

As Engrossed: 3/18/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Moore**

A BILL ACT 847 OF 1991
SENATE BILL 548

For An Act To Be Entitled

8 "AN ACT TO AMEND ARTICLES I, II, III AND IV OF THE CENTRAL
9 INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT AS CODIFIED
10 IN ARKANSAS CODE 8-8-202; TO RATIFY THE COMPACT AS
11 AMENDED; AND FOR OTHER PURPOSES."

12
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. Articles I, II, III and IV of the Central Interstate Low-
16 Level Radioactive Waste Compact, as codified in Arkansas Code 8-8-202 are
17 hereby amended to read as follows:

18 "ARTICLE I.

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20 Policy and Purpose

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22 The party states recognize that each state is responsible for the management
23 of its nonfederal low-level radioactive wastes. They also recognize that the
24 Congress, by enacting the Low-Level Radioactive Waste Policy Act (Public Law
25 96-573), has authorized and encouraged states to enter into compacts for the
26 efficient management of wastes. It is the policy of the party states to
27 cooperate in the protection of the health, safety, and welfare of their
28 citizens and the environment, and to provide for and encourage the economical
29 management of low-level radioactive wastes. It is the purpose of this compact
30 to provide the framework for such a cooperative effort; to promote the health,
31 safety, and welfare of the citizens and the environment of the region; to
32 limit the number of facilities needed to effectively and efficiently manage
33 low-level radioactive wastes and to encourage the reduction of the generation
34 thereof; and to distribute the costs, benefits, and obligations among the
35 party states. It is the policy of the party states that activities conducted
36 by the commission are the formation of public policies and are therefore

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1 public business.

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ARTICLE II.

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Definitions

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7 As used in this compact, unless the context clearly requires a different
8 construction:

9 (a) 'Commission' means the Central Interstate Low-Level Radioactive
10 Waste Compact Commission;

11 (b) 'Disposal' means the isolation and final disposition of waste;

12 (c) 'Decommissioning' means the measures taken at the end of a
13 facility's operating life to assure the continued protection of the public
14 from any residual radioactivity or other potential hazards present at the
15 facility;

16 (d) 'Extended care' means the continued observation of a facility
17 after closure for the purpose of detecting a need for maintenance, ensuring
18 environmental safety, and determining compliance with applicable licensure and
19 regulatory requirements and includes undertaking any action or cleanup
20 necessary to protect public health and the environment;

21 (e) 'Facility' means any site, location, structure, or property used
22 or to be used for the management of waste;

23 (f) 'Generator' means any person who, in the course of or as an
24 incident to manufacturing, power generation, processing, medical diagnosis and
25 treatment, biomedical research, other industrial or commercial activity, other
26 research, or mining in a party state, produces or processes waste.

27 'Generator' does not include any person who receives waste generated outside
28 the region for subsequent shipment to a regional facility;

29 (g) 'Host state' means any party state in which a regional facility is
30 situated or is being developed;

31 (h) 'Institutional control' means those activities carried out by the
32 host state to physically control access to the disposal site following
33 transfer of the license to the owner of the disposal site. These activities
34 include, but are not limited to, environmental monitoring, periodic
35 surveillance, minor custodial care, and other necessary activities at the site

1 as determined by the host state and administration of funds to cover the costs
2 for these activities. The period of institutional control will be determined
3 by the host state but may not be less than one hundred years following
4 transfer of the license to the owner of the disposal site;

5 (i) 'Low-level radioactive waste' or 'waste' means, as defined in the
6 Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste
7 not classified as: high-level radioactive waste; transuranic waste; spent
8 nuclear fuel; or by-product material as defined in Section 11 e.2 of the
9 Atomic Energy Act of 1954, as amended through 1978;

10 (j) 'Management of waste' means the storage, treatment, or disposal of
11 waste;

12 (k) 'Notification of each party state' means transmittal of written
13 notice to the Governor, presiding officer of each legislative body, and any
14 other persons designated by the party state's commission member to receive
15 such notice;

16 (l) 'Party state' means any state which is a signatory party to this
17 compact;

18 (m) 'Person' means any individual, corporation, business enterprise,
19 or other legal entity, either public or private;

20 (n) 'Region' means the area of the party states;

21 (o) 'Regional facility' means a facility which is located within the
22 region and which has been approved by the commission for the benefit of the
23 party states;

24 (p) 'Site' means any property which is owned or leased by a generator
25 and is contiguous to or divided only by a public or private way from the
26 source of generation;

27 (q) 'State' means a state of the United States, the District of
28 Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any
29 other territorial possession of the United States;

30 (r) 'Storage' means the holding of waste for treatment or disposal;
31 and

32 (s) 'Treatment' means any method, technique, or process, including
33 storage for radioactive decay, designed to change the physical, chemical, or
34 biological characteristics or composition of any waste in order to render such
35 waste safer for transport or management, amenable for recovery, convertible to

1 another usable material, or reduced in volume.

