

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1312\*  
Committee Substitute Favorable 5/10/89  
Committee Substitute #2 Favorable 6/27/89

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 requirements concerning insurance, bonding for closure and post-closure costs,

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

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

14 **"§ 104E-8. Radiation Protection Commission – Members; selections; removal;  
15 compensation; quorum; services.**

16 (a) The Commission shall consist of ~~40~~13 voting public members and 10  
17 nonvoting ex officio members. The ~~40~~13 voting public members of the Commission  
18 shall be appointed by the Governor as follows:

- 19 (1) One member who shall be actively involved in the field of  
20 environmental protection;
- 21 (2) One member who shall be an employee of one of the licensed public  
22 utilities involved in the generation of power by atomic energy;
- 23 (3) One member who shall have experience in the field of atomic energy  
24 other than power generation;
- 25 (4) One member who shall be a scientist or engineer from the faculty of  
26 one of the institutions of higher learning in the State;
- 27 (5) One member who shall have recognized knowledge in the field of  
28 radiation and its biological effects from the North Carolina Medical  
29 Society;
- 30 (6) One member who shall have recognized knowledge in the field of  
31 radiation and its biological effects from the North Carolina Dental  
32 Society;
- 33 (7) One member who shall have recognized knowledge in the field of  
34 radiation and its biological effects from the State at large;
- 35 (8) One member who shall have recognized knowledge in the field of  
36 radiation and its biological effects and who shall be a practicing  
37 hospital administrator from the North Carolina Hospital Association;
- 38 (9) One member who shall have recognized knowledge in the field of  
39 radiation and its biological effects from the North Carolina  
40 Chiropractic Association;
- 41 (10) One member who shall have recognized knowledge in the clinical  
42 application of radiation, shall be a practicing radiologic technologist  
43 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 not be deemed a waiver of any immunity  
20 from liability otherwise available under any provision of law;".

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

22 "**§ 104G-8. Liability and defense. defense, and legal representation.**

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

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

38 (c) ~~The Authority may appropriate funds for the purpose of paying all or part of a~~  
39 ~~claim made or any civil judgment entered against any of its current or former members,~~  
40 ~~officers, agents, or employees when such claim is made or such judgment is rendered as~~  
41 ~~damages on account of any act done or omission made or in the scope and course of his~~  
42 ~~current or former employment or duty as a member, officer, agent or employee;~~  
43 ~~provided, however, that nothing in this section shall permit the Authority to appropriate~~  
44 ~~funds for the purpose of paying a claim made or civil judgment entered against any~~

1 ~~current or former member, officer, agent or employee where the Authority or a court of~~  
2 ~~competent jurisdiction finds that the claim or civil judgment resulted from malice, fraud~~  
3 ~~or corruption. The Attorney General shall be the legal representative of the Authority~~  
4 ~~and shall provide legal advice and counsel to the Authority. The Authority and the~~  
5 ~~Department of Justice shall enter into an appropriate contract or make other mutually~~  
6 ~~satisfactory arrangements for legal services, including reimbursement of the Department~~  
7 ~~of Justice for any costs incurred other than routine or minor costs. The Authority may~~  
8 ~~employ or retain other legal counsel with the prior approval of the Attorney General."~~

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

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

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

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

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

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

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

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

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

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

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

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

20           Sec. 17. Sections 6, 7, and 8 of this act are effective 31 January 1989.  
21 Sections 2 and 3 of this act are effective 1 July 1989. Sections 1, 4, and 5 and Sections  
22 9 through 17 are effective upon ratification.