

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

(3) Starting July 1, 1989, each dependent child shall receive a benefit of \$175 a month.

(4) Starting July 1, 1990, each dependent child shall receive a benefit of \$200 a month.

(5) Starting July 1, 1991, each dependent child shall receive a benefit of \$225 a month.

(6) Starting July 1, 1992, each dependent child shall receive a benefit of \$250 a month.

(7) Starting July 1, 1991, a participating local district may increase the \$250 benefit under subparagraph (6) by the cost of living, in accordance with the provisions of subsection 10.

B. The benefits shall begin the first month after the death of the qualifying member and shall be payable to each dependent child, in accordance with Title 18-A, article V, until the end of the month in which he no longer meets the definition of "dependent child" in section 17001, subsection 12.

C. When any dependent child becomes ineligible to receive benefits under this subsection, the other dependent children, if any, shall continue to receive benefits in accordance with this subsection.

D. The combined benefits under subsection 3 and this subsection may not exceed 80% of the deceased qualifying member's average final compensation adjusted annually at the same time and at the same percentage as adjustments under subsection 10.

Sec. 4. 5 MRSA §18553, sub-§5, ¶D is enacted to read:

D. Starting July 1, 1991, a participating local district may increase the \$150 benefit under paragraph A by the cost of living, in accordance with the provisions of subsection 10.

Sec. 5. Applications. Existing beneficiaries under this section shall get the greater of their current benefit or the new benefits under this Act.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

EDUCATIONAL AND CULTURAL SERVICES, DEPARTMENT OF

Teacher Retirement

All Other

\$35,772

Effective September 29, 1987.

CHAPTER 530

S.P. 639 — L.D. 1865

AN ACT Creating the Maine Low-level Radioactive Waste Authority.

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

Whereas, the United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, requires that states assume responsibility for providing for the capacity for the disposal of low-level radioactive waste generated within their borders; and

Whereas, Maine is not a member state to a regional compact for low-level radioactive waste disposal; and

Whereas, the United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, establishes January 1, 1988, as the milestone date for states which are not members of a compact to develop a siting plan for an in-state disposal facility and further provides for penalties for failure to meet those milestones, including surcharges on waste disposed of and possible denial of access to regional disposal facilities; and

Whereas, it is the purpose of this legislation to meet that January 1, 1988, milestone; 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. 5 MRSA §12004, sub-§7, ¶A, sub-¶(11) is enacted to read:

(11) Maine Low-level Radioactive Waste Authority \$100/day 38 MRSA §1512

Sec. 2. 36 MRSA §271, sub-§2, ¶A, as enacted by PL 1985, c. 764, §8, is amended to read:

A. Hear and determine appeals according to the following provisions of law:

- (1) The tree growth tax law, chapter 105, subchapter II-A;
- (2) The farm and open space law, chapter 105, subchapter X;
- (3) As provided in section 843;

- (4) As provided in section 844;
- (5) Section 272; and
- (6) Section 2865; and
- (7) Title 38, section 1505;

Sec. 3. 38 MRSA §1454, as amended by PL 1985, c. 522, §§2 and 3, is repealed and the following enacted in its place:

§1454. Radioactive Waste Evaluation Fund

1. Establishment. There is established the Radioactive Waste Evaluation Fund to be used to carry out the purposes of this chapter. Money allocated to the commission and to the Department of Environmental Protection from this fund shall be administered by the Commissioner of Environmental Protection in accordance with established budgetary procedures and this section. The commissioner may accept state, federal and private funds to be used as appropriate to assure safe and effective low-level radioactive waste management, to develop capacity for sale, storage and disposal of these wastes and to monitor and evaluate plans for storage and disposal of high-level radioactive waste.

2. Service fee. Except for waste which is exempt in accordance with subsection 3, the Board of Environmental Protection shall assess each low-level radioactive waste generator for a service fee on all low-level radioactive waste generated in this State which is shipped to commercial low-level radioactive waste disposal facilities, stored awaiting disposal at a commercial low-level radioactive waste disposal facility or stored for any other purpose. That service fee shall be based 50% on the volume and 50% on the radioactivity of the waste generated in the previous calendar year, but each generator shall be assessed an annual fee of at least \$300. The Board of Environmental Protection shall promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, concerning the calculation of the fee and the exemptions to the fee, consistent with this section. The revenue from this service fee shall be credited to the fund established in subsection 1 and used to carry out this chapter.