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ARTICLE III.

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Rights and Obligations

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7 (a) There shall be provided within the region one (1) or more regional
8 facilities which together provide sufficient capacity to manage all wastes
9 generated within the region. It shall be the duty of regional facilities to
10 accept compatible wastes generated in and from party states, and meeting the
11 requirements of this act, and each party state shall have the right to have
12 the wastes generated within its borders managed at such facility.

13 (b) To the extent authorized by federal law and host state law, a host
14 state shall regulate and license any regional facility within its borders and
15 ensure the extended care of such facility.

16 (c) Rates shall be charged to any user of the regional facility, set by
17 the operator of a regional facility, and shall be fair and reasonable and be
18 subject to the approval of the host state. Such approval shall be based upon
19 criteria established by the commission.

20 (d) A host state may establish fees which shall be charged to any user
21 of a regional facility, and which shall be in addition to the rates approved
22 pursuant to Section (c) of this article, for any regional facility within its
23 borders. Any fees proposed by the host state shall be subject to a 120 day
24 prior notice to the commission with an opportunity to provide comments to the
25 host state. Such fees shall be fair and reasonable and shall provide the host
26 state with sufficient revenue to cover all anticipated present and future
27 costs associated with any regional facility and a reasonable reserve for
28 future contingencies, which are not covered by rates established in section
29 (c) of this Article including, but not limited to:

30 1. The licensure, operation, monitoring, inspection, maintenance,
31 decommissioning, closure, institutional control, and extended care of a
32 regional facility; and

33 2. Response, removal, remedial action or cleanup deemed appropriate and
34 required by the host state as a result of a release of radioactive or
35 hazardous materials from such regional facility; and

- 1 3. Premiums for property and 3rd party liability insurance; and
- 2 4. Protection of the public health, safety, and environment; and
- 3 5. Compensation and incentives to the host community;
- 4 6. Any amount due from a judgment or settlement involving a property or
- 5 third party liability claim for medical expenses and all other damages
- 6 incurred as a result of personal injury or death, and damages or losses to
- 7 real or personal property or the environment; and
- 8 7. Cost of defending or pursuing liability claims against any party or
- 9 state.

10 The fees established pursuant to this section (d) of this article may
11 include incentives for source and volume reduction and may be based on the
12 hazard of the waste. Notwithstanding anything to the contrary in this
13 Compact, or in any state constitution, statute, or regulation, to the extent
14 that such fees are insufficient to pay for any costs associated with a
15 regional facility, including all costs under Section (d) of Article III, all
16 party states and any other state(s) whose generators use the regional
17 facility, shall share liability for all such costs. However, there shall be
18 no recovery from the states under section (d) of this Article until all
19 available funds, payments, or in-kind services have been exhausted including:

- 20 i. designated low-level radioactive waste funds managed by the host
- 21 state; and
- 22 ii. payable proceeds of insurance or surety policies applicable to a
- 23 regional facility; and
- 24 iii. proceeds of reasonable collection efforts against the regional
- 25 facility operator(s); and
- 26 iv. payments from or in-kind services by generators.

27 In the event any regional facility operator files or has filed against
28 it a bankruptcy proceeding, then for purposes of determining whether or not
29 reasonable collection efforts have been undertaken, the filing of such
30 proceedings if not dismissed within 60 days of filing shall be considered
31 exhaustion of reasonable collection efforts with respect to such party.
32 Recovery from the states under section (d) of Article III upon satisfaction of
33 the exhaustion of available funds, payments, or in-kind services shall not
34 preclude any state from further recovery of its costs from a facility
35 operator, insurer or generator. During the period of time that such

1 reasonable collection efforts or exhaustion of available funds, payments, or
2 in-kind services occur, any applicable statutes of limitation with respect to
3 claims against any other parties or states will be deemed tolled and will not
4 run. All costs or liabilities shared by a state shall be shared
5 proportionately by comparing the volume of the waste received at a regional
6 facility from the generators of each state with the total volume of the waste
7 received at a regional facility from all generators.

