

State of Arkansas

76th General Assembly

First Extraordinary Session, 1987

SENATE BILL

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By: Senators Scott, Benham, Hopkins, Cassady and Canada

"AN ACT TO REPEAL ACT 9 OF 1983 AND TO THEREBY WITHDRAW THIS STATE FROM PARTICIPATION IN THE CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT; TO CREATE THE ARKANSAS LOW-LEVEL RADIOACTIVE WASTE AUTHORITY AND TO PRESCRIBE ITS POWERS, FUNCTIONS AND DUTIES; AND FOR OTHER PURPOSES."

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

SECTION 1. The Arkansas Low-Level Radioactive Waste Authority is hereby created as an agency of the State.

SECTION 2. DEFINITIONS.

(a) 'Person' means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government or governmental subdivision or agency, or other legal entity or any legal successor to or representative, agent, or agency of any of these.

(b) 'Authority' means the Arkansas Low-Level Radioactive Waste Authority.

(c) 'Radioactive material' means any solid, liquid, or gaseous material, whether occurring naturally or produced artificially, that emits radiation spontaneously.

(d) 'Low-level waste' means, as defined in the Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste not classified as: high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in Section 11 e.2 [42 U.S.C. § 2014 (e) (2)] the Atomic Energy Act of 1954, as amended through 1978.

(e) 'Disposal' means the isolation of radioactive material from the environment.

(f) 'Disposal site' means the property and facilities used for the disposal of low-level radioactive waste.

(g) 'On-site operator' means a person who is employed by or who contracts with the authority and who is responsible for supervising the overall operations of the disposal site.

(h) 'Management' means establishing, adopting, and entering into and assuring compliance with the general policies, rules, and contracts that govern the operation of a disposal site.

(i) 'Operation' means the control, supervision, and implementation of the actual physical activities involved in the receipt, processing, packaging, storage, disposal, monitoring, and retrieval of low-level waste at a disposal site and the maintenance of the disposal site and any other responsibilities designated by the board as part of the operation.

SECTION 3. (a) The authority shall be governed by a board of directors composed of six members that shall manage and control the authority and shall administer and implement this Act.

(b) Members of the board shall be appointed by the governor with the advice and consent of the Senate. One member of the board must be a medical doctor licensed to practice medicine in Arkansas, one member of the board must be a certified health physicist, one member of the board must be an attorney licensed to practice law in Arkansas, one member of the board must be a geologist, and two members of the board must represent the general public.

(c) A representative of the general public on the board or a person related within the second degree by affinity or within the third degree by consanguinity to that member may not be an employee of or otherwise have a financial interest in any person that has a contract with or that uses the services of any low-level waste storage, processing, or disposal site in the United States.

(d) After a disposal site is selected under this Act, the governor shall appoint to the board, at the earliest opportunity, at least one representative of the general public as a representative of the local interests. The representative of the general public representing local interests must be a resident of the county in which the disposal site is proposed to be located.

SECTION 4. (a) Members of the board serve for staggered terms of six years with the terms of two directors expiring February 1 of each odd-numbered year.

(b) A vacancy on the board shall be filled for the unexpired term in the manner provided by subsection (b) of Section 1 of this Act for selection of other directors.

SECTION 5. Each member of the board shall take the constitutional oath of office required of other appointed state officers.

Members of the board shall receive no compensation but shall be entitled to receive a per diem of \$50.00 for each day of attendance at meetings of the board or attending other official business of the board plus mileage at the rate prescribed in state travel regulations.

SECTION 6. (a) The members of the board shall select from their number at the first directors' meeting after appointment of members to the board one person to serve as chairman, one person to serve as vice-chairman, and one person to serve as secretary.

(b) Persons selected to serve as chairman, vice-chairman, and secretary shall serve for terms of two years.

(c) The chairman shall preside over meetings of the board, and in his absence, the vice-chairman shall preside.

(d) The chairman, vice-chairman, and secretary shall perform the duties and may exercise the powers specifically given them in this Act or in orders of the board.

(e) A majority of the members of the board constitute a quorum for the transaction of business of the authority, but no official act of the board is valid without the affirmative vote of a majority of the members of the board.

