

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2014 to July 16, 2015**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 15, 2015**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2015**

**3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

**Sec. 2. 1 MRSA §413, sub-§1,** as enacted by PL 2011, c. 662, §8, is amended to read:

**1. Designation; responsibility.** Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit ~~and~~ or regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within a ~~reasonable period of time~~ 5 working days of the receipt of the request by the office responsible for maintaining the public record requested and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

See title page for effective date.

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**CHAPTER 318  
H.P. 769 - L.D. 1108**

**An Act To Protect Children  
and the Public from Vapor  
from Electronic Smoking  
Devices**

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

**Sec. 1. 22 MRSA §1541, sub-§1-A** is enacted to read:

**1-A. Electronic smoking device.** "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

**Sec. 2. 22 MRSA §1541, sub-§6,** as enacted by PL 1993, c. 342, §1 and affected by §9, is amended to read:

**6. Smoking.** "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar, or pipe or ~~other object giving off tobacco smoke~~ a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

See title page for effective date.

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**CHAPTER 319  
S.P. 468 - L.D. 1303**

**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**

**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,

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

**Sec. 1. 5 MRSA §12004-G, sub-§11-A**, as enacted by PL 1993, c. 363, §1 and affected by §21, is amended to read:

**11-A.**

Environment/ Natural Resources	<u>Clean-up</u> and <u>Response</u> Fund <u>Insurance</u> Review Board	Expenses Only for Certain Members	38 MRSA §568-B
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**Sec. 2. 5 MRSA §12004-I, sub-§24-B**, as enacted by PL 1991, c. 698, §1, is repealed.

**Sec. 3. 10 MRSA §1024, sub-§1**, as amended by PL 2003, c. 537, §29 and affected by §53, 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 Replacement Fund, exclusive of any amounts reserved by law 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-A, subsection 1, paragraph A, subparagraph (1), division (b), 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 Replacement Fund from the Maine Ground Water-Oil and Surface Waters Clean-up and Response Fund or the proceeds of bonds of the State issued pursuant to subsection 2.

**Sec. 4. 32 MRSA §10012, sub-§2**, as amended by PL 2007, c. 497, §1, is further amended to read:

**2. Disposal of fees and civil penalties.** All fees received by the board under subsection 1 and civil penalties imposed under sections 10015 or 10016 must be paid to the Treasurer of State to be deposited into the Maine Ground Water-Oil and Surface Waters Clean-up and Response Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees and civil penalties does not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

**Sec. 5. 32 MRSA §10015, first ¶**, as amended by PL 2005, c. 330, §2, is further amended to read:

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Superior Court. Civil penalties accrue to the Maine Ground Water-Oil and Surface Waters Clean-up and Response Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7, notwithstanding any other provision of law.

**Sec. 6. 32 MRSA §10016, sub-§5**, as enacted by PL 2007, c. 497, §2, is further amended to read:

**5. Injunctions.** The Attorney General may bring an action in District Court or Superior Court to enjoin a person from violating subsection 4 and to restore to a person who has suffered any ascertainable loss by reason of that violation any money or personal or real property that may have been acquired by means of that violation and to compel the return of compensation received for engaging in that unlawful conduct.

A person who violates the terms of an injunction issued under this subsection shall pay to the State a fine of not more than \$10,000 for each violation. In an action under this subsection, when a permanent injunction has been issued, the court may order the person against whom the permanent injunction is issued to pay to the Maine Ground Water-Oil and Surface Waters Clean-up and Response Fund under Title 38, chapter 3, subchapter ~~2-B~~ 2-A the costs of the investi-

gation of that person by the Attorney General and the costs of suit, including attorney's fees. In an action by the Attorney General brought against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to a person who has suffered any ascertainable loss any money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

**Sec. 7. 38 MRSA §341-G, sub-§1**, as amended by PL 1991, c. 817, §8, is further amended to read:

**1. Transfer funds.** The amount transferred from each fund must be proportional to that fund's contribution to the total special revenues received by the department under chapter 2, subchapter 2; ~~sections section 551, 569-A and 569-B~~; and chapter 13, subchapter 4. Any funds received by the board from the General Fund must be credited towards the amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

**Sec. 8. 38 MRSA §342-B, sub-§5**, as enacted by PL 1993, c. 355, §4, is amended to read:

**5. Relationship to ground water fund claims.** The exemption provided in subsection 2, paragraph B from liability under section 570 does not exempt lenders who apply to the Maine Ground Water and Surface Waters Clean-up and Response Fund for coverage pursuant to section 568-A from the obligation to pay the full amount of deductible determined by the commissioner.

**Sec. 9. 38 MRSA §542, sub-§4**, as enacted by PL 1969, c. 572, §1, is amended to read:

**4. Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emitting, escaping, emptying or dumping.

**Sec. 10. 38 MRSA §542, sub-§5**, as amended by PL 1985, c. 496, Pt. A, §6, is further amended to read:

**5. Fund.** "Fund" means the Maine ~~Coastal Ground and Inland Surface Oil Waters Clean-up and Response~~ Coastal Ground and Inland Surface Oil Waters Clean-up and Response Fund.

