

LEGISLATIVE BILL 426

Approved by the Governor May 26, 1987

Introduced by Schellpeper, 18; L. Johnson, 15;
Weihsing, 48; Scofield, 49; Hefner, 19;
Korshoj, 16; Peterson, 21; Conway, 17

AN ACT relating to the Low-Level Radioactive Waste Disposal Act; to amend sections 81-1578 to 81-1581, 81-1588, 81-1590, 81-1592, 81-1599, 81-15,101 to 81-15,104, 81-15,106, 81-15,107, and 81-15,113, Revised Statutes Supplement, 1986; to state intent; to provide zero-release objective requirements; to eliminate a definition; to define and redefine terms; to provide powers and duties; to change provisions relating to licenses as prescribed; to change provisions relating to the assessment of cleanup costs; to change provisions relating to long-term care; to provide a local monitoring committee as prescribed; to rename a fund; to eliminate a provision relating to the transfer of funds as prescribed; to require legislative approval for certain actions; to require certain hearings; to provide requirements for an environmental impact analysis; to prohibit certain appropriations; to harmonize provisions; to repeal the original sections; 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, 1986, be amended to read as follows:

81-1578. Sections 81-1578 to 81-15,116 and sections 5, 15, and 16 of this act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Sec. 2. That section 81-1579, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1579. (1) The Legislature hereby declares that it is the policy of the State of Nebraska, in furtherance of its responsibility to cooperate and coordinate with the Central Interstate Low-Level Radioactive Waste Compact Commission and to protect the

health, safety, and welfare of its citizens and the environment:

(1) (a) To provide for the availability of capacity either within or outside the state for the commercial disposal of low-level radioactive waste generated within the state at commercial low-level radioactive waste disposal facilities as designated by the Central Interstate Low-Level Radioactive Waste Compact Commission, except for waste generated as a result of defense or federal research and development activities;

(2) (b) To recognize that low-level radioactive waste can be most safely and efficiently managed on a regional basis; and

(3) (c) To institute and maintain a regulatory program for commercial disposal of low-level radioactive waste at such facilities.

(2) It is also the policy of the State of Nebraska that the cost of disposal of low-level radioactive waste be borne by the generators of such waste. In furtherance of such policy, the state shall not be liable for any financial subsidy of the construction and maintenance of a low-level radioactive waste disposal facility without prior legislative approval.

Sec. 3. That section 81-1580, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1580. The purpose of the Low-Level Radioactive Waste Disposal Act is to effectuate the policies set forth in section 81-1579 by providing:

(1) A program of effective regulation of disposal of low-level radioactive waste based on zero-release objectives that will protect for the protection of the public health and environment with an adequate margin of safety; and

(2) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to disposal of low-level radioactive waste.

Nothing in the Low-Level Radioactive Waste Disposal Act shall be intended to establish any other regulatory responsibilities pertaining to radioactive materials except for the licensing and regulation of a land disposal facility.

Sec. 4. That section 81-1581, Revised Statutes Supplement, 1986, 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 5 of this act shall be used.

Sec. 5. Custodial care shall mean the continued observation, monitoring, and care of a facility for a minimum of one hundred years following transfer of the ownership of the facility from the operator to this state.

Sec. 6. That section 81-1588, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1588. Disposal shall mean the isolation and final disposition of radioactive waste from the biosphere by emplacement in a ~~land disposal~~ facility that employs technology dictated by a zero-release objective.

Sec. 7. That section 81-1590, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1590. Land disposal facility shall mean the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes. Facility shall mean any site, location, structure, or property 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. 8. That section 81-1592, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1592. Person shall mean any individual, corporation, partnership, firm, association, joint venture, trust, estate, public or private institution, group, public agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but shall not include federal governmental agencies.

