  
18 refined products and their by-products not otherwise specified in this subsection,  
19 excluding liquid asphalt; and

20 C. Thirty-eight cents per barrel of gasoline.

21 A fee paid on a transfer out of state is eligible for reimbursement under this subsection  
22 only if documentation of that payment and transfer are presented to the department within  
23 12 months of the transfer.'

24 Amend the bill in section 16 in §551 in subsection 5 in paragraph A in the 3rd line  
25 (page 9, line 23 in L.D.) by inserting after the following: "subchapter" the following: 'and  
26 subchapter 2-B'

27 Amend the bill in section 16 in §551 in subsection 5 in paragraph D in the 3rd line  
28 (page 9, line 36 in L.D.) by inserting after the following: "pursuant to" the following:  
29 'section 568-A.'

30 Amend the bill by striking out all of sections 27 and 28 and inserting the following:

31 '**Sec. 27. 38 MRSA §568-A, sub-§2, as amended by PL 2013, c. 300, §11, is**  
32 **further amended to read:**

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

39 A. Standard deductibles are calculated under this paragraph based on the number of  
40 underground storage facilities or the capacity of gallons owned by the aboveground

1 storage facility owner at the time the covered discharge is discovered. Standard  
2 deductibles are as follows.

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

5	6	7	8	9	10	11	12	13
	Number of underground storage							Deductible
	facilities owned by the facility owner							
	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

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

16	17	18	19	20	21	22	23	24	25
	Total aboveground oil storage capacity								Deductible
	in gallons owned by the facility owner								
	Less than 1,320								\$500
	1,321 to 50,000								2,500
	50,001 to 250,000								5,000
	250,001 to 500,000								10,000
	500,001 to 1,000,000								25,000
	1,000,001 to 1,500,000								40,000
	greater than 1,500,000								62,500

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

30 (4) For aboveground tanks regulated by the Maine Fuel Board with less than 300  
31 gallons' storage capacity, the standard deductible may be waived by the  
32 commissioner upon submission of documentation of a passing ultrasonic  
33 thickness test of the tank conducted within 12 months prior to the discharge.

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

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

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

- 1 (3) For motor fuel storage and marketing and retail facilities, the deductibles are:
- 2 (a) Five thousand dollars for failure to comply with applicable design and
- 3 installation requirements in effect at the time of the installation or retrofitting
- 4 requirements for leak detection pursuant to section 564, subsections 1 and
- 5 1-A;
- 6 (b) Five thousand dollars for failure to comply with section 564, subsection
- 7 1-B and any rules adopted pursuant to that subsection;
- 8 (c) Five thousand dollars for failure to comply with section 564, subsection
- 9 2-A, paragraphs B to F and I, and any rules adopted pursuant to that
- 10 subsection; and
- 11 (d) Ten thousand dollars for failure to comply with section 564, subsection
- 12 2-A, paragraph H, and any rules adopted pursuant to that subsection.
- 13 (4) For consumptive use heating oil facilities with an aggregate storage capacity
- 14 of less than 2,000 gallons, the deductibles are:
- 15 (a) Two thousand dollars for failure to comply with section 565, subsection
- 16 1, if applicable;
- 17 (b) Two thousand dollars for failure to comply with section 565, subsection
- 18 2, regarding monitoring; and
- 19 (c) Two thousand dollars for failure to comply with section 565, subsection
- 20 2, regarding any requirement to report evidence of a possible leak or
- 21 discharge.
- 22 (5) For consumptive use heating oil facilities with an aggregate storage capacity
- 23 of 2,000 gallons or greater, the deductibles are:
- 24 (a) Five thousand dollars for failure to comply with section 565, subsection
- 25 1, if applicable;
- 26 (b) Five thousand dollars for failure to comply with section 565, subsection
- 27 2, regarding monitoring; and
- 28 (c) Ten thousand dollars for failure to comply with section 565, subsection 2,
- 29 regarding any requirement to report evidence of a possible leak or discharge.
- 30 (6) For waste oil and heavy oil and airport hydrant facilities with discharges that
- 31 are not contaminated with hazardous constituents, the deductibles for failure to
- 32 comply with rules adopted by the board are:
- 33 (a) Five thousand dollars for rules regarding design and installation
- 34 requirements in effect at the time of the installation;
- 35 (b) Five thousand dollars for rules regarding retrofitting of leak detection
- 36 and corrosion protection, if applicable;
- 37 (c) Five thousand dollars for rules regarding overfill and spill prevention;

