

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1951

S.P. 730

In Senate, March 1, 1994

**An Act to Consolidate and Streamline the Functions of Maine
Government in Conformity with the Provisions of the Texas Low-Level
Radioactive Waste Disposal Compact.**

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 LAWRENCE of York. (GOVERNOR'S BILL).
Cosponsored by Representative: ANDERSON of Woodland.

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

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Sec. 1. 22 MRSA §565-A is enacted to read:

§565-A. Coordination with State Radiation Control Agency

The Health and Environmental Testing Laboratory shall provide laboratory services for environmental testing and analysis as necessary to implement the radiation protection services of the department conducted pursuant to section 680, subsection 2, paragraph D. Each nuclear power plant shall pay a fee to the Health and Environmental Testing Laboratory to the special revenue account established in section 568 to carry out the purposes of this section. The fee is \$90,000 annually.

Sec. 2. 22 MRSA §664, sub-§5, as amended by PL 1987, c. 882, §2, is further amended to read:

5. Fees. Each nuclear power plant licensee whose operations are monitored under this chapter shall pay a fee to the State Nuclear Safety Inspector to the permanent fund established in section 680, subsection 7. The fee shall must take the form of a yearly payment indicated in this subsection for the fiscal year from the fund established in section 680, subsection 7, for the full cost of the on-site inspection program, including the cost to the State for personnel and fringe benefits.

The State Nuclear Safety Inspector fee shall--be--\$80,000 is \$100,000 annually.

Sec. 3. 22 MRSA §675-A is enacted to read:

§675-A. Advisory Committee on Radiation

1. Appointment. The Governor shall appoint an Advisory Committee on Radiation consisting of 5 members. Four of the members must have training and experience in the various fields in which sources of radiation are used; one member must be a physician regularly involved in the medical use of radiation; and one member must represent the general public. Members of the committee serve 5-year staggered terms and are not compensated for their services, but may be reimbursed for actual expenses to attend committee meetings or for authorized business of the committee.

2. Duties. The committee shall make recommendations to the commissioner and furnish advice that is requested by the department on matters relating to the regulation of sources of

2 radiation including enforcement actions, regulation revision and
3 the establishment of fees.

4 **Sec. 4. 22 MRSA §676, sub-§4,** as amended by PL 1987, c. 519,
5 **§6,** is further amended to read:

6
7 **4. Radioactive waste.** The Department of Environmental
8 Protection Human Services shall coordinate management of and
9 shall serve as point of contact with the United States Nuclear
10 Regulatory Commission for high-level and low-level radioactive
11 wastes, in consultation with the Department of Environmental
12 Protection, the State Nuclear Safety Advisor in fulfillment of
13 his duties pursuant to Title 25, sections 51 and 52, and the
14 State Nuclear Safety Inspector in fulfillment of his duties
15 pursuant to chapter 159-A.

16
17 **Sec. 5. 22 MRSA §679,** as enacted by PL 1983, c. 345, §§13 and
18 14, is amended to read:

19 **§679. Low-level radioactive waste disposal**

20
21 State Notwithstanding any contrary provisions in this Title
22 or Title 38, state regulation of low-level radioactive waste
23 disposal shall be subject to the primary jurisdiction of the
24 Department of Environmental--Protection Human Services, as
25 specified in Title-38 section 676.

26
27 **Sec. 6. 22 MRSA §§679-A to 679-C** are enacted to read:

28
29 **§679-A. Low-level radioactive waste management**

30
31 **1. Designated.** The department is designated as the agency
32 to fulfill the state regulatory and enforcement requirements for
33 the Texas Low-Level Radioactive Waste Disposal Compact, referred
34 to in this chapter as the "compact." The department shall also
35 execute the administrative requirements of the compact as defined
36 in subsection 2, paragraph B.

37
38 **2. Duties of the department.** The department shall:

39
40 **A.** Develop rules to fulfill the State's responsibilities
41 and requirements for the compact pursuant to the contract
42 requirements set forth in Article IV, Section 4.05,
43 subsections (1) to (4), (6) and (8) of the compact.

