

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1671, L.D. 2347, Bill, "An Act to Amend the Radioactive Waste Laws"

Amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 38 MRSA §1540, sub-§1, as amended by PL 1989, c. 480, §17, is further amended to read:

1. Strict liability. Notwithstanding any provision of law to the contrary, except as otherwise expressly provided in section 1540-A, any person, including the authority, engaged in low-level radioactive waste disposal or storage activities provided in this chapter, ~~shall be~~ is subject to liability without fault for property damage, bodily injury or death resulting from those activities. Any defendant in an action under this subsection may be ~~jointly and severally~~ jointly and severally liable for actual damages only as provided in section 1540-A.

Further amend the bill by striking out all of sections 6 and 7 and inserting in their place the following:

'Sec. 6. 38 MRSA §1540-A is enacted to read:

§1540-A. Liability scheme

The liability imposed under section 1540 for damages caused by low-level radioactive waste is apportioned as follows.

1. Liability for low-level radioactive waste prior to authority possession. Prior to authority possession of low-level radioactive waste, each generator, owner or transporter of low-level radioactive waste is liable for actual damages caused by the low-level radioactive waste of that generator, owner or transporter.

2 2. Liability for low-level radioactive waste in authority
3 possession. Following the authority taking possession of
4 low-level radioactive waste, liability for actual damages caused
5 by the low-level radioactive waste is apportioned in the
6 following order.

7 A. The authority is strictly liable for any damages up to
8 the level of insurance coverage secured by the authority as
9 required under section 1540, subsection 4 and the level of
10 any self-insurance fund established by the authority under
11 section 1540, subsection 4 on the date of the filing of any
12 action pursuant to section 1540, subsection 1.

13 B. Siting, design and construction contractors and site
14 operators retained by the authority are liable for their own
15 negligent acts or omissions proximately causing injury or
16 damage to persons or property for damages not satisfied
17 pursuant to paragraph A.

18 C. Generators or owners of low-level radioactive waste are
19 strictly liable for damages not satisfied pursuant to
20 paragraphs A and B in proportion to the volume and curie
21 content, calculated in the same manner as user fees under
22 section 1536, subsection 2, of the waste shipped to the
23 low-level radioactive waste storage or disposal facility.

24 D. The authority is strictly liable for damages not
25 satisfied pursuant to paragraphs A to C but only up to the
26 level of the amount recoverable by the authority through
27 supplemental fees under section 1542. The authority is not
28 required to pay any amount under this paragraph until it
29 actually collects that amount through supplemental fees
30 under section 1542.

31 E. If damages remain unsatisfied after liability is imposed
32 and apportioned under paragraphs A to D, the State accepts
33 liability for any property damage, bodily injury or death
34 resulting from the low-level radioactive waste disposal or
35 storage activities provided in this chapter.

36 3. Right of contribution. Any person who has been assessed
37 and has paid damages pursuant to subsection 1 or 2 may sue to
38 recover those damages from any person whose negligent act or
39 omission proximately caused those damages. The authority shall
40 pursue any reasonable remedies, considering the
41 cost-effectiveness of pursuing these remedies, that it has
42 against any negligent party to recover damages paid out under
43 subsection 2, paragraph A. All damages recovered under this
44 subsection by the authority must be placed in the self-insurance

2 fund established under section 1540 to the extent that the
3 self-insurance fund was depleted to pay damages under subsection
4 2, paragraph A. Any further damages recovered by the authority
5 under this subsection may be used to reimburse any commercial
6 insurer of the authority for damages paid by that insurer under
7 subsection 2, paragraph A, to the extent reimbursement is
8 required by the policy of that insurer. All other damages
9 recovered by the authority under this subsection must be placed
10 in the self-insurance fund.

11 4. Out-of-state disposal. Notwithstanding section 1540,
12 subsection 1, the liability scheme set forth in this chapter does
13 not apply to the disposal of low-level radioactive waste at a
14 facility located outside the State, even if the authority helped
15 to negotiate an agreement or operated as a billing agent for the
16 compact or contract payments.

17 **Sec. 7. 38 MRSA §1542, as enacted by PL 1987, c. 530, §4, is**
18 **amended to read:**

19 **§1542. Supplemental fee**

20
21 ~~Except for costs attributable to negligence by the authority~~
22 ~~or its contractors,--if~~ If the cost costs of post-closure care,
23 authority liability for actual damages under section 1540-A,
24 including a contribution action under section 1540-A, subsection
25 3, and long-term institutional control, including mitigation of
26 any environmental problems that may develop at the site, exceeds
27 exceed the available funds available to the authority, including
28 enforcement of a an existing judgment, federal assistance and the
29 reserve for unforeseen contingencies provided in sections 1535
30 and 1536, the authority may assess generators of low-level
31 radioactive waste a supplemental fee to cover ~~that cost~~ those
32 costs, in proportion to the volume and radioactivity ~~of the~~
33 portion of the waste generated by each generator which remains in
34 the waste stream curie content, calculated in the same manner as
35 user fees under section 1536, subsection 2, of the waste shipped
36 to the low-level radioactive waste storage or disposal facility.
37 In the event that a generator has insufficient assets at that
38 time, the owners of that generator shall ~~be~~ are jointly and
39 severally liable for the supplemental fee of that generator. If
40 any owner pays more than his, the owner's proportional share of
41 the costs under this subsection, that owner shall ~~have~~ has a
42 cause of action to recover that excess from other owners who paid
43 less than their share.'
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STATEMENT OF FACT

2 This amendment readjusts the apportionment of liability for
4 damages caused by low-level radioactive waste in the possession
6 of the Maine Low-level Radioactive Waste Authority. Under this
amendment:

8 1. The authority is first strictly liable for any claims for
10 actual damages up to the level of its self-insurance fund and
whatever commercial insurance it has;

12 2. Siting, design and construction contractors and site
14 operators are next liable for unsatisfied damage claims for their
own negligence;

16 3. Generators or owners of low-level radioactive waste are
18 next strictly liable for unsatisfied damage claims in proportion
to the volume and curie content of the waste each shipped to the
20 low-level radioactive waste storage or disposal facility;

22 4. The authority is next strictly liable for any unsatisfied
24 damage claims up to the level of any amount that it can recover
through supplemental fees imposed on generators and owners of
generators; and

26 5. Finally, any remaining liability is accepted by the State.

28 This amendment allows a right-of-contribution action to be
30 brought by any entity that has paid damages under the liability
apportionment scheme against any person whose negligence caused
32 those damages. This amendment also requires the authority to
pursue cost-effective and reasonable remedies against negligent
34 parties. Damages recovered by the authority are required first
to be used to replenish the self-insurance fund, then to pay
36 claims of its commercial insurer. Any further damages recovered
are placed in the self-insurance fund.

38 Finally, this amendment clarifies the provision of law that
40 allows the authority to assess supplemental fees. It also allows
the authority to assess supplemental fees to cover costs of
42 liability imposed under the liability apportionment scheme,
including any contribution action brought against the authority
44 for negligence.

Reported by the Committee on Energy and Natural Resources
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