**Sec. 11. 38 MRSA §542, sub-§6**, as amended by PL 2011, c. 206, §12, is further amended to read:

**6. Oil.** "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

**Sec. 12. 38 MRSA §542, sub-§8**, as enacted by PL 1969, c. 572, §1, is amended to read:

**8. Owner or operator.** "~~Operate~~ Owner or operator" ~~shall mean means~~ any person owning or operating an oil terminal facility whether by lease, contract or any other form of agreement or a person in control of, or having responsibility for, the daily operation of an oil storage facility.

**Sec. 13. 38 MRSA §542, sub-§9-C**, as enacted by PL 1997, c. 364, §25, is amended to read:

**9-C. Responsible party.** "Responsible party" means any person who could be held liable under section 552 or as defined in section 562-A, subsection 17.

**Sec. 14. 38 MRSA §548, 2nd ¶**, as amended by PL 1991, c. 817, §10, is further amended to read:

Any unexplained discharge of oil within state jurisdiction or discharge of oil occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal or cleanup of discharges, including the restoration of water supplies contaminated by discharges from interstate pipelines and other discharges prohibited by section 543, whether by the person reporting the discharge, the commissioner or the commissioner's agents or contractors, must be paid in the first instance from the Maine ~~Coastal Ground and Inland Surface Oil Waters Clean-up and Response~~ Coastal Ground and Inland Surface Oil Waters Clean-up and Response Fund and any reimbursements due that fund must be collected in accordance with section 551.

**Sec. 15. 38 MRSA §549**, as amended by PL 2013, c. 405, Pt. C, §23, is further amended to read:

**§549. Personnel and equipment**

The commissioner shall establish and maintain at such ports within the State, and other places as the commissioner determines, employees and equipment necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel necessary to carry out the purposes of this subchapter, and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment must be paid from the Maine ~~Coastal Ground and Inland Surface Oil Waters Clean-up and Response~~ Coastal Ground and Inland Surface Oil Waters Clean-up and Response Fund established by this subchapter. The commissioner and the Director of the Division of Geology, Natural Areas and Coastal Resources shall periodically consult with each other relative to procedures for the prevention of oil discharges into the coastal waters of the State from offshore drilling production facilities. Inspection and enforcement employees of the department in their line of duty under this subchapter have the powers of a constable.

**Sec. 16. 38 MRSA §551**, as amended by PL 2013, c. 349, §1, is further amended to read:

### §551. Maine Ground and Surface Waters Clean-up and Response Fund

The ~~Maine Coastal Ground and Inland~~ Surface Oil Waters Clean-up and Response Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. ~~The balance in the fund is limited to \$6,000,000, the sum of which includes all funds credited under this section \$18,500,000.~~ The Department of Environmental Protection shall collect fees in accordance with subsection 4. To this fund are credited all license and registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements, assessments and other fees and charges related to this subchapter, ~~and to and subchapter 2-B.~~ To this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, ~~3rd-party damages, costs of cleanup of discharges of oil and oil by-products, including, but not limited to, restoration of water supplies and 3rd-party damages covered by this subchapter~~ any obligations of the State pursuant to Title 10, section 1024, subsection 1.

Money in the fund, not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter must be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on that investment must be credited to the ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ fund.

~~1-A. Sensitive area data management and mapping.~~ The Legislature may allocate no more than \$350,000 per year of the amount then currently in the fund until fiscal year 1994-95 to mapping, data management and computerization related to the protection of sensitive areas and similar activities required under section 546 B. ~~This limitation does not include personnel costs. The allocations must be made in accordance with section 555. After fiscal year 1993-94, the Legislature must review the need for these activities before allocating additional funds.~~

~~1-B. Research and development.~~ The Legislature may allocate not more than ~~\$250,000~~ \$100,000 per annum of the amount currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, ~~petroleum products and their by-products on waters of the State.~~ Researchers receiving funds under this subsection shall use vessels based in this State as platforms when practicable. Such allocations must be made in accordance with section 555.

**2. Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses arising from physical bodily injury, directly or indirectly as a result of a discharge

of oil prohibited by section 543 including all discharges of oil from interstate pipelines, in this subsection called "the claimant," may apply within 12 months after the occurrence of a discharge to coastal waters and for other ~~surface~~ discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner may, upon petition and for good cause shown, waive the time limitation for filing damage claims. All 3rd-party damage claims for which no determination of award has been made must be processed in accordance with the substantive and procedural provisions of this section.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the 3rd-party damage claim process as an interested party. A responsible party shall provide written notification to the department of the responsible party's intent to join within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, the determination of the amount of the claim and award is binding in any subsequent action for reimbursement to the fund. If a claimant has not been compensated for 3rd-party damages by the responsible party or the expenses are above the responsible party's deductible and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ fund.

