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Date: (Filing No. H- )

**ENVIRONMENT AND NATURAL RESOURCES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 501, L.D. 671, Bill, “An Act To Amend the Laws Governing the Ground Water Oil Clean-up Fund”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**Sec. 1. 38 MRSA §568-A, sub-§2**, as amended by PL 2009, c. 501, §9, 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

**COMMITTEE AMENDMENT**

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

3		
4	Total aboveground oil storage capacity	Deductible
5	in gallons owned by the facility owner	
6	Less than 1,320	\$500
7	1,321 to 50,000	2,500
8	50,001 to 250,000	5,000
9	250,001 to 500,000	10,000
10	500,001 to 1,000,000	25,000
11	1,000,001 to 1,500,000	40,000
12	greater than 1,500,000	62,500

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

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

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

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

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

25 (a) Five thousand dollars for failure to comply with applicable design and  
26 installation requirements in effect at the time of the installation or retrofitting  
27 requirements for leak detection pursuant to section 564, subsections 1 and  
28 1-A;

29 (b) Five thousand dollars for failure to comply with section 564, subsection  
30 1-B and any rules adopted pursuant to that subsection;

31 (c) Five thousand dollars for failure to comply with section 564, subsection  
32 2-A, paragraphs B to F and I, and any rules adopted pursuant to that  
33 subsection; and

34 (d) Ten thousand dollars for failure to comply with section 564, subsection  
35 2-A, paragraph H, and any rules adopted pursuant to that subsection.

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

38 (a) Two thousand dollars for failure to comply with section 565, subsection  
39 1, if applicable;

- 1 (b) Two thousand dollars for failure to comply with section 565, subsection  
2 2, regarding monitoring; and
- 3 (c) Two thousand dollars for failure to comply with section 565, subsection  
4 2, regarding any requirement to report evidence of a possible leak or  
5 discharge.
- 6 (5) For consumptive use heating oil facilities with an aggregate storage capacity  
7 of 2,000 gallons or greater, the deductibles are:
- 8 (a) Five thousand dollars for failure to comply with section 565, subsection  
9 1, if applicable;
- 10 (b) Five thousand dollars for failure to comply with section 565, subsection  
11 2, regarding monitoring; and
- 12 (c) Ten thousand dollars for failure to comply with section 565, subsection 2,  
13 regarding any requirement to report evidence of a possible leak or discharge.
- 14 (6) For waste oil and heavy oil and airport hydrant facilities with discharges that  
15 are not contaminated with hazardous constituents, the deductibles for failure to  
16 comply with rules adopted by the board are:
- 17 (a) Five thousand dollars for rules regarding design and installation  
18 requirements in effect at the time of the installation;
- 19 (b) Five thousand dollars for rules regarding retrofitting of leak detection  
20 and corrosion protection, if applicable;
- 21 (c) Five thousand dollars for rules regarding overfill and spill prevention;
- 22 (d) Five thousand dollars for rules regarding the monitoring of cathodic  
23 protection systems;
- 24 (e) Five thousand dollars for rules regarding testing requirements for tanks  
25 and piping on evidence of a leak;
- 26 (f) Five thousand dollars for rules regarding maintenance of a leak detection  
27 system; and
- 28 (g) Ten thousand dollars for rules regarding the reporting of leaks.
- 29 C. Conditional deductibles for aboveground facilities and tanks are as follows.
- 30 (1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal  
31 pursuant to 16-219 CMR, chapter 34, the deductibles are:
- 32 (a) Five thousand dollars for failure to obtain a construction permit from the  
33 Office of the State Fire Marshal, when required under Title 25, chapter 318  
34 and 16-219 CMR, chapter 34 or under prior applicable law;
- 35 (b) Five thousand dollars for failure to design and install piping in  
36 accordance with section 570-K and rules adopted by the department;

- 1 (c) Five thousand dollars for failure to comply with an existing consent  
2 decree, court order or outstanding deficiency statement regarding violations  
3 at the aboveground facility;
  - 4 (d) Five thousand dollars for failure to implement a certified spill prevention  
5 control and countermeasure plan, if required;
  - 6 (e) Five thousand dollars for failure to install any required spill control  
7 measures, such as dikes;
  - 8 (f) Five thousand dollars for failure to install any required overfill  
9 equipment;
  - 10 (g) Five thousand dollars if the tank is not approved for aboveground use;  
11 and
  - 12 (h) Ten thousand dollars for failure to report any leaks at the facility.
- 13 (2) For aboveground tanks subject to the jurisdiction of the Oil and Solid Fuel  
14 Board, the deductibles are:
- 15 (a) One hundred and fifty dollars for failure to install the facility in  
16 accordance with rules adopted by the Oil and Solid Fuel Board and in effect  
17 at the time of installation;
  - 18 (b) Two hundred and fifty dollars for failure to comply with the rules of the  
19 Oil and Solid Fuel Board;
  - 20 (c) Two hundred and fifty dollars for failure to make a good faith effort to  
21 properly maintain the facility; and
  - 22 (d) Five hundred dollars for failure to notify the department of a spill.