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

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

B. Waste which is authorized by the United States Nuclear Regulatory Commission to be stored for up to 3 years at the site of generation for decay and ultimate disposal without regard to radioactivity; and

C. Radioactive waste or other material, including, but

not limited to, sealed radioactive sources, which is returned to the vendor.

4. Fee assessment; ceiling. The Commissioner of Environmental Protection shall annually on June 30th, beginning in 1987, assess a service fee calculated in accordance with subsection 2, in an amount equal to \$250,000 less any balance carried forward under subsection 6. The commissioner shall assess each generator for its service fee. Each generator shall pay the service fee within 30 days, except that any generator may choose to make quarterly payments instead. In the event that the balance in the fund at the beginning of the fiscal year exceeds the ceiling, the excess shall be remitted to the generators within 30 days, in proportion to their payments during the previous fiscal year. Upon dissolution of the commission, any unexpended funds shall be promptly remitted to the generators in proportion to their payments in the previous fiscal year.

5. Allocation. Money in the fund established by this section shall be allocated from time to time by the Legislature for the following purposes: To the commission for advisory and public information activities and to the Department of Environmental Protection for regulatory activities. These amounts shall become available in accordance with Title 5, chapters 141 to 155.

The commission may receive and expend federal grants and payments for the purpose of carrying out its duties. The money received by the commission from federal sources shall not be counted toward the ceiling established in sub-section 4.

6. Balance carried forward. Any unexpended balance shall not lapse, but shall be carried forward to the same fund for the next fiscal year and shall be available for the purposes authorized by this chapter.

7. Financial reports. The commissioner shall report quarterly to the Advisory Commission on Radioactive Waste and annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over natural resources on the income to and expenditures from the Radioactive Waste Evaluation Fund for the previous fiscal year and on the budget for the coming year. Those reports shall include total fees received from each generator, line item detail on expenditures, including in-state travel and out-of-state travel, printing, mailing and hearings, personnel, consultant services, general operating expenses, supplies and overhead for both the commission and the department and transfers of funds under subsection 7-A.

7-A. Transfer of funds. Notwithstanding Title 5, section 1585, funds allocated under this section may be transferred, as necessary to accomplish the purposes of this chapter, from the Department of Environmental Protection to other agencies, including the Maine Geological Survey, Maine Land Use Regulation Commission, Division of Health Engineering and the State Planning Office.

Sec. 4. 38 MRSA c. 14-B is enacted to read:

CHAPTER 14-B

MAINE LOW-LEVEL RADIOACTIVE
WASTE AUTHORITY

SUBCHAPTER I

GENERAL PROVISIONS

§1501. Short title

This chapter shall be known and may be cited as the "Maine Low-level Radioactive Waste Authority Act."

§1502. Legislative findings and purpose

The United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, requires that states assume responsibility for providing the capacity for the disposal of low-level radioactive waste generated within their borders. The State has expressed its intent to develop, if necessary, a site for the location of a low-level radioactive waste disposal facility within the State. The State is continuing to try to negotiate a compact or agreement for low-level radioactive waste disposal out of State. The United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, establishes January 1, 1988, as the milestone date for states which are not members of a compact to develop a siting plan for a low-level radioactive waste disposal facility. To accomplish that task, it is necessary for the State to provide for planning, siting, construction, operation and maintenance, site closure and long-term, post-closure control of a low-level radioactive waste disposal facility or facilities. In order to protect public health, safety and the environment, federal regulations require the effective isolation of low-level radioactive waste for 500 years following disposal site closure, observation and maintenance of the closed site and long-term institutional control of the site leading to termination of the operating license.

