

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

3. Terms of office. The terms of office of board members are determined under this subsection.

A. The terms of board members appointed by the Governor are determined as follows.

(1) Initial terms are staggered. One consumer, one employer, one 3rd-party payor and 3 providers shall serve one-year terms. Two consumers, one employer, one 3rd-party payor and 3 providers shall serve 2-year terms.

(2) After the initial terms, members appointed by the Governor shall serve full ~~2-year~~ 3-year terms and shall continue to serve until their successors have been appointed.

(3) Board members may serve 3 full terms consecutively.

B. The terms of departmental board members are ~~2-year~~ 3-year terms. Departmental board members may serve an unlimited number of terms.

Sec. 5. 22 MRSA §8704, sub-§7, as amended by PL 2003, c. 469, Pt. C, §25, is further amended to read:

7. Annual report. The board shall prepare and submit an annual report on the operation of the organization and the Maine Health Data Processing Center as authorized in Title 10, section 681, including any activity contracted for by the organization, ~~and on health care trends~~ to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters no later than February 1st of each year. The report must include an annual accounting of all revenue received and expenditures incurred in the previous year and all revenue and expenditures planned for the next year. The report must include a list of persons or entities that requested data from the organization in the preceding year with a brief summary of the stated purpose of the request.

Sec. 6. 22 MRSA §8706, sub-§2, ¶B, as repealed and replaced by PL 1997, c. 525, §3, is amended to read:

B. Reasonable user fees must be charged on a sliding scale for the right to access and use the health data and information available from the organization. Fees may be charged for services provided to the department on a contractual basis. ~~Fees must be waived for the Bureau of Insurance.~~ Fees may be reduced or waived for users that demonstrate a plan to use the data or information in research of general value to the

public health or inability to pay the scheduled fees, as provided by rules adopted by the board.

Sec. 7. 22 MRSA §8711, sub-§2, as amended by PL 1999, c. 353, §16, is repealed.

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

Effective May 31, 2005.

CHAPTER 254

S.P. 469 - L.D. 1342

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

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.

§4396. Interim Spent Fuel Storage Facility Oversight Fund

The Interim Spent Fuel Storage Facility Oversight Fund, referred to in this section as "the fund," is established as a nonlapsing fund within the Office of the Public Advocate. All fees paid under this subchapter are collected by the Public Advocate for deposit in the fund. The Public Advocate shall oversee the fund and may disburse amounts in the fund to agencies or to other appropriate state funds in order to pay or contribute to the payment of costs incurred by agencies with respect to federal or state proceedings; safety, radiation and environmental monitoring; and security or other oversight-related activities related to the decommissioning of a nuclear power plant or the development or operation of an interim spent fuel storage facility in this State. The Public Advocate shall keep an annual accounting of all funds received by the fund and all disbursements from the fund and shall make a report of this accounting to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by the first Monday in February of each year.

PART B

Sec. B-1. 22 MRSA §565-A, as amended by PL 1997, c. 686, §1, is further amended 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 facility, as defined in section 662, 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 except that for fiscal year 1997-98 the fee is \$122,000.~~

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

§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 a facility licensed by the United States Nuclear Regulatory Commission and situated in the State must 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; and Title 35-A, sections 4331 to 4393, 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 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.

Sec. B-3. 22 MRSA §664, sub-§1, as amended by PL 1999, c. 57, Pt. B, §1, is further amended to read:

1. Records. Each facility licensee shall permit the 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-4. 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;
- (3) The results of emissions monitoring undertaken by or on behalf of the facility licensee; or
- (4) That adequate radiation protection measures are in place; ~~or~~ and

C. Taking radiological measurements for the purpose of verifying compliance with applicable state laws, including, but not limited to, Title 38, section 1455, and confirming and verifying compliance with the standards of the United States Nuclear Regulatory Commission for unrestricted license termination, provided that the taking of such measurements employs techniques, protocols, instruments and quality assurance practices in accordance with generally accepted scientific or industry practices, including, but not limited to, those described in the federal Multi-Agency Radiation Survey and Site Investigation Manual.

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

taken by the licensee and measurements taken pursuant to this subsection.

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

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

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

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

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

Sec. B-9. 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 read:

4. Radioactive waste. The Department of Health and Human Services shall coordinate management of and shall serve as point 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-10. 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-11. 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 actual costs incurred in conducting activities related to decommissioning by the department's regular or project staff or by the department's contractors. Reimbursement charges may not exceed \$70,000 in fiscal year 1997-98 or \$100,000 in fiscal year 1998-99. Reimbursement charges may not exceed \$50,000 for each remaining year of decommissioning activity. Payments required under this section cease upon the July 2005 payment of \$50,000 to the department in fiscal year 2005-06.

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

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

PART D

Sec. D-1. 22 MRSA §663, as amended by PL 1997, c. 686, §4 and PL 2003, c. 689, Pt. B, §6, is repealed.

Sec. D-2. Effective date. This Part takes effect September 30, 2006.

PART E

Sec. E-1. Appropriations and allocations. The following appropriations and allocations are made.

EXECUTIVE DEPARTMENT

Public Advocate 0410

Initiative: Allocates funds for the payment of costs incurred by agencies related to the decommissioning of the Maine Yankee nuclear power plant.

OTHER SPECIAL REVENUE

FUNDS	2005-06	2006-07
All Other	\$270,000	\$217,500
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OTHER SPECIAL REVENUE FUNDS TOTAL	\$270,000	\$217,500

See title page for effective date, unless otherwise indicated.

CHAPTER 255

H.P. 165 - L.D. 214

An Act To Recognize the Federal Salary Level for Overtime When Higher than the State Level

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

Sec. 1. 26 MRSA §663, sub-§3, ¶K, as repealed and replaced by PL 1999, c. 465, §7, is amended to read:

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher.

See title page for effective date.

CHAPTER 256

H.P. 1049 - L.D. 1492

An Act To Permit the Department of Health and Human Services To Charge Fees to Homestead Facility Residents