44
45 **B.** Provide for the disbursement of funds from the
46 Radioactive Waste Fund to fulfill the requirements of
47 Article IV, Section 4.05, subsection (6) of the compact, to
48 compensate the state commission member and to fund the
49 activities of the Maine Commission on Radioactive Waste as
50 described in section 679-C; and

2 C. Report annually to the Maine Commission on Radioactive
4 Waste on its activities pertaining to this section.

6 3. Employees. To fulfill the requirements of this section,
8 the department may employ the following staff subject to state
10 Civil Service Law: Assistant Engineer, Grade 22; and Clerk
12 Typist III, Grade 12.

14 **§679-B. Radioactive Waste Fund**

16 1. Establishment. There is established the Radioactive
18 Waste Fund to be used to carry out the purposes of this chapter.
20 Money allocated from this fund must be administered by the
22 commissioner in accordance with established budgetary procedures
24 and this section. The commissioner may accept state, federal and
26 private funds to be used as appropriate to ensure safe and
28 effective low-level radioactive waste management and to monitor
30 and evaluate plans for storage and disposal of high-level
32 radioactive waste.

34 2. Service fee. Except for waste that is exempt in
36 accordance with subsection 3, the department shall assess each
38 low-level radioactive waste generator a service fee on all
40 low-level radioactive waste generated in this State that is
42 shipped to a low-level radioactive waste disposal facility,
44 stored awaiting disposal at such a facility or stored for any
46 other purpose. The service fee must be based 50% on the volume
48 and 50% on the radioactivity of the waste buried in a disposal
50 facility in the previous calendar year or placed in storage in
the previous calendar year if the State had no access to a
disposal facility for that year, but each generator must be
assessed a minimum of \$100 annually. The radiation control
program within the department's Division of Health Engineering
shall adopt rules in accordance with the Maine Administrative
Procedure Act concerning the calculation of the fee and the
exemptions to the fee, consistent with this section. The revenue
from this service fee must be credited to the fund established in
subsection 1 and used to carry out the purposes of this section.

3. Fee exemptions. The following types of low-level
radioactive waste are exempt from the service fee established in
subsection 2:

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

B. Waste that is authorized by the United States Nuclear
Regulatory Commission to be stored at the site of generation

2 for decay and ultimate disposal without regard to
3 radioactivity; and

4 C. Radioactive waste or other material that is returned to
5 the vendor, including, but not limited to, sealed sources.

6
7 4. Fee assessment; ceiling. The commissioner shall
8 annually on June 30th, beginning in 1994, assess a service fee
9 calculated in accordance with subsection 2, in an amount equal to
10 \$250,000 plus, if needed, any additional amounts to fulfill the
11 payment requirements to the Texas Low-Level Radioactive Waste
12 Disposal Compact Commission pursuant to section 679-A, subsection
13 2, paragraph B less any balance carried forward under subsection
14 6. The commissioner shall assess each generator a service fee.
15 Each generator shall pay the service fee within 30 days, except
16 that any generator may choose to make quarterly payments
17 instead. If the balance in the fund at the beginning of the
18 fiscal year exceeds the total permissible service fee, the excess
19 must be remitted pro rata to the generators within 30 days in
20 proportion to their payments during the previous fiscal year.
21 Upon dissolution of the Maine Commission on Radioactive Waste,
22 the ceiling must be lowered by the amount of the budget of the
23 Maine Commission on Radioactive Waste as set forth in section
24 679-C, subsection 7.

25
26 5. Allocation from fund. Money in the fund established by
27 this section must be allocated from time to time by the
28 Legislature for the following purposes: to the Maine Commission
29 on Radioactive Waste as described in section 679-C for advisory
30 and public information activities; and to the department for
31 regulatory activities as described in this section. These
32 amounts become available in accordance with Title 5, chapters 141
33 to 155.

34
35 The department may receive and expend federal grants and payments
36 for the purpose of carrying out its duties set out in section
37 679-A, subsection 2. The money received by the department from
38 federal sources may not be counted toward the ceiling established
39 in subsection 4.

40
41 6. Balance carried forward. Any unexpended balance may not
42 lapse, but must be carried forward in the same amount for the
43 next fiscal year and is available for the purposes authorized by
44 this chapter.

