

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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1987

Whereas, unless this legislation is immediately enacted, there will be a significant loss of revenue to the General Fund which would unbalance the budget; and

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

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

4 MRSA §18, sub-§6, as amended by PL 1985, c. 814, Pt. K, is further amended to read:

6. **Fees.** When the court refers parties to the Court Mediation Service after the filing of a complaint or petition under Title 19, section 214 or 581, or Title 19, chapter 13, the court shall assess the parties a \$60 fee to be apportioned equally between the parties, unless the court otherwise directs. The court shall not assess the parties any fees beyond the initial \$60 fee, unless one or both of the parties files under Title 19, section 214 or 581, or Title 19, chapter 13, a motion to amend a final decree, a motion to enforce a final decree or a motion for contempt. When the court refers the parties to the Court Mediation Service after the filing under Title 19, section 214 or 581, or Title 19, chapter 13, of a motion to amend a final decree, a motion to enforce a final decree or a motion for contempt, the court shall assess the parties another \$60 fee to be apportioned equally between the parties, unless the court otherwise directs.

A party may file an in forma pauperis application for waiver of a fee established by this subsection. If the court finds that the party does not have sufficient funds to pay the fee, it shall order the fee waived.

~~This subsection is repealed on June 30, 1987.~~

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

Effective June 29, 1987.

CHAPTER 519

H.P. 1053 — L.D. 1416

AN ACT to Establish a State Nuclear Safety Inspection and Monitoring Program for Commercial Nuclear Power Facilities in the State.

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

Whereas, this Bill requires rulemaking to be initiated in time for a report to be submitted to the Legislature by January 1987; and

Whereas, immediate action is necessary in order to allow sufficient time for rulemaking to take place; and

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

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

Sec. 1. 22 MRSA c. 159-A is enacted to read:

CHAPTER 159-A

STATE NUCLEAR SAFETY PROGRAM

§661. Public policy

In the interests of the public health and welfare of the people of this State, it is the declared public policy of this State that the operation of nuclear power facilities licensed to operate in the State shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the environmental protection policies of this State. It is the purpose of this chapter, in conjunction with sections 671 to 690; Title 25, sections 51 and 52; Title 37-B, section 951; and Title 35, sections 3331 to 3393, to exercise the jurisdiction of the State to the maximum extent 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 the operations of commercial nuclear power facilities within the State which hold an operating 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.

§662. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commercial nuclear power facility or facility. A "commercial nuclear power facility" or "facility" means a utilization facility situated in this State which holds an operating permit or license issued by the United States Nuclear Regulatory Commission.

§663. State Nuclear Safety Inspector

There is established within the Department of Human Services the State Nuclear Safety Inspector Office administered by a State Nuclear Safety Inspector. The State Nuclear Safety Inspector shall be a classified employee, subject to the Civil Service Law.

1. Qualifications. The State Nuclear Safety Inspector shall be an individual knowledgeable in the field of commercial nuclear power production and shall possess, at a minimum, a master's degree with major work in nuclear, mechanical, electrical or chemical engineering and have at least 3 years experience in nuclear operations.

2. Duties. The State Nuclear Safety Inspector shall serve as an on-site nuclear safety inspector of commercial nuclear power facilities and on-site storage and transportation of nuclear waste.

3. Staff. The State Nuclear Safety Inspector shall employ such other personnel as may be necessary to carry out the purposes of this chapter.

§664. Responsibility of nuclear power plant licensees.

The responsibility of nuclear power plant licensees is as follows.

1. Records. Each nuclear power plant licensee shall permit the inspection and copying, for the purposes of this chapter, of its books and records, maintained in any form, provided that books and records that are privileged as a matter of law, proprietary, security-related, or restricted by federal law, shall not be open to inspection. Subject to the approval of the Nuclear Regulatory Commission and of the nuclear power plant licensee, access to books and records which are proprietary, security-related or restricted by federal law may be granted, if the State Nuclear Safety Inspector, on behalf 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, as defined by Title 26, section 1711, subsection 12.

2. Monitoring. Each nuclear power plant 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. For the purposes of this subsection, monitoring means 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. Nothing in this chapter prohibits a State Nuclear Safety Inspector from participating in licensee training activities which are scheduled for licensee personnel.

3. Access. The licensee shall provide the State Nuclear Safety Inspector with unescorted access to the plant at all times and on an identical basis as that provided to licensee personnel with unescorted access clearance, provided that the State Nuclear Safety Inspector complies with the licensee's applicable access control measures for security, radiological protection, personal safety and fitness for duty. The State Nuclear Safety In-

pector shall be subject to and comply with such continuing security procedures and periodic medical testing which is applicable to all licensee employees as may be required to retain unrestricted facility access.