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 3-A.

C. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim.

D. Damage claims arising under this subchapter that are a result of a prohibited discharge to coastal waters are recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter for discharges to coastal waters are exclusive.

E. Awards from the fund on damage claims may not include any amount the claimant has recovered, on account of the same damage, by way of settlement with the responsible party or the responsible party's representatives or judgment of a court of competent jurisdiction against the responsible party to the extent these amounts are duplicative.

F. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties.

G. The remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive for damages that are not a result of prohibited discharges to coastal waters. A court awarding damages to a claimant as a result of a discharge of oil to surface waters prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative.

H. Payments from the fund for 3rd-party damage claims may not exceed \$200,000 per claimant except when the damages are a result of a discharge to coastal waters or when the claimant is a publicly owned or operated public water system.

I. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 548 or section 568, subsection 2 that a public or private water supply is available and if that water supply best meets the criteria of that section and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in

treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548.

J. A claimant is not eligible for compensation under this subsection for costs, expenses or damages related to a discharge if the commissioner determines that the claimant is a responsible party ~~as defined under section 542, subsection 9-C.~~

K. Prior to forwarding a claim to the hearing examiner under subsection 3-A, the commissioner may require that the amount of the claim be finalized.

L. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim, such as legal fees or real estate appraisal fees.

M. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for failure by the claimant to provide the information necessary to process the claim within 60 days after the claimant receives written notice that the claim is insufficient for processing or for ineligibility as determined by the commissioner under paragraph J. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7.

**2-B. Claimant contact.** When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

**3-A. Determination of disputed 3rd-party damage claims.** The commissioner shall establish a disputed claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner and any responsible party who has joined as an interested party.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant.

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner are informal and the rules of evidence applicable to judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. The party seeking review of a hearing examiner's determination must file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State.

**4. Funding.** ~~The Maine Coastal and Inland Surface Oil Clean-up Fund fund~~ is funded pursuant to this subsection.

~~A. License fees are 3¢ per barrel of unrefined crude oil and all other refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and A fee is assessed on the first transfer of products listed in this subsection by oil terminal facility licensees and on a person required to register with the commissioner under section 545-B who first transports oil into the State. These fees must be paid monthly by the licensee on the basis of records certified to the commissioner. License fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund fund.~~

A-1. A fee is assessed of:

- (1) Three cents per barrel of unrefined crude oil and liquid asphalt;
- (2) Seven cents per barrel of #6 fuel oil;
- (3) Twenty-two cents per barrel of #2 fuel oil, kerosene, jet fuel, diesel fuel and other refined products and their by-products not otherwise specified in this subsection, excluding liquid asphalt; and

(4) Forty-one cents per barrel of gasoline.

This paragraph does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O, subsection 1, paragraph C and is subject to fees established under section 1319-I.

~~D. Any A person required to register under section 545-B and who first transports oil in Maine shall pay 3¢ per barrel for all crude and refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the registrant during the period of registration. Fees must be paid monthly by the registrant on the basis of records certified to the commissioner. Fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. The registrant subject to this subsection shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the oil the person transported by the registrant or transferred during the period of registration or the licensed period. This paragraph does not apply to waste oil transported into Maine in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I.~~

E. When the commissioner projects that the fund balance will reach \$6,000,000 \$18,500,000, the commissioner shall provide a 15-day notice that the per barrel fees assessed under this subsection will be suspended. The \$6,000,000 \$18,500,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. Following any suspension of fees assessed under this subsection, the commissioner shall provide a 15-day advance notice to licensees before fees are reimposed.

F. If the fund balance is reduced to \$6,000,000 or less, the Clean-up and Response Fund Review Board under section 568-B may adopt rules increasing the fees imposed under paragraph A-1 by up to 20¢ per barrel for gasoline and up to 10¢ per barrel for other petroleum products, except unrefined crude oil, liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The Clean-up and Response Fund Review Board may use the emergency rule-making procedures under Title 5, section 8054 if necessary to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to this paragraph terminates and the fees imposed under paragraph A-1 apply when the fund balance reaches \$10,000,000.



**4-A. Penalty for late payment of fees.** Fees assessed under subsection 4 are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in this State. Licensees or registrants who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 4. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

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

- A. Four cents per barrel of #6 fuel oil;
- B. Nineteen cents per barrel of #2 fuel oil, kerosene, jet fuel, diesel fuel and other refined products and their by-products not otherwise specified in this subsection, excluding liquid asphalt; and
- C. Thirty-eight cents per barrel of gasoline.

