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Short Title: Waste Amendments-1.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE RADIATION PROTECTION COMMISSION, TO IMPOSE A TAX ON THE GROSS RECEIPTS OF A LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY AT A RATE OF ONE PERCENT TO BE CREDITED TO THE GENERAL FUND, AND TO AMEND VARIOUS STATUTES RELATING TO LOW-LEVEL RADIOACTIVE WASTE.

The General Assembly of North Carolina enacts:

Section. 1. G.S. 104E-6.1(a) reads as rewritten:

"(a) No land may be used as a low-level radioactive waste disposal facility until fee simple title to the land has been conveyed to the State of North Carolina. In consideration for such conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. Such lease agreement shall specify that for an annual rent of fifty dollars (\$50.00), the lessee shall be allowed to use the land for the development and operation of a low-level radioactive waste ~~landfill~~-disposal facility. Such lease agreement shall provide that the lessor or any person authorized by the lessor shall have at all times the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of Chapter 104E. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory

1 requirements concerning insurance, bonding for closure and post-closure costs,
2 monitoring and other financial or health and safety requirements as required by
3 applicable law and regulations. The State, as lessor, shall be immune from liability
4 except as otherwise provided by statute. The lease shall be transferrable with the written
5 consent of the lessor, which consent will not be unreasonably withheld. In the case of
6 such a transfer of the lease, the transferee shall be subject to all terms and conditions
7 that the State deems necessary to ensure compliance with applicable laws and
8 regulations. If the lessee or any successor in interest fails in any material respect to
9 comply with any applicable law, regulation, or permit condition, or with any term or
10 condition of the lease, the State may terminate the lease after giving the lessee written
11 notice specifically describing the failure to comply and upon providing the lessee a
12 reasonable time to comply. If the lessee does not effect compliance within the
13 reasonable time allowed, the State may reenter and take possession of the premises."

14 Sec. 2. G.S. 104E-8 reads as rewritten:

15 **"§ 104E-8. Radiation Protection Commission – Members; selections; removal;
16 compensation; quorum; services.**

17 (a) The Commission shall consist of ~~10~~13 voting public members and 10
18 nonvoting ex officio members. The ~~10~~13 voting public members of the Commission
19 shall be appointed by the Governor as follows:

- 20 (1) One member who shall be actively involved in the field of
21 environmental protection;
- 22 (2) One member who shall be an employee of one of the licensed public
23 utilities involved in the generation of power by atomic energy;
- 24 (3) One member who shall have experience in the field of atomic energy
25 other than power generation;
- 26 (4) One member who shall be a scientist or engineer from the faculty of
27 one of the institutions of higher learning in the State;
- 28 (5) One member who shall have recognized knowledge in the field of
29 radiation and its biological effects from the North Carolina Medical
30 Society;
- 31 (6) One member who shall have recognized knowledge in the field of
32 radiation and its biological effects from the North Carolina Dental
33 Society;
- 34 (7) One member who shall have recognized knowledge in the field of
35 radiation and its biological effects from the State at large;
- 36 (8) One member who shall have recognized knowledge in the field of
37 radiation and its biological effects and who shall be a practicing
38 hospital administrator from the North Carolina Hospital Association;
- 39 (9) One member who shall have recognized knowledge in the field of
40 radiation and its biological effects from the North Carolina
41 Chiropractic Association;
- 42 (10) One member who shall have recognized knowledge in the clinical
43 application of radiation, shall be a practicing radiologic technologist
44 from the North Carolina Society of Radiologic Technologists, and

1 shall be certified by the American Registry of Radiologic
2 Technologists;

3 (11) One member who shall have recognized knowledge in the clinical
4 application of radiation and shall be a practicing podiatrist licensed by
5 the North Carolina State Board of Podiatry ~~Examiners.~~ Examiners;

6 (12) One member who shall have recognized knowledge in the field of
7 radiation and its biological effects from the North Carolina Chapter of
8 the Health Physics Society;

9 (13) One member who shall have recognized knowledge in the field of
10 radiation and its biological effects, who shall be a licensed
11 veterinarian, and who shall be appointed by the Governor upon
12 consultation with the Dean of the College of Veterinary Medicine of
13 North Carolina State University.

