

MAINE STATE LEGISLATURE

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(New Draft of S.P. 167, L.D. 522)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1631

S.P. 564

In Senate, May 17, 1983

Reported by Senator Pearson of Penobscot from the Committee on Energy and Natural Resources and printed under Joint Rule 2.

Original bill presented by Senator Carpenter of Aroostook. Cosponsored by Representative Diamond of Bangor and Senator Wood of York.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Create the Nuclear Activity
Consent Law.

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

Sec. 1. 1 MRSA §15-A, as enacted by PL 1979, c. 519, §1, is repealed.

Sec. 2. 10 MRSA c. 3, sub-c. III-A, as amended, is repealed.

Sec. 3. 10 MRSA c. 3, sub-c. III-B, first 2 lines, as enacted by PL 1981, c. 439, §9, are repealed.

Sec. 4. 10 MRSA §§171 to 174, as enacted by PL 1981, c. 439, §9, are repealed.

1 Sec. 5. 10 MRSA §175, as amended by PL 1983, c.
2 88, §2, is reallocated to 38 MRSA §1476.

3 Sec. 6. 10 MRSA §176, as amended by PL 1983, c.
4 88, §3, is reallocated to 38 MRSA §1477.

5 Sec. 7. 35 MRSA §3366 is enacted to read:

6 §3366. On-site storage of spent fuel assemblies;
7 limitations

8 After July 1, 1992, no nuclear fission thermal
9 power plant licensee may store or maintain in on-site
10 spent fuel element pools or other on-site temporary
11 storage facilities any spent nuclear fuel which was
12 removed from the nuclear reactor core more than 3
13 years previously.

14 Sec. 8. 38 MRSA §361-D, as enacted by PL 1979,
15 c. 519, §2, is repealed.

16 Sec. 9. 38 MRSA c. 14-A is enacted to read:

17 CHAPTER 14-A

18 NUCLEAR WASTE ACTIVITY

19 SUBCHAPTER I

20 GENERAL PROVISIONS

21 §1451. Definitions

22 As used in this chapter, unless the context
23 otherwise indicates, the following terms have the
24 following meanings.

25 1. Area studies, for high-level radioactive
26 waste. "Area studies," for high-level radioactive
27 waste, means the study of areas with potentially ac-
28 ceptable sites using available geophysical, geologic,
29 geochemical, hydrologic and other information; and
30 additional geological reconnaissance and field work,
31 including geophysical testing, preliminary borings
32 and excavation as necessary to assess whether site
33 characterization should be undertaken for any sites
34 within the area. Area studies also include

1 socioeconomic and environmental studies and prepara-
2 tion of any environmental assessment relating to the
3 suitability of the site for nomination for site
4 characterization.

5 2. By-product material. "By-product material"
6 means:

7 A. Any radioactive material except special
8 nuclear material yielded in or made radioactive
9 by exposure to the radiation incident to the pro-
10 cess of producing or utilizing nuclear material;
11 and

12 B. The tailings or waste produced by the extrac-
13 tion or concentration of uranium or thorium from
14 any ore processed primarily for its source mate-
15 rial content.

16 3. Closure or site closure. "Closure" or "site
17 closure" means all activities performed at a waste
18 disposal site, such as stabilization and contouring,
19 to assure that the site is in a stable condition so
20 that only minor custodial care, surveillance and mon-
21 itoring are necessary at the site, following termina-
22 tion of licensed operation.

23 4. Decommissioning a nuclear power plant. "De-
24 commissioning a nuclear power plant" means the series
25 of activities undertaken, beginning at the time of
26 closing of a nuclear power plant, to ensure that the
27 final disposition of the site or any radioactive com-
28 ponents or material, but not including spent fuel,
29 associated with the plant is accomplished safely in
30 compliance with all applicable state and federal
31 laws. Decommissioning includes activities undertaken
32 to prepare a nuclear power plant for final disposi-
33 tion, to monitor and maintain it after closing and to
34 effect final disposition of any radioactive compo-
35 nents of the nuclear power plant.

36 5. Environmental impact statement. "Environ-
37 mental impact statement" means any document prepared
38 pursuant to or in compliance with the the require-
39 ments of the United States National Environmental

1 Policy Act of 1969, Section 102(2)(c), 83 Stat. 852,
2 1981.

3 6. High-level radioactive waste. "High-level
4 radioactive waste" means the highly radioactive mate-
5 rial resulting from the reprocessing of spent nuclear
6 fuel, including liquid waste produced directly in
7 reprocessing and any solid material derived from that
8 liquid waste that contains fission products in suffi-
9 cient concentrations; and other highly radioactive
10 material that the United States Nuclear Regulatory
11 Commission, consistent with existing law, determines
12 by rule to require permanent isolation.

