

MAINE STATE LEGISLATURE

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(Emergency)
(New Draft of S.P. 205, L.D. 561)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1865

S.P. 639

In Senate, June 15, 1987

Reported by Senator Usher of Cumberland for the Committee on Energy and Natural Resources and printed under Joint Rule 2. Original Bill sponsored by Senator Kany of Kennebec. Cosponsored by: Representative Mitchell, Representative Holloway of Edgecomb, Representative Coles of Harpswell.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

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

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

22	<u>(11)</u>	<u>Maine Low-level</u>	<u>\$100/day</u>	<u>38 MRSA §1512</u>
23		<u>Radioactive Waste</u>		
24		<u>Authority</u>		

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

27 A. Hear and determine appeals according to the
28 following provisions of law:

- 29 (1) The tree growth tax law, chapter 105,
30 subchapter II-A;
- 31 (2) The farm and open space law, chapter
32 105, subchapter X;
- 33 (3) As provided in section 843;
- 34 (4) As provided in section 844;
- 35 (5) Section 272; and

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- (6) Section 2865; and
- (7) Title 38, section 1505;

Sec. 3. 38 MRSA §1454, as amended by PL 1985, c. 522, §§2 and 3, is repealed and the following enacted in its place:

§1454. Radioactive Waste Evaluation Fund

1. Establishment. There is established the Radioactive Waste Evaluation Fund to be used to carry out the purposes of this chapter. Money allocated to the commission and to the Department of Environmental Protection from this fund shall be administered by the Commissioner of Environmental Protection in accordance with established budgetary procedures and this section. The commissioner may accept state, federal and private funds to be used as appropriate to assure safe and effective low-level radioactive waste management, to develop capacity for sale, storage and disposal of these wastes and to monitor and evaluate plans for storage and disposal of high-level radioactive waste.

2. Service fee. Except for waste which is exempt in accordance with subsection 3, the Board of Environmental Protection shall assess each low-level radioactive waste generator for a service fee on all low-level radioactive waste generated in this State which is shipped to commercial low-level radioactive waste disposal facilities, stored awaiting disposal at a commercial low-level radioactive waste disposal facility or stored for any other purpose. That service fee shall be based 50% on the volume and 50% on the radioactivity of the waste generated in the previous calendar year, but each generator shall be assessed an annual fee of at least \$300. The Board of Environmental Protection shall promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, concerning the calculation of the fee and the exemptions to the fee, consistent with this section. The revenue from this service fee shall be credited to the fund established in subsection 1 and used to carry out this chapter.

3. Fee exemptions. The following types of

1 low-level radioactive waste shall be exempt from the
2 service fee established in subsection 2:

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

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

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

14 4. Fee assessment; ceiling. Except for money
15 received from sources other than fees, the fund es-
16 tablished by this section shall not exceed a balance
17 of \$250,000. The Commissioner of Environmental Pro-
18 tection shall determine the fees as of June 30th an-
19 nually, beginning in 1987, sufficient to bring the
20 starting balance in the fund for the fiscal year be-
21 ginning July 1st up to the ceiling established by
22 this subsection. The commissioner shall assess each
23 generator for its service fee. Each generator shall
24 pay the service fee within 30 days, except that any
25 generator may choose to make quarterly payments in-
26 stead. In the event that the balance in the fund at
27 the beginning of the fiscal year exceeds the ceiling,
28 the excess shall be remitted to the generators within
29 30 days, in proportion to their payments during the
30 previous fiscal year. Upon dissolution of the com-
31 mission, any unexpended funds shall be promptly re-
32 mitted to the generators in proportion to their pay-
33 ments in the previous fiscal year.

34 5. Allocation. Money in the fund established by
35 this section shall be allocated from time to time by
36 the Legislature for the following purposes: To the
37 commission for advisory and public information activ-
38 ities and to the Department of Environmental Protec-
39 tion for regulatory activities. These amounts shall
40 become available in accordance with Title 5, chapters
41 141 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 chap-
10 ter.

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, line
20 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 and transfers of funds
25 under subsection 7-A.