Sec. 9. That section 81-1599, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1599. The department shall have and may exercise the following powers and duties to carry out the Low-Level Radioactive Waste Disposal Act:

(1) Develop a program for the regulation of disposal of low-level radioactive waste based on a zero-release objective;

(2) Issue, modify, suspend, or revoke licenses or orders;

(3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation;

(4) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(5) Enter upon any private or public property at all reasonable times to determine compliance with the act and rules and regulations adopted and promulgated pursuant to the act;

(6) Institute training programs to qualify personnel to administer the act and make such personnel available for participation in any programs of the federal government, other states, or interstate agencies in furtherance of the purposes of the act;

(7) Enter into agreements with the federal government, other states, or interstate agencies by which the department agrees to perform inspections and other functions relating to the disposal of low-level radioactive waste on a cooperative basis with the federal government, other states, or interstate agencies;

(8) Require licensees to keep records relating to releases which cause or contribute to air, water, or land pollution and to make such records available for inspection;

(9) Require submission of plans, specifications, and other data for siting, construction, and operation of a land disposal facility;

(9) (10) Require proper operation and maintenance of a land disposal facility;

(10) Require licensees (a) to keep detailed records of each and every release which may cause or contribute to air, water, or land pollution or to the exposure to the environment of radioactive or hazardous substances, (b) to inform the department of each such event within twenty-four hours of its occurrence, and (c) to make such records available for inspection by the department, the public, and other interested persons;

(11) Require licensees to adopt low-level radioactive waste technological and operative procedures consistent with a zero-release objective; and

(12) (11) Exercise all incidental powers necessary to carry out the purposes of the Low-Level Radioactive Waste Disposal Act.

Sec. 10. That section 81-15,101, Revised

Statutes Supplement, 1986, 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) 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. 11. That section 81-15,102, Revised Statutes Supplement, 1986, be amended to read as follows:

81-15,102. (1) The state may accept or acquire, by gift, transfer, or purchase, from another governmental agency or private person, suitable sites including land and appurtenances for the disposal of low-level radioactive waste. Sites received by gift or transfer shall be subject to approval and acceptance by the department Legislature on behalf of the state.

(2) The applicant shall notify the Governor and the Legislature before beginning any onsite geological activity, such as soil core sampling, to determine the suitability of a site in the State of Nebraska for use as a facility.

(3) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired in fee simple absolute and used exclusively for such purpose until the department determines that such exclusive use is not required to protect the public health, safety, welfare, or environment. Before such a

site is leased for other use, the department shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. All radioactive material accepted for disposal at a radioactive waste disposal site shall become the property of the state, except that remedial cleanup costs which become necessary during the period of custodial care shall be assessed first to the facility operator, then proportionately against the generators of the radioactive waste.

(4) (3) The state may contract for the operation of a disposal site owned by the state or acquired pursuant to subsection (1) of this section. The contract operator shall be subject to licensing by the department and shall be subject to the surety and ~~long-term~~ custodial care funding provisions of section 81-15,103.

Sec. 12. That section 81-15,103, Revised Statutes Supplement, 1986, be amended to read as follows:

81-15,103. (1) For licensed activities involving disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee to provide an adequate surety or other financial arrangement sufficient to accomplish any necessary corrective action or cleanup on real or personal property caused by releases of radiation from a disposal site during the operational life of the facility and to comply with the requirements for decontamination, decommissioning, site closure, and stabilization of sites, and structures and equipment used in conjunction with such licensed activity, in the event the licensee abandons the facility or defaults for any reason in performing its operational or other such requirements. Any arrangement which constitutes self-insurance shall not be allowed. In addition to the surety requirements, the licensee shall purchase property and third-party liability insurance and pay the necessary periodic premiums at all times in such amounts as determined by the council pursuant to rules and regulations adopted and promulgated pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) All sureties required pursuant to subsection (1) of this section which are forfeited shall be paid to the department for deposit by the State Treasurer in a special fund called the Radiation Site Closure and Reclamation Fund, which is hereby created. Any money in the fund may be expended by the department as necessary to complete the requirements on which

licensees have defaulted. Money in this fund shall not be used for normal operating expenses of 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.

(3) For licensed activities involving the disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee, before termination of the license, to make available such funding arrangements as may be necessary to provide for long-term site surveillance and custodial care.