13 7. High-level radioactive waste disposal.
14 "High-level radioactive waste disposal" means the
15 emplacement in a repository of high-level radioactive
16 waste, spent nuclear fuel or other highly radioactive
17 material with no foreseeable intent of recovery,
18 whether or not that emplacement permits the recovery
19 of that waste.

20 8. High-level radioactive waste repository or
21 repository. "High-level radioactive waste reposi-
22 tory" or "repository" means any system licensed by
23 the United States Nuclear Regulatory Commission that
24 is intended to be used for, or may be used for, the
25 permanent deep geologic disposal of high-level radio-
26 active waste and spent nuclear fuel, whether or not
27 the system is designed to permit the recovery, for a
28 limited period during initial operation, of any mate-
29 rials placed in the system. This term includes both
30 surface and subsurface areas at which high-level
31 radioactive waste and spent nuclear fuel handling ac-
32 tivities are conducted.

33 9. High-level radioactive waste storage.
34 "High-level radioactive waste storage" means reten-
35 tion of high-level radioactive waste, spent nuclear
36 fuel, or transuranic waste with the intent to recover
37 that waste or fuel for subsequent use, processing or
38 disposal.

39 10. License. "License" means a federal or state
40 license, issued to a named person upon application to
41 use, manufacture, produce, transfer, receive, acquire
42 or possess quantities of, or devices or equipment

1 utilizing, radioactive material.

2 11. Low-level radioactive waste. "Low-level
3 radioactive waste" means radioactive material that is
4 not high-level radioactive waste, spent nuclear fuel,
5 transuranic waste or by-product material, as defined
6 in the United States Code, Title 42, Section
7 2014(e)(2), the Atomic Energy Act of 1954, Section
8 11e(2); and that the United States Nuclear Regulatory
9 Commission, consistent with existing law, classifies
10 as low-level radioactive waste.

11 12. Low-level radioactive waste disposal facil-
12 ity. "Low-level radioactive waste disposal facility"
13 means a facility for the isolation of low-level
14 radioactive waste from the biosphere inhabited by
15 people and their food chains.

16 13. Low-level radioactive waste generator.
17 "Low-level radioactive waste generator" means a
18 person who produces or processes low-level radio-
19 active waste, whether or not that waste is shipped
20 off site.

21 14. Low-level radioactive waste licensee or
22 low-level waste licensee. "Low-level radioactive
23 waste licensee" or "low-level waste licensee" means
24 any person licensed by the State or Federal Govern-
25 ment to generate, treat, store or dispose of
26 low-level radioactive waste.

27 15. Low-level radioactive waste storage facil-
28 ity. "Low-level radioactive waste storage facility"
29 means any facility for storage of low-level radio-
30 active waste, except for temporary on-site storage
31 prior to disposal.

32 16. Radioactive material. "Radioactive mate-
33 rial" means any material which emits ionizing radi-
34 ation spontaneously. It includes accelerator-produced,
35 by-product, naturally occurring, source and special
36 nuclear materials.

37 17. Site characterization, for high-level radio-
38 active waste. "Site characterization," for
39 high-level radioactive waste, means:

1 A. Siting research facilities with respect to a
2 test and evaluation facility at a candidate site;
3 and

4 B. Activities, whether in the laboratory or in
5 the field, undertaken to establish the geologic
6 condition and the ranges of the parameters of a
7 candidate site relevant to the location of a
8 repository, including borings, surface excava-
9 tions, excavations of exploratory shafts, limited
10 subsurface lateral excavations and borings, and
11 in site testing needed to evaluate the suit-
12 ability of a candidate site for the location of a
13 repository, but not including preliminary borings
14 and geophysical testing needed to assess whether
15 site characterization should be undertaken.

16 18. Source material. "Source material" means:

17 A. Uranium or thorium, or any combination
18 thereof, in any physical or chemical form; or

19 B. Ores which contain by weight 1/20th of 1%,
20 0.05% or more of uranium, thorium or any combina-
21 tion thereof. Source material does not include
22 special nuclear material.

