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House of Representatives, February 18, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative COLES of Harpswell. Cosponsored by Representative LORD of Waterboro and Representative MITCHELL of Freeport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-TWO

An Act to Amend the Radioactive Waste Laws.

	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 38 MRSA §1503, sub-§1-A is enacted to read:
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б	<u>1-A. Authority possession of low-level radioactive waste.</u> "Authority possession of low-level radioactive waste" means the authority has received actual delivery of and has accepted the
8	low-level radioactive waste at an authority facility.
10	Sec. 2. 38 MRSA §1540, sub-§1, as amended by PL 1989, c. 480, §17, is further amended to read:
12	1. Strict liability. Notwithstanding any provision of law
14	to the contrary, any person, including the authority, engaged in low-level radioactive waste disposal or storage activities
16	provided in this chapter, shallbe <u>is</u> subject to liability without fault for property damage, bodily injury or death
18	resulting from those activities. Any defendant in an action under this subsection may be jointly and-severally liable for
20	actual damages enly as provided in section 1540-A.
22	Sec. 3. 38 MRSA §1540, sub-§2, as enacted by PL 1987, c. 530, §4, is repealed.
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26	Sec. 4. 38 MRSA §1540, sub-§3, as amended by PL 1989, c. 480, §17, is repealed.
28	Sec. 5. 38 MRSA $\$1540$, sub- $\$4$, as amended by PL 1989, c. 480, $\$17$, is further amended to read:
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32	4. Insurance. The authority shall purchase, or require any of its contractors to purchase, insurance or other financial protection, including <u>establishing</u> , <u>by</u> rule, a <u>separate</u>
34	self-insurance fund <u>established as a trust with assets that may</u> not be commingled with other funds, against the site failure
36	sufficient to cover any foreseeable problems during the life of the facility plus a reasonable reserve for unforeseen
38	contingencies. The cost of insurance purchased by the authority shall must be included in the assessment and fees charged by the
40	facility under sections 1535 and 1536. <u>The authority shall</u> monitor the size of any self-insurance fund established pursuant
42	to this subsection. By July 1, 1993, the authority shall establish by rule a mechanism to refund on a prorated basis the
44	full balance in any self-insurance fund in the event the authority no longer proposes to site a facility in the State and
46	the authority has no continuing liability. The authority shall report to the joint standing committee of the Legislature having
48	jurisdiction over radioactive waste matters by January 1, 1994 and biannually thereafter on the status and form of any
50	self-insurance fund established under this subsection.

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

<u>§1540-A. Liability scheme</u>

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

 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.

2. Liability for low-level radioactive waste in authority 16 possession. Following the authority taking possession of low-level radioactive waste, liability for actual damages caused 18 by the low-level radioactive waste is apportioned in the following order.

A. Siting, design and construction contractors and site operators retained by the authority are liable for damages for their own acts or omissions proximately causing injury or damage to persons or property.

B. The authority is next liable for any unsatisfied damage claims up to the level of insurance coverage secured by the authority as required under section 1540, subsection 4.

C. The authority is next liable for any unsatisfied damage claims up to the level of any self-insurance fund
 established by the authority under section 1540, subsection 4 on the date of the filing of any action under section
 1540, subsection 1.

36 D. Generators or owners of low-level radioactive waste are next liable for any unsatisfied damage claims in proportion 38 to the volume and curie content of the waste shipped to the low-level radioactive waste storage or disposal facility. 40

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

3. Right of contribution. Any person who has been assessed and has paid damages under subsection 1 or 2 may sue to recover those damages from any person whose act or omission proximately caused those damages.

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

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

12 §1542. Supplemental fee

14 Except for costs attributable to negligence by the authority or its contractors, if the cost of post-closure care, liability 16 for actual damages and long-term institutional control, including mitigation of any environmental problems that may develop at the 18 site, exceeds the available funds, including enforcement of a judgment, federal assistance and, the reserve for unforeseen 20 contingencies provided in sections 1535 and 1536 and authority liability under section 1540-A, the authority may assess 22 generators of low-level radioactive waste a supplemental fee to cover that cost, in proportion to the volume and radioactivity of 24 the portion of the waste generated by each generator which that remains in the waste stream. In the event that a generator has 26 insufficient assets at that time, the owners of that generator shall-be are jointly and severally liable for the supplemental 28 fee of that generator. If any owner pays more than his the owner's proportional share of the costs under this subsection, that owner shall--have has a cause of action to recover that 30 excess from other owners who paid less than their share.

STATEMENT OF FACT

This bill clarifies the responsibility and liability provisions for low-level radioactive waste. The bill:

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1. Establishes a separate self-insurance fund as a trust;

Requires the Low-level Radioactive Waste Authority to
 monitor and report on any self-insurance fund that it establishes;

3. Clarifies a liability scheme for damages attributable to low-level radioactive waste and provides a right of contribution
for persons that are assessed damages under this scheme that are the result of another person's act or omission. The bill exempts
from this liability scheme any damages from low-level radioactive waste that has been shipped to an out-of-state facility; and

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4. Allows the Low-level Radioactive Waste Authority to assess a supplemental fee on generators and, if necessary, owners of generators to cover their liability.

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