26 7-A. Transfer of funds. Notwithstanding Title
27 5, section 1585, funds allocated under this section
28 may be transferred, as necessary to accomplish the
29 purposes of this chapter, from the Department of En-
30 vironmental Protection to other agencies, including
31 the Maine Geological Survey, Maine Land Use Regula-
32 tion Commission, Division of Health Engineering and
33 the State Planning Office.

34 Sec. 4. 38 MRSA c. 14-B is enacted to read:

35 CHAPTER 14-B

36 MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY

37 SUBCHAPTER I

38 GENERAL PROVISIONS

1 §1501. Short title

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

5 §1502. Legislative findings and purpose

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

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

1 §1503. Definitions

2 As used in this chapter, unless the context oth-
3 erwise indicates, the following terms have the fol-
4 lowing meanings.

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

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

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

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

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

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

38 7. Low-level radioactive waste generator.
39 "Low-level radioactive waste generator" or "genera-

1 tor" means a person who produces or processes
2 low-level radioactive waste, whether or not that
3 waste is shipped off-site.

4 8. Operator. "Operator" means a person, includ-
5 ing the authority, designated to develop and operate
6 a facility.

7 9. Person. "Person" means an individual, a
8 partnership, a voluntary association, a firm, a cor-
9 poration and a governmental or quasi-public entity.

10 §1504. Essential governmental function

11 The purposes of this chapter are public and the
12 authority is performing an essential governmental
13 function in carrying out this chapter.

14 §1505. Exemption from taxes; payment in lieu of
15 taxes

16 1. Exemption from taxes. The authority shall
17 not be required to pay any taxes on any property re-
18 quired or used by it for the purposes provided in
19 this chapter, nor may the authority be required to
20 pay any tax upon its income, except as may be re-
21 quired by the laws of the United States.

22 2. Payment in lieu of taxes. The authority
23 shall annually pay a municipality an amount in lieu
24 of taxes equal to the amount of property taxes not
25 paid to that municipality during the previous calen-
26 dar year due to the statutory property tax exemption
27 provided in this section. In the case of an unorga-
28 nized territory, the authority shall annually pay the
29 amount to the State Tax Assessor who shall deposit
30 that amount in the Unorganized Territory Education
31 and Services Fund established in Title 36, chapter
32 115. If the authority disagrees with the amount de-
33 termined to be due in lieu of taxes under this sub-
34 section, it may appeal to the State Board of Property
35 Tax Review as provided in Title 36, section 271.

36 §1506. Fiscal year

37 The fiscal year of the authority shall coincide
38 with that of the State.

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SUBCHAPTER II

ORGANIZATION

§1511. Authority established

There is established, to carry out the purposes of this chapter, the Maine Low-level Radioactive Waste Authority referred to in this chapter as the "authority." The authority is a body corporate and politic and is an instrumentality of the State.

§1512. Membership; qualifications; terms; and compensation

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

A. Prior to selection of a disposal site, including voter approval as provided in section 1493, the authority shall consist of 7 members, including the State Geologist, ex officio, and 6 public members appointed by the Governor subject to confirmation by the Legislature. The Governor shall select a chairman from among the 6 public members.

B. Within 30 days after selection of a disposal site, including voter approval as provided in section 1493, 2 additional members representing the area selected shall be appointed to the authority. Those 2 members shall be appointed by the Governor from among a list of candidates nominated by the municipal officers of the municipality or municipalities in which the site is located or, in the case of selection of a site in the unorganized territories, the county commissioners of the county or counties in which the site is located. Those 2 members are subject to confirmation by the Legislature.

2. Qualifications. Among the members there shall be at least one person knowledgeable in the health field; one person knowledgeable in the field of nuclear waste; one person knowledgeable in the field of construction engineering; one person knowledgeable in the environmental field; one person

1 knowledgeable in the field of public administration;
2 and one person knowledgeable in the field of busi-
3 ness. The appointments shall reflect some geographi-
4 cal diversity. The 2 members representing the area
5 selected for a disposal site shall be residents of
6 the area in which the site is to be located. No mem-
7 ber, except the State Geologist, may be a state em-
8 ployee while serving as a member of the authority.