45
46 7. Financial reports. The department shall report annually
47 before February 1st to the joint standing committee of the
48 Legislature having jurisdiction over natural resources matters on
49 the income to and expenditures from the Radioactive Waste Fund
50 for the previous year and on the budget for the coming year.

2 Those reports must include total fees received from each
4 generator, line item detail on expenditures including in-state
6 travel and out-of-state travel, printing, mailing and hearings,
8 personnel, consultant services, general operating expenses,
10 supplies and overhead for the department and transfer of funds
12 under subsection 8.

8 8. Transfer of funds. Notwithstanding Title 5, section
10 1585, funds allocated under this section may be transferred as
12 necessary to accomplish the purposes of this section and Title
14 38, chapter 14-A from the department to other agencies, including
16 the Department of Environmental Protection, the State Planning
18 Office, the Maine Geological Survey and the Maine Land Use
20 Regulation Commission.

16 §679-C. Maine Commission on Radioactive Waste

18 1. Establishment; purpose. The Maine Commission on
20 Radioactive Waste, referred to in this section as the
22 "commission," is established as a successor to the Advisory
24 Commission on Radioactive Waste. The commission shall advise the
26 Governor, the Legislature and other pertinent state agencies and
28 entities on matters relating to radioactive waste management and
30 provide information to the public and create opportunities for
32 public input in order to facilitate public understanding of
34 radioactive waste issues.

28 2. Membership; appointment. The commission consists of 14
30 members, appointed as follows:

32 A. The Commissioner of Environmental Protection or the
34 commissioner's designee;

36 B. The commissioner or the commissioner's designee;

38 C. The State Geologist or a designee;

40 D. One person from a commercial nuclear power facility
42 situated in the State, appointed by the Governor;

44 E. Two persons from organizations that hold licenses issued
46 by the State for the use of radioactive material, appointed
48 by the Governor;

50 F. Two Senators, appointed by the President of the Senate,
one belonging to the political party holding the largest
number of seats in the Senate and one belonging to the
political party holding the 2nd largest number of seats in
the Senate;

2 G. Two members of the House of Representatives, appointed
4 by the Speaker of the House of Representatives, one
6 belonging to the political party holding the largest number
of seats in the House of Representatives and one belonging
to the political party holding the 2nd largest number of
seats in the House of Representatives; and

8 H. Four members of the general public with a knowledge of
10 and interest in the management of radioactive materials and
12 radioactive waste, 2 of whom are appointed by the Governor,
14 one of whom is appointed by the President of the Senate and
one of whom is appointed by the Speaker of the House of
Representatives.

16 The terms of the legislative members expire the first Wednesday
18 in December 1996 and every 2 years thereafter. The terms of the
20 public member and the licensee member appointed by the President
22 of the Senate expire December 31, 1997 and every 2 years
24 thereafter. The terms of the public member and the licensee
26 member appointed by the Speaker of the House of Representatives
28 and the 2 public members and the person from a commercial nuclear
30 power facility appointed by the Governor expire December 31, 1996
and every 2 years thereafter. Notwithstanding this subsection,
any public member or licensee member may be removed by the
appointed authority, at the pleasure of the appointing authority
and a new member may be appointed to complete the term of the
preceding appointee. Members may continue to serve until their
replacements are designated. Vacancies must be filled by the
appointing authority to complete the term of the preceding
appointee. The commission shall elect the chair and vice-chair
from its membership by majority vote of all members present.

