

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1342

S.P. 469

In Senate, March 17, 2005

**An Act Reducing Oversight Expense for Decommissioning Nuclear
Power Plants To Benefit Electric Ratepayers**

Submitted by the Office of the Public Advocate pursuant to Joint Rule 204.
Reference to the Committee on Utilities and Energy 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 BARTLETT of Cumberland.
Cosponsored by Representative: BLISS of South Portland.

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

PART A

Sec. A-1. 35-A MRSA c. 43, sub-c. 2, as amended, is repealed.

Sec. A-2. 35-A MRSA c. 43, sub-c. 6 is enacted to read:

SUBCHAPTER 6

POST-DECOMMISSIONING OVERSIGHT FEES

§4395. State assessment

Any licensee operating an interim spent fuel storage facility in this State shall pay a fixed annual fee to cover all present and reasonably foreseeable future state fees, costs and assessments with respect to the licensee, including, but not limited to: the costs of any commission investigation; the commission's participation in wholesale rate proceedings; safety, radiation and environmental monitoring; and security oversight-related costs. This annual fee consolidates the various fees and assessments imposed by the State on the licensee. The amount of the fixed payment is as follows:

1. September 1, 2005 to December 31, 2005. September 1, 2005 to December 31, 2005, \$90,000;

2. Calendar years 2006 and 2007. Calendar years 2006 and 2007, \$360,000 per year;

3. Calendar year 2008. Calendar year 2008, \$296,667; and

4. Calendar years 2009 to 12th month. Calendar years 2009 to the 12th month of the year following the year the spent nuclear fuel is removed from the site, \$170,000 per year.

The fees paid under this section are independent of and in addition to any compliance costs incurred either by the licensee or by any contractor hired by the Department of Environmental Protection to oversee, monitor or implement measures necessary to ensure compliance pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

PART B

Sec. B-1. 22 MRSA §565-A, as amended by PL 1997, c. 686, §1, is further amended to read:

2 **§565-A. Coordination with State Radiation Control Agency**

4 The Health and Environmental Testing Laboratory shall
6 provide laboratory services for environmental testing and
8 analysis as necessary to implement the radiation protection
10 services of the department conducted pursuant to section 680,
12 subsection 2, paragraph D. ~~Each facility, as defined in section
14 662, shall pay a fee to the Health and Environmental Testing
16 Laboratory to the special revenue account established in section
18 568 to carry out the purposes of this section. The fee is
20 \$90,000 annually except that for fiscal year 1997-98 the fee is
22 \$122,000.~~

24 **Sec. B-2. 22 MRSA §661**, as amended by PL 1999, c. 174, §2, is
26 further amended to read:

28 **§661. Public policy**

30 In the interests of the public health and welfare of the
32 people of this State, it is the declared public policy of this
34 State that a facility licensed by the United States Nuclear
36 Regulatory Commission and situated in the State must be
38 accomplished in a manner consistent with protection of the public
40 health and safety and in compliance with the environmental
42 protection policies of this State. It is the purpose of this
44 chapter, in conjunction with sections 671 to 690; Title 25,
46 sections 51 and 52; and Title 35-A, sections 4331 to 4393, to
48 exercise the jurisdiction of the State to the maximum extent
50 permitted by the United States Constitution and federal law and
~~to establish in cooperation with the Federal Government a State
Nuclear Safety Inspector Program for the on-site monitoring,
regulatory review and oversight of a facility within the State
that holds a license issued by the United States Nuclear
Regulatory Commission.~~ Nothing in this chapter may be construed
as an attempt by the State to regulate radiological health and
safety reserved to the Federal Government by reason of the United
States Atomic Energy Act of 1954, as amended.

40 **Sec. B-3. 22 MRSA §663**, as amended by PL 1997, c. 686, §4 and
42 PL 2003, c. 689, Pt. B, §6, is repealed.

44 **Sec. B-4. 22 MRSA §664, sub-§1**, as amended by PL 1999, c. 57,
46 Pt. B, §1, is further amended to read:

48 **1. Records.** Each facility licensee shall permit the
50 inspection and copying, for the purposes of this chapter, of its
books and records, maintained in any form, except that books and
records that are privileged as a matter of law, proprietary,
security-related or restricted by federal law, are not open to

inspection. Subject to the approval of the United States Nuclear
Regulatory Commission and of the facility licensee, access to
books and records that are proprietary, security-related or
restricted by federal law may be granted, if ~~the State Nuclear
Safety Inspector, on behalf of the State,~~ an authorized
representative of the State enters into a nondisclosure
agreement. For purposes of this section, proprietary information
includes personnel records, manufacturers' proprietary
information, licensee proprietary information and trade secrets.
For purposes of this subsection, "trade secrets" means any
confidential formula, pattern, process, device, information or
compilation of information, including chemical name, that is used
in any employer's business that gives the employer an opportunity
to obtain any advantage over competitors who do not know or use
it.