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

**5. Disbursements from fund.** Money in the ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ shall fund may be disbursed for the following purposes and no others:

- A. Administrative expenses, ~~personnel expenses~~ personal services and equipment costs of the ~~commissioner~~ department related to the administration and enforcement of this subchapter and subchapter 2-B, except that total disbursements for personal services may not exceed \$7,000,000 per fiscal year;
- B. All costs, including without limitation personnel undertaking oil spill response and clean-up activities and equipment expenses, involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products covered by this subchapter, including the discharge of oil from an oil storage facility not paid by a responsible party or an applicant for coverage by the fund, and all discharges from interstate pipelines and other discharges prohibited by section 543;

C. Sums allocated to research and development in accordance with this section;

D. Payment of ~~3rd party~~ 3rd-party claims awarded in accordance with this section that are not paid by the responsible party or applicant for coverage by the fund and payment of 3rd-party damage claims that are paid to owners or operators pursuant to section 568-A, subsection 6;

E. Payment of costs of hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims;

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund;

H. Sums, up to \$50,000 each year, that have been allocated by the Legislature on a contingency basis in accordance with section 555 for payment of costs for damage assessment for specific spills and site-specific studies of the environmental impacts of a particular discharge prohibited by section 543 that may have adverse economic effects and occur subsequent to such an allocation, when those studies are determined necessary by the commissioner; ~~and~~

I. Payment of costs for the collection of overdue reimbursements-;

J. All costs associated with the Board of Underground Oil Storage Tank Installers, not to exceed \$100,000;

K. Payments to or on behalf of applicants eligible for coverage by the fund under section 568-A, subsection 1 for expenses above the deductible specified in section 568-A, subsection 2 incurred in commissioner-approved clean-up activities and specified in an agreement under section 568-A, subsection 4;

L. All costs associated with the Clean-up and Response Fund Review Board, not to exceed \$200,000;

M. Costs incurred by the Office of the State Fire Marshal to implement the duties assigned to the State Fire Marshal in this chapter, not to exceed \$150,000;

N. Sums up to \$500,000 annually to retrofit, repair, replace or remove aboveground oil storage tanks or facilities when the commissioner determines that action is necessary to abate an imminent threat to a groundwater restoration project, a public water supply or a sensitive geologic area, including coastal islands and peninsulas. Money available under this paragraph may be disbursed by the department to pay reasonable costs actually incurred by municipalities in assisting the department in taking actions under this paragraph. Money available under this paragraph may also be

used by the department to fund educational efforts that encourage the retrofit, repair, replacement or removal of aboveground oil storage tanks or facilities. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Clean-up and Response Fund Review Board. Money may not be disbursed from the fund under this paragraph unless the department has adopted a written policy in accordance with the Maine Administrative Procedure Act establishing:

(1) Criteria for determining those instances when funds should be disbursed under this paragraph, including criteria for determining what constitutes a sensitive geologic area;

(2) Guidelines that ensure that money disbursed from the fund under this paragraph will be used in the most cost-effective manner, considering the likelihood of actual contamination of water supplies absent action taken pursuant to this paragraph, the costs of remediation of such contamination and the possibility that the owner of an aboveground oil storage tank or facility would retrofit, repair, replace or remove the tank at the owner's own expense;

(3) Guidelines for payments to municipalities for reasonable administrative costs actually incurred by municipalities in assisting the department in taking actions under this paragraph;

(4) A means test for eligibility for disbursements from the fund;

(5) A deductible that is adjusted according to the financial means of the person receiving a disbursement; and

(6) Limits for eligibility to residents of this State; and

O. Sums up to \$2,000,000 annually to distribute to community action agencies as defined in Title 22, section 5321, subsection 2 for loans and grants to retrofit, repair, replace or remove aboveground and underground oil storage tanks and associated piping at single-family residences. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Clean-up and Response Fund Review Board. A community action agency shall administer the funds in accordance with program operating standards, including the allocation formula established by the Maine State Housing Authority for its weatherization program. Sums available under this paragraph may be disbursed by the department to pay reasonable costs actually incurred by a community

action agency in providing services pursuant to this paragraph. Money may not be disbursed from the fund under this paragraph unless the department has adopted a written policy in accordance with the Maine Administrative Procedure Act establishing guidelines for payments to community action agencies for reasonable administrative costs actually incurred by community action agencies in providing services pursuant to this paragraph.

**6. Reimbursements to Maine Ground and Surface Waters Clean-up and Response Fund.** For the use of the fund, the commissioner shall seek recovery of ~~all~~ disbursements from the fund for the following purposes, including overdrafts and interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small, the likelihood of success too uncertain or that recovery of costs is unlikely due to the inability of the responsible party to pay those costs, ~~provided except~~ that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs ~~A~~, B, D, E, H and I in connection with a prohibited discharge; ~~and~~

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd-party claims in excess of \$15,000, except to the extent that the costs are covered by payments received under any federal program;

E. Disbursements made by the fund greater than \$750,000 per occurrence expended from the fund pursuant to subsection 5, paragraph K for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A, subsection 1, excluding occurrences at underground oil storage facilities; and

F. Disbursements made by the fund greater than \$1,000,000 per occurrence at an underground oil storage facility expended from the fund pursuant to subsection 5, paragraph K for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A, subsection 1.