23 19. Source material mill tailings. "Source
24 material mill tailings" means the tailings or waste
25 produced by the extraction or concentration of ura-
26 nium or thorium from any ore processed primarily for
27 its source material content, including discrete sur-
28 face waste resulting from underground solution
29 extraction processes, but not including underground
30 ore bodies depleted by those solution extraction pro-
31 cesses.

32 20. Special nuclear material. "Special nuclear
33 material" means:

34 A. Plutonium, uranium 233 and uranium enriched
35 in the isotope 233 or in the isotope 235, but
36 does not include source material; or

37 B. Any material artificially enriched by any of
38 the material listed in paragraph A, but does not
39 include source material.

1 21. Spent nuclear fuel. "Spent nuclear fuel"
2 means fuel that has been withdrawn from a nuclear
3 reactor following irradiation, the constituent ele-
4 ments of which have not been separated by
5 reprocessing.

6 22. Transuranic waste. "Transuranic waste"
7 means radioactive waste containing alpha-emitting
8 transuranic elements with radioactive half-lives
9 greater than 5 years, in excess of 10 nanocuries per
10 gram.

11 §1452. Consent of Legislature for federal radio-
12 active waste storage facilities

13 Notwithstanding any other provision of law, this
14 State does not consent to the acquisition by the Fed-
15 eral Government, by purchase, condemnation, lease,
16 easement or by any other means, of any land, building
17 or other structure, above or below ground, in or
18 under the waters of the State for use in storing,
19 depositing or treating high-level or low-level radio-
20 active waste materials, except by prior affirmative
21 vote of the Legislature.

22 SUBCHAPTER II

23 HIGH-LEVEL RADIOACTIVE WASTE

24 §1461. Intent

25 It is the intent of the Legislature to cooperate
26 fully with the Federal Government to manage safely
27 and effectively high-level radioactive waste, pro-
28 vided that the Federal Government financially assists
29 the State in this participation. It is further the
30 intent of the Legislature to participate to the maxi-
31 mum extent in the federal process for siting
32 high-level radioactive waste repositories.

33 §1462. Limitation

34 No state department or agency may accept any
35 funds related to siting high-level radioactive waste
36 repositories, nor may any state agency participate in
37 these efforts, unless the applicable requirements of
38 this subchapter have been fulfilled.

1 §1463. Area studies

2 1. Plan. Prior to initiation of area studies,
3 the commissioner shall submit a plan for these
4 studies to the Legislature for approval, including,
5 by reference, any federal plan for those studies.
6 This plan shall include procedures for the establish-
7 ment of a state review group to review the conduct of
8 area studies and report the findings of those
9 studies. This review group shall include representa-
10 tives of the scientific community, the Legislature
11 and the general public. The review group may be
12 established and may conduct its activities before
13 other elements of the plan are approved.

14 2. Exploration. No person may explore geolog-
15 ical formations within this State for the purpose of
16 siting a high-level radioactive waste repository
17 without a written permit from the State Geologist.
18 The State Geologist shall approve requests for these
19 exploration permits, if the proposed activity is con-
20 sistent with the plan required by subsection 1 and
21 with the General Guidelines for Recommendation of
22 Sites for Nuclear Waste Repositories promulgated in
23 final form by the United States Department of Energy,
24 in accordance with the United States Nuclear Waste
25 Policy Act of 1982, Public Law 97-425.

26 3. Public hearings. No plan for area studies
27 may be approved unless it contains provision for
28 public hearings in the State within 12 months after
29 commencement of the studies to receive comments on:

30 A. The technical feasibility of the proposed
31 waste management technology;

32 B. The environmental impact of a waste reposi-
33 tory in the area of study;

34 C. The social impact of a waste repository in
35 the area of study;

36 D. The economic impact of a waste repository in
37 the area of study;

38 E. Whether the proposed facility will be subject
39 to section 413, waste discharge licenses; section

1 483, site location of development; section 590,
2 air emission licensing; section 1304, licenses
3 for waste facilities; and any other laws adminis-
4 tered by the department that may be applicable;

5 F. Conformance of the plan with the federal
6 guidelines cited in subsection 2; and

7 G. A reasonable comparative evaluation of the
8 suitability of sites in the study area compared
9 with sites in other areas.

10 4. Approval of plan required. No agent of the
11 State may participate in area studies after the end
12 of the session of the Legislature at which the plan
13 was submitted, until the Legislature has approved a
14 plan for these studies.

