

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

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J.S. McCarthy Company
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PUBLIC LAWS

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under the chapter or any rule or order of the ~~superintendent~~ administrator with the same force and validity as if served personally.

2. Service. Service under subsection 1 may be made by leaving a copy of the process in the office of the ~~superintendent~~ administrator, but it is not effective unless:

A. The plaintiff, who may be the ~~superintendent~~ administrator in a suit, action or proceeding instituted by ~~him~~ the administrator, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at ~~his~~ the last address known to the plaintiff; and

B. The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Sec. 83. 32 MRSA §11310, sub-§§1 to 5, as enacted by PL 1985, c. 643, are amended to read:

1. Notice of intent, summary order. The ~~superintendent~~ administrator shall commence an administrative proceeding under this chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but must be in writing.

2. Notification of parties. Upon entry of a notice of intent or summary order, the ~~superintendent~~ administrator shall promptly notify, in writing, all interested parties that the notice or summary order has been entered and the reasons for that notice or order. If the proceeding is pursuant to a notice of intent, the ~~superintendent~~ administrator shall notify all interested parties of the date, time and place set for the hearing in the notice or, if no hearing has been scheduled, the ~~superintendent~~ administrator shall notify all interested parties that they have 30 calendar days from the entry of the notice of intent to file a written request with the ~~superintendent~~ administrator for a hearing. If the proceeding is pursuant to a summary order, the ~~superintendent~~ administrator shall notify all interested parties that they have 30 calendar days from the entry of the order to file a written request for a hearing on the matter with the ~~superintendent~~ administrator and that the hearing will be scheduled to commence within 15 calendar days after the receipt of the written request.

Notwithstanding anything in this subsection, the ~~superintendent~~ administrator may give notice of the entry of the notice of intent or summary order to such parties as ~~he~~ the administrator may determine to be necessary or appropriate.

3. Hearing. If the proceeding is pursuant to a summary order, the ~~superintendent~~ administrator, whether or not a written request for a hearing is received from any

interested party, may set the matter down for hearing on the ~~superintendent's~~ administrator's own motion.

4. Summary order final. A summary order issued against any person becomes a final order:

A. Thirty days after the ~~superintendent~~ administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing and none is scheduled by the ~~superintendent~~ administrator; or

B. On the date of the hearing, if the person requesting the hearing fails to appear.

5. Action pending final determination. If a hearing is requested or ordered, the ~~superintendent~~ administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

Sec. 84. 32 MRSA §11311, as enacted by PL 1985, c. 643, is amended to read:

§11311. Judicial review of orders

Any person aggrieved by a final order of the ~~superintendent~~ administrator may obtain review of the order in the Kennebec County Superior Court by filing a petition in accordance with Title 5, section 11001, and the Maine Rules of Civil Procedure, Rule 80C.

Sec. 85. 32 MRSA §11312 is enacted to read:

§11312. Orders issued by Superintendent of Banking

All orders issued by the Superintendent of Banking at a time when authority for administering this chapter was vested in the Superintendent of Banking shall remain in effect for as long as they would have remained in effect if that authority had not been transferred to the Securities Administrator.

See title page for effective date.

CHAPTER 543

H.P. 753 - L.D. 1057

An Act to Provide Financial Assistance to Expedite the Removal of Underground Oil Tanks

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

Whereas, owners of certain underground oil storage facilities and tanks are required to remove them by October 1, 1989; and

Whereas, this legislation provides assistance to certain residential and commercial owners of underground

oil storage facilities and tanks to permit them to comply with the October 1, 1989, removal date; and

Whereas, to provide this assistance and ensure that the tanks are removed by this date, it is necessary that the assistance be available when this legislation is approved; 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,

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

Sec. 1. 10 MRSA §963-A, sub-§49-B, as repealed and replaced by PL 1987, c. 769, Pt. A, §44, is amended to read:

49-B. Underground oil storage facility. "Underground oil storage facility" means ~~the same as set forth in Title 38, section 562, subsection 13~~ any tank, together with associated piping and dispensing facilities, 10% or more of which is located beneath the surface of the ground and not on or above a floor in such a manner that it may be readily inspected, located at a single location and used, formerly used or intended to be used for the marketing and distribution of oil, petroleum products or their by-products to persons or entities other than the owner of the facility.

Sec. 2. 10 MRSA §963-A, sub-§§49-D and 49-E are enacted to read:

49-D. Underground oil storage tank; tank. "Underground oil storage tank" or "tank" means any tank, together with associated piping, 10% or more of which is located beneath the surface of the ground and not on or above a floor in such a manner that it may be readily inspected, located at a single location and used, formerly used or intended to be used for consumption by the owner or user of the tank on the premises.

49-E. Underground oil storage tank replacement project. "Underground oil storage tank replacement project" or "tank replacement project" means the removal, disposal or replacement of all or any part of an underground oil storage tank.

Sec. 3. 10 MRSA §1023-D, as enacted by PL 1987, c. 521, §4, is amended to read:

§1023-D. Underground Oil Storage Replacement Fund

1. Creation. The Underground Oil Storage Facility Replacement Fund is created and established under the jurisdiction and control of the authority.