Requests for reimbursement to the fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191, or the

department may file suit in District Court. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

**6-A. Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil, all costs incurred by the State in the abandonment of an underground oil storage facility or tank under section 566-A, subsection 4 and interest are a lien against the real estate of the responsible party. The lien does not apply to the real estate of a licensee if the discharge was caused or suffered by a carrier destined for the licensee's facilities. For a responsible party determined eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any unpaid deductible assigned under section 568-A, subsection 2 and any eligible clean-up costs and 3rd-party damage claims above \$750,000, or above \$1,000,000 for underground oil storage facilities.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

**7. Waiver of reimbursement.** Upon petition of any licensee, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

- A. An act of war;
- B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 548; or

C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such finding by the board, immediate credit therefor must be entered for the party involved. The findings of the board are conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred, not a right granted.

**8. Disbursements to state agencies.** A state agency that seeks reimbursement from the ~~Maine Coastal and Inland Surface Oil Clean-up Fund~~ fund for costs incurred in undertaking oil spill response activities shall keep time records demonstrating the amount of spill response activities performed for which reimbursement is sought. A state agency may establish a dedicated account for receipt of disbursements from the fund. Disbursements from the fund to a state agency pursuant to subsection 5, paragraph B must be deposited in that account, if it has been established, and may be used by the agency to support its activities.

**Sec. 17. 38 MRSA §551-A**, as amended by PL 2007, c. 292, §§30 to 32, is repealed.

**Sec. 18. 38 MRSA §562-A, sub-§4-A** is enacted to read:

**4-A. Clean-up and Response Fund Review Board.** "Clean-up and Response Fund Review Board" or "review board" means the board created in section 568-B.

**Sec. 19. 38 MRSA §562-A, sub-§9**, as enacted by PL 1989, c. 865, §2, is amended to read:

**9. Fund.** "Fund" means the ~~Maine Ground Water and Surface Waters Clean-up and Response Fund~~.

**Sec. 20. 38 MRSA §562-A, sub-§9-A**, as enacted by PL 1993, c. 363, §4 and affected by §21, is repealed.

**Sec. 21. 38 MRSA §562-A, sub-§17, ¶E**, as amended by PL 2007, c. 655, §3, is further amended to read:

E. With regard to sections 551, 568, 568-A, ~~569-A~~ and 570, persons described in paragraphs A to D with regard to aboveground oil storage facilities.

**Sec. 22. 38 MRSA §566-A, sub-§4**, as amended by PL 2009, c. 121, §11, is further amended to read:

**4. Commissioner role.** If the owner of an underground oil storage facility or tank fails to properly abandon the facility or tank within a reasonable time period, the commissioner may undertake the abandonment. The commissioner shall seek recovery of costs incurred to undertake the abandonment, whether

from state or federal funds, in accordance with the procedures set forth in section ~~569-A~~ 551, subsection ~~10~~ 6. Costs incurred by the commissioner to undertake the abandonment are a lien against the real estate of the owner as provided under section ~~569-A~~ 551, subsection ~~10-A~~ and section ~~569-B~~, subsection 6-A.

**Sec. 23. 38 MRSA §568, sub-§1**, as amended by PL 2009, c. 121, §12, is further amended to read:

**1. Removal.** Any person discharging or suffering a discharge of oil from an underground oil storage facility or an aboveground oil storage facility in the manner prohibited by section 543 and any other responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3 or may undertake the removal of that discharge and retain agents and contractors for that purpose, who shall operate under the direction of the commissioner. Any unexplained discharge of oil within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge, the commissioner or the commissioner's agents or contractors, may be paid in the first instance from the ~~Ground Water Oil Clean-up Fund~~ fund, including any expenses incurred by the State under subsection 3, and any reimbursements due that fund must be collected in accordance with section ~~569-A~~ or ~~569-B~~ 551, subsection 6.

**Sec. 24. 38 MRSA §568, sub-§6**, as enacted by PL 1991, c. 763, §7, is amended to read:

**6. Reimbursement.** If the commissioner requires an underground oil storage facility owner or operator to remove or close an underground oil storage facility upon evidence of a leak and if after investigation that facility is found not to be the source of a leak, the commissioner shall immediately reimburse that facility owner or operator from the fund for the documented costs of that removal. The facility owner or operator may be reimbursed for damages resulting from the removal, such as loss of income, through the 3rd-party damage claim process in section ~~569~~ 551.

**Sec. 25. 38 MRSA §568-A, sub-§1, ¶A**, as amended by PL 1995, c. 361, §4, is further amended to read:

A. The applicant must submit within 180 days of reporting the discharge a written request to the commissioner to be covered by the fund. The request must include:

- (1) A description of the discharge and the locations threatened or affected by the discharge, to the extent known;

(2) An agreement that the applicant shall pay the deductible amount specified in subsection 2;

(3) For underground storage facilities, documentation regarding the applicant's compliance with the requirements of subsection 2, paragraph B; and

(4) For aboveground facilities, documentation required by the Clean-up and Response Fund Insurance Review Board.

