

MAINE STATE LEGISLATURE

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(Emergency)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 561

S.P. 205

In Senate, March 2, 1987

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator KANY of Kennebec.

Cosponsored by Representative MITCHELL of Freeport,
Representative HOLLOWAY of Edgecomb, Representative COLES of
Harpswell.

STATE OF MAINE

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

AN ACT Creating the Maine Low-level
Radioactive Waste Authority.

1
2
3

4 **Emergency preamble.** Whereas, Acts of the Legis-
5 lature do not become effective until 90 days after
6 adjournment unless enacted as emergencies; and

7 Whereas, the United States Low-level Radioactive
8 Waste Policy Act of 1980, Public Law 96-573, requires
9 that states assume responsibility for providing for
10 the capacity for the disposal of low-level radioac-
11 tive waste generated within their borders; and

12 Whereas, Maine is not a member state to a region-
13 al compact for low-level radioactive waste disposal;
14 and

1 Whereas, the United States Low-level Radioactive
2 Waste Policy Amendments Act of 1985, Public Law
3 99-240, establishes January 1, 1988, as the
4 milestone date for states which are not members of a
5 compact to develop a siting plan for an in-state dis-
6 posal facility and further provides for penalties for
7 failure to meet those milestones, including
8 surcharges on waste disposed of and possible denial
9 of access to regional disposal facilities; and

10 Whereas, it is the purpose of this legislation to
11 meet that January 1, 1988, milestone; and

12 Whereas, in the judgment of the Legislature,
13 these facts create an emergency within the meaning of
14 the Constitution of Maine and require the following
15 legislation as immediately necessary for the preser-
16 vation of the public peace, health and safety; now,
17 therefore,

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

20 Sec. 1. 2 MRSA §6, sub-§4, as amended by PL
21 1985, c. 746, §1, and as repealed and replaced by PL
22 1985, c. 785, Pt. B, §2, is repealed and the follow-
23 ing enacted in its place:

24 4. Range 88. The salaries of the following
25 state officials and employees shall be within salary
26 range 88:

27 State Purchasing Agent;

28 Director, Arts and Humanities Bureau;

29 Director, State Museum Bureau;

30 Director of the Bureau of Parks and Recreation;

31 State Director of Alcoholic Beverages;

32 Executive Director, Retirement System;

33 Director of Public Lands;

1 State Librarian;
2 Director of Employee Relations;
3 Director, Bureau of Air Quality Control;
4 Director, Bureau of Land Quality Control;
5 Director, Bureau of Water Quality Control;
6 Director, Bureau of Oil and Hazardous Materials
7 Control; and
8 Executive Director, Maine Low-level Radioactive
9 Waste Authority.

10 Sec. 2. 5 MRSA §12004, sub-§7, ¶A, sub-¶(11) is
11 enacted to read:

12	<u>(11) Maine Low-Level</u>	<u>Legislative</u>	<u>38 MRSA</u>
13	<u>Radioactive Waste</u>	<u>Per diem and</u>	<u>§1512</u>
14	<u>Authority</u>	<u>Expenses (Chair-</u>	
15		<u>man expenses</u>	
16		<u>Only)</u>	

17 Sec. 3. 36 MRSA §271, sub-§2, ¶A, as enacted by
18 PL 1985, c. 764, §8, is amended to read:

19 A. Hear and determine appeals according to the
20 following provisions of law:

- 21 (1) The tree growth tax law, chapter 105,
22 subchapter II-A;
- 23 (2) The farm and open space law, chapter
24 105, subchapter X;
- 25 (3) As provided in section 843;
- 26 (4) As provided in section 844;
- 27 (5) Section 272; and
- 28 (6) Section 2865; and
- 29 (7) Title 38, section 1505;

1 Sec. 4. 38 MRSA §1454, as amended by PL 1985, c.
2 522, §§2 and 3, is repealed and the following enacted
3 in its place:

4 §1454. Radioactive Waste Evaluation Fund

5 1. Establishment. There is established the Ra-
6 dioactive Waste Evaluation Fund to be used to carry
7 out the purposes of this chapter and chapter 14-B.
8 Money allocated to the commission and to the Depart-
9 ment of Environmental Protection from this fund shall
10 be administered by the Commissioner of Environmental
11 Protection in accordance with established budgetary
12 procedures and this section. The Maine Low-level Ra-
13 dioactive Waste Authority shall administer money al-
14 located to it. The commissioner or authority may ac-
15 cept state, federal and private funds to be used as
16 appropriate to assure safe and effective low-level
17 radioactive waste management, to develop capacity for
18 sale, storage and disposal of these wastes and to
19 monitor and evaluate plans for storage and disposal
20 of high-level radioactive waste.