9 3. Terms of office. The appointed members shall
10 each serve 4-year terms, except of the terms of the
11 initial 6 appointments, 1 shall expire June 30, 1988;
12 2 shall expire June 30, 1989; 1 shall expire June 30,
13 1990; and 2 shall expire June 30, 1991. The terms of
14 the 2 members appointed to represent the area se-
15 lected for a disposal site shall also be staggered.
16 Of the initial 2 appointees, one shall be appointed
17 for a term of up to 2 years which expires June 30th
18 and one shall be appointed for a term of up to 4
19 years which expires on June 30th. Persons appointed
20 to fill vacancies shall be appointed in the same man-
21 ner as the person whom they are replacing to complete
22 the unexpired term of the former member. No member
23 may serve more than 2 consecutive full terms.

24 4. Reimbursement. Members, except the State Ge-
25 ologist, shall be paid \$100 per diem. All members
26 shall be paid for expenses in the same manner as
27 state employees.

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 authority shall hire an execu-
39 tive director who shall serve at the pleasure of the
40 authority. The salary of the executive director

1 shall be established by the authority at the time of
2 appointment.

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

9 §1515. Staff employees; conflict of interest; per-
10 sonal liability

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

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

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

25 4. Personal liability. Personal liability of
26 authority members and employees shall be as provided
27 in the Maine Tort Claims Act, Title 14, chapter 741,
28 except that the authority shall indemnify a member or
29 an employee against any liability arising out of an
30 act or omission occurring within the course or scope
31 of employment.

32 §1516. Sunset

33 1. Justification report; evaluation and analy-
34 sis. For purposes of the Maine Sunset Act, Title 3,
35 chapter 23, the authority shall be considered an in-
36 dependent agency, with its first justification report
37 in accordance with Title 3, section 504, due no later
38 than October 31, 1996, and the evaluation and analy-
39 sis in accordance with Title 3, section 505, by the

1 joint standing committee of the Legislature having
2 jurisdiction over audit and program review due no later
3 than December 31, 1997, but notwithstanding Title
4 3, sections 506 and 507, the authority shall not terminate,
5 except as provided in this chapter.

6 2. Termination. The authority shall terminate
7 one year after:

8 A. The State has entered into a compact ratified
9 as provided in section 1474, for the disposal of
10 all low-level radioactive waste for which the
11 State is responsible;

12 B. The State has entered into an agreement determined by the
13 authority to be sufficient to provide for the disposal of all low-level
14 radioactive waste for which the State is responsible;
15 or
16 or

17 C. The United States Nuclear Regulatory Commission has terminated
18 the license under 10 Code of Federal Regulations, Section 61.31, for any
19 disposal facility constructed in accordance with
20 this chapter.
21 this chapter.

22 3. Report to the Legislature. Within 30 days of
23 the occurrence of any of the events described in sub-
24 section 2, the authority shall issue a report verifying
25 that fact to the Governor and the Legislature.

26 SUBCHAPTER III
27 POWERS AND PROPERTY

28 §1521. Powers

29 In order to accomplish the purposes of this chapter
30 and in addition to any other powers conveyed by
31 this chapter, the authority may exercise the following
32 powers:

33 1. Sue. Sue and be sued;

34 2. Seal. Have a seal and alter the seal at its
35 pleasure;

36 3. Bylaws. Adopt from time to time and amend

1 bylaws covering its procedure, publish those bylaws
2 as necessary or advisable and cause records of its
3 proceedings to be kept;

4 4. Rules. Promulgate in accordance with the
5 Maine Administrative Procedure Act, Title 5, chapter
6 375, all rules necessary to carry out its responsi-
7 bilities under this chapter, including procedural
8 rules, rules for operation of a disposal facility and
9 other rules;