- 1 (d) Five thousand dollars for rules regarding the monitoring of cathodic  
2 protection systems;
- 3 (e) Five thousand dollars for rules regarding testing requirements for tanks  
4 and piping on evidence of a leak;
- 5 (f) Five thousand dollars for rules regarding maintenance of a leak detection  
6 system; and
- 7 (g) Ten thousand dollars for rules regarding the reporting of leaks.
- 8 C. Conditional deductibles for aboveground facilities and tanks are as follows.
- 9 (1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal  
10 pursuant to 16-219 CMR, chapter 34, the deductibles are:
- 11 (a) Five thousand dollars for failure to obtain a construction permit from the  
12 Office of the State Fire Marshal, when required under Title 25, chapter 318  
13 and 16-219 CMR, chapter 34 or under prior applicable law;
- 14 (b) Five thousand dollars for failure to design and install piping in  
15 accordance with section 570-K and rules adopted by the department;
- 16 (c) Five thousand dollars for failure to comply with an existing consent  
17 decree, court order or outstanding deficiency statement regarding violations  
18 at the aboveground facility;
- 19 (d) Five thousand dollars for failure to implement a certified spill prevention  
20 control and countermeasure plan, if required;
- 21 (e) Five thousand dollars for failure to install any required spill control  
22 measures, such as dikes;
- 23 (f) Five thousand dollars for failure to install any required overfill  
24 equipment;
- 25 (g) Five thousand dollars if the tank is not approved for aboveground use;  
26 and
- 27 (h) Ten thousand dollars for failure to report any leaks at the facility.
- 28 (2) For aboveground tanks subject to the jurisdiction of the Maine Fuel Board,  
29 the deductibles are:
- 30 (a) One hundred and fifty dollars for failure to install the facility in  
31 accordance with rules adopted by the Maine Fuel Board and in effect at the  
32 time of installation;
- 33 (b) Two hundred and fifty dollars for failure to comply with the rules of the  
34 Maine Fuel Board;
- 35 (c) Two hundred and fifty dollars for failure to make a good faith effort to  
36 properly maintain the facility; and

1 (d) Five hundred dollars for failure to notify the department of a spill.

2 The commissioner shall make written findings of fact when making a determination of  
3 deductible amounts under this subsection. The commissioner's findings may be appealed  
4 to the Clean-up and Response Fund Insurance Review Board, as provided in section  
5 568-B, subsection 2-C. On appeal, the burden of proof is on the commissioner as to  
6 which deductibles apply.

7 After determining the deductible amount to be paid by the applicant, the commissioner  
8 shall pay from the fund any additional eligible clean-up costs and 3rd-party damage  
9 claims up to \$1,000,000 for underground oil storage facilities and up to \$750,000 for all  
10 other occurrences associated with activities under section ~~569-A~~ 551, subsection 8 ~~5~~,  
11 paragraphs B, D and ~~J~~ K. The commissioner shall pay the expenses directly, unless the  
12 applicant chooses to pay the expenses and seek reimbursement from the fund. The  
13 commissioner may pay from the fund any eligible costs above \$1,000,000 for  
14 underground oil storage facilities and above \$750,000 for all other occurrences, but the  
15 commissioner shall recover these expenditures from the responsible party pursuant to  
16 section ~~569-A~~ 551.

17 ~~An applicant found ineligible for fund coverage for failure to achieve substantial~~  
18 ~~compliance under former subsection 1, paragraph B or failure to apply within 180 days of~~  
19 ~~reporting the discharge may, on or before July 1, 1996, make a new application for fund~~  
20 ~~coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all~~  
21 ~~applicable deductible amounts in this subsection and the commissioner waives the~~  
22 ~~180-day filing requirement pursuant to subsection 1.'~~

23 Amend the bill in section 31 in §568-B in subsection 1 by striking out all of  
24 paragraph B and inserting the following:

25 'B. Four members of the public, appointed by the Governor, ~~Of the 4 members, 2 of~~  
26 ~~whom must~~ have expertise in biological science, earth science, engineering, insurance  
27 or law. The 4 members may not be employed in or have a direct and substantial  
28 financial interest in the petroleum industry;'

29 Amend the bill in section 31 in §568-B in subsection 1 by striking out all of  
30 paragraphs E to H and inserting the following:

31 'E. One member representing marine fisheries interests appointed by the President of  
32 the Senate;

33 'F. One member familiar with oil spill technology appointed by the Speaker of the  
34 House of Representatives;

35 'G. One member with expertise in coastal geology, fisheries biology or coastal  
36 wildlife habitat appointed by the President of the Senate; and

37 'H. One member who is a licensed state pilot or a licensed merchant marine officer  
38 appointed by the Speaker of the House of Representatives.'