21 2. Service fee. Except for waste which is ex-
22 empt in accordance with subsection 3, the Board of
23 Environmental Protection shall assess each low-level
24 radioactive waste generator for a service fee on all
25 low-level radioactive waste generated in this State
26 which is shipped to commercial low-level radioactive
27 waste disposal facilities, stored awaiting disposal
28 at a commercial low-level radioactive waste disposal
29 facility or stored for any other purpose. That ser-
30 vice fee shall be based 50% on the volume and 50% on
31 the radioactivity of the waste generated in the pre-
32 vious calendar year, but each generator shall be as-
33 essed an annual fee of at least \$300. The Board of
34 Environmental Protection shall promulgate rules in
35 accordance with the Maine Administrative Procedure
36 Act, Title 5, chapter 375, concerning the calculation
37 of the fee and the exemptions to the fee, consistent
38 with this section. The revenue from this service fee
39 shall be credited to the fund established in subsec-
40 tion 1 and used to carry out this chapter and chapter
41 14-B.

42 3. Fee exemptions. The following types of
43 low-level radioactive waste shall be exempt from the
44 service fee established in subsection 2:

1 A. Waste which is authorized by the United
2 States Nuclear Regulatory Commission for disposal
3 without regard to radioactivity;

4 B. Waste which is authorized by the United
5 States Nuclear Regulatory Commission to be stored
6 for up to 3 years at the site of generation for
7 decay and ultimate disposal without regard to ra-
8 dioactivity; and

9 C. Radioactive waste or other material, includ-
10 ing, but not limited to, sealed radioactive
11 sources, which is returned to the vendor.

12 4. Fee assessment; ceiling. Except for money
13 received from sources other than fees, the fund es-
14 tablished by this section shall not exceed a balance
15 of \$450,000. The Commissioner of Environmental Pro-
16 tection shall determine the fees as of June 30th an-
17 nually, beginning in 1987, sufficient to bring the
18 starting balance in the fund for the fiscal year be-
19 ginning July 1st up to the ceiling established by
20 this subsection. The commissioner shall assess each
21 generator for its service fee. Each generator shall
22 pay the service fee within 30 days, except that any
23 generator may choose to make quarterly payments in-
24 stead. In the event that the balance in the fund at
25 the beginning of the fiscal year exceeds the ceiling,
26 the excess shall be remitted to the generators within
27 30 days, in proportion to their payments during the
28 previous fiscal year. Upon dissolution of the com-
29 mission and the authority established in accordance
30 with chapter 14-B, any unexpended funds shall be
31 promptly remitted to the generators in proportion to
32 their payments in the previous fiscal year.

33 5. Allocation. Money in the fund established by
34 this section shall be allocated from time to time by
35 the Legislature for the following purposes: To the
36 commission for advisory and public information activ-
37 ities; to the Department of Environmental Protection
38 for regulatory activities; and to the Maine Low-level
39 Radioactive Waste Authority for administrative activ-
40 ities required by chapter 14-B. These amounts shall
41 become available in accordance with Title 5, chapters
42 141 to 155

1 The commission may receive and expend federal grants
2 and payments for the purpose of carrying out its du-
3 ties. The money received by the commission from fed-
4 eral sources shall not be counted toward the ceiling
5 established in subsection 4.

6 6. Balance carried forward. Any unexpended bal-
7 ance shall not lapse, but shall be carried forward to
8 the same fund for the next fiscal year and shall be
9 available for the purposes authorized by this chapter
10 and chapter 14-B.

11 7. Financial reports. The commissioner shall
12 report quarterly to the Advisory Commission on Radio-
13 active Waste and annually, before February 1st, to
14 the joint standing committee of the Legislature hav-
15 ing jurisdiction over natural resources on the income
16 to and expenditures from the Radioactive Waste Evalu-
17 ation Fund for the previous fiscal year and on the
18 budget for the coming year. Those reports shall in-
19 clude total fees received from each generator and
20 line item detail on expenditures, including in-state
21 travel and out-of-state travel, printing, mailing and
22 hearings, personnel, consultant services, general op-
23 erating expenses, supplies and overhead for both the
24 commission and the department.

25 7-A. Transfer of funds. Notwithstanding Title
26 5, section 1585, funds allocated under this section
27 may be transferred as necessary to accomplish the
28 purposes of this chapter and chapter 14-B from the
29 Department of Environmental Protection to other agen-
30 cies, including the Maine Geological Survey, Maine
31 Land Use Regulation Commission, Division of Health
32 Engineering and the State Planning Office.

33 Sec. 5. 38 MRSA c. 14-B is enacted to read:

34 CHAPTER 14-B

35 MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY

36 SUBCHAPTER I

37 GENERAL PROVISIONS

38 §1501. Short title

1 This chapter shall be known and may be cited as
2 the "Maine Low-level Radioactive Waste Authority
3 Act."

4 §1502. Legislative findings and purpose

5 The United States Low-level Radioactive Waste
6 Policy Act of 1980, Public Law 96-573, requires that
7 states assume responsibility for providing the capac-
8 ity for the disposal of low-level radioactive waste
9 generated within their borders. The State has ex-
10 pressed its intent to develop, if necessary, a site
11 for the location of a low-level radioactive waste
12 disposal facility within the State. The State is
13 continuing to try to negotiate a compact or agreement
14 for low-level radioactive waste disposal out of
15 State. The United States Low-level Radioactive Waste
16 Policy Amendments Act of 1985, Public Law 99-240, es-
17 tablishes January 1, 1988, as the the milestone date
18 for states which are not members of a compact to de-
19 velop a siting plan for a low-level radioactive waste
20 disposal facility. To accomplish that task, it is
21 necessary for the State to provide for planning, sit-
22 ing, construction, operation and maintenance, site
23 closure and long-term, post-closure control of a
24 low-level radioactive waste disposal facility or fa-
25 ilities. In order to protect public health, safety
26 and the environment, federal regulations require the
27 effective isolation of low-level radioactive waste
28 for 500 years following disposal site closure, obser-
29 vation and maintenance of the closed site and long-
30 term institutional control of the site leading to
31 termination of the operating license.

