

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

PKS

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47

L.D. 1266
(Filing No. S- 289)

**STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 469, L.D. 1266, Bill, "An Act to Amend Certain Provisions of the Maine Low-level Radioactive Waste Authority Act"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 38 MRSA §1502, as enacted by PL 1987, c. 530, §4, is amended to read:

§1502. Legislative findings and purpose

The United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, requires that states assume responsibility for providing the capacity for the disposal of low-level radioactive waste generated within their borders. The State has expressed its intent to develop, if necessary, a site for the location of a low-level radioactive waste disposal or storage facility within the State. The State is continuing to try to negotiate a compact or agreement for low-level radioactive waste disposal out of the State. The United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, establishes January 1, 1988, as the milestone date for states which are not members of a compact to develop a siting plan for a low-level radioactive waste disposal facility. To accomplish that task, it is necessary for the State to provide for planning, siting, construction, operation and maintenance, site closure and long-term, post-closure control of a low-level radioactive waste disposal facility or facilities. In order to protect public health, safety and the environment, federal regulations require the effective isolation of low-level radioactive waste for 500 years following disposal site closure, observation and maintenance of the closed site and long-term institutional control of the site leading to termination of the operating license.

1
3 If an application for a license to operate a disposal
5 facility has not been filed by January 1, 1990, federal law
7 requires that the Governor provide written certification that the
9 State is capable of providing for, and will provide for, the
11 storage, disposal or management of low-level radioactive waste
13 generated within the State. Thus, it is necessary for the State
to either provide for planning, siting, construction, operation
and maintenance, and site closure of a low-level radioactive
waste storage facility or facilities or other management
strategies for low-level radioactive waste, while the State
continues to proceed with the planning, siting and construction
of a low-level radioactive waste disposal facility.

15 The purpose of this chapter is to establish the Maine
17 Low-level Radioactive Waste Authority with the responsibility, if
19 necessary, to coordinate and oversee the planning, siting,
21 construction, operation, maintenance, closure, post-closure
23 observation and maintenance and long-term institutional control
25 of a facility or facilities with sufficient capacity to dispose
27 of only or to store the low-level radioactive waste generated
29 within this State and for which this State is responsible and to
31 provide for termination of the license for the facility or
33 facilities.

25 Sec. 2. 38 MRSA §1503, sub-§§6-A and 7-A are enacted to read:

27
29 6-A. Low-level radioactive waste storage facility.
31 "Low-level radioactive waste storage facility" or "storage
33 facility" means a parcel of land, together with the structures,
35 equipment and improvements on or attached to the land, for the
storage of all low-level radioactive waste generated within the
State and for which the State is responsible, except for on-site
low-level radioactive waste storage.

37 7-A. On-site low-level radioactive waste storage. "On-site
39 low-level radioactive waste storage" or "on-site storage" means
temporary storage located on the parcel of land on which the
waste is generated.

41 Sec. 3. 38 MRSA §1516, sub-§1, as enacted by PL 1987, c. 530,
43 §4, is amended to read:

45 1. Justification report; evaluation and analysis. For
47 purposes of the Maine Sunset Act, Title 3, chapter 23, the
49 authority shall be considered an independent agency, with its
51 first justification report in accordance with Title 3, section
504, due no later than October 31, 1996, and the evaluation and
analysis in accordance with Title 3, section 505, by the joint
standing committee of the Legislature having jurisdiction over
audit and program review due no later than December 31, 1997, but

H. W. S.

COMMITTEE AMENDMENT "A" to S.P. 469, L.D. 1266

1 notwithstanding Title 3, sections 506 and 507, the authority
shall not terminate, ~~except as provided in this chapter.~~

3

5 **Sec. 4. 38 MRSA §1516, sub-§§2 and 3, as enacted by PL 1987, c.
530, §4, are repealed.**

7 **Sec. 5. 38 MRSA §1521, sub-§4, as enacted by PL 1987, c. 530,
§4, is amended to read:**

9

11 4. Rules. Promulgate in accordance with the Maine
Administrative Procedure Act, Title 5, chapter 375, all rules
13 necessary to carry out its responsibilities under this chapter,
including procedural rules, rules for operation of a disposal or
storage facility and other rules;

