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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1743** Session of  
1989

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INTRODUCED BY ITKIN AND J. L. WRIGHT, JUNE 20, 1989

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REFERRED TO COMMITTEE ON APPROPRIATIONS, JUNE 20, 1989

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AN ACT

1 Creating a fee system to cover the costs related to the  
2 establishment of a low-level radioactive waste disposal  
3 regional facility in Pennsylvania.

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5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 CHAPTER 1.

8 GENERAL PROVISIONS

9 Section 101. Short title.

10 This act shall be known and may be cited as the Low-Level  
11 Radioactive Waste Disposal Regional Facility Act.

12 Section 102. Legislative findings and purpose.

13 (a) Findings.--The General Assembly finds:

14 (1) That the Low-Level Radioactive Waste Policy  
15 Amendments Act of 1985 and the Appalachian States Low-Level  
16 Radioactive Waste Compact Law, adopted pursuant thereto,  
17 requires the Commonwealth to timely provide a regional  
18 facility for disposal of low-level radioactive waste  
19 generated within Compact member states; that the waste  
20 generators are required, under the terms of the Appalachian  
21 States Low-Level Radioactive Waste Compact Law and the Low-  
22 Level Radioactive Waste Disposal Act, to pay the costs of  
23 developing, establishing, and operating the low-level  
24 radioactive waste disposal facility; and that such costs  
25 associated with preconstruction development of the facility  
26 are estimated to be approximately \$33,000,000.

27 (2) That the costs for implementing the nuclear power  
28 plant related requirements of the Radiation Protection Act  
29 have increased, and such costs are to be covered by power  
30 reactor fees.

1           (3) That those activities which generate low-level  
2 radioactive wastes requiring disposal contribute to the  
3 health and welfare of the citizens of the Compact member  
4 states, and advance payment of funds by certain waste  
5 generators will enhance the timely availability of a disposal  
6 site and reduce the costs of waste disposal.

7           (b) Purpose.--The General Assembly therefore establishes  
8 that the purposes of this act are as follows:

9           (1) To establish a low-level radioactive waste disposal  
10 regional facility siting fund which would:

11           (i) Require nuclear power reactor constructors and  
12 operators situated in this Commonwealth to pay to the  
13 Department of Environmental Resources funds to be  
14 utilized for reasonable and proper expenses, subject to  
15 limitations set forth herein, that are incurred by the  
16 department, its consultants, and the selected regional  
17 facility operator in execution of activities required by  
18 section 307 of the Low-Level Radioactive Waste Disposal  
19 Act.

20           (ii) Authorize and encourage other potential users  
21 of the regional facility to make voluntary payments to  
22 the department for the purposes stated in subparagraph  
23 (i).

24           (2) To provide for the recovery of an equitable portion  
25 of funds advanced by persons described under paragraph (1) by  
26 allowing them credits against surcharges to be billed to all  
27 waste depositors by the department.

28           (3) To increase the existing reactor fees assessed under  
29 the Radiation Protection Act to cover the costs of  
30 implementing the requirements of the Radiation Protection

1 Act.

2 Section 103. Definitions.

3 The following words and phrases when used in this act shall  
4 have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Appalachian States Low-Level Radioactive Waste Compact Law."  
7 The act of December 22, 1985 (P.L.539, No.120).

8 "Contributor." A person who is mandated to make or who is  
9 voluntarily making contributions to the fund.

10 "Department." The Department of Environmental Resources of  
11 the Commonwealth.

12 "Fund." The Regional Facility Siting Fund created by this  
13 act.

14 "Low-Level Radioactive Waste Disposal Act." The act of  
15 February 9, 1988 (P.L.31, No.12).

16 "Low-Level Radioactive Waste Policy Amendments Act of 1985."  
17 Public Law 99-240, 99 Stat. 1842, 42 U.S.C. § 2021b et seq.

18 "Radiation Protection Act." The act of July 10, 1984  
19 (P.L.688, No.147).

20 "Waste depositor." Any person disposing of low-level  
21 radioactive waste in the regional facility during the operative  
22 period of this act.

23 CHAPTER 3

24 REGIONAL FACILITY SITING FUND

25 Section 301. Regional Facility Siting Fund.

26 (a) Establishment.--There shall be established within the  
27 State Treasury an interest-bearing, non-lapsing, restricted  
28 account to be known as the Regional Facility Siting Fund.

29 (b) Deposits.--All mandated and voluntary contributions  
30 under this act, together with actual interest earned on these

1 contributions by the State Treasurer, shall be deposited into  
2 the fund. Separate accounting of contributions and actual  
3 interest earned thereon shall be continuously maintained for  
4 purposes of implementing sections 306 and 310.