32 The purpose of this chapter is to establish the
33 Maine Low-level Radioactive Waste Authority with the
34 responsibility, if necessary, to coordinate and over-
35 see the planning, siting, construction, operation,
36 maintenance, closure, post-closure observation and
37 maintenance and long-term institutional control of a
38 facility or facilities with sufficient capacity to
39 dispose of only the low-level radioactive waste gen-
40 erated within this State and for which this State is
41 responsible and to provide for termination of the li-
42 cence for the facility or facilities.

43 §1503. Definitions

1 As used this chapter, unless the context other-
2 wise indicates, the following terms have the follow-
3 ing meanings.

4 1. Authority. "Authority" means the Maine
5 Low-level Radioactive Waste Authority created in this
6 chapter.

7 2. Closure. "Closure" or "site closure" means
8 all activities performed at a waste disposal site,
9 such as stabilization and contouring, to assure that
10 the site is in a stable condition so that only minor
11 custodial care, surveillance and monitoring are nec-
12 essary at the site, following termination of opera-
13 tion.

14 3. Commission. "Commission" or "advisory com-
15 mission" means the Advisory Commission on Radioactive
16 Waste established by section 1453.

17 4. License. "License" means a license issued by
18 the United States Nuclear Regulatory Commission for
19 the operation of a low-level radioactive waste facil-
20 ity under the Code of Federal Regulations, Part 61.

21 5. Low-level radioactive waste. "Low-level ra-
22 dioactive waste" means radioactive material that is
23 not high-level radioactive waste, spent nuclear fuel,
24 transuranic waste or by-product material, as defined
25 in the United States Code, Title 42, Section
26 2014(e)(2), the United States Atomic Energy Act of
27 1954, Section 11 (e)(2), and that the United States
28 Nuclear Regulatory Commission, consistent with exist-
29 ing law, classifies as low-level radioactive waste.

30 6. Low-level radioactive waste disposal facili-
31 ty. "Low-level radioactive waste disposal facility,"
32 "disposal facility" or "facility" means a parcel of
33 land, together with the structures, equipment and im-
34 provements on or attached to the land, for the isola-
35 tion of low-level radioactive waste from the
36 biosphere inhabited by people and their food chains.

37 7. Low-level radioactive waste generator.
38 "Low-level radioactive waste generator" or "genera-
39 tor" means a person who produces or processes
40 low-level radioactive waste, whether or not that
41 waste is shipped off-site.

1 §1511. Authority established

2 There is established, to carry out the purposes
3 of this chapter, the Maine Low-level Radioactive
4 Waste Authority referred to in this chapter as the
5 "authority." The authority is a body corporate and
6 politic and is an instrumentality of the State. The
7 authority shall be considered a financing and admin-
8 istrative organization within the meaning of Title 5,
9 section 12004, subsection 7.

10 §1512. Membership; qualifications; terms; and com-
11 pen-sation

12 1. Membership. Membership of the authority
13 shall be as follows.

14 A. Prior to selection of a disposal site, in-
15 cluding voter approval as provided in section
16 1493, the authority shall consist of 9 members,
17 including the chairman, who are appointed by the
18 Governor subject to confirmation by the Legisla-
19 ture.

20 B. Within 30 days after selection of a disposal
21 site, including voter approval as provided in
22 section 1493, 2 additional members representing
23 the area selected shall be appointed to the au-
24 thority. Those 2 members shall be appointed by
25 the Governor from among a list of candidates nom-
26 inated by the municipal officers of the munici-
27 pality or municipalities in which the site is lo-
28 cated or, in the case of selection of a site in
29 the unorganized territories, the county commis-
30 sioners of the county or counties in which the
31 site is located. Those 2 members are subject to
32 confirmation by the Legislature.

33 2. Qualifications. Among the members there
34 shall be at least one person knowledgeable in the
35 health field; one person knowledgeable in the field
36 of nuclear waste; one person knowledgeable in the
37 field of construction engineering; one person
38 knowledgeable in the environmental field; one person
39 knowledgeable in the field of public administration;
40 and one person knowledgeable in the field of busi-
41 ness. The appointments shall reflect some geographi-

1 cal diversity. The 2 members representing the area
2 selected for a disposal site shall be residents of
3 the area in which the site is to be located. No mem-
4 ber, except the executive director, may be a state
5 employee while serving as a member of the authority.

