

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1266

S.P. 469

In Senate, April 20, 1989

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KANY of Kennebec:

Cosponsored by Representative COLES of Harpswell, Representative MITCHELL of Freeport and Senator HOLLOWAY of Lincoln.

STATE OF MAINE

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

An Act to Amend Certain Provisions of the Maine Low-level Radioactive Waste Authority Act.

(EMERGENCY)



1 **Emergency preamble.** Whereas, Acts of the Legislature do not
2 become effective until 90 days after adjournment unless enacted
3 as emergencies; and

4 Whereas, the Maine Low-level Radioactive Waste Authority
5 desires to amend certain portions of the Maine Low-level
6 Radioactive Waste Authority Act; and

7 Whereas, in order to comply with federal regulations
8 governing the disposal and storage of low-level radioactive
9 waste, the authority has deemed it advisable to amend the Act to
10 provide for the interim storage of low-level radioactive waste
11 while it continues to proceed with the planning and siting of a
12 disposal facility; and

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

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

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

21 **§1502. Legislative findings and purpose**

22 The United States Low-level Radioactive Waste Policy Act of
23 1980, Public Law 96-573, requires that states assume
24 responsibility for providing the capacity for the disposal or
25 storage of low-level radioactive waste generated within their
26 borders. The State has expressed its intent to develop, if
27 necessary, a site for the location of a low-level radioactive
28 waste disposal or storage facility within the State. The State
29 is continuing to try to negotiate a compact or agreement for
30 low-level radioactive waste disposal out of the State. The
31 United States Low-level Radioactive Waste Policy Amendments Act
32 of 1985, Public Law 99-240, establishes January 1, 1988, as the
33 milestone date for states which are not members of a compact to
34 develop a siting plan for a low-level radioactive waste disposal
35 or storage facility. To accomplish that task, it is necessary
36 for the State to provide for planning, siting, construction,
37 operation and maintenance, site closure and long-term,
38 post-closure control, as necessary, of a low-level radioactive
39 waste disposal or storage facility or facilities. In order to
40 protect public health, safety and the environment, federal
41 regulations require the effective isolation of low-level
42 radioactive waste for 500 years following disposal site closure,
43 observation and maintenance of the closed site and long-term
44 institutional control of the site leading to termination of the
45 operating license. In the interim, however, federal regulations
46 require at least a storage facility.

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

Sec. 2. 38 MRSA §1503, sub-§6-A is enacted to read:

6-A. Low-level radioactive waste storage facility. "Low-level radioactive waste storage facility" or "storage facility" means a parcel of land, together with the structures, equipment and improvements on or attached to the land, for the storage of low-level radioactive waste on an interim basis.

Sec. 3. 38 MRSA §1521, sub-§4, as enacted by PL 1987, c. 530, §4, is amended to read:

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

Sec. 4. 38 MRSA §1521, sub-§5-A is enacted to read:

5-A. Storage facility. Plan, site, construct, operate, maintain, close, provide long-term care and provide for termination of the license of a low-level radioactive waste storage facility or facilities with sufficient capacity to store the low-level radioactive waste generated within this State and for which the State is responsible;

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

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

Sec. 6. 38 MRSA §1524, sub-§3, as enacted by PL 1987, c. 530, §4, is amended to read:

3. Suspension of access. Any person who commits a violation as described in subsections 1 and 2 may, in addition to

1 the penalties provided in subsections 1 and 2, have access to a
3 disposal or storage facility suspended by the authority for up to
5 one year. That suspension may be renewed until the violator
demonstrates the ability to remedy the situation for which the
penalty was assessed.

7 The authority shall enforce this section in the Superior Court
9 for Kennebec County or for the county in which the violation
occurs.

11 **Sec. 7. 38 MRSA §1525**, as amended by PL 1987, c. 544, is
13 further amended to read:

15 **§1525. Low-level radioactive waste management plan**

17 The authority shall promulgate by rule, following public
19 hearing, a plan for the management of the State's low-level
21 radioactive waste. The plan shall guide the State's activities
23 in disposing of the State's low-level radioactive waste. The
25 plan shall be adopted by January 1, 1988, and shall be updated
27 annually. The first plan is intended to meet the January 1,
1988, milestone date for the development of a siting plan
required by the United States Code, Title 42, Section 5(e)(1)(B),
of the United States Low-level Radioactive Policy Amendments Act
of 1985, Public Law 99-240. The updated plan shall also include
a provision for the State's activities in storing the State's
low-level radioactive waste prior to permanent disposal until the
authority determines that the provision is unnecessary.

