

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

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

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

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

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

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

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

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

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

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

**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.'

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

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

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

**'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 aboveground 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 overflow 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 Insurantee 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-A551~~, subsection 85, paragraphs B, D and ~~JK~~. 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-A551~~.

~~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.~~

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

'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;'

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

'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.'

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

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

Amend the bill by inserting after section 42 the following:

'**Sec. 43. 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.

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

Amend the bill by adding before the summary the following:

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

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

## **SUMMARY**

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

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

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

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

4. It removes from the bill certain changes to the statutory standard deductible amounts for coverage of clean-up costs and eligible 3rd-party damage costs under the new Maine Ground and Surface Waters Clean-up and Response Fund. It eliminates from the bill the section that transfers from the Board of Environmental Protection to the Clean-up and Response Fund Review Board the authority to adopt rules to determine the standards for assessing an applicant's ability to pay the deductible with respect to the applicant's personal residence.

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

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

**FISCAL NOTE REQUIRED**  
**(See attached)**