6 3. Terms of office. The chairman, who shall be
7 the full-time executive director of the authority,
8 shall serve at the pleasure of the Governor. The
9 other members shall each serve 4-year terms, except
10 of the terms of the initial 8 appointments, 2 shall
11 expire June 30, 1988; 2 shall expire June 30, 1989; 2
12 shall expire June 30, 1990; and 2 shall expire June
13 30, 1991. The terms of the 2 members appointed to
14 represent the area selected for a disposal site shall
15 also be staggered. Of the initial 2 appointees, one
16 shall be appointed for a term of up to 2 years which
17 expires June 30th and one shall be appointed for a
18 term of up to 4 years which expires on June 30th.
19 Persons appointed to fill vacancies shall be ap-
20 pointed in the same manner as the person whom they
21 are replacing to complete the unexpired term of the
22 former member. No member may serve more than 2 con-
23 secutive full terms.

24 4. Reimbursement. Members, except the chairman,
25 shall be paid legislative per diem plus actual ex-
26 penses. The chairman shall be paid for expenses in
27 the same manner as any other state employee.

28 §1513. Meetings; quorum

29 1. Meetings. The authority shall meet at least
30 every 2 months until the facility is operating and at
31 least every 6 months thereafter.

32 2. Quorum. A quorum shall consist of a majority
33 of the members of the full authority and any decision
34 requiring a vote shall require the favorable vote of
35 at least a majority of the members of the full au-
36 thority.

37 §1514. Executive director

38 1. Salary. The salary of the executive director
39 shall be as provided in Title 2, section 6. The Gov-
40 ernor may establish the initial salary step at time
41 of appointment.

1 2. Powers and duties. The executive director
2 shall oversee day-to-day operations of the authority;
3 hire appropriate staff members with approval of the
4 authority; and carry out other responsibilities dele-
5 gated by the authority subject to conditions and in-
6 structions which the authority deems appropriate.

7 §1515. Staff employees; conflict of interest; per-
8 sonal liability

9 1. Authority. The authority may hire, on a tem-
10 porary or permanent basis, such staff as necessary,
11 including legal counsel and financial experts.

12 2. Exempt from Civil Service Law. Employees of
13 the authority shall not be subject to Title 5, chap-
14 ters 71 and 372.

15 3. Conflict of interest. Notwithstanding Title
16 5, section 18, subsection 1, each member of the au-
17 thority and each employee, contractor, agent or other
18 representative of the authority is deemed an "execu-
19 tive employee" solely for purposes of Title 5, sec-
20 tion 18. In addition, Title 17, section 3104, shall
21 be applicable, in accordance with its provisions, to
22 all such representatives of the authority.

23 4. Personal liability. Personal liability of
24 authority members shall be as provided in the Maine
25 Tort Claims Act, Title 14, chapter 741.

26 §1516. Sunset

27 1. Justification report; evaluation and analy-
28 sis. For purposes of the Maine Sunset Act, Title 3,
29 chapter 23, the authority shall be considered an in-
30 dependent agency, with its first justification report
31 in accordance with Title 3, section 504, due no later
32 than October 31, 1996, and the evaluation and analy-
33 sis in accordance with Title 3, section 505, by the
34 joint standing committee of the Legislature have ju-
35 risdiction over audit and program review due no later
36 than December 31, 1997, but notwithstanding Title 3,
37 sections 506 and 507, the authority shall not termi-
38 nate, except as provided in this chapter.

39 2. Termination. The authority shall terminate
40 one year after:

1 A. The State has entered into a compact ratified
2 as provided in section 1474, for the disposal of
3 all low-level radioactive waste for which the
4 State is responsible;

5 B. The State has entered into an agreement de-
6 termined by the authority to be sufficient to
7 provide for the disposal of all low-level radio-
8 active waste for which the State is responsible;
9 or

10 C. The United States Nuclear Regulatory Commis-
11 sion has terminated the license under 10 Code of
12 Federal Regulations, Section 61.31, for any dis-
13 posal facility constructed in accordance with
14 this chapter.

15 3. Report to the Legislature. Within 30 days of
16 the occurrence of any of the events described in sub-
17 section 2, the authority shall issue a report verify-
18 ing that fact to the Governor and the Legislature.

19 SUBCHAPTER III
20 POWERS AND PROPERTY

21 §1521. Powers

22 In order to accomplish the purposes of this chap-
23 ter and in addition to any other powers conveyed by
24 this chapter, the authority may exercise the follow-
25 ing powers:

26 1. Sue. Sue and be sued;

27 2. Seal. Have a seal and alter the seal at its
28 pleasure;

29 3. Bylaws. Adopt from time to time and amend
30 bylaws covering its procedure, publish those bylaws
31 as necessary or advisable and cause records of its
32 proceedings to be kept;

33 4. Rules. Promulgate in accordance with the
34 Maine Administrative Procedure Act, Title 5, chapter
35 375, all rules necessary to carry out its responsi-
36 bilities under this chapter, including procedural
37 rules, rules for operation of a disposal facility and
38 other rules;

1 5. Disposal facility. Plan, site, construct,
2 operate, maintain, close, provide long-term care and
3 provide for termination of the license of a low-level
4 radioactive waste disposal facility or facilities
5 with sufficient capacity only to dispose of the
6 low-level radioactive waste generated within this
7 State and for which the State is responsible;

8 6. Personal property. Acquire, hold and dispose
9 of personal property;

