

LEGISLATIVE BILL 1174

Approved by the Governor April 18, 1998

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Landis, 46; C. Peterson, 35; Raikes, 25; Schellpeper, 18

AN ACT relating to environmental protection; to amend sections 81-15,102 and 81-15,113.01, Revised Statutes Supplement, 1997; to change provisions relating to the Low-Level Radioactive Waste Disposal Act; to require a study; to state intent regarding funding; to repeal the original sections; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-15,102, Revised Statutes Supplement, 1997, is amended to read:

81-15,102. (1) The state shall accept or acquire, by gift, transfer, or purchase, from the licensed facility operator, title to the land and appurtenances used for the disposal of low-level radioactive waste after the expiration of both the operational life and closure period of the facility, if:

(a) Both the Department of Health and Human Services Regulation and Licensure and the Department of Environmental Quality determine that (i) the requirements for site closure, decommissioning, and decontamination adopted pursuant to rules and regulations of the Department of Health and Human Services Regulation and Licensure and the Department of Environmental Quality which are allowed under federal law have been met by the licensed facility operator and (ii) such operator is in compliance with all financial requirements; and

(b) The amendments to the Central Interstate Low-Level Radioactive Waste Compact made by Laws 1991, LB 837, section 4, codified in section 71-3521, are in effect and have been ratified by Congress.

The title to the land and appurtenances shall be transferred without cost to the state. Such transfer of title to the state does not relieve the developer, licensed facility operator, or generators of such waste from liability for their actions that occurred whether known or unknown during the design, construction, operation, and closure of the facility. Sites received by gift or transfer shall be subject to approval and acceptance by the 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 and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of this section. Such lands and appurtenances shall be used exclusively for the disposal of low-level radioactive waste 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. Remedial cleanup costs which become necessary during the period of custodial care shall be assessed first to the licensed facility operator, then proportionately against the generators of the radioactive waste and as set out in the Central Interstate Low-Level Radioactive Waste Compact found in section 71-3521.

(4) The state may contract for the management of a disposal site. The contractor shall be subject to licensing by the department and shall be subject to the surety and custodial care funding provisions of section 81-15,103.

(5) If and until licensing of a facility is approved, no further construction contracts shall be let or actual construction begun, other than filling the identified wetland, before the Department of Environmental Quality has conducted a six-month public education program to inform the people of the county and the people of the state of the exact characteristics of the facility to be built, which program shall be undertaken forthwith.

Sec. 2. Section 81-15,113.01, Revised Statutes Supplement, 1997, is amended to read:

81-15,113.01. (1) There is hereby created the Community Improvements Cash Fund which shall be under the direction of the department. The Central Interstate Low-Level Radioactive Waste Compact Commission shall annually through 1997 1998 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. 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 the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(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 Property Tax Administrator pursuant to section 77-1613.01.

(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. 3. The Executive Board of the Legislative Council in conjunction with the Natural Resources Committee of the Legislature shall conduct an interim study on the legal consequences of withdrawing from the Central Interstate Low-Level Radioactive Waste Compact. It is the intent of the Legislature that \$150,000 of federal rebate funds appropriated to the Department of Environmental Quality for FY1998-99 shall be transferred to the Executive Board of the Legislative Council to hire legal counsel for advice on such issues.

Sec. 4. Original sections 81-15,102 and 81-15,113.01, Revised Statutes Supplement, 1997, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.