The purpose of this chapter is to establish the Maine Low-level Radioactive Waste Authority with the responsibility, if necessary, to coordinate and oversee the planning, siting, construction, operation, maintenance, closure, post-closure observation and maintenance and long-term institutional control of a facility or facilities with sufficient capacity to dispose of only the low-level radioactive waste generated within this State and for which this State is responsible and to provide for termination of the license for the facility or facilities.

§1503. Definitions

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

1. Authority. "Authority" means the Maine Low-

level Radioactive Waste Authority created in this chapter.

2. Closure. "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site, following termination of operation.

3. Commission. "Commission" or "advisory commission" means the Advisory Commission on Radioactive Waste established by section 1453.

4. License. "License" means a license issued by the United States Nuclear Regulatory Commission for the operation of a low-level radioactive waste facility under the Code of Federal Regulations, Part 61.

5. Low-level radioactive waste. "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or by-product material, as defined in the United States Code, Title 42, Section 2014(e)(2), the United States Atomic Energy Act of 1954, Section 11 (e)(2), and that the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste.

6. Low-level radioactive waste disposal facility. "Low-level radioactive waste disposal facility," "disposal facility" or "facility" means a parcel of land, together with the structures, equipment and improvements on or attached to the land, for the isolation of low-level radioactive waste from the biosphere inhabited by people and their food chains.

7. Low-level radioactive waste generator. "Low-level radioactive waste generator" or "generator" means a person who produces or processes low-level radioactive waste, whether or not that waste is shipped off-site

8. Operator. "Operator" means a person, including the authority, designated to develop and operate a facility.

9. Person. "Person" means an individual, a partnership, a voluntary association, a firm, a corporation and a governmental or quasi-public entity.

§1504. Essential governmental function

The purposes of this chapter are public and the authority is performing an essential governmental function in carrying out this chapter.

§1505. Exemption from taxes; payment in lieu of taxes

1. Exemption from taxes. The authority shall not be required to pay any taxes on any property required or used by it for the purposes provided in this chapter, nor may the authority be required to pay any tax upon

its income, except as may be required by the laws of the United States.

2. Payment in lieu of taxes. The authority shall annually pay a municipality an amount in lieu of taxes equal to the amount of property taxes not paid to that municipality during the previous calendar year due to the statutory property tax exemption provided in this section. In the case of an unorganized territory, the authority shall annually pay the amount to the State Tax Assessor who shall deposit that amount in the Unorganized Territory Education and Services Fund established in Title 36, chapter 115. If the authority disagrees with the amount determined to be due in lieu of taxes under this subsection, it may appeal to the State Board of Property Tax Review as provided in Title 36, section 271.

§1506. Fiscal year

The fiscal year of the authority shall coincide with that of the State.

SUBCHAPTER II

ORGANIZATION

§1511. Authority established

There is established, to carry out the purposes of this chapter, the Maine Low-level Radioactive Waste Authority referred to in this chapter as the "authority." The authority is a body corporate and politic and is an instrumentality of the State.

§1512. Membership; qualifications; terms; and compensation

1. Membership. Membership of the authority shall be as follows.

A. Prior to selection of a disposal site, including voter approval as provided in section 1493, the authority shall consist of 7 members, including the State Geologist, ex officio, and 6 public members appointed by the Governor subject to review by the joint standing committee of the Legislature having jurisdiction over energy and natural resources and confirmation by the Legislature. The Governor shall select a chairman from among the 6 public members.

B. Within 30 days after selection of a disposal site, including voter approval as provided in section 1493, 2 additional members representing the area selected shall be appointed to the authority. Those 2 members shall be appointed by the Governor from among a list of candidates nominated by the municipal officers of the municipality or municipalities in which the site is located or, in the case of selection of a site in the unorganized territories, the county commissioners of the county or counties in which the site is located. Those 2 members are subject to review by the joint standing committee of the Legislature having jurisdiction

over energy and natural resources and confirmation by the Legislature.

