

## LEGISLATIVE BILL 761

Approved by the Governor May 25, 1989

Introduced by Natural Resources Committee, Schmit, 23,  
 Chairperson; Lamb, 43; Beck, 8; Weihsing,  
 48; Elmer, 38; Kristensen, 37;  
 Morrissey, 1

AN ACT relating to low-level radioactive waste; to amend sections 81-1590, 81-1591, 81-15,101, 81-15,101.02, and 81-15,106, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1578, 81-1579.01, 81-1581, 81-15,101.01, 81-15,101.03, 81-15,104, and 81-15,113.01, Revised Statutes Supplement, 1988; to state intent; to define and redefine terms; to change provisions relating to Nebraska's representation on the Central Interstate Low-Level Radioactive Waste Compact Commission; to change licensure provisions; to change membership provisions and provide immunity from liability and additional powers for local monitoring committees; to provide for technical assistance as prescribed; to provide for an appropriation; to change provisions relating to fees and the use of funds as prescribed; to provide additional building requirements for a facility; to authorize a special assessment against generators; to change provisions relating to the term of a license; to impose a surcharge on facility users; to provide for distribution of the surcharge; to provide for studies of a distribution formula and liability issues; to prohibit receipt of wastes as prescribed; to provide for water sampling and analysis and testing of agricultural products; to provide for training for emergencies; to harmonize provisions; to repeal the original sections, and also Laws 1983, LB 200, section 2; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 81-1578, Revised Statutes Supplement, 1988, be amended to read as follows:

81-1578. Sections 81-1578 to 81-15,116 and

sections 6, 7, and 15 to 18 of this act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Sec. 2. That section 81-1579.01, Revised Statutes Supplement, 1988, be amended to read as follows:

81-1579.01. It is the intent of the Legislature that the Central Interstate Low-Level Radioactive Waste Compact Commission shall establish a satellite office in the State of Nebraska within thirty days after the effective date of this act and shall establish its central offices in the State of Nebraska prior to commencement of construction of the facility.

Sec. 3. That section 81-1581, Revised Statutes Supplement, 1988, be amended to read as follows:

81-1581. For purposes of the Low-Level Radioactive Waste Disposal Act, unless the context otherwise requires, the definitions found in sections 81-1582 to 81-1597 and section 6 of this act shall be used.

Sec. 4. That section 81-1590, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1590. Facility shall mean any site, location, structure, or property the land, building, and equipment selected pursuant to the Central Interstate Low-Level Radioactive Waste Compact and used or to be used for the disposal of low-level radioactive waste.

Sec. 5. That section 81-1591, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1591. Low-level radioactive waste shall mean radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (2) of section 81-1582 and classified by the federal government as low-level radioactive waste but shall not include waste which remains a federal responsibility as designated in section 3(b) of the Low-Level Radioactive Waste Policy Act, as amended, 42 U.S.C. 2021C(b).

Sec. 6. Operational life of the facility shall mean the period of time commencing when low-level radioactive waste is initially received at the facility and ending when the facility permanently ceases to receive such waste for disposal.

Sec. 7. The member of the Central Interstate Low-Level Radioactive Waste Compact Commission representing Nebraska shall be appointed by the Governor

with the approval of a majority of the members of the Legislature, and such member shall serve at the pleasure of the Governor. The appointee may begin to serve immediately following appointment and prior to approval by the Legislature. If the appointee receives less than majority approval by the members of the Legislature, the Governor shall appoint another person to represent Nebraska on the commission within ten days of the failure to receive such approval. The member representing Nebraska on the commission may, when necessary, designate an alternate member to represent Nebraska.

Sec. 8. That section 81-15,101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-15,101. (1) Each application for a license shall be in writing and shall state such information as the department may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant deemed reasonable and necessary to protect the public health and environment with an adequate margin of safety. The applicant shall also describe the funding arrangements such applicant will make to provide for custodial care. The department may at any time after the filing of the application and before the expiration of the license require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee.