32 3. Duties. The duties of the commission are to:

34 A. Provide opportunities for public input and disseminate
36 information to the general public concerning the management
38 of radioactive waste;

40 B. Study the management, transportation, treatment, storage
42 and disposal of radioactive waste, including high-level and
low-level radioactive waste and mixed waste, generated in
this State;

44 C. Monitor methods, criteria and federal timetables for
46 siting and constructing high-level radioactive waste
repositories or storage facilities;

48 D. Monitor the Texas siting effort and Texas Low-Level
50 Radioactive Waste Disposal Compact Commission activities
and, if events require, propose legislation to reinstitute

2 an in-state siting effort for the storage or disposal of
3 low-level radioactive waste in the State;

4 E. Advise the Governor, the Legislature, the department and
5 the Department of Environmental Protection or their
6 successors, the Texas Low-Level Radioactive Waste Disposal
7 Compact Commission and other pertinent state agencies and
8 entities, as appropriate, on relevant findings and
9 recommendations of the commission;

10 F. Receive a written report from the State's member of the
11 Texas Low-Level Radioactive Waste Disposal Compact
12 Commission within 60 days after a meeting of that commission
13 or an oral report from that member at the next scheduled
14 meeting of the Maine Commission on Radioactive Waste,
15 whichever comes first; and

16 G. Prepare a newsletter recording developments relevant to
17 radioactive waste issues.

18 4. Meetings and reports. The commission shall meet at
19 least 4 times a year. The commission shall submit an annual
20 report of activities to the Governor, the President of the
21 Senate, the Speaker of the House of Representatives and the joint
22 standing committee of the Legislature having jurisdiction over
23 energy and natural resources matters by January 15th of each year.

24 5. Compensation. Members of the commission are entitled to
25 compensation in accordance with the provisions of Title 5,
26 chapter 379, except that all legislative members of the
27 commission must obtain prior approval of out-of-state travel from
28 their respective presiding officers.

29 6. Staff assistance. The commissioner shall provide
30 assistance to the commission in the conduct of its business and
31 the Legislative Council shall provide legislative staff
32 assistance. The State Nuclear Safety Advisor and the Public
33 Advocate shall provide consultation as requested.

34 7. Budget. The total annual expenditures of the commission
35 are limited to \$125,000 including funds necessary to fill the
36 following staff positions subject to state Civil Service Law:
37 one Environmental Specialist position, Range 26 and 1/2 Clerk
38 Typist III position.

39 8. Repeal. This commission is subject to review and
40 terminates in accordance with Title 3, chapter 33, not including

2 the grace period, no later than June 30, 1999, unless continued
3 or modified by law.

4 **Sec. 7. 22 MRSA §680, sub-§1**, as amended by PL 1991, c. 496,
5 §4, is further amended to read:

6
7 **1. Nuclear power plants.** The annual registration fee for
8 operating nuclear power plants is ~~\$138,000--per--fiscal--year~~
9 ~~1991-92--and--\$100,000--per--year--in--subsequent--fiscal--years~~ \$80,000.

10
11 **Sec. 8. 38 MRSA §1453**, as amended by PL 1993, c. 92, §17, is
12 repealed.

13
14 **Sec. 9. 38 MRSA §1454**, as affected by PL 1989, c. 890, Pt. A,
15 §40 and amended by Pt. B, §270, is repealed.

16
17 **Sec. 10. 38 MRSA §1481**, as enacted by PL 1985, c. 705, §5, is
18 repealed.

19
20 **Sec. 11. 38 MRSA c. 14-B**, as amended, is repealed.

21
22 **Sec. 12. 38 MRSA c. 14-C** is enacted to read:

23
24 **CHAPTER 14-C**

25
26 **LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

27
28 **§1545. Assessment for compact costs**

29
30 The State Planning Office shall assess any nuclear plant
31 within the State for the full costs of membership and
32 participation in the Texas Low-Level Radioactive Waste Disposal
33 Compact, referred to in this section as the "compact," subject to
34 the provisions of Articles IV and V of that agreement. The
35 assessments charged to the nuclear power plant and passed on
36 through wholesale rates to retail utilities are considered just
37 and reasonable operating costs for retail utilities in this State
38 and may be deferred for recovery in future rate proceedings,
39 except that refunds received by the nuclear power plant under
40 subsection 6 must be credited against costs recoverable under
41 this paragraph. Assessments billed pursuant to this section must
42 be forwarded to the Texas Low-Level Radioactive Waste Disposal
43 Authority.

