

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 898, L.D. 2260)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2371

9 S.P. 945

In Senate, April 11, 1986

10 Reported by Senator Usher of Cumberland from the Committee on
11 Energy and Natural Resources and printed under Joint Rule 2. Original bill
12 sponsored by Senator Kany of Kennebec. Cosponsored by Representative
Mitchell of Freeport, Representative Coles of Harpswell and Representative
Holloway of Edgecomb.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT Concerning Radioactive Waste Activity
20 and Disapproving High-level
21 Radioactive Waste Sites in the State.
22

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

25 Sec. 1. 1 MRSA §1, as amended by PL 1979, c.
26 512, §1, is further amended to read:

27 §1. Extend of sovereignty and jurisdiction

28 The jurisdiction and sovereignty of the State ex-
29 tend to all places within its boundaries, subject on-
30 ly to such rights of concurrent jurisdiction as are
31 granted by the State over places ceded by the State
32 to the United States. This section shall not limit or
33 restrict the jurisdiction of the State over any per-
34 son or with respect to any subject, within or without
35 its boundaries, which jurisdiction is exercisable by

1 reason of citizenship, residence or for any other
2 reason recognized by law.

3 Sec. 2. 1 MRSA §9, first ¶ is amended to read:

4 In no event shall any transfer of legislative ju-
5 risdiction between the United States and this State
6 take effect nor shall the Governor transmit any no-
7 tice proposing such a transfer pursuant to section 8,
8 subsection 2, unless under the applicable laws of the
9 United States in addition to the other requirements
10 of law:

11 Sec. 3. 1 MRSA §9, sub-§1 is amended to read:

12 1. Title acquired by United States. The United
13 States of America has acquired title to such land by
14 purchase, condemnation or otherwise.

15 Sec. 4. 1 MRSA §29 is enacted to read:

16 §29. Consent not given for high-level radioactive
17 waste deep geological repository

18 Notwithstanding any other provisions of chapter 1
19 or any other provision of law, the State does not
20 consent to the acquisition by the United States, or
21 any agent, agency or person acting under its authori-
22 ty or direction, of any interest in land or waters
23 within the State to be used for the exploration, sit-
24 ing, construction or operation of a repository for
25 the deep geological disposal of high-level waste, and
26 does not cede any legislative jurisdiction over lands
27 or waters acquired by or on behalf of the United
28 States for such purposes.

29 Sec. 5. 38 MRSA §1452, as enacted by PL 1983, c.
30 381,

31 §1452. Consent of Legislature for federal radioac-
32 tive waste storage facilities

33 Notwithstanding any other provision of law, this
34 State does not consent to the acquisition by the Fed-
35 eral Government, by purchase, condemnation, lease,
36 easement or by any other means, of any land, building
37 or other structure, above or below ground, or in or

1 under the waters of the State for use in storing, de-
2 depositing or treating high-level or low-level radioac-
3 tive waste materials, except by prior affirmative
4 vote of the Legislature. The Legislature may con-
5 sent, by prior affirmative vote, to such activities,
6 except that consent is expressly withheld for any
7 such activity undertaken in connection with the deep
8 geological disposal of high-level radioactive waste,
9 as provided in section 1461.

10 Sec. 6. 38 MRSA §1461, as enacted by PL 1983, c.
11 381, §9, is repealed.

12 Sec. 7. 38 MRSA §1461-A is enacted to read:

13 §1461-A. Disapproval of high-level radioactive waste
14 repository

15 1. Disapproval. The State has received notice
16 that the United States Department of Energy, in ac-
17 cordance with the United States Nuclear Waste Policy
18 Act of 1982, Public Law 97-425, is considering 2
19 sites within the State of Maine as potentially ac-
20 ceptable sites for location of a high-level radioac-
21 tive waste repository and has considered at least 3
22 other sites within Maine for this purpose. The Leg-
23 islature finds:

24 A. That, based on all available technical infor-
25 mation, the geology at these sites is not suit-
26 able for a high-level radioactive waste reposito-
27 ry;

28 B. That exploration for, construction or opera-
29 tion of such a repository at these sites is con-
30 trary to the economic well-being of the people of
31 this State; and

32 C. That the location of such a repository at
33 these sites is contrary to the safety and health
34 of the people of the State of Maine and would
35 substantially interfere with the power and abili-
36 ty of the State to govern its citizens and pro-
37 vide for their health, safety and welfare.