2. Sources of money. There shall be paid into the fund the following:

A. All money appropriated for inclusion in the fund or appropriated to the authority for use in providing

financial assistance to owners of underground oil storage facilities or tanks, subject to any restrictions applicable to the appropriation;

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

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

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

3. Application of fund. Money in the fund may be applied to carry out any power of the authority under this section or under or in connection with section 1026-F, including, but not 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 principal, interest and other amounts due on insured loans. Money in the fund may be used for direct loans or grants for all or part of underground oil storage facility replacement projects or underground oil storage tank replacement projects when the authority determines that:

A. The underground oil storage facility or tank is leaking or, has been identified by the Department of Environmental Protection as posing an environmental threat, or removal is required by applicable law within 2 years from the date of application to the authority for a loan;

B. The applicant, if the applicant is not a unit of local government, demonstrates a reasonable likelihood that it will not be able to obtain the funds necessary to undertake all or any part of the project from any other source, including a loan insured under section 1026-F financial need for the assistance;

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

~~D. The project will assist in creating or retaining jobs and will provide a more healthy environment.~~

E. The applicant is an eligible enterprise which does not own or use directly or indirectly, by 50% or more common ownership, more than one location, excluding personal residences, at which an underground oil storage facility or tank is located, or the applicant is a unit of local government, which for the purposes of this section includes a public school.

The authority, pursuant to Title 5, chapter 375, subchapter II, shall adopt rules for determining eligibility, feasibility, terms, conditions and security for the loans and grants. In the case of loans, the authority may charge an interest rate which may be as low as 0% and which may be greater, depending on the financial ability of the applicant to pay as determined by the authority, up to a maximum of 2% below the prime rate of interest charged by major Boston banks. Money

in the fund not needed currently to meet the obligations of the authority as provided in this section may be invested in such a manner as permitted by law.

4. Accounts within fund. The authority may divide the fund into such separate accounts as it determines are necessary or convenient for carrying out this section, including, but not limited to, accounts reserved for direct loan funds or grants for underground oil storage facility removal and direct loan funds or grants for tank removal.

5. Revolving fund. The fund shall be a nonlapsing, revolving fund. All money in the fund shall be continuously applied by the authority to carry out this section and section 1026-F.

Sec. 4. 10 MRSA §1024, sub-§1, as amended by PL 1987, c. 846, §6, is further amended to read:

1. Request for funds. If at any time the money in the Mortgage Insurance Fund and the money in the Loan Insurance Reserve Fund, exclusive of the money pledged or assigned as security for specific obligations of the authority, is insufficient to meet expenses and obligations of the authority, as these expenses and obligations are projected by the authority to become due and payable, the authority shall in writing request the Governor to provide the necessary money. The Governor shall transfer sufficient money to the Mortgage Insurance Fund or Loan Insurance Reserve Fund, as directed by the authority, from the State Contingent Account or the proceeds of bonds of the State issued pursuant to subsection 2. If at any time the money in the Underground Oil Storage ~~Facility~~ Replacement Fund, exclusive of any amounts reserved by law ~~or rule~~ for direct loans pursuant to section 1023-D, subsection 3, is insufficient to meet the expenses and obligations of the authority incurred pursuant to section 1026-F, as these expenses and obligations are projected by the authority to become due and payable, the authority shall in writing request the Governor to provide the necessary money. Within 30 days of receipt of the request, the Governor shall transfer sufficient money to the Underground Oil Storage ~~Facility~~ Replacement Fund from the Ground Water Oil Clean-up Fund or the proceeds of bonds of the State issued pursuant to subsection 2. If at any time the money in the Overboard Discharge Replacement Fund, exclusive of any amounts reserved by law or rule for direct loans pursuant to section 1023-E, subsection 3, is insufficient to meet the expenses and obligations of the authority incurred pursuant to section 1026-G, as these expenses and obligations are projected by the authority to become due and payable, the authority shall request, in writing, the Governor to provide the necessary money. Within 30 days of receipt of the request, the Governor shall transfer sufficient money to the Overboard Discharge Replacement Fund from the State Contingent Account or the proceeds of bonds of the State issued pursuant to subsection 2.

Sec. 5. 10 MRSA §1025, first ¶, as amended by PL 1987, c. 846, §8, is further amended to read:

When, in the opinion of the authority, the action is necessary to safeguard the Mortgage Insurance Fund, Loan Insurance Reserve Fund, Underground Oil Storage ~~Facility~~

Replacement Fund or Overboard Discharge Replacement Fund and to maintain income from eligible projects, the authority may, in addition to its other powers:

Sec. 6. 38 MRSA §569, sub-§4, as repealed and replaced by PL 1987, c. 769, Pt. A, §177, is amended to read:

4. Funding. A fee of ~~3¢ 9¢~~ per barrel of gasoline and ~~2¢ 8¢~~ per barrel of refined petroleum products and their by-products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, shall be assessed on the transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees shall be paid monthly by the oil terminal facility licensees on the basis of records certified to the department. All such transfer fees shall be credited to the Ground Water Oil Clean-up Fund upon receipt by the department, except that the amount of these fees in excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products, other than gasoline and liquid asphalt, shall be transferred by the department upon receipt as follows.

A. Sixty-two and one half percent of the excess shall be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.

B. Thirty-seven and one half percent of the excess shall be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

After an aggregate sum of \$5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of \$3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to this subsection shall be reduced by 6¢ per barrel.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective July 10, 1989.

CHAPTER 544

S.P. 166 - L.D. 323

An Act to Improve Ferry Service to Matinicus Isle

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