The commissioner with respect to a claim involving an underground oil storage facility, or the State Fire Marshal with respect to a claim involving an aboveground oil storage facility, may waive the 180-day filing requirement for applicants for coverage of clean-up costs for discharges discovered after April 1, 1990 when the applicant has cooperated in a timely manner with the department in cleaning up the discharge.

**Sec. 26. 38 MRSA §568-A, sub-§1, ¶H**, as enacted by PL 1995, c. 361, §4, is amended to read:

H. The Clean-up and Response Fund Insurance Review Board shall develop, in consultation with the State Fire Marshal, the documentation requirements for claims submitted under this section by owners of aboveground oil storage facilities.

**Sec. 27. 38 MRSA §568-A, sub-§2**, as amended by PL 2013, c. 300, §11, 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

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

Total aboveground oil storage capacity in gallons owned by the facility owner	Deductible
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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Two thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and

(c) Two thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(5) For consumptive use heating oil facilities with an aggregate storage capacity of 2,000 gallons or greater, the deductibles are:

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

(b) Five thousand dollars for failure to comply with section 565, subsection 2, regarding monitoring; and

(c) Ten thousand dollars for failure to comply with section 565, subsection 2, regarding any requirement to report evidence of a possible leak or discharge.

(6) For waste oil and heavy oil and airport hydrant facilities with discharges that are not contaminated with hazardous constituents, the deductibles for failure to comply with rules adopted by the board are:

(a) Five thousand dollars for rules regarding design and installation requirements in effect at the time of the installation;

- (b) Five thousand dollars for rules regarding retrofitting of leak detection and corrosion protection, if applicable;
- (c) Five thousand dollars for rules regarding overfill and spill prevention;
- (d) Five thousand dollars for rules regarding the monitoring of cathodic protection systems;
- (e) Five thousand dollars for rules regarding testing requirements for tanks and piping on evidence of a leak;
- (f) Five thousand dollars for rules regarding maintenance of a leak detection system; and
- (g) Ten thousand dollars for rules regarding the reporting of leaks.

C. Conditional deductibles for aboveground facilities and tanks are as follows.

(1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal pursuant to 16-219 CMR, chapter 34, the deductibles are:

- (a) Five thousand dollars for failure to obtain a construction permit from the Office of the State Fire Marshal, when required under Title 25, chapter 318 and 16-219 CMR, chapter 34 or under prior applicable law;
- (b) Five thousand dollars for failure to design and install piping in accordance with section 570-K and rules adopted by the department;
- (c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding deficiency statement regarding violations at the aboveground facility;
- (d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;
- (e) Five thousand dollars for failure to install any required spill control measures, such as dikes;
- (f) Five thousand dollars for failure to install any required overfill equipment;
- (g) Five thousand dollars if the tank is not approved for aboveground use; and
- (h) Ten thousand dollars for failure to report any leaks at the facility.

(2) For aboveground tanks subject to the jurisdiction of the Maine Fuel Board, the deductibles are:

- (a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Maine Fuel Board and in effect at the time of installation;
- (b) Two hundred and fifty dollars for failure to comply with the rules of the Maine Fuel Board;
- (c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and
- (d) Five hundred dollars for failure to notify the department of a spill.

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

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

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

**Sec. 28. 38 MRSA §568-A, sub-§6**, as enacted by PL 1993, c. 553, §1 and affected by §7, is amended to read:

**6. Reimbursement of 3rd-party damages paid.** If a person claiming to have suffered property damage or actual economic damage directly or indirectly as a result of a discharge of oil to groundwater prohibited

by section 543 files a claim for damages against the owner or operator of an underground or aboveground oil storage tank in a court of competent jurisdiction without simultaneously filing or previously having filed a 3rd-party damage claim pursuant to section ~~569-A 551~~, the owner or operator may file a claim with the commissioner to be reimbursed for damages paid or payable to that 3rd party under a settlement or judgment. Such a claim for reimbursement must be filed and processed as follows.

A. The claim for reimbursement must be filed with the commissioner. If the owner or operator has not previously filed an application for fund coverage pursuant to subsection 1, the person claiming reimbursement shall also make application. The application must comply with the requirements of subsection 1 and must be processed and judged by the standards set forth in that subsection except that it is not required to be filed within 180 days of reporting the discharge.

B. If the person is eligible for fund coverage, the commissioner shall calculate the amount of reimbursement to the owner or operator by determining whether each amount claimed would be eligible for payment had the 3rd party applied directly to the fund. Eligible amounts, minus any deductible that has not previously been met by the owner or operator, must be paid to that owner or operator.