10 5. Disposal facility. Plan, site, construct,
11 operate, maintain, close, provide long-term care and
12 provide for termination of the license of a low-level
13 radioactive waste disposal facility or facilities
14 with sufficient capacity only to dispose of the
15 low-level radioactive waste generated within this
16 State and for which the State is responsible;

17 6. Personal property. Acquire, hold and dispose
18 of personal property;

19 7. Real property. Acquire in the name of the
20 authority by purchase, eminent domain, lease or oth-
21 erwise, real property and interests in real property
22 determined necessary or desirable for its purposes,
23 and use the property;

24 8. Fees. Establish and collect fees, assess-
25 ments and other charges and expend money received as
26 provided in this chapter;

27 9. Contracts. Make, modify and carry out con-
28 tracts or agreements with the United States or any
29 instrumentality or agency of the United States, this
30 State or any of its agencies or instrumentalities,
31 municipalities or bodies existing therein, public
32 corporations, private corporations, partnerships, as-
33 sociations and individuals which are necessary or
34 useful in carrying out its powers, duties or pur-
35 poses;

36 10. Employees. Employ such assistants, agents,
37 engineering, architectural and construction experts
38 and inspectors and attorneys and such other employees
39 as it deems necessary or desirable to carry out its
40 purposes;

1 11. Information. Obtain any information and
2 conduct investigations useful or convenient for carrying out any of its purposes, powers or duties;
3

4 12. Inspections. Conduct inspections of gener-
5 ators, processors, storers and transporters of
6 low-level radioactive waste;

7 13. Entry at reasonable hours. Enter during
8 normal working hours upon any lands, waters and
9 premises in the State for the purpose of making sur-
10 veys, soundings, drillings, examinations and inspec-
11 tions as it deems necessary for the purpose of this
12 chapter. The entry shall not be deemed a trespass;

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

15 15. Enforcement. Establish and enforce
16 low-level radioactive waste packaging and transporta-
17 tion requirements;

18 16. Exercise powers. Exercise any of its powers
19 in the public domain of the United States, unless the
20 exercise of those powers is not permitted by the laws
21 of the United States; and

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

25 §1522. Property

26 All property of the authority and all property
27 held in the name of the State pursuant to this chap-
28 ter shall be exempt from levy and sale by virtue of
29 any execution, and no execution or other judicial
30 process may be a lien upon its property held pursuant
31 to this chapter; provided that the authority shall
32 not lease, sell or otherwise convey any of its real
33 or personal property or easements in property, fran-
34 chises, buildings or structures, except that the au-
35 thority may permit the erection or installation of
36 electric power, telegraph, telephone, water, sewer or
37 pipeline facilities.

38 §1523. Contractors; contracts

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

4 2. Approval. Contracts and agreements for more
5 than \$10,000 relating to the construction, operation,
6 maintenance, closure and post-closure monitoring of a
7 disposal facility shall be awarded only after compet-
8 itive bid and approval by the authority.

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

11 §1524. Penalties

12 1. Violation. Any person who violates this
13 chapter or any rule promulgated under this chapter or
14 neglects or refuses to comply with any of the provi-
15 sions of this chapter, commits a civil violation for
16 which a forfeiture not to exceed \$1,000 may be ad-
17 judged. Each day of violation shall be considered a
18 separate offense.

19 2. Public health and safety. Any person who
20 commits a violation as described in subsection 1
21 which endangers the health and safety of the public
22 or of the employees of the disposal facility shall be
23 subject to a civil penalty not to exceed \$5,000 to be
24 recovered in a civil action. Each day of violation
25 shall be considered a separate offense.

26 3. Suspension of access. Any person who commits
27 a violation as described in subsections 1 and 2 may,
28 in addition to the penalties provided in subsections
29 1 and 2, have access to a disposal facility suspended
30 by the authority for up to one year. That suspension
31 may be renewed until the violator demonstrates the
32 ability to remedy the situation for which the penalty
33 was assessed.

34 The authority shall enforce this section in the Super-
35 rior Court for Kennebec County or for the county in
36 which the violation occurs.