10 7. Real property. Acquire in the name of the
11 authority by purchase, eminent domain, lease or oth-
12 erwise, real property and interests in real property
13 determined necessary or desirable for its purposes,
14 and use the property;

15 8. Fees. Establish and collect fees, assess-
16 ments and other charges and expend money received as
17 provided in this chapter;

18 9. Contracts. Make, modify and carry out con-
19 tracts or agreements with the United States or any
20 instrumentality or agency of the United States, this
21 State or any of its agencies or instrumentalities,
22 municipalities or bodies existing therein, public
23 corporations, private corporations, partnerships, as-
24 sociations and individuals which are necessary or
25 useful in carrying out its powers, duties or pur-
26 poses;

27 10. Employees. Employ such assistants, agents,
28 engineering, architectural and construction experts
29 and inspectors and attorneys and such other employees
30 as it deems necessary or desirable to carry out its
31 purposes;

32 11. Information. Obtain any information and
33 conduct investigations useful or convenient for car-
34 rying out any of its purposes, powers or duties;

35 12. Inspections. Conduct inspections of genera-
36 tors, processors, storers and transporters of
37 low-level radioactive waste;

38 13. Entry at reasonable hours. Enter upon any
39 lands, waters and premises in the State for the pur-

1 pose of making surveys, soundings, drillings, exami-
2 nations and inspections as it deems necessary or con-
3 venient for the purpose of this chapter. The entry
4 shall not be deemed a trespass;

5 14. Insurance. Procure insurance or other as-
6 surances in aid of any of its purposes;

7 15. Enforcement. Establish and enforce
8 low-level radioactive waste packaging and transporta-
9 tion requirements;

10 16. Exercise powers. Exercise any of its powers
11 in the public domain of the United States, unless the
12 exercise of those powers is not permitted by the laws
13 of the United States; and

14 17. Other actions. Take all other lawful ac-
15 tions necessary and incidental to these powers in
16 carrying out the requirements of this chapter.

17 §1522. Property

18 All property of the authority and all property
19 held in the name of the State pursuant to this chap-
20 ter shall be exempt from levy and sale by virtue of
21 any execution, and no execution or other judicial
22 process may be a lien upon its property held pursuant
23 to this chapter; provided that the authority shall
24 not lease, sell or otherwise convey, or allow to be
25 used, any of its real or personal property or ease-
26 ments in property, franchises, buildings or struc-
27 tures, except that the authority may permit the erec-
28 tion or installation of electric power, telegraph,
29 telephone, water, sewer or pipeline facilities.

30 §1523. Eminent domain

31 Whenever a reasonable price cannot be agreed upon
32 for the purchase or lease of real property found nec-
33 essary for the purposes of the authority or whenever
34 the owner is legally incapacitated or is absent or is
35 unable to convey valid title or is unknown, the au-
36 thority may acquire by eminent domain any such real
37 property, whether wholly or partly constructed, or
38 interest or interests in the property and any land,
39 rights, easements, franchises and other property

1 deemed necessary or convenient for the construction
2 or reconstruction or the efficient operation of the
3 low-level radioactive waste disposal facility, in the
4 manner provided by Title 23, chapter 3, subchapter
5 III. Title to any property taken by eminent domain
6 shall be in the name of the authority.

7 §1524. Contractors; contracts

8 1. Use authorized. The authority may determine
9 to carry out any authorized activity through use of
10 contractors, subject to the requirements of law.

11 2. Approval. Contracts and agreements for more
12 than \$10,000 relating to the construction, operation,
13 maintenance, closure and post-closure monitoring of a
14 disposal facility shall be awarded only after competi-
15 tive bid and approval by the authority.

16 3. Rules. The authority shall promulgate rules
17 for the awarding of contracts by July 1, 1987.

18 §1525. Penalties

19 1. Violation. Any person who violates this
20 chapter or any rule promulgated under this chapter or
21 neglects or refuses to comply with any of the provi-
22 sions of this chapter, commits a civil violation for
23 which a forfeiture not to exceed \$1,000 may be ad-
24 judge. Each day of violation shall be considered a
25 separate offense.

26 2. Public health and safety. Any person who
27 commits a violation as described in subsection 1
28 which endangers the health and safety of the public
29 or of the employees of the disposal facility shall be
30 subject to a civil penalty not to exceed \$5,000 to be
31 recovered in a civil action. Each day of violation
32 shall be considered a separate offense.

33 3. Suspension of access. Any person who commits
34 a violation as described in subsections 1 and 2 may,
35 in addition to the penalties provided in subsections
36 1 and 2, have access to a disposal facility suspended
37 for up to one year. That suspension may be renewed
38 until the violator demonstrates the ability to remedy
39 the situation for which the penalty was assessed.

1 The Attorney General shall enforce this section in
2 the Superior Court for Kennebec County or for the
3 county in which the violation occurs.