(2) No license issued under the Low-Level Radioactive Waste Disposal Act shall be assigned or in any manner disposed of unless the department, after securing full information, finds that the transfer is in accordance with the act and gives its consent in writing.

(3) If any person becomes the legal or beneficial owner of more than fifty percent of any class of the issued and outstanding equity securities of an applicant or licensee at any time after the application has been made and before the expiration of the license, the department shall conduct a review which shall include, but not be limited to, the environmental compliance record and financial responsibility of such person. At the conclusion of the review, the department shall issue a report of its findings, including its conclusions regarding the adequacy of such person to fulfill the provisions of the application or license and

all laws, rules, and regulations. Copies of the report shall be sent to the Governor, Legislature, and local monitoring committee.

~~(3)~~ (4) The department shall not approve any application for a license to receive radioactive waste from any person for disposal on land not owned by the state or federal government.

Sec. 9. That section 81-15,101.01, Revised Statutes Supplement, 1988, be amended to read as follows:

81-15,101.01. (1)(a) The developer shall send written notification by certified or registered mail to the Governor and the Legislature of the selection of three proposed sites by January 1, 1989. Within thirty days after such notification, a local monitoring committee shall be established for each proposed site area. The local monitoring committees shall only exist until a site is selected, except that the local monitoring committee for the selected site area shall continue to exist.

(b) The committees shall represent the citizens of the proposed site areas and maintain communication with the developer and the department to assure protection of public health and safety and the protection of the air, land, and water resources of the area. It is the intent of the Legislature that the local monitoring committees provide significant input concerning local needs and resources regarding all relevant aspects of the site selection and, after a site is selected, that the remaining local monitoring committee provide significant input concerning local needs and resources regarding all relevant aspects of the construction, operation, monitoring, closure, and custodial care of the facility. The functions and duties of the committees shall be established pursuant to rules and regulations adopted and promulgated by the council.

(c) Each local monitoring committee shall have access to all monitoring data collected at the site and may contract with a geologist or any other technical expert who shall participate in the developer's onsite characterization and selection process. After a license is issued, the local monitoring committee may hire or contract with a qualified inspector as determined by the department. The inspector shall have the right of independent access to the facility and may inspect all records and activities at the site and carry out joint inspections with the department. The inspector shall report any violations to the department for appropriate

action.

(2) The Conservation and Survey Division of the University of Nebraska shall provide without charge technical assistance to the local monitoring committee with the sampling, analysis, and testing provided for in section 16 of this act, including, but not limited to, monitoring and performance of such sampling, analysis, and testing.

(3) Each local monitoring committee shall be composed of the following nine ten members, all of whom shall be residents of Nebraska:

(a) Two members selected from municipalities which have zoning jurisdiction within fifteen miles of the proposed site or, if there are no such municipalities, from the municipality in closest proximity to the proposed site, to be appointed by the chief executive officer of each municipality or by the governing body if there is no chief executive officer;

(b) Two members from the county in which the site is proposed, to be appointed by the governing body of the county. One member shall be an owner of real property that is within a three-mile radius of the proposed site, and one member shall be an at-large member;

(c) Two members appointed by the board of directors of the natural resources district in which the site is proposed; and

(d) Three Four members, to be appointed by the Governor, who reside within fifty miles of the proposed site, one of whom represents conservation, one of whom represents agriculture, and one of whom is an at-large member, and one of whom is the chief of a fire department located within fifteen miles of the proposed site.

If the appointments required by subdivisions (a) through (c) of this subsection have not been made within thirty days after the effective date of this act, the Governor shall make such appointments. Appointment of a person ineligible to serve pursuant to the requirements of this section shall be considered the equivalent of not making an appointment.

(4) No member of a local monitoring committee shall be liable in any civil action for damages resulting from his or her acts of commission or omission arising out of and in the course of his or her rendering any services as such member in good faith. This section shall not grant immunity for the operation of a motor vehicle in connection with such services or to any member causing damages by willful and wanton acts of

commission or omission.