44
45 **1. Initial assessments.** The State Planning Office shall
46 bill an initial assessment in the amount of \$12,500,000 within 30
47 days following ratification of the compact agreement by the
48 Congress of the United States. The amount assessed must be paid
49 within 15 days of assessment. Any amounts received by the State
50 Planning Office from a self-insurance fund and the Low-level

2 Radioactive Waste Facility Fund established pursuant to sections
3 1535 and 1540 must be credited toward this assessment.

4 The State Planning Office shall bill a 2nd assessment in the
5 amount of \$12,500,000 within 30 days following the date of the
6 opening of the compact facility in Texas. The amount assessed
7 must be paid within 15 days of assessment.

8
9 2. Host county assessments. The State Planning Office
10 shall bill an initial host county assessment in accordance with
11 Article IV, Section 4.05, subsection (5) of the compact in the
12 amount of \$1,250,000 no later than 3 working days following
13 ratification of the compact agreement by the Congress of the
14 United States. The amount assessed must be paid within 10 days
15 of assessment.

16
17 The State Planning Office shall bill a 2nd host county assessment
18 in the amount of \$1,250,000 no later than 3 working days
19 following the approval of a facility operating license by the
20 Texas Water Commission or its successor agency.

21
22 3. Pro rata shares of compact commission's operating
23 budget. On an annual basis or on any other schedule established
24 by the Texas Low-Level Radioactive Waste Disposal Compact
25 Commission, the State's share of the administrative, legal and
26 other expenses budgeted for the operation of the compact
27 commission must be assessed by the Department of Human Services
28 pursuant to Title 22, section 679-A. Amounts assessed under this
29 section must be paid within 30 days of assessment.

30
31 4. Limitation. Any payment under the compact must be paid
32 from funds available as a result of assessments levied pursuant
33 to this section. In the event that sufficient funds are not
34 available from those assessments, payments may not be made for
35 this purpose from the General Fund or any other state account
36 without specific legislative approval. A fee may not be charged
37 for an indirect cost rate or as a handling charge by any agency
38 of the State during the time that the funds are in the possession
39 of the State Planning Office.

40
41 5. Alternative payment schedule. In accordance with
42 Article V, Section 5.02 of the compact agreement and if so
43 designated by the Texas Low-Level Radioactive Waste Disposal
44 Compact Commission, the schedule for assessments by the State
45 Planning Office to be forwarded to the Texas Low-Level
46 Radioactive Waste Disposal Authority under this section must be
47 revised to conform to the payment schedule for the repayment of
48 debt incurred for the construction of the Texas disposal
49 facility. An amount may not be assessed pursuant to this

2 subsection on less than 30 days' notice and a payment may not be
3 required in less than 15 days from the date of assessment.

4 6. Surcharge. Beginning on June 30 of the first year
5 following commencement of operations at the compact facility, the
6 Department of Human Services pursuant to Title 22, section 679-A
7 shall assess a surcharge for waste disposed of by any generator
8 who has not been assessed for compact cost pursuant to
9 subsections 1 and 2. The surcharge must be refunded to any
10 generator who was assessed and made payments pursuant to
11 subsections 1 and 2. The surcharge must be assessed based on a
12 30-year facility life and be based on the amount of waste
13 disposed of at the compact facility in the previous calendar
14 year. The Department of Human Services shall adopt rules to
15 govern the calculation of the surcharge so that each generator is
16 assessed pro rata shares of the cost of the assessment under
17 subsections 1 and 2.

18 **Sec. 13. Transition provisions.** The following actions are
19 necessary to carry out the purposes of this legislation.

20 1. No later than June 30, 1994, or on the date that this
21 legislation takes effect if that date is subsequent to June 30,
22 1994:

23 A. All amounts invested in a self-insurance fund
24 established pursuant to the Maine Revised Statutes, Title
25 38, section 1540, subsection 4 must be transferred to the
26 State Planning Office for the purpose of partial fulfillment
27 of the assessment pursuant to Title 38, section 1545,
28 subsection 1 and the self-insurance fund is terminated and
29 ceases to exist;

30 B. The unspent balance of the fund for facility
31 construction established pursuant to Title 38, section 1535
32 must be transferred to the State Planning Office for the
33 purpose of partial fulfillment of the assessment pursuant to
34 Title 38, section 1535, subsection 1; and

35 C. The remaining balance, if any, of all financial accounts
36 in the possession of the Maine Low-level Radioactive Waste
37 Authority must be transferred to the Maine Commission on
38 Radioactive Waste and must be deducted from the amount of
39 the Radioactive Waste Fund assessment for fiscal year
40 1994-95.