8 (e) To the extent authorized by federal law, each party state is
9 responsible for enforcing any applicable federal and state laws and
10 regulations pertaining to the packaging and transportation of waste generated
11 within or passing through its borders, and shall adopt practices that will
12 ensure that waste shipments originating within its borders and destined for a
13 regional facility will conform to applicable packaging and transportation laws
14 and regulations.

15 (f) Each party state has the right to rely on the good faith
16 performance of each other party state.

17 (g) Unless authorized by the commission, it shall be unlawful after
18 January 1, 1986, for any person:

19 (1) To deposit, at a regional facility, waste not generated within the
20 region;

21 (2) To accept, at a regional facility, waste not generated within the
22 region;

23 (3) To export from the region, waste which is generated within the
24 region; and

25 (4) To transport waste from the site at which it is generated except to
26 a regional facility.

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28 ARTICLE IV.

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30 The Commission

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32 (a) There is hereby established the Central Interstate Low-Level
33 Radioactive Waste Compact Commission. The commission shall consist of one (1)
34 voting member from each party state, except that each host state shall have
35 two at-large voting members and one nonvoting member from the county in which

1 the facility is located. All members shall be appointed according to the laws
2 of each state. The appointing authority of each party state shall notify the
3 commission in writing of the identity of its member and any alternates. Any
4 alternate may act on behalf of the member only in the absence of such member
5 or members. Each state is responsible for the expenses of its member of the
6 commission.

7 (b) Except for the nonvoting member, each commission member shall be
8 entitled to one (1) vote. Unless otherwise provided herein, no action of the
9 commission shall be binding unless a majority of the total voting membership
10 casts its vote in the affirmative.

11 (c) The commission shall elect from among its membership a chairman.
12 The commission shall adopt and publish, in convenient form, bylaws and
13 policies which are not inconsistent with this compact.

14 (d) The commission shall meet at least once a year, and shall also meet
15 upon the call of the chairman, by petition of a majority of the membership, or
16 upon the call of a host state member. All meetings of the commission shall be
17 open to the public with reasonable advance publicized notice given and such
18 meetings shall be subject to those exceptions provided for within the open
19 meetings laws of the host state. The commission shall adopt bylaws that are
20 consistent in scope and principle with the open meetings law of the host
21 state, or if there is no host state, the open meetings law of the state in
22 which the commission headquarters are located.

23 (e) The commission may initiate any proceedings or appear as an
24 intervenor or party in interest before any court of law, or any federal,
25 state, or local agency, board, or commission that has jurisdiction over any
26 matter arising under or relating to the terms and provisions of this compact.
27 The commission shall determine in which proceedings it shall intervene or
28 otherwise appear and may arrange for such expert testimony, reports, evidence,
29 or other participation in such proceedings as may be necessary to represent
30 its views.

31 (f) The commission may establish such committees as it deems necessary
32 for the purpose of advising the commission on any and all matters pertaining
33 to the management of waste.

34 (g) The commission may employ and compensate a staff limited only to
35 those persons necessary to carry out its duties and functions. The commission

1 may also contract with and designate any person to perform necessary functions
2 to assist the commission. Unless otherwise required by acceptance of a
3 federal grant, the staff shall serve at the commission's pleasure irrespective
4 of the civil service, personnel, or other merit laws of any of the party
5 states or the federal government and shall be compensated from funds of the
6 commission.

7 (h) Funding for the commission shall be as follows:

8 (1) The commission shall set and approve its first annual budget as
9 soon as practicable after its initial meeting. Party states shall equally
10 contribute to the commission budget on an annual basis, an amount not to
11 exceed twenty-five thousand dollars (\$25,000) until surcharges are available
12 for that purpose. Host states shall begin imposition of the surcharges
13 provided for in this section as soon as practicable and shall remit to the
14 commission funds resulting from collection of such surcharges within sixty
15 (60) days of their receipt; and

16 (2) Each state hosting a regional facility shall annually levy
17 surcharges on all users of such facilities, based on the volume and
18 characteristics of wastes received at such facilities, the total of which:

19 (a) Shall be sufficient to cover the annual budget of the commission;
20 and

21 (b) Shall be paid to the commission, provided, however, that each host
22 state collecting such surcharges may retain a portion of the collection
23 sufficient to cover the administrative costs of collection, and that the
24 remainder be sufficient only to cover the approved annual budget of the
25 commission.

26 (i) The commission shall keep accurate accounts of all receipts and
27 disbursements. An independent certified public accountant shall annually audit
28 all receipts and disbursements of commission funds and submit an audit report
29 to the commission. Such audit report shall be made a part of the annual report
30 of the commission required by this article.