~~(5)~~ ~~(3)~~ There is hereby created the Local Site Selection Cash Fund which shall be under the direction of the ~~Department of Environmental Control~~ department. Fees or surcharges received pursuant to subdivision (1)(g) of section 81-15,104 shall be placed in the fund. There is hereby appropriated a one-time appropriation of ~~seventy-five~~ three hundred thousand dollars from the Local Site Selection Cash Fund for the period July 1, 1988, to June 30, 1989, ~~or until a site is selected,~~ whichever is later, for the payment of all reasonable and necessary costs in order to carry out this section. The unexpended balance on June 30, 1989, is hereby reappropriated. The funds shall be appropriated equally among the committees and may be used for technical studies, determination of social and economic impact, and any other purpose deemed appropriate by such committees to the monitoring of the low-level radioactive waste site planning, construction, or maintenance to assure protection of the air, land, and water resources of the area. The committees shall file quarterly reports with the department verifying expenditures made pursuant to this subsection. The local monitoring committees may hire clerical staff and purchase supplies. The local monitoring committees may not hire professional or technical staff but may contract for professional or technical services.

~~(4)~~ ~~(6)~~ There is hereby created the Local Monitoring Committee Cash Fund which shall be under the direction of the ~~Department of Environmental Control~~ department. Fees or surcharges received pursuant to subdivision (1)(h) of section 81-15,104 shall be placed in the fund. The fees and surcharges collected pursuant to subdivision (1)(h) of section 81-15,104 shall not exceed fifty one hundred thousand dollars per year and shall be used by such local monitoring committee for all reasonable and necessary costs in order to carry out this section. The local monitoring committee may hire clerical staff and purchase office supplies. The Except for a qualified inspector hired pursuant to subdivision (1)(c) of this section, the local monitoring committee may not hire professional or technical staff but may contract for professional or technical services.

~~(5)~~ ~~(7)~~ Any money in the Local Site Selection Cash Fund or the Local Monitoring Committee Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 72-1276.

Sec. 10. That section 81-15,101.02, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-15,101.02. No license for the operation of a facility shall be granted to any applicant who proposes a disposal design which uses traditional shallow land burial as used prior to 1979. The disposal cells of the facility shall be built above grade levels and designed to meet the state's zero-release objectives. An applicant shall present a disposal design for above-ground disposal or other technology which contains one or more engineered, artificially constructed barriers to isolate the waste from the surrounding environment. An applicant shall present a plan of continuous environmental monitoring to detect any releases of radiation from the disposal facility and having the capability of providing early warning of releases of radiation from the facility. The monitoring plan shall cover the operational life of the facility and such time period following site closure and stabilization that is necessary to protect the health and safety of the public. An applicant shall present a plan for the recovery, cleanup, or other corrective action necessary as a result of the release of radiation from the facility. The facility design shall include a plan for retrievability and removal of all waste.

Sec. 11. That section 81-15,101.03, Revised Statutes Supplement, 1988, be amended to read as follows:

81-15,101.03. (1) No low-level radioactive waste produced as a result of decommissioning a nuclear reactor shall be stored or disposed of at the facility until the department has determined that such facility is designed to safely store or dispose of such waste.

(2) Unless an emergency exists, no waste shall be accepted from outside the Central Interstate Low-Level Radioactive Waste Compact region without prior approval by the Legislature. No agreement entered into pursuant to an emergency situation shall extend beyond six months unless a continuation of the agreement is approved by the Legislature.

Sec. 12. That section 81-15,104, Revised Statutes Supplement, 1988, be amended to read as follows:

81-15,104. (1) The department shall collect fees or surcharges established by the council for radiation protection services provided pursuant to the Low-Level Radioactive Waste Disposal Act and the Central Interstate Low-Level Radioactive Waste Compact. Services for which fees or surcharges may be established

include (a) issuance, amendment, and renewal of licenses for facilities, (b) inspection of licensees, (c) environmental custodial care activities to assess the radiological impact of activities conducted by licensees, (d) certification of personnel to operate the facility, (e) such other activities of department personnel which are reasonably necessary to assure that the licensed facility is being operated in accordance with the Low-Level Radioactive Waste Disposal Act and which reasonably should be borne by the licensee, (f) the budget of the Central Interstate Low-Level Radioactive Waste Compact Commission pursuant to Article IV, section (h)(2), of the compact, (g) payment by the developer of all reasonable and necessary costs of the local monitoring committees as prescribed in subsection ~~(3)~~ (5) of section 81-15,101.01 until June 30, 1989, or until a site is selected, whichever is later, and (h) payment by the developer of all reasonable and necessary costs of the local monitoring committee where the facility is located as prescribed in subsection ~~(4)~~ (6) of section 81-15,101.01.

