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In Senate, January 4, 2023

An Act to Update the Responsibilities of the Clean-up and Response Fund Review Board

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered
printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.

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

2 **Sec. 1. 38 MRSA §341-D, sub-§1-D** is enacted to read:

3 **1-D. Rulemaking.** The board shall adopt rules as necessary for hearing appeals from
4 insurance claims-related decisions of the commissioner and the State Fire Marshal under
5 section 568-A. Rules adopted pursuant to this subsection are routine technical rules
6 pursuant to Title 5, chapter 375, subchapter 2-A.

7 **Sec. 2. 38 MRSA §341-D, sub-§4, ¶C**, as amended by PL 2007, c. 661, Pt. B, §3,
8 is further amended to read:

9 C. License or permit decisions appealed to the board under another law. Unless the
10 law provides otherwise, the standard of review is the same as provided under paragraph
11 A; ~~and~~

12 **Sec. 3. 38 MRSA §341-D, sub-§4, ¶D**, as amended by PL 2017, c. 334, §3, is
13 further amended to read:

14 D. License or permit decisions regarding an expedited wind energy development as
15 defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section
16 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by
17 the commissioner under this paragraph, the board shall base its decision on the
18 administrative record of the department, including the record of any adjudicatory
19 hearing held by the department, and any supplemental information allowed by the
20 board for supplementation of the record. The board may remand the decision to the
21 department for further proceedings if appropriate. The chair of the Public Utilities
22 Commission or the chair's designee may serve as a nonvoting member of the board and
23 is entitled to fully participate but is not required to attend meetings and hearings when
24 the board considers an appeal pursuant to this paragraph. The chair's participation on
25 the board pursuant to this paragraph does not affect the ability of the Public Utilities
26 Commission to submit information to the department for inclusion in the record of any
27 proceeding before the department; ~~and~~

28 **Sec. 4. 38 MRSA §341-D, sub-§4, ¶E** is enacted to read:

29 E. Decisions on insurance claims-related matters heard under section 568-A, including
30 but not limited to decisions on eligibility for coverage, eligibility of costs and waiver
31 and amount of deductible. Except as provided in board rules, an applicant must file the
32 appeal not later than the 30th day after the applicant receives the decision made under
33 section 568-A. If the board overturns the decision made under section 568-A, the board
34 must pay reasonable costs, including reasonable attorney's fees, incurred by the
35 aggrieved applicant in pursuing the appeal to the board from the Maine Ground and
36 Surface Waters Clean-up and Response Fund established under section 551.
37 Reasonable attorney's fees include only those fees incurred from the time of an
38 insurance claims-related decision forward. Decisions of the board are subject to judicial
39 review pursuant to Title 5, chapter 375, subchapter 7.

40 **Sec. 5. 38 MRSA §568-A, sub-§2**, as amended by PL 2015, c. 319, §27, is further
41 amended by amending the first blocked paragraph to read:

42 The commissioner shall make written findings of fact when making a determination of
43 deductible amounts under this subsection. The commissioner's findings may be appealed

1 to the ~~Clean-up and Response Fund Review Board~~, as provided in section ~~568-B~~ Board of
2 Environmental Protection as provided in section 341-D, subsection ~~2-C~~ 4, paragraph E. On
3 appeal, the burden of proof is on the commissioner as to which deductibles apply.

4 **Sec. 6. 38 MRSA §568-A, sub-§2-B**, as enacted by PL 2011, c. 206, §17, is
5 amended to read:

6 **2-B. Failure to pay deductibles.** An order issued under subsection 1, paragraph F-1
7 may be conditioned on payment of the applicable deductibles. If an applicant fails to pay
8 the deductible amounts as determined under subsection 2 within 180 days of receipt of a
9 bill from the department or within 180 days of a decision by the ~~review board~~ Board of
10 Environmental Protection as provided in section 341-D or an appellate court upholding the
11 determination, whichever is later, the commissioner may seek reimbursement from the
12 applicant or any other responsible party of all costs incurred by the State in the removal,
13 abatement and remediation of the discharge for which coverage was sought.

14 **Sec. 7. 38 MRSA §568-A, sub-§6, ¶C**, as amended by PL 2015, c. 319, §28, is
15 further amended to read:

16 C. Appeals of decisions made under this subsection may be made to the ~~Clean-up and~~
17 ~~Response Fund Review Board~~ of Environmental Protection as provided in section
18 341-D.