5 (c) Appropriation and purpose.--Moneys in the fund are  
6 hereby appropriated and, upon authorization of the Governor, may  
7 be expended by the department on a continuing basis solely for  
8 the following purposes:

9 (1) Reimbursement of expenses incurred by the regional  
10 facility operator for regional facility site selection,  
11 regional facility design and land purchase activities, but  
12 not to include any profit.

13 (2) Fees paid by the department to consultants.

14 (3) Cost of the department for its expenses.

15 (d) Disbursements.--Each disbursement from the fund shall be  
16 deemed to be made from both contributions, and actual interest  
17 earned thereon, in the same proportion as each bears to the  
18 fund's total balance at the time of such disbursement.

19 Section 302. Fund contribution.

20 (a) Maximum fund contribution.--The sum of \$33,000,000,  
21 exclusive of interest earned or imputed, shall be the maximum  
22 amount to be paid by mandated fund contributors. The actual  
23 amounts to be paid by mandated fund contributors shall be  
24 ratably reduced to the extent that the department determines  
25 that an amount less than \$33,000,000 suffices for the purposes  
26 of this act, to the extent of voluntary contributions received  
27 or reasonably anticipated, or to the extent of actual  
28 commitment, for the purposes of this act, of financial resources  
29 by persons or organizations other than mandated or voluntary  
30 contributors. It is the intent of this section that no funds

1 significantly in excess of those reasonably required to  
2 effectuate the purposes of this act be paid into the fund.

3 (b) Mandated fund contributors.--

4 (1) Each person who is constructing or is operating in  
5 Pennsylvania, pursuant to a construction permit or operating  
6 license issued by the United States Nuclear Regulatory  
7 Commission, one or more of the nine nuclear power reactor  
8 facilities identified in this subsection, which are expected  
9 to produce electric energy for commercial purposes and low-  
10 level radioactive waste for significant portions of the  
11 functional life of the regional facility, shall pay to the  
12 department a mandated contribution in the form of a fee for  
13 each such reactor facility in the amount and at such time as  
14 follows:

15	Date of required payment	Fee per reactor
16	Not later than the 30th day	
17	following the effective date	
18	of this act.....	\$133,000
19	July 1, 1989.....	\$800,000
20	July 1, 1990.....	\$1,200,000
21	July 1, 1991.....	\$933,000
22	July 1, 1992.....	\$333,000
23	July 1, 1993.....	\$264,000

24 (2) The provisions of this subsection shall be  
25 applicable to the following nuclear power reactor facilities,  
26 which are producing or are reasonably anticipated to produce  
27 electric energy for commercial purposes and are generating or  
28 are reasonably anticipated to generate low-level radioactive  
29 waste throughout a significant portion of the functional life  
30 of the regional facility:

- 1 (i) Beaver Valley - No. 1
- 2 (ii) Beaver Valley - No. 2
- 3 (iii) Limerick - No. 1
- 4 (iv) Limerick - No. 2
- 5 (v) Peach Bottom - No. 2
- 6 (vi) Peach Bottom - No. 3
- 7 (vii) Susquehanna - No. 1
- 8 (viii) Susquehanna - No. 2
- 9 (ix) Three Mile Island - No. 1

10 (c) Voluntary fund contributors.--Any person, other than one  
11 required to make fund contributions pursuant to subsection (b),  
12 in an Appalachian States Compact member state who anticipates  
13 future use of the regional facility may, in one or more of the  
14 annual payment periods specified in subsection (b), make a  
15 voluntary contribution to the fund by payment to the department.  
16 Unless clearly stated otherwise, for the purposes of this act  
17 generally, and for the purposes of section 303 specifically, a  
18 person making such a voluntary contribution shall, to the extent  
19 of that contribution, be regarded without distinction as a  
20 mandated contributor. Such designation does not obligate or  
21 require future contributions by such persons. Voluntary  
22 contributions shall be applied by the department to reduce the  
23 fees of mandated contributors on a pro rata basis.

24 (d) Contributor reconciliation accounts.--At all times  
25 during the effective period of this act, the department shall  
26 maintain a reconciliation ledger consisting of a reconciliation  
27 account for each person making a contribution under this  
28 section. Contributions by such person, and the imputed  
29 interested accrued pursuant to subsection (e), shall be promptly  
30 debited to the contributor's reconciliation account. Fee

1 payments, and imputed interest thereon, by a person who is a  
2 mandated contributor for more than one nuclear power reactor  
3 facility shall, for the purposes of this act, be merged in a  
4 single reconciliation account in the name of such person.