Sec. B-5. 22 MRSA §664, sub-§2, as amended by PL 1999, c. 739,
§1, is further amended to read:

2. Monitoring. Each facility licensee shall permit
monitoring, for the purposes of this chapter, of the premises,
equipment and materials, including source, special nuclear and
by-product materials, in its possession or use, or subject to its
control and any vehicle or means of transportation used to remove
materials or equipment from the site, including, but not limited
to, by rail, water, roadway or air. Monitoring of vehicles or
other means of transportation used to remove materials or
equipment from the site must be undertaken in a manner that is
safe, that employs properly calibrated instruments and that does
not result in unreasonable delays in the removal of materials or
equipment from the site.

For the purposes of this subsection, "monitoring" means any one
or combination of the following:

A. Observing the conduct of operations, including
maintenance, quality assurance activities, the preparation,
transportation and handling of radioactive waste, emissions
monitoring, radiation protection and the observation of
emergency preparedness tests and drills;

B. Taking analytical radiological measurements using
properly calibrated instruments to confirm:

(1) The results of quality assurance activities
undertaken by or on behalf of the facility licensee;

(2) That the preparation, transportation and handling
of radioactive waste is undertaken in accordance with
applicable standards;

2 (3) The results of emissions monitoring undertaken by
or on behalf of the facility licensee; or

4
6 (4) That adequate radiation protection measures are in
place; ~~or~~ and

8 C. Taking radiological measurements for the purpose of
10 verifying compliance with applicable state laws, including,
and verifying compliance with the standards of the United
12 States Nuclear Regulatory Commission for unrestricted
license termination, provided that the taking of such
14 measurements employs techniques, protocols, instruments and
quality assurance practices in accordance with generally
16 accepted scientific or industry practices, including, but
not limited to, those described in the federal Multi-Agency
18 Radiation Survey and Site Investigation Manual.

20 The licensee shall, upon request, provide split samples to the
~~State-Nuclear-Safety-Inspector~~ an authorized representative of
22 the department. All analytical measurements taken pursuant to
this subsection must be shared with the licensee. The licensee
24 may provide data to explain any conflicts between measurements
taken by the licensee and measurements taken pursuant to this
26 subsection.

28 ~~Nothing--in--this--chapter--prohibits--the--State--Nuclear--Safety~~
~~Inspector--from--participating--in--licensee--training--activities--that~~
30 ~~are--scheduled--for--licensee--personnel.~~

32 **Sec. B-6. 22 MRSA §664, sub-§§3 to 5**, as amended by PL 1997, c.
686, §5, are repealed.

34 **Sec. B-7. 22 MRSA §665**, as amended by PL 1997, c. 686, §6, is
36 repealed.

38 **Sec. B-8. 22 MRSA §666**, as amended by PL 1997, c. 686, §7 and
PL 2003, c. 689, Pt. B, §7, is repealed.

40 **Sec. B-9. 22 MRSA §667**, as amended by PL 1997, c. 686, §8, is
42 repealed.

44 **Sec. B-10. 22 MRSA §676, sub-§4**, as amended by PL 1993, c.
664, §8 and PL 2003, c. 689, Pt. B, §6, is further amended to
46 read:

48 **4. Radioactive waste.** The Department of Health and Human
Services shall coordinate management of and shall serve as point
50 of contact with the United States Nuclear Regulatory Commission

for high-level and low-level radioactive wastes, in consultation
with the Department of Environmental Protection, and the State
Nuclear Safety Advisor in fulfillment of his the State Nuclear
Safety Advisor's duties pursuant to Title 25, sections 51 and 52,
~~and the State Nuclear Safety Inspector in fulfillment of his
duties pursuant to section 666.~~

Sec. B-11. 22 MRSA §679-B, sub-§2, as amended by PL 1995, c.
333, §1, is further amended to read:

2. Service fee; ceiling. Except for waste that is exempt
in accordance with subsection 4, the department shall assess
annually by September 1st each low-level radioactive waste
generator a service fee on all low-level radioactive waste
generated in this State that is shipped to a low-level
radioactive waste disposal facility, stored awaiting disposal at
such a facility or stored for any other purpose. The service fee
must be based 50% on the volume and 50% on the radioactivity of
the waste disposed in a disposal facility in the previous
calendar year or placed in storage in the previous calendar year
if the State did not have access to a disposal facility for that
year, but each generator must be assessed a minimum of \$100
annually. Each generator must pay this service fee within 30
days, except that any generator may choose to make quarterly
payments instead. Any radioactive waste for which a service fee
was assessed and collected under this section can not be
reassessed for the purposes of this section. The radiation
control program within the 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 each year must amount to \$135,000 and must be
credited to the fund established in subsection 1 and used to
carry out the purposes of this section and of Title 38, section
1453-A. If the Advisory Commission on Radioactive Waste, as
established in Title 38, section 1453-A is dissolved, the service
fee ceiling must be lowered by the amount of the budget of that
commission.~~

Sec. B-12. 25 MRSA §52, sub-§3, as amended by PL 2003, c. 673,
Pt. S, §1, is repealed.

PART C

Sec. C-1. PL 1997, c. 686, §12, as amended by PL 1999, c. 366,
§3, is further amended to read:

Sec. 12. Reimbursement. Maine Yankee Atomic Power Company
shall reimburse the Department of Environmental Protection for

2 actual costs incurred in conducting activities related to
3 decommissioning by the department's regular or project staff or
4 by the department's contractors. Reimbursement charges may not
5 exceed \$70,000 in fiscal year 1997-98 or \$100,000 in fiscal year
6 1998-99. Reimbursement charges may not exceed \$50,000 for each
7 remaining year of decommissioning activity. Payments required
8 under this section cease upon the July 2005 payment of \$50,000 to
the department in fiscal year 2005-06.

10 **Sec. C-2. PL 1997, c. 700, §10** is amended to read:

12 **Sec. 10. Payment by Maine Yankee Atomic Power Plant.** The
13 Maine Yankee Atomic Power Plant shall pay \$25,000 by July 1st of
14 each year to the Department of Environmental Protection to
15 support legislative allocations to the department associated with
16 the Advisory Commission on Radioactive Waste and
17 Decommissioning. Payments required under this section cease on
18 the date ~~of the final operating license termination of the Maine~~
19 ~~Yankee Atomic Power Plant~~ that the former plant site, except for
20 the spent fuel storage facility, is released from operating
21 license requirements by the Nuclear Regulatory Commission. Any
22 unobligated balance remaining ~~must be returned to~~ may be used by
23 the department to pay costs incurred in overseeing and monitoring
24 the site of the Maine Yankee Atomic Power Plant until the balance
is exhausted.

28 SUMMARY

30 The State's only nuclear generating unit, known as Maine
31 Yankee, permanently ceased operations in 1997, began the process
32 of dismantlement and decontamination in 1998 and has completed
33 more than 95% of that physical decommissioning process. With the
34 imminent completion of physical decommissioning of the nuclear
35 generating unit, the State's monitoring and oversight activities
36 will change significantly. This bill ensures that monitoring
37 and oversight of the site and the interim spent fuel storage
38 installation will continue as necessary and will continue to be
39 funded by the nuclear generating facility. The bill reorganizes
40 the State's oversight and monitoring functions and repeals or
41 sets the schedule for repeal of statutory provisions to eliminate
42 unnecessary regulatory oversight functions and related fees that
43 are charged to electric ratepayers.

44
45 Certain state monitoring and oversight activities and costs
46 related to an operating nuclear facility, such as emissions
47 reporting and waste transport fees, are also repealed. This
48 reorganization and establishment of a new assessment level on the
licensee was part of a recent Federal Energy Regulatory

Commission settlement related to decommissioning the facility
2 that was unopposed and approved in August 2004.

4 In particular, Part A of the bill establishes a single
assessment to be paid by the licensee for all state activities
6 related to the site, including safety, radiation and
environmental monitoring and security. The single annual payment
8 to the State is \$360,000 for calendar years 2006 and 2007 and
\$170,000 every year thereafter until the spent fuel is removed
10 from the site and the interim spent fuel storage installation is
finally decommissioned. Part A also eliminates the requirement
12 in the Maine Revised Statutes, Title 35-A for particular
monitoring and reporting of routine radioactive releases, which
14 no longer occur.

16 Part B of the bill eliminates funding for the State Nuclear
Safety Inspector position effective September 2005, as well as
18 the various fees associated with specific testing and monitoring
programs.

20 Part C eliminates, after the payment made in July 2005, the
22 requirement that Maine Yankee reimburse the Department of
Environmental Protection for costs incurred by the department in
24 conducting activities related to the decommissioning. All fees
eliminated in the bill are consolidated into the single
26 assessment imposed in Part A of the bill, to be allocated by the
State at its discretion.

28 The Department of Health and Human Services and the
30 Department of Environmental Protection continue to be the primary
agencies responsible for continued oversight of these activities.