4. On-site facilities. Any nuclear power plant licensee, upon the request of the commissioner, shall provide rent-free space, including all necessary utility and janitorial services, for the exclusive use of the State Nuclear Safety Inspector. The office shall be convenient to and have full access to the nuclear power facility and shall provide the State Nuclear Safety Inspector with privacy.

5. Fees. Each nuclear power plant licensee whose operations are monitored under this chapter shall pay a fee to the permanent fund established in section 680, subsection 7. The amount of the fee for each licensee shall be calculated by multiplying the total allocation to the Department of Human Services 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, by the licensee's proportion of the total electric generating capacity of all licensees subject to this chapter.

§665. United States Nuclear Regulatory Commission activities.

The State Nuclear Safety Inspector shall take all reasonable steps to cooperate with any on-site resident inspectors employed by the United States Nuclear Regulatory Commission in a manner which enables these employees to fulfill their responsibilities under federal law and regulation. Subject to the approval of the United States Nuclear Regulatory Commission and of the licensee, and pursuant to Title 25, section 51, the State Nuclear Safety Inspector shall observe United States Nuclear Regulatory Commission inspections, meetings and audits as they pertain to the safety of the licensee's operations and procedures.

§666. Responsibilities of the State Nuclear Safety Inspector.

The responsibilities of the State Nuclear Safety Inspector are as follows.

1. Damages to public health and safety. In the event the State Nuclear Safety Inspector has reason to believe that any activity poses a danger to public health and safety, and after notifying the operator of the facility and the United States Nuclear Regulatory Commission, the inspector shall immediately notify the Governor, the Commissioner of Human Services and the State Nuclear Safety Advisor within the State Planning Office. This provision should not be construed as precluding the State Nuclear Safety Inspector from discussing his concerns with the United States Nuclear Regulatory Commission or others before making a determination that any activity poses a danger to public health and safety.

2. Reports. The State Nuclear Safety Inspector, with the cooperation of the Director of Health Engineering, shall prepare a report of his activities under this chapter to be submitted January 1st of each year to the State Nuclear Safety Advisor and the Legislature. The State Nuclear Safety Inspector shall prepare monthly reports for the State Nuclear Safety Advisor, the President of the Senate and the Speaker of the House, with copies to the United States Nuclear Regulatory Commission and the licensee.

3. Confidential and privileged information. The State Nuclear Safety Inspector shall keep confidential and privileged the identity of any person providing communications which, in the opinion of the State Nuclear Safety Inspector, support a presumption of unsafe operation of a commercial nuclear power facility or which indicate any violation of the licensee's operating license issued by the United States Nuclear Regulatory Commission, unless the request for confidentiality is waived or withdrawn by such person. The safety inspector shall make all prudent efforts to investigate the basis for any related allegation of unsafe or improper operation and shall cooperate to the extent feasible with the United States Nuclear Regulatory Commission personnel in this effort. Any information brought to the attention of the state inspector which involves the safety of the plant or a possible violation of United States Nuclear Regulatory Commission regulations shall be immediately brought to the attention of the United States Nuclear Regulatory Commission and the licensee.

§667. Liability

Notwithstanding the immunities set forth in Title 14, section 8103, the State shall be liable for the negligent acts or omissions of the State Nuclear Safety Inspector, or any personnel under his direct supervision and control, which occur on the site of a commercial nuclear power facility. All other provisions of Title 14, chapter 741, including notice requirements, defense and indemnification of employees and limitations on damage amounts, shall apply.

Sec. 2. 22 MRSA §673, sub-§3-A is enacted to read:

3-A. Commercial nuclear power facility or facility. A "commercial nuclear power facility" or "facility" means a utilization facility situated in this State which holds an operating permit or license issued by the United States Nuclear Regulatory Commission.

Sec. 3. 22 MRSA §674, sub-§4, ¶¶H and I, as enacted by PL 1983, c. 345, §§13 and 14, are amended to read:

H. Encourage, participate in, or conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation; and

I. Collect and disseminate information relating to control of sources of radiation, including:

(1) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(2) Maintenance of a file of registrants possessing sources of radiation requiring registration under this Act and any administrative or judicial action pertaining thereto; and

(3) Maintenance of a file of all of the department's rules relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon; ;

Sec. 4. 22 MRSA §674, sub-§4, ¶¶J and K are enacted to read:

J. Establish and maintain a continuous radiation monitoring system to record the radioactive levels of gaseous and liquid discharges from any commercial nuclear power facility operating in the State; and