5 (e) Imputed interest.--Mandated and voluntary contributions  
6 made under this section shall accrue imputed interest. Such  
7 interest shall be computed on an annual basis for the period  
8 beginning with the time of receipt of a contribution and ending  
9 on each successive June 30th. Such interest shall be simple  
10 annual interest at a rate equal to the rate then being imposed  
11 by the Department of Revenue for unpaid State taxes due and  
12 payable to the Commonwealth. It is the intent of this subsection  
13 to properly recognize the time value of funds contributed so as  
14 to allow for inclusion of that additional imputed interest in  
15 fixing surcharges provided for by section 303. Accordingly,  
16 withdrawal from the fund and expenditure by the department of  
17 funds contributed under this section shall not be credited  
18 against, deducted from, or otherwise cause to diminish the debit  
19 balance of contributors' reconciliation accounts on which  
20 imputed interest is accrued under this subsection. The imputed  
21 interest required by this subsection is a separate and distinct  
22 calculation for the purpose of implementing section 303 and  
23 shall not, for any purpose or in any circumstance, be regarded  
24 as the actual interest on amounts in the fund which may be  
25 earned pursuant to section 301(a).

26 (f) Final value of contributions.--For the purposes of  
27 determining surcharges and otherwise administering the  
28 provisions of section 303, the debit balance in each  
29 contributor's reconciliation account as of June 30, 1994,  
30 together with imputed interest accrued thereon, shall be



1 regarded as the final reconciliation account value of each  
2 contributor, and the sum of all such contributor's final  
3 reconciliation account values shall be regarded as the final  
4 reconciliation control account value. No further imputed  
5 interest shall be accrued after that date on the final  
6 reconciliation account value of each contributor's account.  
7 Section 303. Reconciliation of control account.

8 (a) Intent.--It is the intent of this section to provide a  
9 procedure to assure that each fund contributor be provided  
10 credits, to the extent of its final reconciliation account  
11 value, against surcharges to be imposed on all waste depositors  
12 under section 315(c) of the Low-Level Radioactive Waste Disposal  
13 Act.

14 (b) Reconciliation period for final reconciliation control  
15 account.--The final reconciliation account value of each  
16 contributor shall be reconciled over ten annual reconciliation  
17 periods against any surcharges on waste depositors imposed by  
18 the department under section 315(c) of the Low-Level Radioactive  
19 Waste Disposal Act. The first annual reconciliation period shall  
20 commence with the first day of the first month of the fifth  
21 calendar quarter during which waste is deposited in the regional  
22 facility.

23 (c) Reconciliation credits.--For each annual reconciliation  
24 period, the department shall determine the revenue required by  
25 all surcharges to be imposed under section 315(c) of the Low-  
26 Level Radioactive Waste Disposal Act and add to such requirement  
27 an additional amount equal to one-tenth of the final  
28 reconciliation control account value, the sum to be termed the  
29 annual reconciliation period revenue. An annual reconciliation  
30 period surcharge rate applicable to current reconciliation

1 period disposal operations shall be then determined by dividing  
2 the annual reconciliation period revenue by the total volume of  
3 waste deposited in the regional facility by all waste depositors  
4 during the preceding 12 months. The annual surcharge rate thus  
5 determined shall be multiplied by the volume of waste deposited  
6 at the regional facility in the current reconciliation period by  
7 each waste depositor and the resulting surcharge assessed upon  
8 each such waste depositor. The surcharge assessment of such a  
9 waste depositor who is a fund contributor shall be credited in  
10 an amount up to one-tenth of its final reconciliation account  
11 value. If, in any reconciliation period, the applicable  
12 surcharge assessment shall be less than one-tenth of the fund  
13 contributor's final reconciliation account value, the difference  
14 may be carried over and usable as additional credit against  
15 applicable surcharges in the next reconciliation period or  
16 alternatively applied to any permit fee imposed under section  
17 315(a) of the Low-Level Radioactive Waste Disposal Act.

18 Section 304. Records and audits.

19 (a) Records.--In addition to the particular records and  
20 accounts specified elsewhere in this act, the department, at all  
21 times during the effective period of this act, shall maintain  
22 such additional records and accounts in such form and manner as  
23 will allow detailed review, examination and audit, by the  
24 Auditor General, of all monetary transactions pursuant to this  
25 act.

26 (b) Fiscal audits.--Within 120 days following June 30 of  
27 each of the fiscal years 1990 through 1994 and the fiscal year  
28 in which the facility begins licensed operations, the department  
29 shall furnish to each fund contributor three copies of a  
30 financial audit performed in accordance with generally accepted

1 auditing standards compatible with the most intensive current  
2 practices of the Department of the Auditor General. Such audit  
3 shall be performed by the Department of the Auditor General.

4 (c) Expenses.--The department may withdraw from the fund  
5 such amounts as are reasonably necessary and proper for  
6 reimbursement of audit costs.