37 SUBCHAPTER IV

38 DUTIES AND RESPONSIBILITIES

1 §1525. Low-level radioactive waste management plan

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

14 §1526. Operating plan and budget; annual report

15 1. Operating plan and budget. The authority
16 shall submit its annual operating plan and proposed
17 budget for the fiscal year beginning July 1st of each
18 year to the Governor, the Legislature and the advis-
19 ory commission by January 1st of that year. The Gov-
20 ernor and the advisory commission shall review the
21 operating plan and budget, but their approval is not
22 required. The portion of the authority's budget per-
23 taining to the administration and operation of the
24 authority requires approval by resolve of the Legis-
25 lature. The Legislature may revise the administra-
26 tive and operational portion of the budget prior to
27 approval. Any budget not approved by April 1st shall
28 be deemed to be approved.

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

33 §1527. Planning, siting and construction of facili-
34 ties

35 1. State facility required. The authority shall
36 develop or provide for the development of, if neces-
37 sary, in accordance with a schedule designed to meet
38 the State's obligations under federal law, a facility
39 or facilities for disposal of all low-level radioac-
40 tive waste generated in the State and for which the
41 State is legally responsible, except to the extent

1 that a generator, prior to construction of the state
2 facility or facilities, informs the authority that it
3 will not need disposal capacity in the state facili-
4 ty.

5 2. Limitation. Site selection activities shall
6 not begin until all planning and necessary rule adop-
7 tion has been completed. Construction shall not be-
8 gin until all approvals are obtained under state and
9 federal law, including voter approval required by
10 section 1493. The proposal shall be submitted to the
11 voters after the Legislature has approved it under
12 section 1479.

13 §1528. Records

14 Following commencement of operation of any
15 low-level radioactive waste disposal facility in this
16 State. The authority shall keep, or cause to be
17 kept, detailed records of all waste disposed of at
18 the facility.

19 SUBCHAPTER V

20 FINANCIAL MATTERS

21 §1531. Fees and other charges

22 The authority shall establish, by rule, fees and
23 other charges sufficient to fund the costs of all
24 low-level radioactive waste disposal activities re-
25 quired by this chapter, including sufficient reserves
26 to cover unforeseen contingencies in the construction
27 phase, the operational phase and the closure and
28 long-term care phase.

29 §1532. Obligations of the authority; use of revenue

30 1. Payment. All expenses incurred in carrying
31 out this chapter shall be paid solely from funds pro-
32 vided in accordance with this chapter and no obliga-
33 tion may be incurred under this chapter beyond the
34 extent to which money has been provided in accordance
35 with this chapter.

36 2. Limitation on expenditures. Expenditure of
37 all revenues received by the authority shall be lim-

1 ited to the purposes of this chapter.

2 §1533. Grants

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

10 §1534. Low-level Radioactive Waste Facility Fund

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

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

25 2. Expenditure of funds. Unless otherwise pro-
26 vided, all the activities described in this chapter,
27 including administrative and operational costs of the
28 authority, shall be funded from the Low-level Radio-
29 active Waste Facility Fund.

30 3. Surplus revenues. Surplus revenues in the
31 Low-level Radioactive Waste Facility Fund shall be
32 carried forward and used to reduce the assessments or
33 fees the following year.

34 §1534-A. Administrative costs

35 1. Assessment. Funds to pay the administrative
36 and operational costs of the authority shall be
37 raised by an assessment of a service fee on each gen-
38 erator of low-level radioactive waste generated in

1 this State. The revenue from this service fee shall
2 be deposited in the Low-Level Radioactive Waste Fa-
3 ility Fund. The authority shall promulgate rules in
4 accordance with the Maine Administrative Procedure
5 Act concerning the calculation of the fee which shall
6 be based 50% on the volume and 50% on the radioactiv-
7 ity of the waste generated in the previous year.