2. Qualifications. Among the members there shall be at least one person knowledgeable in the health field; one person knowledgeable in the field of nuclear waste; one person knowledgeable in the field of construction engineering; one person knowledgeable in the environmental field; one person knowledgeable in the field of public administration; and one person knowledgeable in the field of business. The appointments shall reflect some geographical diversity. The 2 members representing the area selected for a disposal site shall be residents of the area in which the site is to be located. No member, except the State Geologist, may be a state employee while serving as a member of the authority.

3. Terms of office. The appointed members shall each serve 4-year terms, except of the terms of the initial 6 appointments, 1 shall expire June 30, 1988; 2 shall expire June 30, 1989; 1 shall expire June 30, 1990; and 2 shall expire June 30, 1991. The terms of the 2 members appointed to represent the area selected for a disposal site shall also be staggered. Of the initial 2 appointees, one shall be appointed for a term of up to 2 years which expires June 30th and one shall be appointed for a term of up to 4 years which expires on June 30th. Persons appointed to fill vacancies shall be appointed in the same manner as the person whom they are replacing to complete the unexpired term of the former member. No member may serve more than 2 consecutive full terms.

4. Reimbursement. Members, except the State Geologist, shall be paid \$100 per diem. All members shall be paid for expenses in the same manner as state employees.

§1513. Meetings; quorum

1. Meetings. The authority shall meet at least every 2 months until the facility is operating and at least every 6 months thereafter.

2. Quorum. A quorum shall consist of a majority of the members of the full authority and any decision requiring a vote shall require the favorable vote of at least a majority of the members of the full authority.

§1514. Executive director

1. Salary. The authority shall hire an executive director who shall serve at the pleasure of the authority. The salary of the executive director shall be established by the authority at the time of appointment.

2. Powers and duties. The executive director shall oversee day-to-day operations of the authority; hire appropriate staff members with approval of the authority; and carry out other responsibilities delegated by the authority subject to conditions and instructions which the authority deems appropriate.

§1515. Staff employees; conflict of interest; personal liability

1. Authority. The authority may hire, on a temporary or permanent basis, such staff as necessary, including legal counsel and financial experts.

2. Exempt from Civil Service Law. Employees of the authority shall not be subject to Title 5, chapters 71 and 372.

3. Conflict of interest. Notwithstanding Title 5, section 18, subsection 1, each member of the authority and each employee, contractor, agent or other representative of the authority is deemed an "executive employee" solely for purposes of Title 5, section 18. In addition, Title 17, section 3104, shall be applicable, in accordance with its provisions, to all such representatives of the authority.

4. Personal liability. Personal liability of authority members and employees shall be as provided in the Maine Tort Claims Act, Title 14, chapter 741, except that the authority shall indemnify a member or an employee against any liability arising out of an act or omission occurring within the course or scope of employment.

§1516. Sunset

1. Justification report; evaluation and analysis. For purposes of the Maine Sunset Act, Title 3, chapter 23, the authority shall be considered an independent agency, with its first justification report in accordance with Title 3, section 504, due no later than October 31, 1996, and the evaluation and analysis in accordance with Title 3, section 505, by the joint standing committee of the Legislature having jurisdiction over audit and program review due no later than December 31, 1997, but notwithstanding Title 3, sections 506 and 507, the authority shall not terminate, except as provided in this chapter.

2. Termination. The authority shall terminate one year after:

A. The State has entered into a compact ratified as provided in section 1474, for the disposal of all low-level radioactive waste for which the State is responsible;

B. The State has entered into an agreement determined by the authority to be sufficient to provide for the disposal of all low-level radioactive waste for which the State is responsible; or

C. The United States Nuclear Regulatory Commission has terminated the license under 10 Code of Federal Regulations, Section 61.31, for any disposal facility constructed in accordance with this chapter.

3. Report to the Legislature. Within 30 days of the occurrence of any of the events described in subsection 2, the authority shall issue a report verifying that fact to the Governor and the Legislature.