31 (j) The commission may accept for any of its purposes and functions any
32 and all donations, grants of money, equipment, supplies, materials, and
33 services, conditional or otherwise from any person, and may receive, utilize,
34 and dispose of same. The nature, amount, and conditions, if any, attendant
35 upon any donation or grant accepted pursuant to this section, together with

1 the identity of the donor, grantor, or lender, shall be detailed in the annual
2 report of the commission.

3 (k) (1) Except as otherwise provided herein, nothing in this compact
4 shall be construed to alter the incidence of liability of any kind for any
5 act, omission, course of conduct, or on account of any causal or other
6 relationships. Generators, transporters of waste, owners, and operators of
7 facilities shall be liable for their acts, omissions, conduct, or
8 relationships in accordance with all laws relating thereto.

9 (2) The commission herein established is a legal entity separate and
10 distinct from the party states and shall be so liable for its actions.
11 Liabilities of the commission shall not be deemed liabilities of the party
12 states. Members of the commission shall not be personally liable for actions
13 taken by them in their official capacity.

14 (l) Any person or party state aggrieved by a final decision of the
15 commission may obtain judicial review of such decisions in the United States
16 District Court in the district wherein the commission maintains its
17 headquarters by filing in such court a petition for review within sixty (60)
18 days after the commission's final decision. Proceedings thereafter shall be in
19 accordance with the rules of procedure applicable in such court.

20 (m) The commission shall:

21 (1) Receive and approve the application of a nonparty state to become a
22 party state in accordance with Article VII;

23 (2) Submit an annual report to, and otherwise communicate with, the
24 governors and the presiding officers of the legislative bodies of the party
25 states regarding the activities of the commission;

26 (3) Hear and negotiate disputes which may arise between the party
27 states regarding this compact;

28 (4) Require of and obtain from the party states, and nonparty states
29 seeking to become party states, data and information necessary to the
30 implementation of commission and party states' responsibilities;

31 (5) Approve the development and operation of regional facilities in
32 accordance with Article V;

33 (6) Notwithstanding any other provision of this compact, have the
34 authority to enter into agreements with any person for the importation of
35 waste into the region and for the right of access to facilities outside the

1 region for waste generated within the region. Such authorization to import or
2 export waste requires the approval of the commission, including the
3 affirmative vote of any host state which may be affected;

4 (7) Revoke the membership of a party state in accordance with Articles
5 V and VII;

6 (8) Require all party states and other persons to perform their duties
7 and obligations arising under this compact by an appropriate action in any
8 form designated in Article IV (e); and

9 (9) Take such action as may be necessary to perform its duties and
10 functions as provided in this compact.

11 (n) All files, records and data of the commission shall be open to
12 reasonable public inspection, regardless of physical form, subject to those
13 exceptions listed within the host state public records law. The commission
14 shall adopt bylaws relating to the availability of files, records, and data of
15 the commission that are consistent in scope and principle with the public
16 records law of the host state or if there is no host state, the public records
17 law of the state in which the commission headquarters are located.

18 (o) All decisions of the commission regarding public meetings and
19 public records issues shall be reviewable solely in a United States District
20 Court of a host state or if there is no host state then in the state in which
21 the compact commission headquarters are located."
22

23 SECTION 2. The Central Interstate Low-Level Radioactive Waste Compact,
24 as amended in Section 1 hereof, is hereby ratified and entered into by the
25 state of Arkansas with any and all other states legally joining therein in
26 accordance with its terms. Any state which does not adopt the amendments
27 made herein to the Central Interstate Low-Level Radioactive Waste Compact may
28 be denied access to a regional facility by the host state.
29

30 SECTION 3. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.
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34 SECTION 4. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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5 SECTION 5. All laws and parts of laws in conflict with this act are
6 hereby repealed.

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8 SECTION 6. EMERGENCY. It is hereby found and determined by the General
9 Assembly that the proper disposal of low level radioactive waste is becoming
10 more and more important; that Arkansas has entered into the Central Interstate
11 Low-Level Radioactive Waste Compact with several other states; that it is
12 essential to the proper administration and operation of the Central Interstate
13 Low-Level Radioactive Waste Compact that the compact be revised to accommodate
14 current needs; that this act is designed to make such revisions and should be
15 given effect immediately. Therefore, an emergency is hereby declared to exist
16 and this act being necessary for the preservation of the public peace, health
17 and safety shall be in full force and effect from and after its passage and
18 approval.

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/s/Moore

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APPROVED: 3/29/91

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