C. Appeals of decisions made under this subsection may be made to the Clean-up and Response Fund Insurance Review Board.

**Sec. 29. 38 MRSA §568-A, sub-§7**, as amended by PL 2009, c. 319, §12, is repealed.

**Sec. 30. 38 MRSA §568-B**, as amended by PL 2013, c. 22, §§1 and 2, is further amended to read:

**§568-B. Clean-up and Response Fund Review Board created**

**1. Clean-up and Response Fund Review Board.** The Clean-up and Response Fund Insurance Review Board, as established by Title 5, section 12004-G, subsection 11-A, is created to hear and decide appeals from insurance claims-related decisions under section 568-A and monitor income and disbursements from the Ground Water Oil Clean-up Fund fund under section ~~569-A 551~~. The review board consists of ~~40~~ 14 members appointed for 3-year terms as follows:

A. Two persons representing the petroleum industry, appointed by the Governor, one of whom is a representative of a statewide association of energy dealers;

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

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

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

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

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

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

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

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

Members other than those described in paragraphs ~~A, A-1 C~~ and ~~B D~~ are entitled to reimbursement for direct expenses of attendance at meetings of the review board or the appeals panel.

**2. Powers and duties of review board.** The Clean-up and Response Fund Insurance Review Board has the following powers and duties:

A. To hear appeals from insurance claims-related decisions of the commissioner and the State Fire Marshal under section 568-A;

B. To adopt rules in accordance with Title 5, chapter 375, subchapter 2 and guidelines necessary for the furtherance of the review board's duties and responsibilities under this subchapter;

~~C. To contract with the department for such assistance in fulfilling the review board's duties as the review board may require;~~

D. To monitor income and disbursements from the Ground Water Oil Clean-up Fund fund under section ~~569-A 551~~ and adjust fees pursuant to section ~~569-A 551~~, subsection ~~5~~ 4, paragraph ~~E~~ F, as required to avoid a shortfall in the fund;

E. To, at such times and in such amounts as it determines necessary, and in consultation with the department, direct the transfer of funds from the

Underground Oil Storage Replacement Fund to the ~~Ground Water Oil Clean-up Fund fund~~; and

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

G. To review and comment on the State's marine oil spill contingency plan; and

H. To review and monitor issues for oil spill prevention and response and recommend to the commissioner any regulatory changes that are appropriate.

**2-A. Meetings.** The Clean-up and Response 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~~ 8 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 Clean-up and Response 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~~ Beginning on April 15, 2015 and every other year thereafter, the Clean-up and Response 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 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 an independent audit of disbursements from the ~~Ground Water Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund fund~~.

**2-E. Staff support.** The commissioner shall provide the Clean-up and Response Fund Review Board with staff support.

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

**Sec. 31. 38 MRSA §569-A**, as amended PL 2013, c. 300, §12, is repealed.

**Sec. 32. 38 MRSA §569-B**, as amended by PL 2009, c. 501, §12, is repealed.

**Sec. 33. 38 MRSA §570, first ¶**, as repealed and replaced by PL 2009, c. 319, §16 and affected by §§22 and 23, is amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section ~~569-A 551~~, subsection ~~8~~ 5, paragraphs ~~A, B, D, E, H I and J K~~, or other damage incurred by the State, except for costs found by the commissioner to be eligible for coverage under section 568-A. The term "other ~~damages damage~~," as used in this paragraph, includes interest computed at 15% a year from the date of expenditure and damage for injury to, destruction of, loss of or loss of use of natural resources; and the reasonable State's costs of assessing natural resources damage and the costs of preparing and implementing a natural resources restoration plan. The commissioner shall demand reimbursement of costs and damages paid by the department from state or federal funds as provided under section ~~569-A 551~~, subsection ~~40~~ 6 except for amounts that are eligible for coverage by the fund under this subchapter. Payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability. ~~This paragraph is repealed December 31, 2015.~~



**Sec. 34. 38 MRSA §570, 2nd ¶**, as enacted by PL 2009, c. 319, §17, is repealed.

**Sec. 35. 38 MRSA §570-A**, as amended by PL 2009, c. 319, §18, is repealed.

**Sec. 36. 38 MRSA §570-B**, as amended by PL 2009, c. 319, §19, is repealed.

**Sec. 37. 38 MRSA §570-I**, as amended by PL 2009, c. 319, §20, is further amended to read:

**§570-I. Budget approval**

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section ~~569-B~~ 551, subsection 5, paragraphs A, C, F and ~~G~~ H for each biennium. The budget must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section ~~569-B~~ 551, subsection 5, paragraphs B, D ~~and E~~ and I to O may be made as authorized by the State Controller following approval by the commissioner.

~~This section takes effect December 31, 2015.~~

**Sec. 38. 38 MRSA §570-J**, as amended by PL 2009, c. 319, §21, is further amended to read:

**§570-J. Personnel and equipment**

The commissioner shall establish and maintain at appropriate locations employees and equipment that, in the commissioner's judgment, are necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel necessary to carry out the purposes of this subchapter and shall prescribe the duties of those employees. The salaries of those employees and the cost of that equipment must be paid from the ~~Ground Water Oil Clean-up Fund~~ fund established by ~~this~~ subchapter ~~2-A~~.