29 **Sec. 8. 38 MRSA §1527, sub-§1**, as enacted by PL 1987, c. 530,
31 §4, is amended to read:

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

43 **Sec. 9. 38 MRSA §1528**, as enacted by PL 1987, c. 530, §4, is
45 amended to read:

47 **§1528. Records**

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

1 **Sec. 10. 38 MRSA §1531**, as enacted by PL 1987, c. 530, §4, is
2 amended to read:

3
4 **§1531. Fees and other charges**

5 The authority shall establish, by rule, fees and other
6 charges sufficient to fund the costs of all low-level radioactive
7 waste disposal or storage activities required by this chapter,
8 including sufficient reserves to cover unforeseen contingencies
9 in the construction phase, the operational phase and the closure
10 and long-term care phase, as the closure and long-term care are
11 necessary.

12
13 **Sec. 11. 38 MRSA §1534**, as enacted by PL 1987, c. 530, §4, is
14 amended to read:

15
16 **§1534. Low-level Radioactive Waste Facility Fund**

17
18 There is created a nonlapsing, revolving fund known as the
19 Low-level Radioactive Waste Facility Fund to be used to pay for
20 the planning, siting, construction, operation, maintenance,
21 closure and post-closure costs of a disposal or storage facility
22 and the administrative and operational costs of the authority.

23
24 1. **Revenue deposited.** Unless otherwise provided, all
25 revenue collected by the authority or the disposal facility to be
26 used for planning, siting, construction, operation, maintenance,
27 closure and post-closure costs of a disposal or storage facility
28 and administrative and operational costs of the authority shall
29 be deposited in the Low-level Radioactive Waste Facility Fund.

30
31 2. **Expenditure of funds.** Unless otherwise provided, all
32 the activities described in this chapter, including
33 administrative and operational costs of the authority, shall be
34 funded from the Low-level Radioactive Waste Facility Fund.

35
36 3. **Surplus revenues.** Surplus revenues in the Low-level
37 Radioactive Waste Facility Fund shall be carried forward and used
38 to reduce the assessments or fees raised in accordance with
39 section 1534-A the following year.

40
41 **Sec. 12. 38 MRSA §1534-A**, as enacted by PL 1987, c. 530, §4,
42 is amended to read:

43
44 **§1534-A. Administrative costs**

45
46 1. **Assessment.** Funds to pay the administrative and
47 operational costs of the authority shall be raised by an
48 assessment of a service fee on each generator of low-level
49 radioactive waste generated in this State. The authority shall
50 annually on June 30th, beginning in 1988, assess a service fee
51 calculated in accordance with this subsection in an amount equal

1 ~~to \$200,000~~ not to exceed \$400,000 less any balance carried
3 forward under section 1534, subsection 3. Each generator shall
5 pay the service fee within 30 days, except that any generator may
7 choose to make quarterly payments instead. The revenue from this
9 service fee shall be deposited in the ~~Low-Level~~ Low-level
Radioactive Waste Facility Fund. The authority shall promulgate
rules in accordance with the Maine Administrative Procedure Act,
Title 5, chapter 375, concerning the calculation of the fee which
shall be based 50% on the volume and 50% on the radioactivity of
the waste generated in the previous year.

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

25 3. Fee exemptions. Generators of the following types of
27 low-level radioactive waste shall be exempt from the service fee
assessed pursuant to subsection 1:

29 A. Waste authorized by the United States Nuclear Regulatory
Commission for disposal without regard to radioactivity;

31 B. Waste authorized by the United States Nuclear Regulatory
33 Commission to be stored for up to 3 years at the site of
generation for decay and ultimate disposal without regard to
35 radioactivity; and

37 C. Radioactive waste or other material, including, but not
limited to, sealed radioactive sources, which is returned to
39 the vendor.

41 **Sec. 13. 38 MRSA §1535, sub-§1**, as amended by PL 1987, c. 769,
Pt. A, §183, is further amended to read:

43 1. **Assessment.** The authority shall assess any nuclear
45 plant within the State for the full cost of planning, siting,
licensing and construction of a low-level radioactive waste
47 disposal or storage facility, including reasonable reserves for
unforeseen contingencies. The initial assessment shall not
49 exceed \$10,000,000 and shall be assessed as follows: \$1,500,000
on March 1, 1988; \$2,500,000 on March 1, 1989; \$2,000,000 on
51 March 1, 1990; \$2,000,000 on March 1, 1991; and \$2,000,000 on
March 1, 1992. The amount assessed shall be paid within 30 days
of

1 assessment. This assessment shall be deposited in the Low-level
Radioactive Waste Facility Fund.

3 **Sec. 14. 38 MRSA §1540, sub-§§1, 3 and 4, as enacted by PL 1987,**
5 **c. 530, §4, are amended to read:**

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

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

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

33 **Sec. 15. 38 MRSA §1541, as enacted by PL 1987, c. 530, §4, is**
35 **amended to read:**

37 **§1541. Delivery of low-level radioactive waste required**

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

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

47 **STATEMENT OF FACT**

49 The purpose of this bill is to amend the Maine Low-level
51 Radioactive Waste Authority Act to clarify and appropriately
place certain responsibilities for the disposal and storage of
53 nuclear waste on low-level nuclear waste generators.