7 Section 305. Default.

8 (a) Default.--For the purposes of this act, a default shall  
9 be deemed to be a material failure to timely make available for  
10 waste deposition a functioning regional facility conforming in  
11 all material respects to applicable law. In addition to any  
12 other such circumstance or set of circumstances, any of the  
13 following shall be deemed to be a default:

14 (1) Termination of the contract to be entered into by  
15 the department on or about July 1, 1989, with a regional  
16 facility operator, prior to submittal to the appropriate  
17 Federal agency of a license application for such a facility.

18 (2) Failure by the regional facility operator to  
19 commence physical construction of a regional facility by  
20 January 1, 1996, at a site having final approval of the  
21 Secretary of Environmental Resources.

22 (3) Failure by the department to move forward to site  
23 approval and to operate a site where there has been a default  
24 by the regional facility operator.

25 (b) Declaration of default.--The Appalachian States Compact  
26 Commission may declare a default when a majority of fund  
27 contributors request such, setting forth in a written  
28 declaration, the circumstances constituting the default.

29 (c) Special rights and remedies.--

30 (1) Upon the declaration of default, the rights and

1 remedies specified in this subsection shall be available to  
2 fund contributors, and duties specified by this subsection  
3 shall be imposed on the department.

4 (2) Each fund contributor shall, within 60 days of  
5 declaration of default, be refunded a pro rata amount of  
6 unexpended contributions, including actual interest earned  
7 thereon, remaining in the fund in the proportion that each  
8 contributor's contributions to the date bears to the total  
9 contributions of all contributors to that date. Contributions  
10 in transit or received by the department on or after that  
11 date shall not be deposited in the fund, but shall be  
12 returned to the sender.

13 (3) The department shall refund to fund contributors all  
14 moneys, including the portion thereof attributable to actual  
15 interest earned thereon, previously released to the facility  
16 operator to the extent that the department has or will  
17 receive any or all of such moneys as a result of the default.  
18 From time to time, upon recovery of reasonable amounts of  
19 such moneys, the department shall refund these moneys to each  
20 fund contributor in the same pro rata proportion stated in  
21 paragraph (2).

22 (d) Remedies preserved.--Nothing in this section shall be in  
23 any way construed to limit the rights and remedies available to  
24 a fund contributor at law or equity. In no event shall the  
25 department or the Commonwealth be liable for unrecovered  
26 expended portions of the fund.

27 Section 306. Withdrawal from Compact.

28 In the event that a Compact member state withdraws from the  
29 Compact before June 30, 1994, any person in such Compact member  
30 state who has made voluntary contributions shall be entitled to

1 a refund of such contributions, not to include any actual  
2 interest earned on such contributions. The department may,  
3 pursuant to section 303, impose additional fees on mandated  
4 contributors sufficient to provide the amount to be refunded.  
5 This refund shall be paid when such additional fees become  
6 available to the department.

7 Section 307. Participation in regulatory proceedings.

8 (a) Department.--Upon request of a contributor that is a  
9 public utility, the department may agree to appear in  
10 proceedings before or present appropriate submittals to that  
11 contributor's public utility regulatory body regarding the  
12 contributor's contribution to the fund. A contributor making  
13 such request shall compensate the department for its actual  
14 costs for travel, lodging and other out-of-pocket or  
15 administrative expenses incurred in compliance with this  
16 request.

17 (b) Affidavit.--If the department does not appear, it will  
18 submit an affidavit providing information relative to such  
19 contributions and surcharges relating to the fund and made or  
20 imposed under this act.

21 Section 308. Retention of records.

22 The department shall retain, in a reasonably accessible form  
23 and place, all records pertaining to contributions, surcharges  
24 and reconciliations made under this act for a period of seven  
25 years beyond its termination. The department shall permit  
26 reasonable access to such records by persons who have paid such  
27 contributions or surcharges.

28 Section 309. Construction.

29 This act shall be construed in pari materia with the  
30 Appalachian States Low-Level Radioactive Waste Compact Law, the

1 Radiation Protection Act, and the Low-Level Radioactive Waste  
2 Disposal Act.

3 Section 310. Expiration of fund.

4 The fund shall expire one year following the last day of the  
5 tenth annual reconciliation period pursuant to section 303.  
6 Unexpended amounts then remaining in the fund attributable to  
7 actual contributions, and exclusive of actual interest earned on  
8 such contributions, shall be refunded to each contributor in the  
9 proportion that each contributor's contributions to the fund  
10 bears to the total of all such contributions. Unexpended amounts  
11 then remaining in the fund attributable to actual interest  
12 earned on contributions shall be transferred to the Low-Level  
13 Waste Fund, as established under the Low-Level Radioactive Waste  
14 Disposal Act.

15 CHAPTER 11

16 MISCELLANEOUS PROVISIONS

17 Section 1101. Retroactivity.

18 Section 302 of this act shall be retroactive to July 1, 1989.

19 Section 1102. Effective date.

20 This act shall take effect immediately.