38 For each of these reasons, the State of Maine ex-
39 pressly disapproves the further exploration for, con-

1 struction or operation of a high-level radioactive
2 waste repository at any of these sites.

3 2. Review by State. If the Federal Government,
4 or any person acting under its direction, in spite of
5 the State's disapproval as provided in subsection 1,
6 proceeds with further efforts to investigate the sit-
7 ing, construction or operation of a high-level radio-
8 active waste repository within the State of Maine,
9 the provisions of sections 1463 to 1466 apply to the
10 extent necessary to allow the State to monitor, re-
11 view and regulate such activities in order to mini-
12 mize the adverse effects on the health, safety and
13 economic well-being of the people of this State aris-
14 ing from these activities.

15 Sec. 8. 38 MRSA §1462, as enacted by PL 1983, c.
16 381, §9, is repealed.

17 Sec. 9. 38 MRSA §§1463 and 1464, as enacted by
18 PL 1983, c. 381, §9, are amended to read:

19 §1463. Area studies

20 1. Plan. Prior to initiation of area studies by
21 the Federal Government or any person acting under its
22 authority, the commissioner, in consultation with the
23 State Geologist, shall submit a plan for these
24 studies to the Legislature for approval, including,
25 by reference, any federal plan for conduct of those
26 studies and a plan for state oversight, review and
27 verification of area studies. ~~This~~ The State plan
28 shall include procedures for the establishment of a
29 state review group to monitor and review the conduct
30 of area studies and report ~~the~~ their findings of
31 these studies to the Governor and the Legislature.
32 This review group shall include representatives of
33 the scientific community, the Legislature and the
34 general public. The review group may be established
35 and may conduct its activities before other elements
36 of the plan are approved.

37 2. Exploration. No person may explore geologi-
38 cal formations within this State for the purpose of
39 siting investigating whether the site may be suitable
40 for a high-level radioactive waste repository without
41 a written permit from the State Geologist the permis-

1 sion of the Legislature. The State Geologist shall
2 approve requests for these exploration permits, and
3 advise the Legislature whether the proposed activity
4 is consistent with the plan required by subsection 1
5 and with the General Guidelines for Recommendation
6 of Sites for Nuclear Waste Repositories promulgated
7 in final form by the United States Department of En-
8 ergy, in accordance with rules promulgated by the
9 United States Department of Energy, the United States
10 Nuclear Regulatory Commission and the United States
11 Environmental Protection Agency relevant to siting a
12 high-level radioactive waste repository and the
13 United States Nuclear Waste Policy Act of 1982, Pub-
14 lic Law 97-425.

15 3. Public hearings. No plan for area studies
16 may be approved unless it contains provision for pub-
17 lic hearings in the State within 12 months after com-
18 mencement of the studies to receive comments on:

19 A. The technical feasibility of the proposed
20 waste management technology;

21 B. The environmental impact of a waste reposito-
22 ry in the area of study;

23 C. The social impact of a waste repository in
24 the area of study;

25 D. The economic impact of a waste repository in
26 the area of study;

27 E. Whether the proposed facility will be subject
28 to section 413, waste discharge licenses; section
29 483, site location of development; section 590,
30 air emission licensing; section 1304, licenses
31 for waste facilities; and any other laws adminis-
32 tered by the department or the Maine Land Use
33 Regulation Commission that may be applicable;

34 F. Conformance of the plan with the federal
35 guidelines cited in subsection 2; and

36 G. A reasonable comparative evaluation of the
37 suitability of sites in the study area compared
38 with sites in other areas; and

1 H. Such other matters as the commissioner deems
2 appropriate.

3 4. Approval of plan required. No Except for
4 oversight monitoring and public information activi-
5 ties, no agent of the State may participate in area
6 studies after the end of the session of the Legisla-
7 ture at which the plan was submitted; until unless
8 the Legislature has approved a plan for these
9 studies.

10 No person may conduct borings or excavations relating
11 to area studies, unless the Legislature has approved
12 a plan for the studies, including those borings of
13 excavations.

14 5. Reports. The commissioner shall keep the
15 Governor and the Legislature fully and currently in-
16 formed about the conduct of any area studies and, ~~im-~~
17 mediately upon within 90 days of completion of those
18 studies, shall review ~~their~~ the findings and report
19 them, together with ~~his~~ the commissioner's comments
20 to the Governor and the Legislature.