SUBCHAPTER III

POWERS AND PROPERTY

§1521. Powers

In order to accomplish the purposes of this chapter and in addition to any other powers conveyed by this chapter, the authority may exercise the following powers:

1. Sue. Sue and be sued;

2. Seal. Have a seal and alter the seal at its pleasure;

3. Bylaws. Adopt from time to time and amend bylaws covering its procedure, publish those bylaws as necessary or advisable and cause records of its proceedings to be kept;

4. Rules. Promulgate in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, all rules necessary to carry out its responsibilities under this chapter, including procedural rules, rules for operation of a disposal facility and other rules;

5. Disposal facility. Plan, site, construct, operate, maintain, close, provide long-term care and provide for termination of the license of a low-level radioactive waste disposal facility or facilities with sufficient capacity only to dispose of the low-level radioactive waste generated within this State and for which the State is responsible;

6. Personal property. Acquire, hold and dispose of personal property;

7. Real property. Acquire in the name of the authority by purchase, lease or otherwise, real property and interests in real property determined necessary or desirable for its purposes, and use the property;

8. Fees. Establish and collect fees, assessments and other charges and expend money received as provided in this chapter;

9. Contracts. Make, modify and carry out contracts or agreements with the United States or any instrumentality or agency of the United States, this State or any of its agencies or instrumentalities, municipalities or bodies existing therein, public corporations, private corporations, partnerships, associations and individuals which are necessary or useful in carrying out its powers, duties or purposes;

10. Employees. Employ such assistants, agents, engineering, architectural and construction experts and inspectors and attorneys and such other employees as it deems necessary or desirable to carry out its purposes;

11. Information. Obtain any information and conduct investigations useful or convenient for carrying out any of its purposes, powers or duties;

12. Inspections. Conduct inspections of generators, processors, storers and transporters of low-level radioactive waste;

13. Entry at reasonable hours. Enter during normal working hours upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings, examinations and inspections as it deems necessary for the purpose of this chapter. The entry shall not be deemed a trespass;

14. Insurance. Procure insurance or other assurances in aid of any of its purposes;

15. Enforcement. Establish and enforce low-level radioactive waste packaging and transportation requirements;

16. Exercise powers. Exercise any of its powers in the public domain of the United States, unless the exercise of those powers is not permitted by the laws of the United States; and

17. Other actions. Take all other lawful actions necessary and incidental to these powers in carrying out the requirements of this chapter.

§1522. Property

All property of the authority and all property held in the name of the State pursuant to this chapter shall be exempt from levy and sale by virtue of any execution, and no execution or other judicial process may be a lien upon its property held pursuant to this chapter; provided that the authority shall not lease, sell or otherwise convey any of its real or personal property or easements in property, franchises, buildings or structures, except that the authority may permit the erection or installation of electric power, telegraph, telephone, water, sewer or pipeline facilities.

§1523. Contractors; contracts

1. Use authorized. The authority may determine to carry out any authorized activity through use of contractors, subject to the requirements of law.

2. Approval. Contracts and agreements for more than \$10,000 relating to the construction, operation, maintenance, closure and post-closure monitoring of a disposal facility shall be awarded only after competitive bid and approval by the authority.

3. Rules. The authority shall promulgate rules for the awarding of contracts by October 1, 1987.

§1524. Penalties

1. Violation. Any person who violates this chapter or any rule promulgated under this chapter or neglects or refuses to comply with any of the provisions of this chapter, commits a civil violation for which a forfeiture

not to exceed \$1,000 may be adjudged. Each day of violation shall be considered a separate offense.

2. Public health and safety. Any person who commits a violation as described in subsection 1 which endangers the health and safety of the public or of the employees of the disposal facility shall be subject to a civil penalty not to exceed \$5,000 to be recovered in a civil action. Each day of violation shall be considered a separate offense.

3. Suspension of access. Any person who commits a violation as described in subsections 1 and 2 may, in addition to the penalties provided in subsections 1 and 2, have access to a disposal facility suspended by the authority for up to one year. That suspension may be renewed until the violator demonstrates the ability to remedy the situation for which the penalty was assessed.

The authority shall enforce this section in the Superior Court for Kennebec County or for the county in which the violation occurs.