14 (b) Public members so appointed shall serve terms of office of four years. Four of
15 the initial members shall be appointed for two years, three members for three years, and
16 three members for four years. Any appointment to fill a vacancy on the Commission
17 created by the resignation, dismissal, death or disability of a public member shall be for
18 the balance of the unexpired term. At the expiration of each public member's term, the
19 Governor shall reappoint or replace the member with a member of like qualifications.
20 At its first meeting on or after July first of each year, the Commission shall designate by
21 election one of its public members as chairman and one of its public members as vice-
22 chairman to serve through June thirtieth of the following year.

23 (c) The 10 ex officio members shall be appointed by the Governor, shall be
24 members or employees of the following State agencies or their successors, and shall
25 serve at the Governor's pleasure:

26 (1) The Utilities Commission;

27 (2) The Commission for Health Services;

28 (3) The Environmental Management Commission;

29 (4) The Board of Transportation;

30 (5) ~~The Division of Civil Preparedness of the Department of the Military and~~
31 ~~Veterans Affairs;~~ Emergency Management of the Department of Crime
32 Control and Public Safety;

33 (6) ~~The radiation protection program within the Department of Human~~
34 ~~Resources;~~ Radiation Protection Division of the Department;

35 (7) The Department of Labor;

36 (8) The Industrial Commission;

37 (9) The Department of Insurance;

38 (10) The Medical Care Commission.

39 (d) The Governor shall have the power to remove any member from the
40 Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S.
41 143B-13.

42 (e) The members of the Commission shall receive per diem and necessary travel
43 and subsistence expenses in accordance with the provisions of G.S. 138-5.

1 (f) A majority of the public members of the Commission shall constitute a
2 quorum for the transaction of business.

3 (g) All clerical and other services required by the Commission shall be supplied
4 by the Secretary of the ~~Department of Human Resources~~-Department."

5 Sec. 3. The initial term of public members of the Radiation Protection
6 Commission who are appointed to the positions on the Commission added by Section 1
7 of this act shall be for two, three, four, or five years, depending on the expiration of the
8 current terms of current members of the Commission. In making initial appointments
9 under this section and Section 1 of this act, the Governor shall specify initial terms such
10 that, as nearly as possible, the same number of terms will expire in each year.

11 Sec. 4. G.S. 104G-6(19) reads as rewritten:

12 "(19) ~~Shall~~May procure and keep in force adequate insurance or
13 otherwise provide for the ~~adequate protection to indemnify and save~~
14 ~~harmless it and its~~indemnification of itself and its members,
15 officers, agents, employees, adjoining property owners, or the
16 general public against loss or liability resulting from any act or
17 omission by or on behalf of the Authority, and for the protection of
18 its property; property, provided that the procurement of insurance
19 by the Authority shall be deemed a waiver of liability only to the
20 extent of the insurance coverage and shall not otherwise be deemed
21 a waiver of any immunity from liability available under any
22 provision of law;".

23 Sec. 5. G.S. 104G-8 reads as rewritten:

24 "**§ 104G-8. Liability ~~and defense.~~ defense, and legal representation.**

25 (a) The provisions of Article 31 of Chapter 143 (Tort Claims Against State
26 Departments and Agencies) shall apply to the Authority. No member, officer, or
27 employee of the Authority, while acting within the scope of their authority, shall be
28 subject to any personal liability or accountability by reason of any act or omission in
29 connection with the exercise of any power or performance of any duty, whether express
30 or implied, pursuant to this Chapter.

31 (b) ~~The Authority may provide for the defense of a criminal or civil proceeding~~
32 ~~brought against any current or former member, officer, agent, or employee either in his~~
33 ~~official or individual capacity, or both, on account of any act done or omission made in~~
34 ~~the scope and course of his employment or duty as a member, officer, agent or~~
35 ~~employee of the Authority. The defense may be provided by the Attorney General or by~~
36 ~~the Authority by its own counsel, by employing other counsel, or by purchasing~~
37 ~~insurance which requires that the insurer provide the defense. The provisions of Article~~
38 31A of Chapter 143 of the General Statutes shall apply to current or former members,
39 officers, agents, or employees of the Authority.