SECTION 7. (a) The board may employ a general manager who shall be the chief administrative officer of the authority and may delegate to him full authority to manage and operate the affairs of the authority subject only to orders of the board. The general manager may employ necessary staff as may be authorized by the board.

(b) The general manager shall execute a bond in the amount determined by the board, payable to the authority, conditioned on the faithful performance of the general manager's duties. The authority shall pay for the bond.

SECTION 8. (a) The board shall maintain a central office in the City of

Little Rock for conducting the business of the authority.

(b) The board also shall maintain an authority office at each disposal site under construction or operated under this Act.

SECTION 9. The board shall hold regular quarterly meetings on dates established by rule of the board and shall hold special meetings at the call of the chair or on written request to the chairman by one member of the board.

SECTION 10. (a) The board shall keep a complete written account of all its meetings and other proceedings and shall preserve its minutes, contracts, records, plans, notices, accounts, receipts, and records of all kinds in a secure manner.

(b) Minutes, contracts, records, plans, notices, accounts, receipts, and other records are the property of the authority and are subject to public inspection.

(c) The board may enter into contracts as provided by this Act, and those contracts shall be executed by the chairman of the board and attested by the secretary of the board in the name of the authority.

(d) The authority may, through its board, sue and be sued in any and all courts of this state in the name of the authority. Service of process in a suit may be had by serving the general manager.

SECTION 11. The authority has jurisdiction over site selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of low-level radioactive waste disposal sites.

SECTION 12. For the purpose of carrying out this Act, the authority may:  
(a) apply for, accept, receive, and administer gifts, grants, and other funds available from any source;

(b) enter into contracts with the federal government and its agencies, the state and its other agencies, interstate agencies, local governmental entities, and private entities for the purpose of carrying out this Act and rules, orders, and standards adopted under this Act;

(c) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of sites and disposal of low-

level waste; and

(d) advise, consult, and cooperate with the federal government and its agencies, the state and its other agencies, interstate agencies, local governmental entities within the state and private entities.

SECTION 13. (a) The board may adopt and amend rules, standards, and orders necessary to properly carry out this Act and to protect the public health and safety and the environment from activities of the authority.

(b) The board may set reasonable civil penalties for the breach of any rule or standard, in amounts that may range from \$1,000 to \$25,000 per violation or per day of violation.

(c) These penalties shall be in addition to any other penalties provided by the laws of this state and may be enforced by complaints filed with the Attorney General or by an attorney hired by the board in an appropriate court of jurisdiction in Pulaski County or in the county in which the violation occurred.

SECTION 14. The authority shall select sites for and develop and operate or contract for operation of one or more disposal facilities for the disposal of low-level waste in the state. These facilities shall be above-ground disposal facilities constructed so as to assure total retrievability and isolation of the waste from the environment. The site for each facility shall be selected by the authority only after making thorough studies and investigations of the most appropriate sites and after holding public hearings on the matter in the area of the proposed facility.

SECTION 15. (a) The authority shall submit to all federal and state agencies from which it must obtain licenses and other types of authorization to construct and operate disposal facilities necessary applications and information to obtain those licenses and authorizations.

(b) The authority shall cooperate with appropriate federal and state agencies in the licensing and authorization process and shall supply additional information and material requested by those agencies. As a condition for obtaining a license, the authority shall submit to the Arkansas Board of Health and the Department of Pollution Control and Ecology or their designees evidence as to the reasonableness of any technique to be practiced at the pro-

posed disposal site for managing low-level waste. Before determining the techniques to be used, the authority shall study alternative techniques for managing low-level waste, including waste processing and reduction at the site of waste generation and at the disposal site, but no below-ground level burial of low-level radioactive waste shall be authorized.

(c) If the application of the authority for a license for the proposed disposal site is denied, the board shall give notice and hold a hearing on an alternative site, as provided by Section 12 of this Act and shall consider and select an alternative site for the disposal site in the manner provided by this Act for the selection of the original proposed disposal site.