23 The commissioner shall make written findings of fact when making a determination of  
24 deductible amounts under this subsection. The commissioner's findings may be appealed  
25 to the Fund Insurance Review Board, as provided in section 568-B, subsection ~~3-A~~ 2-C.  
26 On appeal, the burden of proof is on the commissioner as to which deductibles apply.

27 After determining the deductible amount to be paid by the applicant, the commissioner  
28 shall pay from the fund any additional eligible clean-up costs and 3rd-party damage  
29 claims up to \$1,000,000 associated with activities under section 569-A, subsection 8,  
30 paragraphs B, D and J. The commissioner shall pay the expenses directly, unless the  
31 applicant chooses to pay the expenses and seek reimbursement from the fund. The  
32 commissioner may pay from the fund any eligible costs above \$1,000,000, but the  
33 commissioner shall recover these expenditures from the responsible party pursuant to  
34 section 569-A.

35 An applicant found ineligible for fund coverage for failure to achieve substantial  
36 compliance under former subsection 1, paragraph B or failure to apply within 180 days of  
37 reporting the discharge may, on or before July 1, 1996, make a new application for fund  
38 coverage of any discharge discovered after April 1, 1990, if the applicant agrees to pay all  
39 applicable deductible amounts in this subsection and the commissioner waives the  
40 180-day filing requirement pursuant to subsection 1.

1           **Sec. 2. 38 MRSA §568-A, sub-§3-A**, as amended by PL 1995, c. 361, §7, is  
2 repealed.

3           **Sec. 3. 38 MRSA §568-B**, as amended by PL 2009, c. 319, §13, is further  
4 amended to read:

5           **§568-B. Fund Insurance Review Board created**

6           **1. Fund Insurance Review Board.** The Fund Insurance Review Board, as  
7 established by Title 5, section 12004-G, subsection 11-A, is created ~~for the purposes of~~  
8 ~~hearing and deciding to hear and decide appeals from insurance claims-related decisions~~  
9 ~~of the commissioner as well as adopting rules and guidelines necessary to the furtherance~~  
10 ~~of its duties and responsibilities under this subchapter under section 568-A and monitor~~  
11 ~~income and disbursements from the Ground Water Oil Clean-up Fund under section~~  
12 ~~569-A.~~ The review board consists of 10 members appointed for 3-year terms as follows:

13           A. ~~Three~~ Two persons representing the petroleum industry, appointed by the  
14 Governor, one of whom is ~~nominated by the Maine Oil Dealers Association, one of~~  
15 ~~whom is a retailer who owns fewer than 5 retail outlets, as defined in Title 10, section~~  
16 ~~1672, subsection 6, and one of whom is a retailer who owns 5 or more retail outlets,~~  
17 ~~as defined in Title 10, section 1672~~ a representative of a statewide association of  
18 energy dealers;

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

21           B. ~~Five~~ Four members of the public ~~who are not employed in the petroleum industry~~  
22 ~~and who do not~~, appointed by the Governor, 2 of whom have expertise in biological  
23 science, earth science, engineering, insurance or law. The 4 members may not be  
24 employed in or have a direct and substantial financial interest in the petroleum  
25 industry to be appointed by the Governor;

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

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

28           Members described in paragraphs A, A-1 and B are entitled to reimbursement for direct  
29 expenses of attendance at meetings of the review board or the appeals panel.

30           **2. Powers and duties of review board.** The Fund Insurance Review Board has the  
31 following powers and duties:

32           A. To hear appeals from insurance claims-related decisions of the commissioner  
33 ~~pursuant to and the State Fire Marshal under~~ section 568-A, subsection 3-A;

34           B. To adopt rules in accordance with Title 5, chapter 375, subchapter ~~II~~ establishing  
35 criteria for determining substantial compliance for aboveground oil storage facilities  
36 2 and guidelines necessary for the furtherance of the review board's duties and  
37 responsibilities under this subchapter;

38           C. To contract with the Finance Authority of Maine for such assistance in fulfilling  
39 the review board's duties as the review board may require;

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

4 E. To consult with the Finance Authority of Maine at such times as are necessary,  
5 but no less than annually, to review income and disbursements from the Waste Oil  
6 Clean-up Fund under Title 10, section 1023-L. The review board, at such times and in  
7 such amounts as it determines necessary, and in consultation with the Finance  
8 Authority of Maine, shall direct the transfer of funds from the Underground Oil  
9 Storage Replacement Fund to the ~~Groundwater~~ Ground Water Oil Clean-up Fund;  
10 and

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

14 2-A. Meetings. The Fund Insurance Review Board shall meet 6 times per year  
15 unless the review board votes not to hold a meeting. Action may not be taken unless a  
16 quorum is present. A quorum is 6 members.