40 (c) ~~The Authority may appropriate funds for the purpose of paying all or part of a~~
41 ~~claim made or any civil judgment entered against any of its current or former members,~~
42 ~~officers, agents, or employees when such claim is made or such judgment is rendered as~~
43 ~~damages on account of any act done or omission made or in the scope and course of his~~
44 ~~current or former employment or duty as a member, officer, agent or employee;~~

1 provided, however, that nothing in this section shall permit the Authority to appropriate
2 funds for the purpose of paying a claim made or civil judgment entered against any
3 current or former member, officer, agent or employee where the Authority or a court of
4 competent jurisdiction finds that the claim or civil judgment resulted from malice, fraud
5 or corruption. The Attorney General shall be the legal representative of the Authority
6 and shall provide legal advice and counsel to the Authority. The Authority and the
7 Department of Justice shall enter into an appropriate contract or make other mutually
8 satisfactory arrangements for legal services, including reimbursement of the Department
9 of Justice for any costs incurred other than routine or minor costs. The Authority may
10 employ or retain other legal counsel with the prior approval of the Attorney General."

11 Sec. 6. G.S. 104G-9(e) reads as rewritten:

12 "(e) No later than 1 ~~August~~ October 1989, the Authority shall select a minimum of
13 two sites that are suitable for the location of a low-level radioactive disposal facility, for
14 characterization. No site may be selected for the location of a low-level radioactive
15 waste disposal facility without first having been characterized."

16 Sec. 7. G.S. 104G-9(f) reads as rewritten:

17 "(f) No later than 1 ~~August~~ October 1990, the Authority shall complete all site
18 characterizations."

19 Sec. 8. G.S. 104G-10(c) reads as rewritten:

20 "(c) The Authority shall select and employ an operator for a low-level radioactive
21 waste disposal facility no later than ~~31 January~~ 1 August 1989. If no private operator is
22 employed by ~~31 January~~ 1 August 1989, the Authority shall designate itself as the
23 operator and shall do everything necessary to obtain all required licenses or permits to
24 operate a low-level radioactive waste disposal facility."

25 Sec. 9. G.S. 104G-13(d) reads as rewritten:

26 "(d) Upon proper closure, the Authority shall assume responsibility for
27 environmental monitoring, maintenance, care, and custody of a low-level radioactive
28 waste disposal facility site during the institutional ~~care period and control period.~~ The
29 Authority may ~~shall~~ release the operator from further ~~responsibility,~~ responsibility for
30 maintenance of the low-level radioactive waste disposal facility, subject to approval by
31 the Department of Human Resources of the transfer of the license to the Authority. The
32 Authority may not release the operator from liability for damages, losses, personal
33 injury, or property damage which may result or arise out of the operation of the low-
34 level radioactive waste disposal facility."

35 Sec. 10. G.S. 104G-15(c) reads as rewritten:

36 "(c) The Authority shall prepare, on a quarterly basis, a detailed financial statement
37 showing its current fee schedules, income from all sources, indebtedness, and expenses
38 for the quarter and fiscal year to date. This report, and any other information regarding
39 the operation of the Authority which may be requested, shall be submitted to the
40 chairmen of the House and Senate committees on Finance and Appropriations, the Joint
41 Legislative Commission on Governmental Operations, the Joint Select Committee on
42 Low-Level Radioactive Waste, the Research Division, and the Fiscal Research ~~Division-~~
43 Division of the General Assembly."

44 Sec. 11. G.S. 104G-16(a) reads as rewritten:

1 "(a) There is hereby established under the control and direction of the Authority a
2 nonreverting Long-Term Care Fund, to be administered by the State Treasurer, which
3 may be used for:

- 4 (1) Administration of the Fund;
- 5 (2) Emergency response to and decontamination of radiation accidents
6 at facilities operated by the Authority, or pursuant to this Chapter; or
- 7 (3) Environmental monitoring, maintenance, care, and custody of a
8 disposal facility including necessary remedial actions during the
9 institutional control period."

10 Sec. 12. G.S. 104G-18 is amended by adding a new subsection to read:

11 "(e) The Authority shall collect and deposit with the State Treasurer a tax on the
12 gross receipts of the facility in the amount of one percent (1%). The tax is payable on a
13 quarterly basis. The operator shall remit the tax due for a quarter to the Authority by the
14 15th day of the month following the end of the quarter. The State Treasurer shall credit
15 receipts under this subsection to the General Fund."