~~This section is effective December 31, 2015.~~

**Sec. 39. 38 MRSA §570-L**, as enacted by PL 1993, c. 363, §18 and affected by §21, is amended to read:

**§570-L. Budget approval; aboveground tanks program**

This section establishes a budget process for expenses of the State Fire Marshal and the Clean-up and Response Fund Insurance Review Board.

**1. Clean-up and Response Fund Review Board.** The chair of the Clean-up and Response Fund Insurance Review Board shall submit budget recommendations for disbursements from the fund in accordance with section ~~569-A~~ 551, subsection ~~8~~ 5, paragraph ~~K~~ L. The budget must be submitted in accordance with Title 5, sections 1663 to 1666.

**2. State Fire Marshal.** The State Fire Marshal shall submit budget recommendations for disburse-

ment from the fund in accordance with section ~~569-A~~ 551, subsection ~~8~~ 5, paragraph ~~L~~ M. The budget must be submitted at the time the State Fire Marshal's budget is otherwise presented.

**Sec. 40. 38 MRSA §1396**, as enacted by PL 2007, c. 569, §6, is amended to read:

**§1396. Financial assistance for upgrading aboveground oil storage tanks or facilities**

The commissioner may disburse money from the Maine Ground Water Oil and Surface Waters Clean-up and Response Fund to retrofit, repair or replace aboveground oil storage tanks or aboveground oil storage facilities in a wellhead protection zone when the commissioner determines that action is necessary to abate an imminent threat to the well. Disbursements must be made in the manner provided under section ~~569-A~~ 551, subsection ~~8~~ 5, paragraphs ~~M~~ and N ~~and O~~ and are subject to the annual disbursement limitations of those paragraphs.

**Sec. 41. 38 MRSA §1398**, as enacted by PL 2007, c. 569, §6, is amended to read:

**§1398. Eligibility for clean-up funds**

Clean-up costs and 3rd-party damages resulting from discharges from an aboveground oil storage facility or an underground oil storage facility installed in violation of section 1393 are not eligible for coverage by the Maine Ground Water Oil and Surface Waters Clean-up and Response Fund under sections 551 and ~~568-A~~ and 569-A.

**Sec. 42. Appropriations and allocations.** The following appropriations and allocations are made.

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

**Remediation and Waste Management 0247**

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

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
Personal Services	\$0	\$0
All Other	(\$250,000)	(\$250,000)
Capital Expenditures	\$0	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$250,000)	(\$250,000)

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

Effective July 4, 2015.

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**CHAPTER 320  
H.P. 166 - L.D. 234**

**An Act Regarding the  
Mountain View Youth  
Development Center**

**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 Mountain View Youth Development Center has excess bed capacity available to house adult offenders, which should be utilized as soon as possible; 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. 34-A MRSA §4117,** as enacted by PL 2013, c. 28, §12, is amended to read:

**§4117. Adult offenders**

The commissioner may confine adults sentenced and committed to the custody of the department who have not attained 26 years of age, except that, until April 30, 2017, the commissioner may confine adults of any age who have been sentenced and committed to the department, in the Mountain View Youth Development Center as long as the housing facilities for adult offenders are fully separated from the housing facilities for juvenile clients and the commissioner maintains at all times full compliance with mandatory sight and sound separation standards established by federal law. All provisions of this Title that are applicable to prisoners apply to adult offenders confined in the Mountain View Youth Development Center as if they were confined in a correctional facility housing only adults.

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

Effective July 5, 2015.

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**CHAPTER 321  
S.P. 191 - L.D. 522**

**An Act To Clarify a Recently  
Enacted Law Designed To  
Expand the Number of  
Qualified Educators**

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

**Sec. 1. 5 MRSA §17859, sub-§1-A,** as enacted by PL 2013, c. 486, Pt. A, §1, is amended to read:

**1-A. Restoration to work of classroom-based employees.** Effective August 1, 2014, a classroom-based employee who has reached normal retirement age and who retires after September 1, 2011 may be restored to service as a classroom-based employee in a school in the unorganized territory or with a school administrative unit as defined in Title 20-A, section 1, subsection 26:

A. In one-year contracts, which may be nonconsecutive. The maximum time that a classroom-based employee may be restored to service with an individual school administrative unit pursuant to this paragraph is 5 years;

B. Subject to the 5-year restriction specified in subsection 1 and the 75% compensation limitation for retired state employees and retired teachers specified in subsection 2, paragraph A; or

C. In any combination of paragraphs A and B, as long as the total time the classroom-based employee is restored to service does not exceed 10 years with an individual school administrative unit.

The retired classroom-based employee must have had a bona fide termination of employment in accordance with state and federal laws and rules, may not return to employment after retirement with the same employer for at least 30 calendar days after the termination of employment and may not return to employment before the effective date of the person's retirement.

For purposes of this section, "classroom-based employee" means a teacher whose principal function is to introduce new learning to students in the classroom or to provide support in the classroom during the introduction of new learning to students.

See title page for effective date.

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