

## LEGISLATIVE BILL 1092

Approved by the Governor April 12, 1988

Introduced by Schellpeper, 18; Hefner, 19; Coordsen, 32;  
Dierks, 40; Scofield, 49; Conway, 17

AN ACT relating to the Low-Level Radioactive Waste Disposal Act; to amend sections 81-1578, 81-1579, 81-1581, 81-15,101.01, and 81-15,104, Reissue Revised Statutes of Nebraska, 1943; to state intent; to define terms; to provide facility site selection procedures as prescribed; to provide duties for the developer; to create local monitoring committees; to provide duties for the committees; to create funds; to provide fees; to appropriate funds; to impose conditions on and prohibit the disposal of certain wastes; to provide for compensation for loss of property value as prescribed; to provide for strict liability in tort; to restrict acceptance of applications as prescribed; 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, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1578. Sections 81-1578 to 81-15,116 and sections 4 and 7 to 14 of this act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Sec. 2. That section 81-1579, Reissue Revised Statutes of Nebraska, 1943, 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:

(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;

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

(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-~~

(3) The Legislature hereby finds that it is the policy of the state that a facility for the disposal of low-level radioactive waste shall be established at a location that best protects the health and safety of its citizens and the environment. In selecting such location, the developer shall emphasize geologic, topographic, demographic, hydrologic, and other technical factors that contribute to such protection and shall construct, operate, and maintain such facility in a manner consistent with state and federal requirements.

It is the intent of the Legislature that potential host communities be actively and voluntarily involved in the siting process. To the extent possible, consistent with the highest level of protection for the health and safety of the citizens of the state and protection of the environment, the developer shall make every effort to locate the facility where community support is evident.

Sec. 3. That section 81-1581, Reissue Revised Statutes of Nebraska, 1943, 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 4 of this act shall be used.

Sec. 4. Developer shall mean any person or commercial entity seeking to site, license, or operate a facility within this state.

Sec. 5. That section 81-15,101.01, Reissue

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

81-15,101.01. (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 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. The committee committees shall represent the citizens of the proposed site area areas and maintain communication with the applicant 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 committee committees provide significant input concerning local needs and resources regarding all relevant aspects of the siting, 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 committee committees shall be established pursuant to rules and regulations adopted and promulgated by the council.

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

(a) Two members selected from any municipality whose municipalities which have zoning jurisdiction is within fifteen miles of the proposed facility site or, if there is are no such municipality municipalities, from the municipality in closest proximity to the proposed facility 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 facility 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 facility site is proposed; and

(d) Three members, to be appointed by the Governor, who reside within fifty miles of the proposed facility site, at least one of whom represents environmental groups conservation, one of whom represents agriculture, and one of whom is an at-large member.

(3) There is hereby created the Local Site Selection Cash Fund which shall be under the direction of the Department of Environmental Control. 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 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 funds shall be appropriated equally among the committees. 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) There is hereby created the Local Monitoring Committee Cash Fund which shall be under the direction of the Department of Environmental Control. 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 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 local monitoring committee may not hire professional or technical staff but may contract for professional or technical services.

(5) 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.

Sec. 6. That section 81-15,104, Reissue Revised Statutes of Nebraska, 1943, 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, and (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) 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) of section 81-15,101.01.

(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 Except as provided in subsections (3) and (4) 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 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. 7. It is the intent of the Legislature that the Central Interstate Low-Level Radioactive Waste Compact Commission shall establish its central offices in the State of Nebraska prior to commencement of

construction of the facility.

Sec. 8. 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.

Sec. 9. Class C low-level radioactive waste, as defined by 10 C.F.R. 61.55 in effect on January 26, 1983, shall be stored or disposed of separately from other types of low-level radioactive waste in containers which can be easily monitored and retrieved and shall be handled, stored, and disposed of in a manner consistent with the zero-release objective described in section 81-1580.

Sec. 10. Waste which is defined by the Nuclear Regulatory Commission or the federal Environmental Protection Agency as mixed waste shall be solidified, neutralized, and stabilized to the maximum degree practicable prior to shipment to the facility. Mixed waste which has not been treated to the degree required by this section shall not be disposed of at the facility.

Sec. 11. (1) Any owner of real property that is within a three-mile radius of the facility on the date a license for such facility is granted who believes that his or her property has declined in value as a result of construction of the facility or his or her heirs or assigns may apply for compensation as provided in this section. Any application for compensation shall be filed within five years of the date the facility first begins accepting low-level radioactive waste. Upon application by a real property owner, the county board of the county in which the facility is located shall hold a hearing to determine whether a loss of real property value has occurred. In reaching a decision, the county board shall consider the value of such property on the date a license is granted to the developer, using appraisals, valuations made by the county assessor of the county, data developed by the Department of Revenue, and any other relevant data, including appraisals which the county board may order. If the real property owner establishes by a preponderance of the evidence that his or her property has suffered loss which has not previously been compensated due to the construction of the facility, the developer shall provide compensation to the real property owner for the amount of the loss. Compensation shall be provided by the developer from fees assessed upon generators of low-level radioactive waste at the

time such waste is delivered to the facility. Any real property owner aggrieved by a final decision of the county board shall be entitled to an appeal in the same manner as appeals are taken pursuant to section 23-135.

(2) As used in this section, real property owner shall mean the owner of record in the office of the county register of deeds on the date a license is granted to the developer as provided in section 81-15.101 or his or her heirs or assigns.

Sec. 12. Any person engaged in the disposal of low-level radioactive waste shall be subject to strict liability in tort for property damage, bodily injury, or death resulting from such disposal.

Sec. 13. The department shall not accept any applications for licensure as provided in section 81-15.101 prior to October 1, 1989.

Sec. 14. There is hereby created the Community Improvements Cash Fund which shall be under the direction of the Department of Environmental Control. The Central Interstate Low-Level Radioactive Waste Compact Commission shall transfer funds received from the states belonging to the Central Interstate Low-Level Radioactive Waste Compact as compensation paid to the host state to the Community Improvements Cash Fund. 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.

Sec. 15. That original sections 81-1578, 81-1579, 81-1581, 81-15.101.01, and 81-15.104, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.