15 No person may conduct borings or excavations relating
16 to area studies, unless the Legislature has approved
17 a plan for the studies, including those borings or
18 excavations.

19 5. Reports. The commissioner shall keep the
20 Governor and the Legislature fully and currently
21 informed about the conduct of any area studies and,
22 immediately upon completion of those studies, shall
23 review their findings and report them, together with
24 his comments to the Governor and the Legislature.

25 §1464. Site characterization and selection

26 1. Limitation. No agent of the State may partici-
27 partate in site characterization or selection
28 efforts, unless the Federal Government agrees that
29 the site characterization or selection process
30 includes:

31 A. Compliance with the United States National
32 Environmental Policy Act of 1969, Public Law
33 91-190, including preparation of a specific envi-
34 ronmental impact statement; and

35 B. Compliance with all applicable state and
36 local laws.

1 2. Legislative findings. No agent of the State
2 may participate in site selection or construction of
3 a high-level radioactive waste repository, unless the
4 Legislature finds that all of the issues in section
5 1463, subsection 3, have been adequately addressed.

6 No person may excavate any exploratory shaft for site
7 characterization, selection or construction, unless
8 the Legislature has approved that activity.

9 3. Reports. The commissioner shall keep the
10 Governor and the Legislature fully and currently
11 informed about the conduct of any site
12 characterization and, immediately upon completion of
13 that effort, shall review the findings and report
14 them, together with his comments to the Governor and
15 the Legislature.

16 §1465. Notice of disapproval

17 1. Departmental review and report. In the event
18 the Secretary of the United States Department of
19 Energy notifies the State, in accordance with the
20 United States Nuclear Waste Policy Act of 1982,
21 Public Law 97-425, Section 114(a) or any other provi-
22 sion of law, that the Secretary has decided to recom-
23 mend to the President of the United States approval
24 of a site within the State for a high-level radio-
25 active waste repository, the Department of Environ-
26 mental Protection shall review that recommendation
27 with special attention to the issues identified in
28 section 1463, subsection 3. In connection with this
29 review, the department shall hold a public hearing in
30 the vicinity of the proposed site and such other
31 public hearings as may be necessary to obtain ade-
32 quate public input. Any person who resides within
33 the State shall be entitled to be heard. The depart-
34 ment shall report its findings to the Governor and
35 the Legislature within 30 days after the date of the
36 notice from the United States Department of Energy.

37 2. Resolve of disapproval. In the event the
38 Secretary of the United States Department of Energy
39 submits to the President a recommendation that the
40 President approve a site within the State for appli-
41 cation for development of a repository, in accordance
42 with the United States Nuclear Waste Policy Act of

1 1982, Public Law 97-425, the Governor and the Legis-
2 lature shall review that recommendation and consider
3 a resolve with text as follows:

4 "The State of Maine hereby disapproves the site
5 at _____ for a high-level radioactive
6 waste repository."

7 The blank space shall be filled with the name of the
8 geographic location of the proposed site of the
9 repository.

10 The resolve shall be referred to the joint standing
11 committee of the Legislature having jurisdiction over
12 natural resources for public hearing and committee
13 action, and the committee shall make its report
14 within 30 days of the Secretary's recommendation. If
15 the Legislature is not in session when the committee
16 report is filed, a special session shall be called in
17 a timely fashion to consider the resolve. Final ac-
18 tion by the Legislature shall be taken within 45 days
19 of the Secretary's recommendation.

20 3. Notification. If a resolve of disapproval is
21 enacted by the Legislature and approved by the Gover-
22 nor, then the Governor shall immediately transmit
23 notification of that disapproval to the President and
24 the Congress.

25 §1466. Other facilities

26 Except for on-site storage of spent fuel from a
27 nuclear power plant, any facility for storage or pro-
28 cessing of high-level radioactive waste which is not
29 a repository is subject to the requirements in this
30 section. Except for storage in existing licensed
31 capacity, on-site storage of spent fuel from a
32 nuclear power plant shall be subject to subsections 1
33 and 2.

34 1. Notification. Any person planning to con-
35 struct a facility covered by this section shall
36 notify the Department of Environmental Protection.
37 The department shall, by rule, specify the form, con-
38 tent and timing of that notice.

1 2. Departmental review. Upon receipt of notice
2 under subsection 1, the department shall review the
3 proposed facility, as closely as possible in accor-
4 dance with section 1463 and report its findings and
5 recommendations within 90 days to the Governor and
6 the Legislature.