16 Sec. 13. G.S. 104G-21(a) reads as rewritten:

17 "(a) Any local government in the county or counties where a low-level radioactive
18 waste facility is proposed to be located pursuant to this Chapter may negotiate with the
19 Authority with respect to any issue relating to the facility except:

- 20 (1) The need for the facility;
- 21 (2) Any proposal to reduce the duties of the Authority under this
22 Chapter or under any license issued for the facility;
- 23 (3) Any proposal to reduce the duties of the Commission or to make
24 less stringent any rule of the Commission; ~~or~~
- 25 (4) Any proposal to reduce the duties of the Board; or
- 26 ~~(4)(5)~~ Any decision of the Authority regarding site selection, operator
27 selection, or technology pursuant to G.S. 104G-9, 104G-10, and
28 104G-11."

29 Sec. 14. G.S. 104G-21(e) reads as rewritten:

30 "(e) In addition to those issues set out in subsection ~~(e)~~, ~~(d)~~, upon petition to the
31 Board by a local government in the county or counties where a low-level radioactive
32 waste facility is proposed to be located, any other issue may be submitted for arbitration
33 except:

- 34 (1) Those issues excluded from negotiation under subsection (a) of this
35 section;
- 36 (2) Any issue relating to the imposition by the General Assembly of a tax,
37 or fee not authorized by this Chapter; and
- 38 (3) Any issue requiring an appropriation by the General Assembly."

39 Sec. 15. G.S. 104G-22(a) reads as rewritten:

40 "(a) To assist the Authority in the performance of its responsibilities under this
41 Chapter and to advise the General Assembly, there is created the Inter-Agency
42 Committee on Low-Level Radioactive Waste (herein called the 'Committee') ~~consisting~~
43 ~~of 11 members.~~ The ~~members-Committee~~ shall be composed of: the Chairman of the
44 Board; the Chairman of the Board's Technical Committee on Low-Level Radioactive

1 Waste; the Chief of the North Carolina Radiation Protection Section; the Chairman of
2 the Commission's Low-Level Radioactive Waste Management Committee; the
3 Chairman of the Authority; ~~the Chairman of the Authority's Technical Committee; the Vice-~~
4 Chairman of the Authority; the Executive Director of the Authority; one additional
5 member of the Authority designated by the Chairman; ~~three~~ four representatives of the
6 Department of Natural Resources and Community Development with expertise in
7 geology, groundwater, water quality, and air quality; a representative of the Solid Waste
8 Management Section of the Division of Health Services of the Department of Human
9 Resources; and the two representatives of the Attorney General's office who provide
10 legal services to the Authority and the Commission. The Chairman of the Board shall
11 serve as the Chairman of the Committee, and the Board shall provide professional and
12 clerical support to the Committee."

13 Sec. 15.1. G.S. 104G-6 is amended by adding the following subsection:

14 "(c) The Authority may in its discretion refuse to contract for the services
15 described in G.S. 104G-6(a)(3) with a person who, or any affiliate of a person who, has
16 been convicted within the previous three years on felony charges in a federal or state
17 court of committing a contract crime or an environmental crime. Notice of any contract
18 with parties listed above shall be disclosed to all members of the General Assembly,
19 detailed the conviction, prior to entering into any contract with said parties. The terms
20 of any contract for services described in G.S. 104G-6(a)(3) entered into by the
21 Authority shall include the following provisions:

- 22 (1) That the contract is voidable by the Authority if a party to the contract
23 subcontracts with or is supplied by a person who has been convicted
24 within the previous three years of a contract crime or an environmental
25 crime.
- 26 (2) That if a party to the contract or an affiliate of a party to the contract is
27 charged in an indictment or an information with engaging in a contract
28 crime or an environmental crime in any federal court or state court, the
29 Authority's obligations under the contract may in the discretion of the
30 Authority be suspended until the charges are resolved.
- 31 (3) That immediate notice be given to the Authority in the event that the
32 contractor is charged in an indictment or information or is convicted of
33 a crime described in this subsection."

34 Sec. 15.2. G.S. 104G-2 reads as rewritten:

35 **"§ 104G-2. Definitions.**

36 Unless the context otherwise requires, the following definitions shall apply to this
37 Chapter:

- 38 (1) 'Affiliate' means one of a group of two or more corporations whose
39 relationship to each other is such that (i) one corporation is
40 substantially controlled, directly or indirectly, by the other or others, or
41 (ii) one of the corporations is substantially controlled directly or
42 indirectly, by the same interests as the other or others, or (iii) one is a
43 predecessor or successor of the other or others under the same, or
44 substantially the same, control. The term 'affiliate' includes the

1 officers, directors, executives, shareholders active in management,
2 employees, and agents of the affiliate. The ownership by one business
3 entity of a controlling interest in another business entity or a pooling of
4 equipment or income among business entities shall be **prima facie**
5 evidence that one business entity is an affiliate of another.