8 2. Reports. The authority shall report annual-
9 ly, before February 1st, to the joint standing com-
10 mittee of the Legislature having jurisdiction over
11 natural resources on the income to and expenditures
12 from the Low-Level Radioactive Waste Facility Fund
13 for administrative costs for the previous fiscal year
14 and on the budget for the coming year. Those reports
15 shall include total fees received from each generator
16 and line item detail on expenditures, including
17 in-state travel and out-of-state travel, printing,
18 mailing and hearings, personnel, consultant services,
19 general operating expenses, supplies and overhead for
20 both the commission and the department.

21 §1535. Planning, siting and construction costs; ad-
22 ministrative costs; limit on assessment

23 1. Assessment. The authority shall assess any
24 nuclear plant within the State for the full cost of
25 planning, siting, licensing and construction of a
26 low-level radioactive waste disposal facility, in-
27 cluding reasonable reserves for unforeseen contingen-
28 cies. The assessment shall be made as the funds are
29 needed, but with sufficient lead time for sound pro-
30 curement and fiscal management practices. This as-
31 sessment shall be deposited in the Low-level Radioac-
32 tive Waste Facility Fund.

33 2. Contractual agreements. Contractual agree-
34 ments with any nuclear power plant in the State must
35 be reached prior to any action on area screening and
36 site characterization or application for a license to
37 operate a disposal facility.

38 A. Area screening and site characterization
39 shall not proceed until a firm contractual agree-
40 ment is reached with any nuclear power plant in
41 the State to pay the full cost of those activi-
42 ties on or before the date those activities are

1 completed. No funds may be expended by the au-
2 thority for those purposes until they are re-
3 ceived from the responsible party.

4 B. Application for a license to operate a
5 low-level radioactive waste disposal facility
6 from the United States Nuclear Regulatory Commis-
7 sion shall not proceed until a firm contractual
8 agreement is reached with any nuclear power plant
9 in the State to pay the full cost of licensing
10 and constructing the facility on or before the
11 date construction will be completed. No funds
12 may be expended by the authority for those pur-
13 poses until they are received from the responsi-
14 ble party.

15 §1536. Operation, maintenance, closure and
16 post-closure costs

17 1. User fees. The authority shall establish by
18 rule a schedule of fees to be paid by all users of a
19 low-level radioactive waste disposal facility. Those
20 fees shall be sufficient to cover the annual operat-
21 ion and maintenance costs and the closure and
22 post-closure costs, including reasonable reserves for
23 unforeseen contingencies. The authority shall amor-
24 tize the closure and post-closure costs over the pro-
25 jected life of the facility and provide insurance up
26 to its full amount until those costs are fully amor-
27 tized.

28 2. Calculation. The authority shall calculate
29 user fees based 50% on the volume and 50% on the ra-
30 dioactivity of waste accepted by the facility. The
31 authority shall establish, by rule, additional fees
32 for hard-to-handle physical forms of waste.

33 3. Surcharge. A surcharge shall be added to the
34 user fees paid by any user who has not been assessed
35 for planning and construction under section 1535. A
36 corresponding reduction shall be credited to any user
37 who was so assessed.

38 4. Limitation. Operation of the state disposal
39 facility shall not proceed until:

40 A. The entire cost of planning, siting, licens-

1 ing and construction has been received from the
2 responsible parties; and

3 B. A firm contractual agreement covering at
4 least 15 years is reached with any nuclear power
5 plant in the State to pay its share of the annual
6 operating and maintenance costs, including an ap-
7 propriate contribution for closure, long-term
8 care and license termination.

9 §1537. Impact payments

10 In addition to payment in lieu of taxes provided
11 in section 1505, the authority may make impact pay-
12 ments based on measurable criteria to a municipality
13 in which a low-level radioactive waste disposal fa-
14 ility is located or, in the case of an unorganized
15 territory, to the State Tax Assessor upon request by
16 the community involved or by the State Tax Assessor.

17 §1538. Annual financial report; audit

18 Within 120 days after the close of its fiscal
19 year, the authority shall provide the Treasurer of
20 State with a copy of its annual financial report cer-
21 tified by an independent certified public accountant
22 selected by the authority. The authority shall also
23 be subject to Title 5, chapter 11.