41 2. The following actions must be taken prior to June 30,
42 1994:

2 A. All funds in the possession of the Advisory Commission
 4 on Radioactive Waste must be transferred to the Radioactive
 6 Waste Fund in the Department of Human Services for the use
 8 of the Maine Commission on Radioactive Waste. The total
 amount of the transferred funds must be used to reduce the
 assessment by the Department of Human Services for the
 Radioactive Waste Fund for fiscal year 1994-95.

10 3. The Maine Low-level Radioactive Waste Authority will
 12 cease operations and terminate the employment of all personnel
 14 when it has completed the transfer of all data, records and
 documents to a proper archive and the transfer of all equipment
 as follows:

16 A. Two computers, one facsimile machine and office
 18 furniture to the radiation control program within the
 Department of Human Services;

20 B. Any remaining computers, as needed, and its library to
 the Maine Commission on Radioactive Waste; and

22 C. All remaining assets, equipment and property to be sold
 24 at auction with all proceeds to be transferred to the
 Radioactive Waste Fund created by section 3 of this Act.

26 4. All property, equipment, assets and balances in all
 28 financial accounts in the possession of the Advisory Commission
 on Radioactive Waste must be transferred to the Maine Commission
 on Radioactive Waste.

30 **Sec. 14. Appropriation.** The following funds are appropriated
 32 from the General Fund to carry out the purposes of this Act.

	1994-95	1995-96
HUMAN SERVICES, DEPARTMENT OF		
Bureau of Health - Division of		
Health Engineering		
Personal Services	\$65,000	\$68,640
All Other	12,672	12,905
Capital Expenditures	8,000	
DEPARTMENT OF HUMAN SERVICES		
TOTAL	<u>\$85,672</u>	<u>\$81,545</u>
MAINE COMMISSION ON RADIOACTIVE		
WASTE		

2	Personal Services	\$70,000	\$75,000
	All Other	50,000	50,000
4	Capital Expenditures	3,000	
6	MAINE COMMISSION RADIOACTIVE WASTE		
	TOTAL	\$123,000	\$125,000

8 **Sec. 15. Retroactivity.** Section 3 of this bill applies
10 retroactively to June 30, 1994.

12 **STATEMENT OF FACT**

14
16 This bill consolidates state functions that are devoted to
18 the monitoring of radioactive waste, the siting and operation of
20 disposal facilities for radioactive waste and the regulation of
22 licensees of the United States Nuclear Regulatory Commission. As
24 required by legislation enacted in 1993, which authorized the
26 State's entry into the Texas Low-Level Radioactive Waste Disposal
28 Compact, this bill eliminates the Maine Low-Level Radioactive
30 Waste Authority, adds new functions to the radiation control
32 program within the Department of Human Services and replaces the
Advisory Commission on Radioactive Waste with a new advisory and
educational body called the Maine Commission on Radioactive
Waste. The purpose of this consolidation of functions is to
reduce the cost to the State's generators of radioactive waste of
their compliance with state and federal regulatory oversight
while ensuring that new duties required by the State's
participation in the interstate compact with Texas and Vermont
are properly performed.

34 This bill also addresses related issues concerning the
36 Radiation Control Program. It reinstates the Advisory Committee
38 on Radiation, which was repealed in 1987, to provide the
40 department with advice on the regulation of radiation-producing
42 materials and devices and their use; and to comply with Maine's
agreement state status with the United States Nuclear Regulatory
Commission, as of 1992, on the regulation of radioactive
materials. This bill also provides for full funding to the
Health and Environmental Testing Laboratory for radiochemical
analysis to support environmental surveillance testing activities
for the Maine Yankee Atomic Power Company and adjust the fees

2 assessed by the Radiation Control Program on the Maine Yankee
Atomic Power Company.

4

6

8 This document has not yet been reviewed to determine the
10 need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.