- 6 (1)(1a) 'Authority' means the North Carolina Low-Level Radioactive Waste
7 Management Authority established pursuant to this Chapter, its
8 governing board, or any successor thereto.
- 9 (2) 'Board' means the Governor's Waste Management Board established
10 pursuant to Part 27 of Article 3 of Chapter 143B of the General
11 Statutes.
- 12 (3) 'Commission' means the North Carolina Radiation Protection
13 Commission established pursuant to Chapter 104E of the General
14 Statutes.
- 15 (3a) 'Contract crime' means (i) any felony violation of state or federal
16 antitrust laws with respect to a public contract, or (ii) any felony
17 violation of any state or federal law involving fraud, bribery, collusion,
18 conspiracy, or other unlawful act in restraint of trade laws.
- 19 (3b) 'Convicted' or 'conviction' means a finding of guilt or a conviction of a
20 contract crime or an environmental crime, with or without an
21 adjudication of guilt, in any federal or state trial court of record as a
22 result of a jury verdict, nonjury trial, or entry of a plea of guilty or **nolo**
23 **contendere.**
- 24 (3c) 'Environmental crime' means any felony violation of state or federal
25 law that protects the environment.
- 26 (4) 'LLRWPA' means the Low-Level Radioactive Waste Policy Act of
27 1980, Pub. L. No. 96-573, 94 Stat. 3347, and the Low-Level
28 Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240,
29 99 Stat. 1842, 42 U.S.C. 2021b **et seq.**
- 30 (5) 'Low-level radioactive waste' means low-level radioactive waste as
31 defined in the Low-Level Radioactive Waste Policy Amendments Act
32 of 1985, Pub. L. 99-240, 99 Stat. 1842, 42 U.S.C. 2021b **et seq.** and
33 other waste, including waste containing naturally occurring and
34 accelerator produced radioactive material, which is not regulated by
35 the United States Nuclear Regulatory Commission or other agency of
36 the federal government and which is determined to be low-level
37 radioactive waste by the Commission.
- 38 (6) 'Low-level radioactive waste facility' means a facility for the storage,
39 collection, processing, treatment, recycling, recovery, or disposal of
40 low-level radioactive waste.
- 41 (7) 'Low-level radioactive waste disposal facility' means any low-level
42 radioactive waste facility or any portion of such facility, including
43 land, buildings, and equipment, which is used or intended to be used
44 for the disposal of low-level radioactive waste on or in land in

1 accordance with rules promulgated under Chapter 104E of the General
2 Statutes.

3 (8) 'Local government(s)' means the board of commissioners of a county
4 or the governing board of a city, as the term 'city' is defined in G.S.
5 160A-1(2).

6 (9) 'Person' means any individual, partnership, corporation, association, or
7 other entity formed for the purpose of doing business as a contractor,
8 subcontractor, supplier, or consultant.

9 (10) 'Pooling' means a combination of persons or corporations engaged in
10 the same business, or for the purpose of engaging in a particular
11 business or commercial or speculative venture, in which all contribute
12 to a common fund or place their holdings of a given stock or other
13 security in the hands and control of a managing member or
14 committee."

15 Sec. 16. G.S. 104G-22(d) reads as rewritten:

16 "(d) Consistent with existing law, each agency, board, commission, or authority from
17 whose membership the Committee is drawn shall be responsible for any expenses
18 incident to the participation of its members in the work of the Committee, including per
19 diem, travel, and subsistence, from funds otherwise appropriated to it. ~~The Authority~~
20 ~~shall pay the costs of any study for which provision is not otherwise made in this section from~~
21 ~~funds otherwise appropriated to the Authority."~~

22 Sec. 16.1. G.S. 104G-23 is amended by adding a new subsection to read:

23 "(d) No low-level radioactive waste shall be accepted for disposal at a disposal
24 facility established pursuant to this Chapter until such time as the Southeast Interstate
25 Low-Level Radioactive Waste Management Compact Commission has established a
26 schedule and initiated the process for designating a state to host the third regional
27 disposal facility."

28 Sec. 17. Sections 6, 7, and 8 of this act are effective 31 January 1989.
29 Sections 2 and 3 of this act are effective 1 July 1989. Sections 1, 4, and 5 and Sections
30 9 through 17 are effective upon ratification.