



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LOW LEVEL RADIOACTIVE WASTE

AS ENROLLED

Senate Bill 20 (Substitute H-5)

Senate Bill 21 as passed by the

Senate

First Analysis (6-21-94)

Sponsor: Senator Vern Ehlers

Senate Committee: Natural Resources
and Environmental Affairs

House Committee: Conservation,
Environment, and Great Lakes

THE APPARENT PROBLEM:

The federal Low-Level Radioactive Waste Policy Act of 1980 authorizes states to enter into regional compacts to designate sites for the disposal of low-level radioactive waste generated in states that are members of a compact. Michigan was selected in June 1987 by the Midwest Interstate Low-Level Radioactive Waste Commission to be the host state for the Midwest Interstate Low-Level Radioactive Waste Compact, which included Ohio, Indiana, Wisconsin, Iowa, Minnesota, and Missouri as well as Michigan. Three regions in the state (Lenawee, Ontonagon, and St. Clair counties) were named as possible sites for the construction of a disposal facility, but these sites subsequently were eliminated from further consideration because of environmental concerns. The commission characterized as too stringent Michigan's criteria for determining a site, and, in July 1991, revoked Michigan's membership in the compact because the state had not fulfilled its obligations as a host site. Some people believe that laws concerning the compact and the siting of a disposal facility should reflect that Michigan no longer is a member of the Midwest Compact, and that Michigan should be authorized to research the options available for handling the disposal of the low-level radioactive waste generated in the state.

THE CONTENT OF THE BILLS:

Senate Bill 20 would amend the Low-Level Radioactive Waste (LLRW) Authority Act to:

*Transfer the LLRW authority from the Department of Management and Budget to the Department of Commerce, as provided by Executive Reorganization Order 1991-23.

*Require the authority to comply with all legal requirements and to seek an attorney general review before entering into relationships with out-of-state entities for low-level radioactive waste disposal.

*Require that the authority inform each potential host site community of the additional benefits and resources available for a community that volunteers as a host site community, and that it provide grants to Michigan State University (MSU) to conduct studies of potential host site communities that respond.

*Delete references to the Midwest Interstate Low-Level Radioactive Waste Commission and Compact, and redefine "compact" as a contractual, cooperative agreement among two or more states to provide for the disposal of low-level radioactive waste that was reflected in the passage of statutes by the participating states.

*Require that the head of the LLRW authority designate a candidate site as the location for the state's disposal site.

*Alter the composition of the International Low-Level Radioactive Waste Research and Education Institute Board of Governors to specify that the attorney general, the director of the Department of Public Health, and an individual from a medical facility that generates radioactive waste be members, among others.

*Reduce the institute's annual appropriation, from \$1 million to \$250,000, and permit the institute to form a private nonprofit corporation.

Senate Bills 20 and 21 (6-21-94)

*Require the board to submit a report on management options available to the state, and the feasibility of options to encourage waste reduction, to the appropriate Senate and House standing committees.

*Require generators to submit a report to the authority concerning the low-level radioactive waste they generate, and require the authority to submit a summary of the reports to the appropriate House and Senate standing committees.

*Require that a contract between compact members, if Michigan were the host state and fulfilled its obligations, include a penalty provision.

*Delete provisions which include the Michigan Environmental Review Board among those who currently have access to each candidate site to conduct site characterization, and who receive comments regarding license applications from local monitoring committees.

*Repeal a section requiring the authority to report to the governor and the legislature by April 1, 1988.

A more detailed description follows.

Waste Disposal. The bill would require that the LLRW authority assist generators in sharing policies to facilitate waste minimization and volume reduction, including, but not limited to, switching from long-lived radioactive materials to short-lived radioactive materials, switching to nonradioactive materials and processes, waste stream screening and separation, and curtailment of waste producing operations. The bill would also require that the authority -- in addition to other legal requirements - submit a proposal to the attorney general for review before entering a contractual relationship obligating the state.

The bill would delete the current provision that the authority refuse to accept waste at the disposal site after December 31, 2013. If the state did not enter a compact, the bill would permit the authority to refuse waste generated outside of Michigan. If Michigan did enter into a compact, the authority could refuse waste generated by a state that was not a member of the compact; that was delinquent in paying dues or fees; or that failed to establish or maintain a permit and regulatory system that was similar to Michigan's for waste generators, carriers, processors, and collectors.

Waste Generated. By October 1st of each year, or as required by the authority, a generator (defined under the act to mean a person licensed as a generator by the Nuclear Regulatory Commission and authorized under Part 137 of the Public Health Code whose act or process results in the production of waste, or whose act first causes waste to become subject to regulation under Part 137 or federal law) would be required to report to the authority on the following information regarding its waste: volume, curie content and principal radionuclides present, form, storage methods, and any other information that the authority considered necessary or helpful in implementing its duties. A summary of this information would be prepared by the authority for the appropriate House and Senate standing committees on environmental and natural resources issues.