39 Amend the bill in section 34 in the first paragraph in the 7th line (page 22, line 9 in  
40 L.D.) by striking out the following: "damages" and inserting the following: 'damages  
41 damage'

1 Amend the bill in section 34 in the first paragraph in the 9th line (page 22, line 11 in  
2 L.D.) by striking out the following: "reasonable" and inserting the following: 'reasonable  
3 State's'

4 Amend the bill by inserting after section 42 the following:

5 '**Sec. 43. Appropriations and allocations.** The following appropriations and  
6 allocations are made.

7 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

8 **Remediation and Waste Management 0247**

9 Initiative: Transfers 20 positions, associated All Other and Capital Expenditures from the  
10 Maine Coastal and Inland Surface Oil Clean-up Fund to the Maine Ground and Surface  
11 Waters Clean-up and Response Fund.

12 OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
13 Personal Services	\$0	\$0
14 All Other	(\$250,000)	(\$250,000)
15 Capital Expenditures	\$0	\$0
16		
17 OTHER SPECIAL REVENUE FUNDS TOTAL	<u>(\$250,000)</u>	<u>(\$250,000)</u>

18  
19 Amend the bill by adding before the summary the following:

20 '**Emergency clause.** In view of the emergency cited in the preamble, this  
21 legislation takes effect when approved.'

22 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
23 section number to read consecutively.

24 **SUMMARY**

25 This amendment adds an emergency preamble and emergency clause and retains all  
26 provisions from the bill except as follows.

27 1. It provides that the balance in the new Maine Ground and Surface Waters Clean-  
28 up and Response Fund is limited to \$18,500,000.

29 2. It provides that unrefined crude oil is not subject to the funding provision for the  
30 new Maine Ground and Surface Waters Clean-up and Response Fund that allows for fee  
31 increases when the fund balance falls to \$6,000,000 or less.

32 3. It provides additional specific fee information for reimbursement of fees imposed  
33 on transfers out of state.

34 4. It removes from the bill certain changes to the statutory standard deductible  
35 amounts for coverage of clean-up costs and eligible 3rd-party damage costs under the  
36 new Maine Ground and Surface Waters Clean-up and Response Fund. It eliminates from  
37 the bill the section that transfers from the Board of Environmental Protection to the  
38 Clean-up and Response Fund Review Board the authority to adopt rules to determine the



COMMITTEE AMENDMENT "A" to S.P. 468, L.D. 1303

1 standards for assessing an applicant's ability to pay the deductible with respect to the  
2 applicant's personal residence.

3 5. It amends certain provisions of the bill governing the appointment of members to  
4 the Clean-up and Response Fund Review Board.

5 The amendment also makes necessary changes to statutory cross-references and adds  
6 an appropriations and allocations section.

7 **FISCAL NOTE REQUIRED**

8 **(See attached)**



# 127th MAINE LEGISLATURE

LD 1303

LR 536(02)

## An Act To Stabilize and Streamline the Department of Environmental Protection's Ground Water Oil Clean-up Fund and Maine Coastal and Inland Surface Oil Clean-up Fund

Fiscal Note for Bill as Amended by Committee Amendment 'A' (S-301)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

### Fiscal Note

	FY 2015-16	FY 2016-17	Projections FY 2017-18	Projections FY 2018-19
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	(\$250,000)	(\$250,000)	(\$250,000)	(\$250,000)
<b>Revenue</b>				
Other Special Revenue Funds	\$0	\$0	\$0	\$0
<b>Transfers</b>				
Other Special Revenue Funds	\$0	\$0	\$0	\$0

### Fiscal Detail and Notes

The bill combines the Ground Water Oil Clean-up Fund and the Maine Coastal and Inland Surface Water Clean-up Fund within the Department of Environmental Protection (DEP) and names the combined fund the Maine Ground and Surface Waters Clean-up and Response Fund (Response Fund). The Response Fund will be used to respond to oil spills and clean-up activities, repair, retrofit, replace or remove aboveground and underground oil storage tanks, as well as undertake certain other activities. This bill allows the Clean-up and Response Fund Review Board to adopt rules raising fees on barrels of certain fuel if the Response Fund's balance becomes \$6,000,000 or less. These fee increases terminate when the Response Fund's balance reaches \$10,000,000. No estimate is made at this time of the potential amount of revenue that would be generated from this fee increase. Combining these two funds will not change the amount of revenue to the DEP. There will be total transfers of \$831,509 and \$827,736 in fiscal years 2015-16 and 2016-17, respectively, from the Response Fund for staff time for reporting oil spills, providing the Board of Environmental Protection with funds and other related costs. Under current law, yearly allocations may not exceed \$250,000 for certain research and development costs and this bill places a \$100,000 maximum on allocations per year. The bill includes Other Special Revenue Funds deallocations of \$250,000 in each of fiscal years 2015-16 and 2016-17 from projected savings from combining these funds and reducing the maximum amount allowed for allocations for research and development.