4 SUBCHAPTER IV

5 DUTIES AND RESPONSIBILITIES

6 §1526. Low-level radioactive waste management plan

7 The authority shall promulgate by rule, following
8 public hearing, a plan for the management of the
9 State's low-level radioactive waste. The plan shall
10 guide the State's activities in disposing of the
11 State's low-level radioactive waste. The plan shall
12 be adopted by December 1, 1987, and shall be updated
13 annually. The first plan is intended to meet the
14 January 1, 1988, milestone date for the development
15 of a siting plan required by the United States Code,
16 Title 42, Section 5(e)(1)(B), of the United States
17 Low-level Radioactive Policy Amendments Act of 1985,
18 Public Law 99-240.

19 §1527. Operating plan and budget; annual report

20 1. Operating plan and budget. The authority
21 shall submit its annual operating plan and budget for
22 the fiscal year beginning July 1st of each year to
23 the Governor, the Legislature and the advisory com-
24 mission by January 1st of that year. The Governor,
25 the Legislature and the advisory commission shall re-
26 view the operating plan and budget, but their approv-
27 al is not required. The operating plan and budget
28 may not take effect until at least 90 days after sub-
29 mission.

30 2. Annual report. The authority shall submit
31 its annual report to the Governor, the Legislature
32 and the advisory commission not later than 120 days
33 after the close of its fiscal year.

34 §1528. Planning, siting and construction of facili-
35 ties

36 1. State facility required. The authority shall
37 develop or provide for the development, if necessary,
38 in accordance with a schedule designed to meet the

1 The authority may accept and expend for any of
2 the purposes of this chapter grants or donations of
3 money, equipment, supplies, materials and services
4 from the United States or political subdivision of
5 the United States, this State or any other state or a
6 political subdivision of this State or any other
7 state, any interstate agency or any person.

8 §1534. Low-level Radioactive Waste Facility Fund

9 There is created a nonlapsing, revolving fund
10 known as the Low-level Radioactive Waste Facility
11 Fund to be used to pay for the planning, siting, con-
12 struction, operation, maintenance, closure and
13 post-closure costs of a disposal facility.

14 1. Revenue deposited. Unless otherwise pro-
15 vided, all revenue collected by the authority or the
16 disposal facility to be used for planning, siting,
17 construction, operation, maintenance, closure and
18 post-closure costs of a disposal facility shall be
19 deposited in the Low-level Radioactive Waste Facility
20 Fund.

21 2. Expenditure of funds. Unless otherwise pro-
22 vided, all the activities described in section 1535
23 and 1536 shall be funded from the Low-level Radioac-
24 tive Waste Facility Fund.

25 3. Surplus revenues. Surplus revenues in the
26 Low-level Radioactive Waste Facility Fund shall be
27 carried forward and used to reduce the assessments or
28 fees the following year.

29 §1535. Planning, siting and construction costs; lim-
30 it on assessment

31 1. Assessment. The authority shall assess any
32 nuclear plant within the State for the full cost of
33 planning, siting, licensing and construction of a
34 low-level radioactive waste disposal, including rea-
35 sonable reserves for unforeseen contingencies. The
36 assessment shall be made as the funds are needed, but
37 with sufficient lead time for sound procurement and
38 fiscal management practices. This assessment shall
39 be deposited in the Low-level Radioactive Waste Fa-
40 cility Fund.

1 2. Contractual agreements. Contractual agree-
2 ments with any nuclear power plant in the State must
3 be reached prior to any action on area screening and
4 site characterization or application for a license to
5 operate a disposal facility.

6 A. Area screening and site characterization
7 shall not proceed until a firm contractual agree-
8 ment is reached with any nuclear power plant in
9 the State to pay the full cost of those activi-
10 ties on or before the date those activities are
11 completed. No funds may be expended by the au-
12 thority for those purposes until they are re-
13 ceived from the responsible party.

14 B. Application for a license to operate a
15 low-level radioactive waste disposal facility
16 from the United States Nuclear Regulatory Commis-
17 sion shall not proceed until a firm contractual
18 agreement is reached with any nuclear power plant
19 in the State to pay the full cost of licensing
20 and constructing the facility on or before the
21 date construction will be completed. No funds
22 may be expended by the authority for those pur-
23 poses until they are received from the responsi-
24 ble party.

25 3. Assessment limit. Notwithstanding subsection
26 1, the funds assessed under this section shall not
27 exceed \$10,000,000.

28 §1536. Operation, maintenance, closure and
29 post-closure costs

30 1. User fees. The authority shall establish by
31 rule a schedule of fees to be paid by all users of a
32 low-level radioactive waste disposal facility. Those
33 fees shall be sufficient to cover the annual opera-
34 tion and maintenance costs and the closure and
35 post-closure costs, including reasonable reserves for
36 unforeseen contingencies. The authority shall amor-
37 tize the closure and post-closure costs over the pro-
38 jected life of the facility and provide insurance up
39 to its full amount until those costs are fully amor-
40 tized.

1 2. Calculation. The authority shall calculate
2 user fees based 50% on the volume and 50% on the ra-
3 dioactivity of waste accepted by the facility. The
4 authority shall establish, by rule, additional fees
5 for hard-to-handle physical forms of waste.

6 3. Surcharge. A surcharge shall be added to the
7 user fees paid by any user who has not been assessed
8 for planning and construction under section 1535. A
9 corresponding reduction shall be credited to any user
10 who was so assessed.