(d) The authority shall provide financial security in the form and manner required by federal and state agencies under federal and state laws and rules adopted under those laws. Supplemental financial security shall be provided as required by any federal or state agency.

(e) The authority may acquire by gift, grant, condemnation or purchase any land, easements, rights-of-way, and other property interests necessary to construct and operate a disposal site.

(f) The authority must acquire the fee simple title to all land and property that is a part of the licensed disposal site by the time the facility is decommissioned.

(g) The authority also may lease property on terms and conditions the board determines advantageous to the authority.

SECTION 16. (a) The authority shall construct or cause to be constructed on the disposal site all works and facilities and from time to time make improvements necessary to prepare for the isolation and disposal of low-level waste.

(b) Preparation and construction of works and facilities at the disposal site shall be done in a manner that will comply with the rules and standards for disposal sites adopted by federal and state agencies and with the disposal plans of the authority.

(c) The authority may contract with any person to construct any part of the works and facilities or from time to time make improvements at the disposal site, provided the contract specifically provides for termination by the authority for failure of the contractor to comply with federal and state standards and rules or with the authority's disposal plans.

(d) The board has control of construction being done for the authority under contract and shall determine whether or not the contract is being fulfilled.

(e) The board shall have the construction work inspected by engineers, inspectors, and other personnel of the authority.

(f) During the progress of the construction work, the engineers, inspectors, and other personnel doing the inspections shall submit to the board written reports that show whether or not the contractor is complying with the contract.

(g) On completion of construction work, the engineers, inspectors, and other personnel shall submit to the board a final detailed written report including information necessary to show whether or not the contractor has fully complied with the contract.

SECTION 17. (a) The board has general authority to manage and, if necessary, operate the disposal sites under this Act and take any actions necessary under this Act to manage and operate the disposal sites in a manner that will protect the public health and safety and the environment.

(b) The board may enter into contracts with persons to perform overall operation in the operation of a disposal site, but no contract may include provisions that relieve the authority of its management responsibility under this Act. The board shall adopt rules establishing criteria for determining the competence of a person to perform the overall operation of a disposal site.

(c) The board shall manage and, if necessary, operate the authority's disposal sites in a manner that complies with laws and with rules and standards of appropriate federal and state agencies having jurisdiction over disposal sites.

(d) Each disposal site shall be supervised by an on-site operator with responsibility for all operations at the site. If the authority contracts under Subsection (b) of this section for the overall operation of a disposal site, the on-site operator shall be a representative of the contractor. If the authority operates the disposal site, the on-site operator shall be employed by the general manager.

(e) The board shall adopt rules governing the operation of disposal sites, acceptance of low-level waste, maintenance and monitoring of disposal

sites, retrievability of the waste, and activities relating to the management and operation of disposal sites.

SECTION 18. (a) On arrival of a shipment of low-level waste at a disposal site, the on-site operator or his agent shall determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level waste before the waste is accepted for disposal at the disposal site.

(b) If low-level waste that is not properly processed or packaged arrives at a disposal site, the on-site operator or his agent shall properly process and package the waste for disposal and charge the person making the shipment the appropriate fee.

(c) The on-site operator or his agent shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transportation of low-level waste any person who delivers to a disposal site low-level waste that is not properly processed or packaged.

SECTION 19. (a) Only low-level waste that is generated within the State of Arkansas may be accepted by a disposal site.

(b) The board by rule shall exclude certain types of low-level waste from a disposal site if the low-level waste is incompatible with disposal operations.

SECTION 20. (a) To protect the public health and safety and the environment, the board, after notice and hearing, shall adopt an emergency response plan for each disposal site to be implemented in the event a disposal site becomes a threat to the public health or safety or the environment.

(b) The authority shall cooperate with and seek the cooperation of federal and state agencies responsible for regulating disposal sites and of federal, state, and local agencies engaged in disaster relief activities.

SECTION 21. (a) On a finding by the board, after notice and hearing, that a disposal site should be closed, the authority and any operator with which it has contracted shall proceed with decommissioning of the disposal site in compliance with federal and state laws and rules and standards adopted under those laws and with rules and plans of the authority.