7 3. Legislative approval of facilities required.
8 No high-level radioactive waste disposal or storage
9 facility covered by this section may be constructed
10 or operated in the State, unless the Legislature has
11 expressly approved the construction or operation of
12 that facility. This approval does not replace any
13 other license or permit that may be required by law
14 or rule.

15 SUBCHAPTER III

16 LOW-LEVEL RADIOACTIVE WASTE

17 §1471. Purpose

18 In accordance with the United States Low-level
19 Radioactive Waste Policy Act of 1980, Public Law
20 96-573, the Legislature accepts its responsibility
21 for providing for the capacity for the disposal of
22 low-level radioactive waste generated within this
23 State. It is the purpose of this subchapter to
24 establish a program for the safe management of
25 low-level radioactive waste, and to provide capacity
26 for its disposal either within this State or in
27 regional facilities.

28 §1472. Reporting

29 Each low-level radioactive waste generator shall
30 annually report, by March 31st, the volume and radio-
31 activity of low-level waste generated and the volume
32 and radioactivity of low-level waste shipped to com-
33 mercial disposal facilities. This report shall be
34 submitted to the commissioner, and shall include
35 information on the specific radioactive materials
36 handled.

37 §1473. Geological characterization

1 The State Geologist shall advise the Governor and
2 the Legislature on the suitability of areas of the
3 State for low-level waste disposal. In determining
4 suitability, the State Geologist shall consider final
5 rules for facility siting under 10 Code of Federal
6 Regulations, Part 61, and other rules, as appropri-
7 ate.

8 §1474. Regional compacts

9 The Governor may negotiate on behalf of the
10 State, with other states and the Federal Government
11 with respect to the siting, licensing, operation and
12 use of low-level waste disposal facilities within and
13 outside this State. The Governor may recommend
14 regional compacts with states that have identified
15 their annual low-level radioactive waste generation,
16 and identified areas within their state that meet
17 preliminary site criteria.

18 STATEMENT OF FACT

19 This new draft brings together in Title 38
20 several requirements of present law relating to
21 radioactive waste which were scattered in various
22 titles. These include sections on high-level waste,
23 low-level waste and spent nuclear fuel. In addition
24 to repositories, the new draft also requires legis-
25 lative approval of any other high-level waste facil-
26 ity except for on-site storage of spent fuel.

27 The new draft retains the requirement of the bill
28 for legislative approval of high-level waste facili-
29 ties. It also responds to the newly enacted United
30 States Nuclear Waste Policy Act of 1982, which allows
31 for state veto of a high-level radioactive waste
32 repository, subject to override by 2 Houses of Con-
33 gress. The new draft provides a specific mechanism
34 for the Legislature and the Governor to act upon a
35 resolve of disapproval, with a time schedule that
36 will meet the federal deadline of 60 days after
37 presidential recommendation of a site.

38 The federal high-level radioactive waste program
39 is intended to result in recommendation by the Presi-
40 dent to Congress of a site for the first geological

1 repository by March 31, 1987 and of a site for the
2 2nd repository by March 31, 1990. The areas identi-
3 fied as potentially acceptable for the first site are
4 all in the West or on the Gulf Coast, in basalt, tuff
5 or salt domes. For the 2nd repository, crystalline
6 rock, including granite, in the eastern states is
7 also being considered. The planned timetable is as
8 follows.

9 1. Department of Energy issues siting guide-
10 lines: Draft issued February 7, 1983; final in fall,
11 1983.

12 2. Regional studies of 17 eastern states,
13 including Maine, based on available information:
14 Draft May 7, 1983; finish report and select states
15 for area study, October 15, 1983.

16 3. Area studies of 5 or 6 potentially acceptable
17 areas, including on-site geophysical work with test
18 borings; study plans issued February 1, 1984; begin
19 field work February 15, 1984; complete study and
20 nominate sites for characterization, mid-1985.

21 4. Site characterization of 3 sites, including
22 excavation of exploratory shafts. Two may be sites
23 that were recommended but not selected for
24 characterization for the first site. This requires 3
25 years' work. The statutory deadline is July 1, 1989.

26 5. Recommendation of the 2nd site by the Presi-
27 dent to Congress by March 31, 1990.

28 6. The state-recommended has 60 days thereafter
29 to express disapproval.

30 7. Congress has 90 days thereafter to override.

31 8. Second repository operational, 1990.

32 3719051083