11 4. Limitation. Operation of the state disposal
12 facility shall not proceed until:

13 A. The entire cost of planning, siting, licens-
14 ing and construction has been received from the
15 responsible parties; and

16 B. A firm contractual agreement covering at
17 least 15 years is reached with any nuclear power
18 plant in the State to pay its share of the annual
19 operating and maintenance costs, including an ap-
20 propriate contribution for closure, long-term
21 care and license termination.

22 §1537. Impact payments

23 In addition to payment in lieu of taxes provided
24 in section 1505, the authority may make impact pay-
25 ments based on measureable criteria to a municipality
26 in which a low-level radioactive waste disposal fa-
27 ility is located or, in the case of an unorganized
28 territory, to the State Tax Assessor upon request by
29 the community involved or by the State Tax Assessor.

30 §1538. Annual financial report; audit

31 Within 120 days after the close of its fiscal
32 year, the authority shall provide the Treasurer of
33 State with a copy of its annual financial report cer-
34 tified by an independent certified public accountant
35 selected by the authority. The authority shall also
36 be subject to Title 5, chapter 11.

37 §1539. Budget and fiscal management

1 Expenditures by the authority shall be consistent
2 with and within the scope of the annual operating
3 plan and budget, but the authority is exempt from the
4 budget requirements of Title 5. Expenditures from
5 the Radioactive Waste Evaluation Fund are subject to
6 allocation by the Legislature. Expenditures from
7 the Low-level Radioactive Waste Facility Fund do not
8 require allocation by the Legislature.

9 §1540. Liability

10 1. Strict liability. Notwithstanding any provi-
11 sion of law to the contrary, any person, including
12 the authority, engaged in low-level radioactive waste
13 disposal activities provided in this chapter, shall
14 be subject to liability without fault for property
15 damage, bodily injury or death resulting from those
16 activities. Any defendant in an action under this
17 subsection may be jointly and severally liable for
18 actual damages only.

19 2. Liability of authority. In the event a
20 building contractor, operator other than the authori-
21 ty or other contractor of the authority would other-
22 wise be subject to liability, but when no claim may
23 be successfully maintained or when no judgment may be
24 enforced against the builder, operator or contractor,
25 the authority shall be subject to liability for prop-
26 erty damage, bodily injury or death resulting from
27 the activity of that builder, operator or contractor.

28 3. State liability. If all other sources of
29 funds, including enforcement of a judgment under sub-
30 section 1, federal assistance, the reserve for un-
31 foreseen contingencies provided in sections 1535 and
32 1536, and supplemental fees provided in section 1542,
33 are insufficient to compensate injured persons, the
34 State shall provide compensation for property damage,
35 bodily injury or death resulting from the low-level
36 radioactive waste disposal activities provided in
37 this chapter.

38 4. Insurance. The authority shall purchase, or
39 require any of its contractors to purchase, insurance
40 or other financial protection against the site fail-
41 ure sufficient to cover any foreseeable problems dur-
42 ing the life of the facility plus a reasonable re-

1 serve for unforeseen contingencies. The cost of in-
2 surance purchased by the authority shall be included
3 in the assessment and fees charged by the facility
4 under sections 1535 and 1536.

5 SUBCHAPTER VI

6 RESPONSIBILITIES OF GENERATORS

7 §1541. Delivery of low-level radioactive waste re-
8 quired

9 Unless otherwise authorized by the authority,
10 when the low-level radioactive waste facility is in
11 operation, in-state generators of low-level radioac-
12 tive waste for which the State is responsible shall
13 dispose of that waste at the disposal facility.

14 §1542. Supplemental fee

15 Except for costs attributable to negligence by
16 the authority or its contractors, if the cost of
17 post-closure care and long-term institutional con-
18 trol, including mitigation of any environmental prob-
19 lems that may develop at the site, exceeds the avail-
20 able funds, including enforcement of a judgment, fed-
21 eral assistance, the reserve of unforeseen contingen-
22 cies provided in sections 1535 and 1536 and the sup-
23 plemental fee provided in this section, the authority
24 may assess generators of low-level radioactive waste
25 a supplementary fee to cover that cost, in proportion
26 to the volume and radioactivity of the portion of the
27 waste generated by each generator which remains in
28 the waste stream. In the event that a generator has
29 insufficient assets at that time, the owners of that
30 generator shall be jointly and severally liable for
31 the supplemental fee of that generator. If any owner
32 pays more than his share of the costs under this sub-
33 section, that owner shall have a course of action to
34 recover that excess from other owners who paid less
35 than their share.

36 Sec. 6. Transitional provisions. In order to
37 provide money for the timely commencement of the work
38 of the authority and to bring the Radioactive Waste
39 Evaluation Fund up to the new cap established by this
40 Act, there shall be imposed an immediate assessment

1 of \$300,000 levied proportionally on all generators
2 as provided in the Maine Revised Statutes, Title 5,
3 section 1454, on the amount of their waste generated
4 in calendar year 1986. The fees assessed under this
5 section shall be paid within 30 days of the effective
6 date of this Act.