21 §1464. Site characterization and selection

22 1. Limitation. No Except for oversight, moni-
23 toring and public information activities, no agent of
24 the State may participate in site characterization or
25 selection ~~efforts; unless~~ studies, until the Legisla-
26 ture finds that all of the matters in section 1463,
27 subsection 3, have been adequately addressed and has
28 approved a plan for the studies and the Federal Gov-
29 ernment agrees that the site characterization or se-
30 selection process 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 lo-
36 cal laws.

37 2. Legislative findings. No agent of the State
38 may participate in site selection or construction of
39 a high-level radioactive waste repository; unless the

1 Legislature finds that all of the issues in section
2 1463, subsection 3, have been adequately addressed.

3 No person may excavate any exploratory shaft for site
4 characterization, selection or construction, unless
5 the Legislature has approved that activity.

6 2-A. Limitations on excavation activities. No
7 person may excavate any exploratory shaft for site
8 characterization, selection or construction, unless
9 the Legislature has approved that activity.

10 3. Reports. The commissioner shall keep the
11 Governor and the Legislature fully and currently in-
12 formed about the conduct of any site characterization
13 and, immediately upon within 90 days of completion of
14 that effort, shall review the findings and report
15 them, together with his the commissioner's comments
16 to the Governor and the Legislature.

17 Sec. 10. 38 MRSA §1465, as enacted by PL 1983,
18 c. 381, §9, is repealed.

19 Sec. 11. 38 MRSA §1466, first ¶, as enacted by
20 PL 1983, c. 381, §9, is amended to read:

21 Except for on-site storage of spent fuel from a
22 nuclear power plant, any facility for storage or pro-
23 cessing of high-level radioactive waste which is not
24 a repository covered by section 1461, subsection 1,
25 is subject to the requirements in this section. Ex-
26 cept for storage in existing licensed capacity, on-
27 site storage of spent fuel from a nuclear power plant
28 shall be subject to subsections 1 and 2.

1

STATEMENT OF FACT

2 The Federal Government is looking for a national
3 site for disposal of high-level radioactive waste and
4 is now considering 2 sites in Maine as potentially
5 acceptable for the deep geological disposal of
6 high-level radioactive waste. Although the United
7 States Nuclear Waste Policy Act of 1982, Public Law
8 97-425, under which this process is proceeding, does
9 not permit a state preemptorily to veto its selection
10 as a host for such a repository, a state's veto being
11 subject to Congressional override, it is important,
12 for purposes of potential legal challenges to the Act
13 itself and for unambiguously communicating the
14 State's position to the Federal Government and its
15 sister states, that the State of Maine declare now
16 that it expressly disapproves the location of a
17 high-level radioactive waste repository at the sites
18 under consideration in this State.

19 Section 4 of the new draft amends the Maine Re-
20 vised Statutes, Title 1, to clearly state that the
21 State does not consent to federal acquisition of
22 property within the State for use as a high-level ra-
23 dioactive waste repository nor does it cede legisla-
24 tive jurisdiction over property acquired for those
25 uses.

26 Section 7 of the new draft expressly disapproves
27 of exploration for, construction or operation of a
28 high-level radioactive waste repository at the sites
29 which the United States Department of Energy is con-
30 sidering in Maine because:

31 A. Based on all available technical information,
32 the geology at these sites is not suitable for a
33 high-level radioactive waste repository;

34 B. Exploration for, construction or operation of
35 such a repository at these sites is contrary to
36 the economic well-being of the people of this
37 State; and

38 C. The location of such a repository at these
39 sites is contrary to the safety and health of the
40 people of the State of Maine and would substan-

1 tially interfere with the power and ability of
2 the State to govern its citizens and provide for
3 their health, safety and welfare.

4 Section 8 of the new draft repeals a portion of
5 present law that might have been construed to prevent
6 the State from receiving federal or other funds nec-
7 essary to conduct review, oversight, monitoring, pub-
8 lic information and other essential state functions.
9 Under the new draft state agencies may accept funds
10 for those purposes as needed.

11 Sections 9 and 11 modify provisions of the Maine
12 Revised Statutes, Title 38, chapter 14-A, subchapter
13 II, to provide that if attempts by the Federal Gov-
14 ernment to locate a high-level radioactive waste deep
15 geological repository in Maine continue, notwith-
16 standing the State's express disapproval and legal
17 challenges to the Federal Government's authority to
18 do so, the Legislature's approval of specific steps
19 in the process is required.
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