19 **Sec. 8. 38 MRSA §568-B**, as amended by PL 2019, c. 314, §§1 to 3, is further
20 amended to read:

21 **§568-B. Clean-up and Response Fund Review Board created**

22 **1. Clean-up and Response Fund Review Board.** The Clean-up and Response Fund
23 Review Board, as established by Title 5, section 12004-G, subsection 11-A, is created to
24 ~~hear and decide appeals from insurance claims related decisions under section 568-A and~~
25 monitor income and disbursements from the fund under section 551. The review board
26 consists of 9 members appointed for 3-year terms as follows:

27 A. One person representing the petroleum industry, appointed by the Governor, who
28 is a representative of a statewide association of energy dealers;

29 A-1. One person, appointed by the President of the Senate, who has expertise in oil
30 storage facility design and installation, oil spill remediation or environmental
31 engineering;

32 B. Two members of the public appointed by the Governor who must have expertise in
33 biological science, earth science, engineering, insurance or law and may not be
34 employed in or have a direct and substantial financial interest in the petroleum industry;

35 C. The commissioner or the commissioner's designee;

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

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

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

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

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

5 **1-A. Vacancies on review board.** Appointed members of the review board serve
6 staggered 3-year terms. An appointed member may not serve more than 2 consecutive 3-
7 year terms. An appointed member continues to serve until that member has been
8 reappointed or a successor has been appointed except that, if the member has not been
9 reappointed or a successor has not been appointed one year after the member's term
10 expires, the member may no longer continue to serve. A vacancy occurring other than by
11 expiration of a term must be filled by appointment for the unexpired portion of the term.

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

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

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

19 D. To monitor income and disbursements from the fund under section 551 and adjust
20 fees pursuant to section 551, subsection 4, paragraph F, as required to avoid a shortfall
21 in the fund;

22 E. To, at such times and in such amounts as it determines necessary, and in consultation
23 with the department, direct the transfer of funds from the Underground Oil Storage
24 Replacement Fund to the fund;

25 F. To review department priorities for disbursements from the fund and make
26 recommendations to the commissioner on how the fund should be allocated;

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

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

30 **2-A. Meetings.** The Clean-up and Response Fund Review Board shall meet 4 ~~2~~ times
31 per year unless the review board votes ~~not~~ to hold an additional meeting or not to hold a
32 meeting. Action may not be taken unless a quorum is present. A quorum is a majority of
33 the seated members.

34 **2-B. Chair.** The review board shall ~~annually~~ choose a member to serve as chair of the
35 review board every 2 years.

36 ~~**2-C. Appeals to review board.** An applicant aggrieved by an insurance claims related~~
37 ~~decision under section 568-A, including but not limited to decisions on eligibility for~~
38 ~~coverage, eligibility of costs and waiver and amount of deductible, may appeal that decision~~
39 ~~to the Clean-up and Response Fund Review Board. The appeals panel is composed of the~~
40 ~~member appointed under subsection 1, paragraph A-1, the 2 members appointed under~~
41 ~~subsection 1, paragraph B, the member appointed under subsection 1, paragraph G and the~~
42 ~~member appointed under subsection 1, paragraph H. The appeals panel shall hear and~~

1 decide the appeal. Action may not be taken by the appeals panel unless a quorum is present.
2 A quorum is a majority of the seated appeals panel members. Except as provided in review
3 board rules, the appeal must be filed within 30 days after the applicant receives the decision
4 made under section 568-A. The appeals panel must hear an appeal at its next meeting
5 following receipt of the appeal unless the appeal petition is received less than 30 days
6 before the meeting or unless the appeals panel and the aggrieved applicant agree to meet at
7 a different time. If the appeals panel overturns the decision made under section 568-A,
8 reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant
9 in pursuing the appeal to the review board must be paid from the fund. Reasonable
10 attorney's fees include only those fees incurred from the time of an insurance claims-related
11 decision forward. Decisions of the appeals panel are subject to judicial review pursuant to
12 Title 5, chapter 375, subchapter 7.

13 **2-D. Report; adequacy of fund.** Beginning on April 15, 2015 and every other year
14 thereafter, the Clean-up and Response Fund Review Board, with the cooperation of the
15 commissioner, shall report to the joint standing committee of the Legislature having
16 jurisdiction over natural resources matters on the department's and the review board's
17 experience administering the fund, clean-up activities and 3rd-party damage claims. The
18 report must include an assessment of the adequacy of the fund to cover anticipated expenses
19 and any recommendations for statutory change. To carry out its responsibility under this
20 subsection, the review board may order an independent audit of disbursements from the
21 fund.

22 **2-E. Staff support.** The commissioner shall provide the Clean-up and Response Fund
23 Review Board with staff support.

24 SUMMARY

25 This bill shifts responsibility for appeals of certain insurance claims-related decisions
26 from the Clean-up and Response Fund Review Board to the Board of Environmental
27 Protection.

28 The bill also provides procedures for vacancies on the board, sets term limits for board
29 members, reduces the number of required meetings and directs the board to choose a chair
30 every 2 years.