SUBCHAPTER IV

DUTIES AND RESPONSIBILITIES

§1525. Low-level radioactive waste management plan

The authority shall promulgate by rule, following public hearing, a plan for the management of the State's low-level radioactive waste. The plan shall guide the State's activities in disposing of the State's low-level radioactive waste. The plan shall be adopted by December 1, 1987, and shall be updated annually. The first plan is intended to meet the January 1, 1988, milestone date for the development of a siting plan required by the United States Code, Title 42, Section 5(e)(1)(B), of the United States Low-level Radioactive Policy Amendments Act of 1985, Public Law 99-240.

§1526. Operating plan and budget; annual report

1. Operating plan and budget. The authority shall submit its annual operating plan and proposed budget for the fiscal year beginning July 1st of each year to the Governor, the Legislature and the advisory commission by January 1st of that year. The Governor and the advisory commission shall review the operating plan and budget, but their approval is not required. The portion of the authority's budget pertaining to the administration and operation of the authority requires approval by resolve of the Legislature. The Legislature may revise the administrative and operational portion of the budget prior to approval. Any budget not approved by April 1st shall be deemed to be approved.

2. Annual report. The authority shall submit its annual report to the Governor, the Legislature and the advisory commission not later than 120 days after the close of its fiscal year.

§1527. Planning, siting and construction of facilities

1. State facility required. The authority shall develop or provide for the development of, if necessary, in accordance with a schedule designed to meet the State's obligations under federal law, a facility or facilities for disposal of all low-level radioactive waste generated in the State and for which the State is legally responsible, except to the extent that a generator, prior to construction of the state facility or facilities, informs the authority that it will not need disposal capacity in the state facility.

2. Limitation. Site selection activities shall not begin until all planning and necessary rule adoption has been completed. Construction shall not begin until all approvals are obtained under state and federal law, including voter approval required by section 1493. The proposal shall be submitted to the voters after the Legislature has approved it under section 1479.

3. Local participation in siting decision. Within 60 days of the final selection by the authority of the low-level waste disposal facility site, the governing body of the municipality where the facility is to be located, or the Secretary of State in the case of an unorganized township, shall hold an election for the purpose of approving the site. Unless 60% of the voters casting ballots in the election approve of the authority's site location decision, the authority shall not locate the facility within the municipality or territory.

§1528. Records

Following commencement of operation of any low-level radioactive waste disposal facility in this State. The authority shall keep, or cause to be kept, detailed records of all waste disposed of at the facility.

SUBCHAPTER V

FINANCIAL MATTERS

§1531. Fees and other charges

The authority shall establish, by rule, fees and other charges sufficient to fund the costs of all low-level radioactive waste disposal activities required by this chapter, including sufficient reserves to cover unforeseen contingencies in the construction phase, the operational phase and the closure and long-term care phase.

§1532. Obligations of the authority; use of revenue

1. Payment. All expenses incurred in carrying out this chapter shall be paid solely from funds provided in accordance with this chapter and no obligation may be incurred under this chapter beyond the extent to which money has been provided in accordance with this chapter.

2. Limitation on expenditures. Expenditure of all revenues received by the authority shall be limited to the purposes of this chapter.

§1533. Grants

The authority may accept and expend for any of the purposes of this chapter grants or donations of money, equipment, supplies, materials and services from the United States or a political subdivision of the United States, this State or any other state or a political subdivision of this State or any other state, any interstate agency or any person.

§1534. Low-level Radioactive Waste Facility Fund

There is created a nonlapsing, revolving fund known as the Low-level Radioactive Waste Facility Fund to be used to pay for the planning, siting, construction, operation, maintenance, closure and post-closure costs of a disposal facility and the administrative and operational costs of the authority.

1. Revenue deposited. Unless otherwise provided, all revenue collected by the authority or the disposal facility to be used for planning, siting, construction, operation, maintenance, closure and post-closure costs of a disposal facility and administrative and operational costs of the authority shall be deposited in the Low-level Radioactive Waste Facility Fund.

2. Expenditure of funds. Unless otherwise provided, all the activities described in this chapter, including administrative and operational costs of the authority, shall be funded from the Low-level Radioactive Waste Facility Fund.