K. Establish and maintain an off-site monitoring network to provide continuous monitoring of gamma radiation levels within the vicinity of any commercial nuclear power facility operating in the State. Portable off-site monitoring devices shall be made available to members of the public to establish a network of volunteer monitors who shall report to the department their finds. For this purpose, the department shall make Geiger Rate meters available to 50 volunteer monitors. In addition to the placement of Geiger Rate meters, the department shall procure 20 Gamma Scintillation Detection Devices and place of them in homes of members of the public who volunteer to participate in the program. The 4 additional devices shall be maintained by the department in reserve. The volunteers with Gamma Scintillation Detection Devices shall also be provided with 2-way radios so they can report their findings in the case of emergency. All volunteers will assist the department in its continuous monitoring network. All off-site monitoring devices shall be geographically distributed throughout the surveillance area to provide the most effective monitoring network. The department shall adopt rules to provide for the selecting of the volunteers, the appropriate and accurate use of the meters and devices and the method and frequency of reporting to the department and other procedures necessary to implement the program.

Sec. 5. 22 MRSA §674, sub-§5, as enacted by PL 1983, c. 345, §§13 and 14, is amended to read:

5. Coordination. The In consultation with the State Nuclear Safety Advisor in fulfillment of his duties pursuant to Title 25, sections 51 and 52, the commissioner shall serve as the coordinator of radiation activities among the Bureau of Civil Emergency Preparedness, Department of Public Safety, Department of Human Services and Department of Environmental Protection. The commissioner shall:

A. Consult with and review regulations and procedures of the agencies and federal law to assure consistency and to prevent unnecessary duplication, inconsistencies or gaps in regulatory requirements; and

B. Review, prior to promulgation, the proposed rules of all agencies of the State relating to use of control of radiation, to assure that these rules are consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and rules of other agencies of the State. The review shall be completed within 15 days.

If the commissioner determines that proposed rules are inconsistent with rules of other agencies of the State or federal law, he shall consult with the agencies involved in an effort to resolve these inconsistencies. In the event no inconsistency is reported within 15 days, the proposed rules shall be presumed consistent for the purposes of this subsection. Upon notification by the commissioner that the inconsistency has not been resolved, the Governor may find that the proposed rules or parts thereof are inconsistent with rules of other agencies of the State or the Federal Government and may issue or order to that effect, in which event the proposed rules or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules to achieve consistency with the proposed rules.

Sec. 6. 22 MRSA §676, sub-§4, as enacted by PL 1983, c. 345, §§13 and 14, is amended to read:

4. Radioactive waste. The Department of Environmental Protection shall coordinate management of and shall serve as liaison point of contact with the United States Nuclear Regulatory Commission for high-level and low-level radioactive wastes, in consultation with the State Nuclear Safety Advisor in fulfillment of his duties pursuant to Title 25, sections 51 and 52, and the State Nuclear Safety Inspector in fulfillment of his duties pursuant to chapter 159-A.

Sec. 7. 22 MRSA §680, sub-§7, as enacted by PL 1983, c. 345, §§13 and 14, is repealed and the following enacted in its place:

7. Permanent fund. All fees shall be paid to the Treasurer of State to be maintained in a permanent fund and used to carry out the purposes of this chapter and chapter 159-A.

Sec. 8. 22 MRSA §682, sub-§1, as enacted by PL 1983, c. 345, §§13 and 14, is amended to read:

1. Authorized. The department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this Act and the rules issued thereunder, except that entry into areas under the jurisdiction of the Federal Government or its duly designat-

ed representative shall be subject to section 684 and Title 25, sections 51 and 52, which are incorporated by reference as provisions of this chapter.

Sec. 9. 25 MRSA §51, as amended by PL 1971, c. 592, §37, is further amended to read:

§51. Agreements

The Governor, the ~~Department of Health and Welfare and the Bureau of State Police, or any person, department or agency designated by the Governor~~ Department of Human Services and other state agencies designated in Title 22, section 676, in consultation with the State Nuclear Safety Advisor, in fulfillment of his duties pursuant to section 52, shall have authority to enter into agreements, understandings or arrangements with any other department or agency of this State, any federal agency, state, political subdivision or person to provide for mutual aid plans, emergency plans, evacuation plans and their implementation, memoranda of understanding and any other agreements deemed necessary to protect public and property in this State from hazards or dangers from radiation, radioactive materials, nuclear materials or the occurrence of a radiological incident as a result of the presence of, release of or emissions from radioactive materials, radioactivity or nuclear materials in this State. The hazards or dangers referred to in this section shall be only those arising from the peaceful use, transportation or storage of nuclear or atomic materials.

Sec. 10. 25 MRSA §52 is enacted to read:

§52. State Nuclear Safety Advisor

1. State Nuclear Safety Advisor position established. There is established within the State Planning Office a State Nuclear Safety Advisor position, which shall be an unclassified, confidential position. The State Nuclear Safety Advisor shall be an individual knowledgeable in the field of nuclear power production.