(4) All funds collected from licensees pursuant to subsection (3) of this section and subsection (1) of section 81-15,101 shall be paid to the department for deposit by the State Treasurer in a special fund called the Radiation Long-term Custodial Care Fund, which is hereby created. All interest accrued on money deposited in the fund may be expended by the department for the continuing long-term surveillance custodial care, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health, safety, and environment. Notwithstanding any other provisions of this subsection, if title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(5) The department may, by contract, agreement, lease, or license with the Department of Health, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

Sec. 13. That section 81-15,104, Revised Statutes Supplement, 1986, 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 disposal facilities, (b) inspection of licensees, (c) environmental surveillance 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, and (f) and (d) the budget of the Central Interstate Low-Level Radioactive Waste Compact Commission pursuant to Article IV, section (h)(2), of the compact.

(2) In determining the amount of such fees, the council shall set the fees in an amount sufficient to reimburse the state for its direct and indirect costs of the services specified in subsection (1) of this section. 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) Any fees or surcharges collected pursuant to this section shall be deposited in the department's Low-Level Radioactive Waste Cash Fund, which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 14. That section 81-15,106, Revised Statutes Supplement, 1986, 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 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. 15. (1) As part of the application for a license, the applicant shall indicate a site for the proposed facility. Within thirty days after a site has been proposed, a local monitoring committee shall be established. The committee shall represent the citizens of the proposed site area and maintain communication with the applicant 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 committee provide significant input concerning local needs and resources regarding all relevant aspects of the siting, operation, monitoring, closure, and custodial care of the facility. The functions and duties of the committee shall be established pursuant to rules and regulations adopted and promulgated by the council.

(2) The local monitoring committee shall be composed of the following members:

(a) Two members from any municipality whose zoning jurisdiction is within fifteen miles of the proposed facility or, if there is no such municipality, from the municipality in closest proximity to the proposed facility, to be appointed by the chief executive officer or by the governing body if there is no chief executive officer;

(b) Two members from the county in which the facility is proposed, to be appointed by the governing body of the county;

(c) Two members appointed by the board of

directors of the natural resources district in which the facility is proposed; and

(d) Three members to be appointed by the Governor who reside within fifty miles of the proposed facility, at least one of whom represents environmental groups.

Sec. 16. 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. 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. 17. That section 81-15,107, Revised Statutes Supplement, 1986, be amended to read as follows:

81-15,107. (1) For any application for licensing disposal of low-level radioactive wastes a license, the department shall provide an opportunity, after public notice, for written comments and shall hold a public hearing in the county in which the proposed facility is to be located. The cost of such hearing shall be borne by the applicant. All testimony offered at such hearing shall be recorded. The department shall issue a written determination of the action to be taken which is based upon findings to be included in the determination and upon evidence presented during the public comment period.

(2) The department shall prepare, for each licensed activity which has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The environmental impact analysis shall address each subject listed in Public Law 91-190, Title I, section 102(2)(c), 83 Stat. 853, and supporting regulations. The department shall prohibit any construction with respect

to any activity for which an environmental impact analysis is required prior to completion of such analysis. The analysis shall be available to the public before the commencement of a at the time notice is given for the hearing held pursuant to this section and shall include:

- (a) An assessment of the radiological and nonradiological impacts to the public health;
- (b) An assessment of any impact on any waterways and ground water;
- (c) Consideration of alternatives to the activities to be conducted, including alternative sites and engineering methods; and
- (d) Consideration of the long-term impacts, including closure, decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination, and reclamation.

(3) Any final agency action or order may be appealed pursuant to section 84-917.

Sec. 18. That section 81-15,113, Revised Statutes Supplement, 1986, be amended to read as follows:

81-15,113. The state's annual contribution to the Central Interstate Low-Level Radioactive Waste Compact Commission's budget shall be paid by generators of low-level radioactive waste in this state which dispose of such waste in low-level radioactive waste disposal facilities through fees assessed by the department pursuant to section 81-15,104. Fees may be reasonably assessed on the basis of volume of the waste shipped and shall be deposited in the Low-Level Radioactive Waste Cash Fund. Such fees shall be due the first of July beginning in 1986 and shall continue until surcharges are collected pursuant to Article IV, section (h)(2) of the compact. There shall be no General Fund appropriation for the construction, maintenance, or long-term monitoring and care of a facility.

Sec. 19. That original sections 81-1578 to 81-1581, 81-1588, 81-1590, 81-1592, 81-1599, 81-15,101 to 81-15,104, 81-15,106, 81-15,107, and 81-15,113, Revised Statutes Supplement, 1986, 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.