3. Surplus revenues. Surplus revenues in the Low-level Radioactive Waste Facility Fund shall be carried forward and used to reduce the assessments or fees the following year.

§1534-A. Administrative costs

1. Assessment. Funds to pay the administrative and operational costs of the authority shall be raised by an assessment of a service fee on each generator of low-level radioactive waste generated in this State. The authority shall annually on June 30th, beginning in 1988, assess a service fee calculated in accordance with this subsection in an amount equal to \$200,000 less any balance carried forward under section 1534, subsection 3. Each generator shall pay the service fee within 30 days, except that any generator may choose to make quarterly payments instead. The revenue from this service fee shall be deposited in the Low-Level Radioactive Waste Facility Fund. The authority shall promulgate rules in accordance with the Maine Administrative Procedure Act concerning the calculation of the fee which shall be based 50% on the volume and 50% on the radioactivity of the waste generated in the previous year.

2. Reports. The authority shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over natural resources on the income to and expenditures from the Low-Level

Radioactive Waste Facility Fund for administrative costs for the previous fiscal year and on the budget for the coming year. Those reports shall include total fees received from each generator and line item detail on expenditures, including in-state travel and out-of-state travel, printing, mailing and hearings, personnel, consultant services, general operating expenses, supplies and overhead for both the commission and the department.

§1535. Planning, siting and construction costs; administrative costs; limit on assessment

1. Assessment. The authority shall assess any nuclear plant within the State for the full cost of planning, siting, licensing and construction of a low-level radioactive waste disposal facility, including reasonable reserves for unforeseen contingencies. The assessment shall not exceed \$10,000,000 and shall be assessed as follows: \$1,500,000 on March 1, 1988; \$2,500,000 on March 1, 1989; \$2,000,000 on March 1, 1991; \$2,000,000 on March 1, 1992. The amount assessed shall be paid within 30 days of assessment. This assessment shall be deposited in the Low-level Radioactive Waste Facility Fund.

2. Contractual agreements. Contractual agreements with any nuclear power plant in the State must be reached prior to any action on area screening and site characterization or application for a license to operate a disposal facility.

A. Area screening and site characterization shall not proceed until a firm contractual agreement is reached with any nuclear power plant in the State to pay the full cost of those activities on or before the date those activities are completed. No funds may be expended by the authority for those purposes until they are received from the responsible party.

B. Application for a license to operate a low-level radioactive waste disposal facility from the United States Nuclear Regulatory Commission shall not proceed until a firm contractual agreement is reached with any nuclear power plant in the State to pay the full cost of licensing and constructing the facility on or before the date construction will be completed. No funds may be expended by the authority for those purposes until they are received from the responsible party.

§1536. Operation, maintenance, closure and post-closure costs

1. User fees. All users of a low-level radioactive waste disposal facility shall be assessed a user fee calculated in accordance with subsections 2 and 3. User fees established under this section shall be designed to raise \$1,000,000 per year. Fees shall not be collected in excess of that amount or, if collected, shall be returned to the users within 15 days of receipt. The authority shall establish, by rule, a schedule of fees to be paid by all users of a low-level radioactive waste disposal facility.

2. Calculation. The authority shall calculate user

fees based 50% on the volume and 50% on the radioactivity of waste accepted by the facility. The authority shall establish, by rule, additional fees for hard-to-handle physical forms of waste.

3. Surcharge. A surcharge shall be added to the user fees paid by any user who has not been assessed for planning and construction under section 1535. A corresponding reduction shall be credited to any user who was so assessed.

4. Limitation. Operation of the state disposal facility shall not proceed until:

A. The entire cost of planning, siting, licensing and construction has been received from the responsible parties; and

B. A firm contractual agreement covering at least 15 years is reached with any nuclear power plant in the State to pay its share of the annual operating and maintenance costs, including an appropriate contribution for closure, long-term care and license termination.

§1537. Impact payments

In addition to payment in lieu of taxes provided in section 1505, the authority may make impact payments based on measurable criteria to a municipality in which a low-level radioactive waste disposal facility is located or, in the case of an unorganized territory, to the State Tax Assessor upon request by the community involved or by the State Tax Assessor.