2. Duties. The State Nuclear Safety Advisor shall have the following duties:

A. To advise the Governor and the Legislature on issues pertaining to the safe operation of nuclear facilities and the safe transportation and storage of nuclear waste;

B. To consult with other agencies of State Government or Federal Government whose activities pertain to the issues in paragraph A;

C. To review and evaluate and to advise the Governor and the Legislature on activities conducted by other states to inspect and monitor the safe operation of nuclear facilities and the safe transportation and storage of nuclear waste; and

D. To prepare a report of his activities under this section to be submitted January 15th of each year to the

Governor and the Legislature.

For purposes of this section, "commercial nuclear power facility" or "facility" means a utilization facility situated in this State which holds an operating permit or license issued by the United States Nuclear Regulatory Commission.

3. Fees. In addition to the fee provided in Title 22, section 664, each nuclear power plant licensee whose operations are monitored under this chapter shall pay a fee to the permanent fund established in section 680, subsection 7. The amount of the fee for each licensee shall be calculated by multiplying the total allocation to the State Planning Office for the fiscal year from the fund established in section 680, subsection 7, for the full cost of the State Nuclear Safety Advisor, including the cost to the State for personnel and fringe benefits, by the licensee's proportion of the total electric generating capacity of all licensees subject to this chapter.

Sec. 11. 37-B MRSA §960, as reallocated by PL 1983, c. 816, Pt. B, §14, is repealed and the following enacted in its place:

§960. Emergency planning area

The emergency planning area is identified as follows.

1. Primary Emergency Planning Zone. The Primary Emergency Planning Zone shall be designated by the Bureau of Civil Emergency Preparedness by rule as the zone where specific evacuation plans are required to protect from radiation exposure by the inhalation pathway. Unless changed by rule, the Primary Emergency Planning Zone shall be the Emergency Radiological Preparedness Plan, with approximately a 10-mile radius around any nuclear power plant. The Primary Emergency Planning Zone shall be compatible with applicable federal laws and regulations.

1-A. Secondary Emergency Planning Zone. The Secondary Emergency Planning Zone shall be designated by the Bureau of Civil Emergency Preparedness, by rule, as the zone beyond the Primary Emergency Planning Zone where protective action plans, pursuant to the State's police powers, are required:

A. To further protect the health and safety of the State's citizens from exposure or other potential dangers in that zone; and

B. To protect the State's economic interests.

The Secondary Emergency Planning Zone shall extend from the Primary Emergency Planning Zone to a designated area, determined by rule, around any nuclear power plant, including the area within this State which lies within the designated area from nuclear power plants in adjacent states or provinces.

2. Ingestion Pathway Zone. The Ingestion Pathway Zone shall be designated by the Bureau of Civil Emergency Preparedness, by rule, as the zone beyond the Emergency Planning Zone where protective action plans are required relative to the food chain. Unless changed by rule, the Ingestion Pathway Zone shall be a circle of a radius not less than 50 miles centered on any nuclear power plant, whether located within this State or in any adjacent state or province.

Sec. 12. Mandatory rulemaking; report to Legislature. The Bureau of Civil Emergency Preparedness shall commence rulemaking to designate a Secondary Emergency Planning Zone as required by the Maine Revised Statutes, Title 37-B, section 960, subsection 1-A, within 30 days of the effective date of this Act. The Bureau of Civil Emergency Preparedness shall submit a report to the Joint Standing Committee on Human Resources, no later than January 15, 1988. That report shall contain the progress made on adopting rules which designate a Secondary Emergency Planning Zone, including the rules which were adopted or which have been proposed, and a discussion of the basis for the rules or proposed rules.

Sec. 13. Allocation. There is allocated from the permanent fund established by the Maine Revised Statutes, Title 22, section 680, subsection 7, the following funds, to carry out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
<u>EXECUTIVE DEPARTMENT</u>		
State Planning Office		
Positions	(1)	(1)
Personal Services	\$51,240	\$51,240
All Other	5,000	5,000
Capital Expenditures	1,500	
Total	<u>\$57,740</u>	<u>\$56,240</u>
Provides funds for the State Nuclear Safety Advisor.		

	<u>(1)</u>	<u>(1)</u>
<u>HUMAN SERVICES, DEPARTMENT OF</u>		
Bureau of Health Engineering		
Positions	(1)	(1)
Personal Services	\$ 56,240	\$56,240
All Other	22,800	22,800
Capital Expenditures	93,200	10,400
Total	<u>\$172,240</u>	<u>\$89,440</u>
Provides funds for the State Nuclear Safety Inspector, part-time clerical support and the capital items required by section 4 of this Act.		

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

Effective June 29, 1987.