24 §1539. Budget and fiscal management

25 Expenditures by the authority shall be consistent
26 with and within the scope of the annual operating
27 plan and budget, but the authority is exempt from the
28 budget requirements of Title 5. Expenditures from
29 the Low-level Radioactive Waste Facility Fund do not
30 require allocation by the Legislature.

31 §1540. Liability

32 1. Strict liability. Notwithstanding any provi-
33 sion of law to the contrary, any person, including
34 the authority, engaged in low-level radioactive waste
35 disposal activities provided in this chapter, shall
36 be subject to liability without fault for property
37 damage, bodily injury or death resulting from those
38 activities. Any defendant in an action under this

1 subsection may be jointly and severally liable for
2 actual damages only.

3 2. Liability of authority. In the event a
4 building contractor, operator other than the authori-
5 ty or other contractor of the authority would other-
6 wise be subject to liability, but when no claim may
7 be successfully maintained or when no judgment may be
8 enforced against the builder, operator or contractor,
9 the authority shall be subject to liability for prop-
10 erty damage, bodily injury or death resulting from
11 the activity of that builder, operator or contractor.

12 3. State liability. If all other sources of
13 funds, including enforcement of a judgment under sub-
14 section 1, federal assistance, the reserve for un-
15 foreseen contingencies provided in sections 1535 and
16 1536, and supplemental fees provided in section 1542,
17 are insufficient to compensate injured persons, the
18 State shall provide compensation for property damage,
19 bodily injury or death resulting from the low-level
20 radioactive waste disposal activities provided in
21 this chapter.

22 4. Insurance. The authority shall purchase, or
23 require any of its contractors to purchase, insurance
24 or other financial protection against the site fail-
25 ure sufficient to cover any foreseeable problems dur-
26 ing the life of the facility plus a reasonable re-
27 serve for unforeseen contingencies. The cost of in-
28 surance purchased by the authority shall be included
29 in the assessment and fees charged by the facility
30 under sections 1535 and 1536.

31 SUBCHAPTER VI

32 RESPONSIBILITIES OF GENERATORS

33 §1541. Delivery of low-level radioactive waste re-
34 quired.

35 Unless otherwise authorized by the authority,
36 when the low-level radioactive waste facility is in
37 operation, in-state generators of low-level radioac-
38 tive waste for which the State is responsible shall
39 dispose of that waste at the disposal facility.

1 §1542. Supplemental fee

2 Except for costs attributable to negligence by
3 the authority or its contractors, if the cost of
4 post-closure care and long-term institutional con-
5 trol, including mitigation of any environmental prob-
6 lems that may develop at the site, exceeds the avail-
7 able funds, including enforcement of a judgment, fed-
8 eral assistance and the reserve for unforeseen con-
9 tingencies provided in sections 1535 and 1536, the
10 authority may assess generators of low-level radioac-
11 tive waste a supplemental fee to cover that cost, in
12 proportion to the volume and radioactivity of the
13 portion of the waste generated by each generator
14 which remains in the waste stream. In the event that
15 a generator has insufficient assets at that time, the
16 owners of that generator shall be jointly and sever-
17 ally liable for the supplemental fee of that genera-
18 tor. If any owner pays more than his proportional
19 share of the costs under this subsection, that owner
20 shall have a cause of action to recover that excess
21 from other owners who paid less than their share.

22 **Sec. 5. Transitional provisions.** In order to
23 provide money for the timely commencement of the work
24 of the authority and additional regulatory responsi-
25 bilities of the Department of Environmental Protec-
26 tion there shall be imposed an immediate assessment
27 of up to \$300,000 levied proportionally on all gener-
28 ators as provided in the Maine Revised Statutes, Ti-
29 tle 5, section 1454, on the amount of their waste
30 generated in calendar year 1986. The fees assessed
31 under this section shall be paid within 30 days of
32 the effective date of this Act and notwithstanding
33 the cap established in section 1454, deposited in the
34 Radioactive Waste Evaluation Fund established pursu-
35 ant to that section. The amount of \$200,000 shall be
36 transferred without repayment from the Radioactive
37 Waste Evaluation Fund to the Low-level Radioactive
38 Waste Facility Fund established pursuant to section
39 1534 to pay for operational costs incurred by the au-
40 thority in fiscal year 1986-87 and fiscal year
41 1987-88.