15

Sec. 6. 38 MRSA §1521, sub-§§5-A and 5-B are enacted to read:

17

19 5-A. On-site storage. If the authority determines that
permanent disposal arrangements will not be ready by 1996, then
the authority shall require generators that do not have adequate
on-site storage capacity to:

21

23 A. Apply to the appropriate licensing authority for timely
licensure for on-site storage of low-level radioactive waste
from 1996 to 2001;

25

27 B. Upon approval under paragraph A, construct a facility
for on-site storage of low-level radioactive waste, with
sufficient capacity to store on-site waste generated from
1996 to 2001, together with any waste accumulated on the
site as of 1996, that meets the licensing requirements for
storage facilities of the Nuclear Regulatory Commission; and

29

31

33

35

37

39

41

43

45

47

49

51

C. Store low-level radioactive waste in an on-site storage
facility in accordance with the terms of any license, if the
appropriate licensing authority approves licensure.

The authority shall adopt rules, subject to the Maine
Administrative Procedure Act, Title 5, chapter 375, consistent
with federal law to implement this subsection.

41

43

45

47

49

51

5-B. Storage facility. If disposal capacity cannot be
provided by 1996, then the authority may commence, on January 1,
1993, the planning, siting and construction of a low-level
radioactive waste storage facility or facilities with sufficient
capacity to store all low-level radioactive waste generated
within this State and for which the State is responsible, and
commence the operation of any storage facility or facilities on
January 1, 1996, provided that, on January 1, 1996, on-site
storage is not available for storing all low-level radioactive
waste generated within this State and for which the State is
responsible. The authority shall maintain, close and provide for

R. 013

COMMITTEE AMENDMENT "A" to S.P. 469, L.D. 1266

1 termination of the license of any low-level radioactive waste
2 storage facility or facilities.

3

4 **Sec. 7. 38 MRSA §1523, sub-§2, as enacted by PL 1987, c. 530,**
5 **§4, is amended to read:**

6

7 2. Approval. Contracts and agreements for more than
8 \$10,000 relating to the construction, operation, maintenance,
9 closure and post-closure monitoring of a disposal or storage
10 facility shall be awarded only after competitive bid and approval
11 by the authority.

12

13 **Sec. 8. 38 MRSA §1524, sub-§§2 and 3, as enacted by PL 1987, c.**
14 **530, §4, are amended to read:**

15

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

22

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

30

31 The authority shall enforce this section in the Superior Court
32 for Kennebec County or for the county in which the violation
33 occurs.

34

35 **Sec. 9. 38 MRSA §1525, as amended by PL 1987, c. 544, is**
36 **further amended to read:**

37

38 **§1525. Low-level radioactive waste management plan**

39

40 The authority shall promulgate by rule, following public
41 hearing, a plan for the management of the State's low-level
42 radioactive waste. The plan shall guide the State's activities
43 in disposing of the State's low-level radioactive waste. The
44 plan shall be adopted by January 1, 1988, and shall be updated
45 annually. The first plan is intended to meet the January 1,
46 1988, milestone date for the development of a siting plan
47 required by the United States Code, Title 42, Section 5(e)(1)(B),
48 of the United States Low-level Radioactive Policy Amendments Act
49 of 1985, Public Law 99-240. The plan, as updated, shall also
50 include a provision for the State's activities in licensing and
51 operating a low-level radioactive waste storage facility prior to

1 permanent disposal, unless the authority determines that planning
2 for a storage facility is unnecessary.

3
4 **Sec. 10. 38 MRSA §1527, sub-§1, as enacted by PL 1987, c. 530,**
5 **§4, is amended to read:**

6
7 1. **State facility required.** The authority shall develop or
8 provide for the development of, if necessary, in accordance with
9 a schedule designed to meet the State's obligations under federal
10 law, a facility or facilities for disposal or storage of all
11 low-level radioactive waste generated in the State and for which
12 the State is legally responsible, except to the extent that a
13 generator, prior to construction of the state facility or
14 facilities, informs the authority that it will not need disposal
15 or storage capacity in the state facility.