7 The portion of the \$6,312.49 in milestone incen-
8 tive payments from the United States Department of
9 Energy in account number 3536.1 which remains in that
10 account on the effective date of this Act is trans-
11 ferred to the Radioactive Waste Evaluation Fund for
12 use in accordance with the restrictions on the use of
13 those funds in the United States Low-level Radioac-
14 tive Waste Policy Amendments Act of 1985, Public Law
15 99-240.

16 Sec. 7. Allocation. The following funds are al-
17 located from the Radioactive Waste Evaluation Fund to
18 carry out the purposes of this Act.

	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	
19				
20	<u>ENVIRONMENTAL PROTEC-</u>			
21	<u>TION, DEPARTMENT OF</u>			
22	Maine Low-level Ra-			
23	dioactive Waste Au-			
24	thority			
25	All Other	\$44,000	\$107,000	\$110,500
26	Allocates funds			
27	to operate the			
28	Maine Low-level			
29	Radioactive			
30	Waste Authority			
31	Bureau of Oil and			
32	Hazardous Materials			
33	Control			
34	Positions	(1)	(1)	(1)
35	Personal Services	\$ 8,000	\$ 23,500	\$ 25,500
36	All Other	17,500	39,000	5,500
37	Capital Expendi-	<u>1,350</u>	<u> </u>	<u> </u>
38	tures			

1 The Low-level Radioactive Waste Authority created
2 in this bill is an independent state agency with de-
3 velopmental, operational and closure responsibilities
4 separate from the advisory and informational respon-
5 sibilities of the Radioactive Waste Advisory Commis-
6 sion and the regulatory responsibilities of the De-
7 partment of Environmental Protection. This bill is
8 recommended by the Advisory Commission on Radioactive
9 Waste.

10 Sections 1 and 2 of the bill establish the levels
11 of compensation for the executive director and mem-
12 bers of the authority.

13 Sections 3 and 4 of the bill amend existing lan-
14 guage establishing the Radioactive Waste Evaluation
15 Fund to provide for use of a portion of the money in
16 that fund by the authority to carry out its adminis-
17 trative responsibilities. In order to provide ade-
18 quate funds for those additional expenses, the ceil-
19 ing on that fund is raised to \$450,000 and a new
20 method of calculation is established.

21 Section 5 of the bill enacts the Maine Revised
22 Statutes, Title 38, chapter 14-B, which creates and
23 describes the duties and responsibilities of the
24 Maine Low-level Radioactive Waste Authority.

25 Initially, the authority shall consist of 9 mem-
26 bers, including the chairman who also serves full
27 time as the executive director of the authority. The
28 other 8 members shall be public members serving part
29 time and representing various fields of experience or
30 expertise, as well as reflecting geographical diver-
31 sity. Following selection of a site for a low-level
32 radioactive waste disposal facility, 2 additional
33 members shall be named representing the area se-
34 lected. All members shall be appointed by the Gover-
35 nor subject to confirmation by the Legislature. The
36 executive director shall serve at the pleasure of the
37 Governor; other members serve staggered 4-year terms.
38 The funds are raised by service fees assessed on the
39 generators.

40 The duties and responsibilities of the authority
41 are related to development, if necessary, of a
42 low-level radioactive waste disposal facility. Vari-

1 ous powers necessary for the accomplishment of that
2 responsibility are granted to the authority, includ-
3 ing the authority to enter premises at reasonable
4 hours to obtain information and to conduct investiga-
5 tors and inspections of generators, processors,
6 storers and transporters of low-level radioactive
7 waste. The authority is to develop a low-level ra-
8 dioactive waste management plan by December 1, 1987,
9 which shall also meet the federal January 1, 1988,
10 milestone date for development of a siting plan. The
11 management plan is to be updated annually and will
12 guide the State's low-level radioactive waste dispos-
13 al activities in the future. No disposal facility
14 may be constructed unless voter approval is given as
15 required by current law.

16 A new Low-level Radioactive Waste Facility Fund
17 is created to pay for the costs related to develop-
18 ment, operation, maintenance, closure and
19 post-closure observation of a disposal facility. The
20 development of a disposal facility is to be funded by
21 a series of assessments on the nuclear power plant in
22 Maine designed to cover the costs of planning, siting
23 and construction, including unforeseen contingencies.
24 A total of up to \$10,000,000 may be assessed for
25 these tasks. Other users will contribute to the de-
26 velopment costs by paying a surcharge on their user
27 fees. The operational, maintenance, closure and
28 post-closure costs of a disposal facility, including
29 unforeseen contingencies, are to be funded by fees
30 levied on users of the facility.

31 Strict liability is imposed for property damage,
32 bodily injury or death resulting from low-level ra-
33 dioactive waste disposal activities. If an operator
34 or other contractor who is otherwise subject to lia-
35 bility is unavailable, the authority may be subject
36 to liability. If unforeseen costs of post-closure
37 care and long-term institutional control exceed
38 available funds, generators may be assessed a supple-
39 mentary fee to cover the cost. If all available
40 funds are exhausted, the State shall provide compen-
41 sation for damages.

42 Sections 6 and 7 of the bill provide transitional
43 funding for the start-up costs of the authority and
44 allocate funds from the Radioactive Waste Evaluation

1 Fund for authority expenses for the next biennium.

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