42 The portion of the \$6,312.49 in milestone incen-
43 tive payments from the United States Department of
44 Energy in account number 3536.1 which remains in that

1 account on the effective date of this Act is trans-
 2 ferred to the Low-level Radioactive Waste Facility
 3 Fund for use in accordance with the restrictions on
 4 the use of those funds in the United States Low-level
 5 Radioactive Waste Policy Amendments Act of 1985, Pub-
 6 lic Law 99-240.

7 **Sec. 6. Allocation.** The following funds are al-
 8 located from the Radioactive Waste Evaluation Fund to
 9 carry out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
11 <u>MAINE LOW-LEVEL RADIOAC-</u>		
12 <u>TIVE WASTE AUTHORITY</u>		
13 All Other	\$200,000	
14 Allocates funds to		
15 operate the Maine		
16 Low-level Radioac-		
17 tive Waste Author-		
18 ity		
19 <u>ENVIRONMENTAL PROTECTION,</u>		
20 <u>DEPARTMENT OF</u>		
21 Technical Studies		
22 Positions	(1)	(1)
23 Personal Services	\$31,500	25,500
24 All Other	56,500	5,500
25 Total	<u>\$ 89,350</u>	<u>\$ 31,000</u>
26 Allocates funds		
27 for an Environmen-		
28 tal Services Spe-		
29 cialist III posi-		
30 tion and for a		
31 contractual ar-		
32 rangement to de-		
33 velop siting rules		
34 for a facility.		
35		
36 TOTAL	<u>\$289,350</u>	<u>\$31,000</u>

1 **Emergency clause.** In view of the emergency cited
2 in the preamble, this Act shall take effect when ap-
3 proved.

4 **FISCAL NOTE**

5 This new draft will increase dedicated revenue in
6 the Radioactive Waste Evaluation Fund of up to
7 \$300,000 in 1987. Those funds are allocated in fis-
8 cal year 1986-87 and fiscal year 1987-88.

9 In addition, this new draft creates a Low-level
10 Radioactive Waste Facility Fund to pay for the admin-
11 istrative and operational costs of the authority and
12 the planning, siting, construction, operation and
13 maintenance, closure and post-closure costs of a
14 low-level radioactive waste disposal facility. The
15 money in that fund is to be raised by assessments on
16 nuclear power plants operating in the State and other
17 generators of low-level radioactive waste in the
18 State and by imposition of fees on users of the fa-
19 cility. The assessment for planning, siting and con-
20 struction of the facility is limited to \$10,000,000.

21 Finally, this new draft results in a possible fu-
22 ture cost to the General Fund due to the provision
23 which could make the State liable for damages result-
24 ing from disposal activities.

25 **STATEMENT OF FACT**

26 This new draft adds a fiscal note to the bill,
27 amends the appropriation section and makes several
28 substantive changes in the bill. The authority mem-
29 bership is reduced to 7 including the State Geolo-
30 gist, and members are to be paid at the rate of \$100
31 per diem plus expenses. The executive director is to
32 be chosen by the authority and paid at a level estab-
33 lished by it. Employees and members of the authority
34 are to be indemnified by the authority for liability
35 arising out of their employment. The authority is
36 directed to keep detailed records regarding the stor-
37 age of waste. The ability to acquire property by
38 eminent domain is removed from the authority's pow-

1 ers. The funding provisions of the authority are
2 clarified, including requiring approval of the au-
3 thority's budget for administrative and operational
4 expenses by the Legislature. Transitional provisions
5 are clarified to provide for first year administra-
6 tive start-up costs of the authority and additional
7 regulatory responsibilities of the Department of En-
8 vironmental Protection. In order to provide ongoing
9 funding for additional departmental costs, the Radio-
10 active Waste Evaluation Fund cap is raised to
11 \$250,000.

12

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