(b) On completion of decommissioning activities and receipt of necessary approval from any federal and state agencies, the board shall transfer fee simple title to the disposal site to the State.

SECTION 22. At least 60 days before each regular session, the authority shall submit to the appropriate committees of the legislature a biennial report that shall serve as a basis for periodic oversight hearings on the authority's operations and on the status of interstate compacts and agreements.

SECTION 23. The board shall ensure that the design of facilities for low-level radioactive waste disposal incorporates, insofar as possible, safeguards against hazards resulting from local meteorological conditions including, without limitation, such phenomena as violent storms, hurricanes, tornados, earthquakes, earth tremors, and susceptibility to flooding.

SECTION 24. Expenses of the authority shall be paid from fees authorized and collected under this Act and appropriations made by the legislature.

SECTION 25. (a) The board shall adopt and have collected a waste disposal fee to be paid by each person who delivers to the authority low-level waste for disposal.

(b) The board shall adopt and periodically revise by rule a schedule of waste disposal fees based on the volume of low-level waste delivered for disposal and the relative hazard presented by each type of low-level waste that is delivered to the disposal site. In determining relative hazard, the board shall consider the radioactive, physical, and chemical properties of each type of low-level waste.

(c) Waste disposal fees adopted by the board shall be sufficient to allow the authority to recover operating and maintenance costs, expenses incurred before beginning operation of the site amortized over a period of not more than 20 years beginning on the first day of operation of the disposal site, an amount necessary to meet future costs of decommissioning and closing the disposal site, an amount sufficient to meet needs for impact assistance under this Act, an amount necessary to pay licensing fees and to provide security required by the agency under laws and rules of the agency.

SECTION 26. The board shall adopt and periodically revise by rule a schedule of processing and packaging fees based on the volume of improperly processed or packaged low-level waste delivered for disposal and on the cost to the authority for processing and packaging the waste properly in compliance with federal and state standards.

SECTION 27. (a) The board may make grants to a city, county, school district, water district, or other political subdivision of this state to reimburse that entity for actual costs or to pay expenses anticipated in connection with additional fire, police, educational, utility, public access, and other governmental services, public works projects, and planning that are required by the city, county, school district, water district, or other political subdivision of this state as a result of the construction and operation of a disposal site within or adjacent to the affected city, county, school district, water district, or other political subdivision of this state.

(b) The board shall adopt rules establishing:

- (1) procedures for the application for grants under this section;
- (2) criteria for determining the adverse effect that the construction and operation of a disposal site will have on cities, counties, school districts, water districts, and other political subdivisions of this state;
- (3) priorities of needs for affected cities, counties, school districts, water districts, and other political subdivisions of this state; and
- (4) methods for monitoring the uses and effectiveness of grants made under this section.

(c) On approval of a grant under this section, the board shall issue an order stating the name of the city, county, school district, water district, or other political subdivision of the state receiving the grant and the amount of the grant and shall direct payment of the grant.

SECTION 28. Act 9 of 1983 is hereby repealed and the State of Arkansas shall not hereafter be a member of the Central Interstate Low-Level Radioactive Waste Compact. All other laws and parts of laws in conflict with this Act are also hereby repealed.

SECTION 29. EMERGENCY. It is hereby found and determined by the Seventy-Sixth General Assembly that under Act 9 of 1983 this State entered into a Central Interstate Low-Level Radioactive Waste Compact with several states for the purpose of providing a suitable area to dispose of low-level radioactive waste; that it has come to the attention of the Seventy-Sixth General Assembly that four areas in Arkansas are to be targeted as potential dump sites of this massive amount of low-level radio active waste from other states; that the areas identified by compact engineers are too small to accommodate the waste from the member states and it would be ill-advised to accept and manage such massive amounts of waste in such a small area; that Arkansas is a low-volume generator of low-level radioactive waste and it is in our best interest to dispose of the waste produced in our State ourselves and not accept the waste of other states; and it behooves the Seventy-Sixth General Assembly to remove Arkansas' participation in this compact immediately. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public health, welfare and safety, shall be in full force and effect from and after its passage and approval."