(2) In determining the amount of such fees or surcharges, the council shall set the fees or surcharges in an amount sufficient to reimburse the state for its direct and indirect costs of the services specified in subsection (1) of this section. Any costs incurred by the State of Nebraska that exceed the fees or surcharges collected pursuant to this section shall be recovered through a special assessment against those generators of low-level radioactive waste which used the facility during the previous two years. The director shall compute the amount due from each generator based on the ratio of the fees or surcharges collected from a particular generator during the two-year period to the total fees or surcharges collected from all generators during such two-year period. Any special assessment collected pursuant to this section shall be remitted to the State Treasurer who shall credit it to the Low-Level Radioactive Waste Cash Fund. The council shall take into account any special arrangements between the state and a licensee, another state, or a federal agency from which the cost of the service is partially or fully recovered.

(3) When a licensee fails to pay the applicable fee or surcharge, the department may suspend or revoke the license or may issue an appropriate order.

(4) Except as provided in subsections ~~(3)~~ and ~~(4)~~ (5) and (6) of section 81-15,101.01, any fees or surcharges collected pursuant to this section shall be



deposited in the department's Low-Level Radioactive Waste Cash Fund, which fund is hereby created. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 13. That section 81-15,106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-15,106. (1) Licenses shall be issued for a period not to exceed the useful life of the facility, except that licenses provide that a facility shall not accept waste for a period longer than thirty years or until five million cubic feet of low-level radioactive waste has been received, whichever occurs sooner. Licenses shall be reviewed every five years subsequent to the date of issuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws, rules, and regulations. Nothing in this subsection shall preclude a license from being reviewed and modified at any time during its term.

(2) The department may issue an order temporarily or permanently closing a facility prior to its scheduled closing date if it finds there is a potential hazard to public health, safety, or the environment which justifies a temporary or permanent closure. A facility that is temporarily closed shall remain closed for as long as necessary for remedial action and throughout the period of facility cleanup and stabilization. Before authorizing the reopening of a temporarily closed facility, the department shall provide an explanation of its reasons for authorizing the reopening.

(3) Any license issued under the Low-Level Radioactive Waste Disposal Act shall be subject to revocation for failure of the licensee to comply with the terms and conditions of the license, the applicable rules and regulations, or the provisions of the act. Any person whose license has been revoked shall be afforded an opportunity for a hearing by the department upon written application made within thirty days after service of notice of such revocation.

(4) In any proceeding for the denial of an application for a license or for revocation, suspension, or modification of a license, the department shall provide to the applicant or licensee an opportunity for a hearing on the record.

Sec. 14. That section 81-15,113.01, Revised

Statutes Supplement, 1988, be amended to read as follows:

81-15,113.01. (1) There is hereby created the Community Improvements Cash Fund which shall be under the direction of the Department of Environmental Control department. The Central Interstate Low-Level Radioactive Waste Compact Commission shall transfer annually through 1992 remit to the department the funds received from the states belonging to the Central Interstate Low-Level Radioactive Waste Compact as compensation paid to the host state. When the facility begins operation, the developer shall levy, collect, and remit to the department a surcharge on the rates charged to the users of the facility which is sufficient to raise two million dollars per year together with any adjustments made by the department pursuant to this section. The department shall remit such surcharge to the State Treasurer who shall credit it to the Community Improvements Cash Fund. On October 1, 1990, and each October 1 thereafter, the department shall adjust the amount to be remitted by the developer by an amount equal to the percentage increase in the Consumer Price Index or, if publication of the Consumer Price Index is discontinued, a comparable index selected by the director. Three hundred thousand dollars per year shall be distributed from the fund to the host community for public purposes. Prior to final site selection, such funds shall be equally divided among the communities that are under active consideration to host the facility. There is hereby appropriated three hundred thousand dollars from the Community Improvements Cash Fund for the period July 1, 1988, to June 30, 1989, to carry out the purposes of this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 72-1276.