16
17 **Sec. 11. 38 MRSA §1528, as enacted by PL 1987, c. 530, §4, is**
18 **amended to read:**

19
20 **§1528. Records**

21
22 Following commencement of operation of any low-level
23 radioactive waste disposal or storage facility in this State--The
24 the authority shall keep, or cause to be kept, detailed records
25 of all waste disposed of or stored at the facility.

26
27 **Sec. 12. 38 MRSA §1531, as enacted by PL 1987, c. 530, §4, is**
28 **amended to read:**

29
30 **§1531. Fees and other charges**

31
32 The authority shall establish, by rule, fees and other
33 charges sufficient to fund the costs of all low-level radioactive
34 waste disposal and storage activities required by this chapter,
35 including sufficient reserves to cover unforeseen contingencies
36 in the construction phase, the operational phase and the closure
37 and long-term care phase.

38
39 **Sec. 13. 38 MRSA §1534, as enacted by PL 1987, c. 530, §4, is**
40 **amended to read:**

41
42 **§1534. Low-level Radioactive Waste Facility Fund**

43
44 There is created a nonlapsing, revolving fund known as the
45 Low-level Radioactive Waste Facility Fund to be used to pay for
46 the planning, siting, construction, operation, maintenance,
47 closure and post-closure costs of a disposal or storage facility
48 and the administrative and operational costs of the authority.

49
50 1. **Revenue deposited.** Unless otherwise provided, all
51 revenue collected by the authority or the disposal or storage

COMMITTEE AMENDMENT "A" to S.P. 469, L.D. 1266

1 facility to be used for planning, siting, construction,
2 operation, maintenance, closure and post-closure costs of a
3 disposal or storage facility and administrative and operational
4 costs of the authority shall be deposited in the Low-level
5 Radioactive Waste Facility Fund.

7 2. Expenditure of funds. Unless otherwise provided, all
8 the activities described in this chapter, including
9 administrative and operational costs of the authority, shall be
10 funded from the Low-level Radioactive Waste Facility Fund.

11 3. Surplus revenues. Surplus revenues in the Low-level
12 Radioactive Waste Facility Fund shall be carried forward and used
13 to reduce the assessments or fees raised in accordance with
14 section 1534-A the following year.

17 Sec. 14. 38 MRSA §1534-A, as enacted by PL 1987, c. 530, §4,
18 is amended to read:

19 §1534-A. Administrative costs

21 1. Assessment. Funds to pay the administrative and
22 operational costs of the authority shall be raised by an
23 assessment of a service fee on each generator of low-level
24 radioactive waste generated in this State. The authority shall
25 annually on June 30th, beginning in 1988 1989, assess a service
26 fee calculated in accordance with this subsection in an amount
27 equal to \$200,000 not to exceed \$400,000 less any balance carried
28 forward under section 1534, subsection 3. Each generator shall
29 pay the service fee within 30 days, except that any generator may
30 choose to make quarterly payments instead. The revenue from this
31 service fee shall be deposited in the ~~Low-Level~~ Low-level
32 Radioactive Waste Facility Fund. The authority shall promulgate
33 rules in accordance with the Maine Administrative Procedure Act,
34 Title 5, chapter 375, concerning the calculation of the fee which
35 shall be based 50% on the volume and 50% on the radioactivity of
36 the waste generated in the previous year.

39 2. Reports. The authority shall report annually, before
40 February 1st, to the joint standing committee of the Legislature
41 having jurisdiction over natural resources on the income to and
42 expenditures from the ~~Low-Level~~ Low-level Radioactive Waste
43 Facility Fund for administrative costs for the previous fiscal
44 year and on the budget for the coming year. Those reports shall
45 include total fees received from each generator and line item
46 detail on expenditures, including in-state travel and
47 out-of-state travel, printing, mailing and hearings, personnel,
48 consultant services, general operating expenses, supplies and
49 overhead for ~~both the commission and the department~~ authority.