17 2-B. Chair. The review board shall annually choose a member to serve as chair of  
18 the review board.

19 2-C. Appeals to review board. An applicant aggrieved by an insurance claims-  
20 related decision under section 568-A, including but not limited to decisions on eligibility  
21 for coverage, eligibility of costs and waiver and amount of deductible, may appeal that  
22 decision to the Fund Insurance Review Board. The appeals panel is composed of the  
23 public members appointed under subsection 1, paragraph B. The appeals panel shall hear  
24 and decide the appeal. Except as provided in review board rules, the appeal must be filed  
25 within 30 days after the applicant receives the decision made under section 568-A. The  
26 appeals panel must hear an appeal at its next meeting following receipt of the appeal  
27 unless the appeal petition is received less than 30 days before the meeting or unless the  
28 appeals panel and the aggrieved applicant agree to meet at a different time. If the appeals  
29 panel overturns the decision made under section 568-A, reasonable costs, including  
30 reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to  
31 the review board must be paid from the fund. Reasonable attorney's fees include only  
32 those fees incurred from the time of an insurance claims-related decision forward.  
33 Decisions of the appeals panel are subject to judicial review pursuant to Title 5, chapter  
34 375, subchapter 7.

35 2-D. Report; adequacy of fund. On or before February 15th of each year, the Fund  
36 Insurance Review Board, with the cooperation of the commissioner, shall report to the  
37 joint standing committee of the Legislature having jurisdiction over natural resources  
38 matters on the department's and the review board's experience administering the Ground  
39 Water Oil Clean-up Fund, clean-up activities and 3rd-party damage claims. The report  
40 must include an assessment of the adequacy of the fund to cover anticipated expenses and  
41 any recommendations for statutory change. The report also must include an assessment  
42 of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil  
43 Clean-up Fund to cover anticipated expenses and any recommendations for statutory  
44 change. To carry out its responsibility under this subsection, the review board may order

1 an independent audit of disbursements from the Ground Water Oil Clean-up Fund, the  
2 Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

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

4 **Sec. 4. 38 MRSA §569-A, sub-§8, ¶A,** as amended by PL 2005, c. 157, §1, is  
5 further amended to read:

6 A. Administrative expenses, personal services and equipment costs of the department  
7 related to the administration and enforcement of this subchapter, except that total  
8 disbursements for personal services may not exceed \$3,700,000 per fiscal year  
9 multiplied by an annual adjustment factor of 4% beginning in fiscal year 2005-06 and  
10 except that total disbursements for administrative expenses may not exceed  
11 \$2,000,000 per fiscal year;

12 **Sec. 5. 38 MRSA §570-H,** as amended by PL 2007, c. 292, §37, is repealed.

13 **Sec. 6. Transition provision.** Members of the Fund Insurance Review Board  
14 created under the Maine Revised Statutes, Title 38, section 568-B, subsection 1 serving  
15 on the effective date of this Act may continue to serve on the board for the remainder of  
16 their terms. When the term of a member expires, that member's successor is appointed in  
17 accordance with this Act. At no time may fewer than 4 public members be appointed.'

## 18 SUMMARY

19 This amendment replaces the bill. The amendment changes the membership of the  
20 Fund Insurance Review Board by:

- 21 1. Decreasing from 3 to 2 the number of members representing the petroleum  
22 industry;
- 23 2. Designating membership of 2 members who have expertise in oil storage facility  
24 design and installation, oil spill remediation or environmental engineering; and
- 25 3. Decreasing from 5 to 4 the number of public members.

26 The amendment also alters the duties of the review board to include reviewing  
27 Department of Environmental Protection priorities for disbursements from the Ground  
28 Water Oil Clean-up Fund and making recommendations to the Commissioner of  
29 Environmental Protection on how the fund should be allocated. The amendment also  
30 provides for the number of meetings to be held by the review board and for the annual  
31 selection of a chair. The amendment also consolidates responsibilities for hearing appeals  
32 and reporting to the Legislature in the section of law that deals with the review board.

33 The amendment retains the provision in current law that repeals the review board on  
34 December 31, 2015. The amendment also retains the provision in the bill that provides  
35 that total disbursements from the Ground Water Oil Clean-up Fund for administrative  
36 expenses may not exceed \$2,000,000 per fiscal year.