§1538. Annual financial report; audit

Within 120 days after the close of its fiscal year, the authority shall provide the Treasurer of State with a copy of its annual financial report certified by an independent certified public accountant selected by the authority. The authority shall also be subject to Title 5, chapter 11.

§1539. Budget and fiscal management

Expenditures by the authority shall be consistent with and within the scope of the annual operating plan and budget, but the authority is exempt from the budget requirements of Title 5. Expenditures from the Low-level Radioactive Waste Facility Fund do not require allocation by the Legislature.

§1540. Liability

1. Strict liability. Notwithstanding any provision of law to the contrary, any person, including the authority, engaged in low-level radioactive waste disposal activities provided in this chapter, shall be 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 liable for actual damages only.

2. Liability of authority. In the event a building contractor, operator other than the authority or other contractor of the authority would otherwise be subject to liability, but when no claim may be successfully maintained or when no judgment may be enforced against the builder, operator or contractor, the authority shall be subject to liability for property damage, bodily injury or death resulting from the activity of that builder, operator or contractor.

3. State liability. If all other sources of funds, including enforcement of a judgment under subsection 1, federal assistance, the reserve for unforeseen contingencies provided in sections 1535 and 1536, and supplemental fees provided in section 1542, are insufficient to compensate injured persons, the State shall provide compensation for property damage, bodily injury or death resulting from the low-level radioactive waste disposal activities provided in this chapter.

4. Insurance. The authority shall purchase, or require any of its contractors to purchase, insurance or other financial protection against the site failure sufficient to cover any foreseeable problems during the life of the facility plus a reasonable reserve for unforeseen contingencies. The cost of insurance purchased by the authority shall be included in the assessment and fees charged by the facility under sections 1535 and 1536.

SUBCHAPTER VI

RESPONSIBILITIES OF GENERATORS

§1541. Delivery of low-level radioactive waste required

Unless otherwise authorized by the authority, when the low-level radioactive waste facility is in operation, in-state generators of low-level radioactive waste for which the State is responsible shall dispose of that waste at the disposal facility.

§1542. Supplemental fee

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

Sec. 5. Transitional provisions. In order to provide money for the timely commencement of the work of the authority and additional regulatory responsibilities of the Department of Environmental Protection there shall be imposed an immediate assessment of up to \$300,000 levied proportionally on all generators as provided in the Maine Revised Statutes, Title 5, section 1454, on the amount of their waste generated in calendar year 1986. The fees assessed under this section shall be paid within 30 days of the effective date of this Act and notwithstanding the cap established in section 1454, deposited in the Radioactive Waste Evaluation Fund established pursuant to that section. The amount of \$200,000 shall be transferred without repayment from the Radioactive Waste Evaluation Fund to the Low-level Radioactive Waste Facility Fund established pursuant to section 1534 to pay for operational costs incurred by the authority in fiscal year 1987-88.

The portion of the \$6,312.49 in milestone incentive payments from the United States Department of Energy in account number 3536.1 which remains in that account on the effective date of this Act is transferred to the Low-level Radioactive Waste Facility Fund for use in accordance with the restrictions on the use of those funds in the United States Low-level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240.

Sec. 6. Allocation. The following funds are allocated from the Radioactive Waste Evaluation Fund to carry out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
<u>MAINE LOW-LEVEL RADIOACTIVE WASTE AUTHORITY</u>		
All Other	\$200,000	
Allocates funds to operate the Maine Low-level Radioactive Waste Authority		
<u>ENVIRONMENTAL PROTECTION, DEPARTMENT OF</u>		
Technical Studies		
Positions	(1)	(1)
Personal Services	\$31,500	25,500
All Other	56,500	5,500
Capital Expenditures	1,350	_____
Total	\$89,350	\$31,000
Allocates funds for an Environmental Services Specialist III position and for a contractual arrangement to develop siting rules for a facility.		
TOTAL	\$289,350	\$31,000

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

Effective June 30, 1987.