51 Sec. 15. 38 MRSA §1535, sub-§1, as amended by PL 1987, c. 769,
52 Pt. A, §183, is further amended to read:

53

COMMITTEE AMENDMENT "A" to S.P. 469, L.D. 1266

1 1. **Assessment.** The authority shall assess any nuclear
2 plant within the State for the full cost of planning, siting,
3 licensing and construction of a low-level radioactive waste
4 disposal or storage facility, including reasonable reserves for
5 unforeseen contingencies. The initial assessment shall not
6 exceed \$10,000,000 and shall be assessed as follows: \$1,500,000
7 on March 1, 1988; \$2,500,000 on March 1, 1989; \$2,000,000 on
8 March 1, 1990; \$2,000,000 on March 1, 1991; and \$2,000,000 on
9 March 1, 1992. As reliable cost estimates become available,
10 additional costs associated with any low-level radioactive waste
11 disposal and storage facilities shall be assessed any nuclear
12 plant within the State following legislative enactment. The
13 amount assessed shall be paid within 30 days of assessment. This
14 assessment shall be deposited in the Low-level Radioactive Waste
15 Facility Fund.

17 **Sec. 16. 38 MRSA §1536, sub-§1,** as enacted by PL 1987, c. 530,
18 §4, is amended to read:

19
20 1. **User fees.** All users of a low-level radioactive waste
21 disposal facility shall be assessed a user fee calculated in
22 accordance with subsections 2 and 3. User fees established under
23 this section shall be designed to raise \$1,000,000 per year.
24 Fees shall not be collected in excess of that amount or, if
25 collected, shall be returned to the users within 15 days of
26 receipt. All users of a low-level radioactive waste storage
27 facility operated by the authority shall be assessed a user fee
28 to cover the costs of operation, maintenance, closure and
29 post-closure of the facility. The authority shall establish, by
30 rule, a schedule of fees to be paid by all users of a low-level
31 radioactive waste disposal or storage facility.

33 **Sec. 17. 38 MRSA §1540, sub-§§1, 3 and 4,** as enacted by PL 1987,
34 c. 530, §4, are amended to read:

35
36 1. **Strict liability.** Notwithstanding any provision of law
37 to the contrary, any person, including the authority, engaged in
38 low-level radioactive waste disposal or storage activities
39 provided in this chapter, shall be subject to liability without
40 fault for property damage, bodily injury or death resulting from
41 those activities. Any defendant in an action under this
42 subsection may be jointly and severally liable for actual damages
43 only.

44
45 3. **State liability.** If all other sources of funds,
46 including enforcement of a judgment under subsection 1, federal
47 assistance, the reserve for unforeseen contingencies provided in
48 sections 1535 and 1536, and supplemental fees provided in section
49 1542, are insufficient to compensate injured persons, the State
50 shall provide compensation for property damage, bodily injury or
51 death resulting from the low-level radioactive waste disposal or
52 storage activities provided in this chapter.

R. W. S.

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47

4. Insurance. The authority shall purchase, or require any of its contractors to purchase, insurance or other financial protection, including a self-insurance fund, against the site failure sufficient to cover any foreseeable problems during the life of the facility plus a reasonable reserve for unforeseen contingencies. The cost of insurance purchased by the authority shall be included in the assessment and fees charged by the facility under sections 1535 and 1536.

Sec. 18. 38 MRSA §1541, as enacted by PL 1987, c. 530, §4, is amended to read:

§1541. Delivery of low-level radioactive waste required

Unless otherwise authorized by the authority, when the low-level radioactive waste disposal or storage facility is in operation, in-state generators of low-level radioactive waste for which the State is responsible shall dispose of or store that waste at the disposal or storage facility.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.'

STATEMENT OF FACT

This amendment expands the authority of the Maine Low-level Radioactive Waste Authority to develop storage facilities if disposal capacity for low-level radioactive waste is not available by 1996. It also allows the authority to require generators of low-level radioactive waste to store that waste on-site. It also allows the authority to develop storage facilities after 1993.

The provision has been deleted which provided that the authority terminate one year after a compact has been ratified or an agreement for disposal out-of-state or the license for any disposal capacity has been terminated. This was done in recognition that there may be administrative duties the authority would undertake associated with disposing of waste out-of-state or as part of a compact.

A cap on the administrative costs of the authority is increased and language is added to strengthen the provision that current assessments for a disposal or storage facility are preliminary.

Reported by Senator Ludwig for the Committee on Energy and Natural Resources. Reproduced and Distributed Pursuant to Senate Rule 12.