(2) The department shall distribute money from the fund as follows:

(a) Prior to final site selection, three hundred thousand dollars per year shall be allocated for public purposes to be divided among the communities that are under active consideration to host the facility as provided in subsection (3) of this section.

(b) After the final site has been selected and until the facility is operational, three hundred thousand dollars per year shall be allocated for public purposes as provided in subsection (3) of this section. Acceptance of the funds distributed pursuant to this subdivision or subdivision (a) of this subsection shall

in no way affect the siting process; and

(c) Once the facility is operational and during the operational life of the facility, the total amount in the fund shall be allocated each year for public purposes as provided in subsection (3) of this section.

(3) Money distributed pursuant to subdivisions (2)(a), (b), and (c) of this section shall be allocated as follows:

(a) Fifty percent of such money shall be distributed to incorporated municipalities which lie totally or partially within ten kilometers of the facility or the proposed facility based on the ratio of the population of the particular incorporated municipality to the total population of all such incorporated municipalities as determined by the latest federal census; and

(b) Fifty percent of such money shall be distributed to the county treasurer of the county where the facility is located or proposed to be located to be distributed to each political subdivision which levied property taxes on the property where the facility is located or proposed to be located. The money shall be distributed on the basis of the ratio of the total amount of taxes levied by each political subdivision to the total amount of property taxes levied by all such political subdivisions on such property based on the amounts stated in the most recent certificate of taxes levied submitted by each county to the Tax Commissioner pursuant to section 77-628.

(4) The Natural Resources Committee of the Legislature shall conduct a study to establish a formula for the equitable distribution of the funds specified in subdivision (2)(c) of this section. The committee shall hold public hearings necessary to carry out the purposes of the study.

Sec. 15. If a generator of low-level radioactive waste fails to fulfill its financial or regulatory responsibilities under either the Central Interstate Low-Level Radioactive Waste Compact or the Low-Level Radioactive Waste Disposal Act, the wastes generated by that generator shall not be received for disposal at the facility until the obligations are fulfilled.

Sec. 16. (1) The department shall offer to landowners directly adjacent to the facility's boundary an annual well and surface water sampling and analysis of any domestic water supply at no cost to the landowner.

(2) The department shall offer to landowners directly adjacent to the facility's boundary the opportunity for testing of agricultural products produced on the property for contamination by radioactivity. The testing shall be conducted pursuant to a plan developed by the department and at no cost to the landowner.

Sec. 17. The developer shall provide to the appropriate local political subdivision training of the first responding fire, police, and ambulance services to handle emergency events at the facility and support for affected county emergency management planning, training, and central dispatch facilities as may be required to handle emergency events at the facility. The developer shall conduct such training programs or contract with appropriate public or private agencies for such training. The content of any such training program shall, prior to the commencement of the training program, be approved by the appropriate state agency which is responsible for such emergency training activity. The developer shall also provide to the appropriate local political subdivision any equipment which is necessary to provide emergency response due to the location and operation of the facility.

Sec. 18. The Judiciary Committee of the Legislature shall conduct a study of liability issues related to the disposal of low-level radioactive waste, including, but not limited to, strict liability, rebuttable presumptions, statutes of limitation, causation, and any other issues related to liability in tort. The committee shall report its findings, together with any recommendations, to the Legislature by November 1, 1989.

Sec. 19. That original sections 81-1590, 81-1591, 81-15,101, 81-15,101.02, and 81-15,106, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1578, 81-1579.01, 81-1581, 81-15,101.01, 81-15,101.03, 81-15,104, and 81-15,113.01, Revised Statutes Supplement, 1988, and also Laws 1983, LB 200, section 2, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.