Volunteer Host Community. The state would seek a volunteer host site community (defined under the bill to mean the city, village, or township designated by the head of the authority as the host site). The bill would require that the authority advise the chief elected officials in areas that had been identified by the authority on October 4, 1989 as potential host site communities of the statutory and socioeconomic benefits of being a volunteer community, of the ability of a volunteer community to negotiate additional benefits, and of resources available to the potential volunteer community prior to making the decision to volunteer. Grants of \$100,000 would be provided by the authority for each potential host site community, subject to appropriation, to be expended for each of the first three communities that responded, and used to conduct social and technical studies of potential host site communities under the direction of each community's chief elected official. If a community did not volunteer, additional grants would be provided to other potential host site volunteer communities in the order in which responses were received.

International Low-Level Radioactive Waste Research and Education Institute. The bill would specify that the institute's board of governors would include the attorney general, the director of the Department of Public Health, and an individual from a medical facility that generates radioactive waste. In addition, the bill would alter the composition of the board to specify that it include representatives of the following: a public utility that produces low-level radioactive waste as a result of the generation of electrical power; a business that is

not a public utility but produces low-level radioactive waste; a medical facility that generates radioactive waste; and faculty members with expertise in nuclear physics or nuclear chemistry and in low-level radioactive waste management. The bill would also delete the current requirement that a member of the institute's board of governors represent the general public if the state is not a member of a compact, and require that an ex-officio nonvoting member be appointed by the governing body of the compact if the state is a member of a compact.

The bill would delete current requirements that the institute conduct research on waste issues, and that it train personnel to manage a disposal site; and require, instead, that the institute develop contracts with universities and other research institutions to conduct research and to provide the economic implications of different waste management and treatment options; however, the institute's annual appropriation from the Low-Level Radioactive Waste Management Fund would be reduced from \$1 million to \$250,000. The institute could form a private nonprofit corporation if its board of governors determined that doing so would assist in fulfilling its functions. In addition, the bill would require that the board of governors comply with the requirements of the Freedom of Information Act, and comply with the following provisions:

--The institute's board of governors would be required to prepare an annual report that detailed the amount received from each source of funds, and the use of all funds received during its reporting year, including a list of all sources that contribute funds for the operation of the institute.

--Within 180 days after the bill's effective date, the institute's board of governors would be required to submit an initial report on management options available to the state, following the U.S. Supreme Court's June, 1992, ruling on the federal law and the revocation of this state's membership in the Midwest Compact (New York v United States, 112 S.C. 2408; 120 L ED 2D 120 [1992]). The report would include waste reduction options.

--The institute's board of governors would identify and evaluate options and make recommendations to the authority regarding interim waste storage, provision of final disposal capacity, and the conduct of a volunteer host community process.

--Copies of the report would be provided to the appropriate standing committees of the Senate and House that address environmental and natural resources issues.

Compact Penalty Provision. If this state entered into a compact and, pursuant to agreements entered into by the compact members, Michigan were selected as the host state for the disposal site and fulfilled its obligations to serve as the host state, the contractual agreement among the compact members would have to include a provision that provided a penalty if any other compact member state subsequently defaulted in any respect on its obligation to serve as the host state for the disposal site. The penalty would have to include at least all of the following:

--Exemplary damages.

--The costs estimated to be incurred by this state due to the default.

--The costs estimated to be incurred by this state due to the lost opportunity to join another compact or to have proceeded as an independent state.

--Other expenses and costs that this state would incur as a result of the default as determined by the authority.

MCL 333.26202 et al.

Senate Bill 21 would amend Part 137 of the Public Health Code, which provides for the disposal of low-level radioactive waste, to make those provisions conform to the provisions of Senate Bill 20. The bill would delete references to the Midwest Interstate Low-Level Radioactive Waste Compact and Commission, and redefine "compact" as "a contractual, cooperative agreement among two or more states to provide for the disposal of low-level radioactive waste, that is reflected in the passage of statutes by the participating states". The bill would also delete a provision prohibiting the Department of Public Health (DPH), after December 31, 2013, from authorizing the acceptance of waste at the waste disposal site. The bill would define "host site" as the candidate site designated by the commissioner as the location for the disposal site in this state.

Currently, the code requires the department to assure that waste generated in a state that is not a

member of the Midwest Compact is not accepted for disposal at the disposal site except upon the affirmative vote of the commission and with the concurrence of the Commissioner of the Low-Level Radioactive Waste Authority. The bill, instead, would require the DPH to assure that waste that was not generated in this state or in a state with which this state elected to enter a compact was not accepted for disposal at the disposal site.

Under the code, prior to January 1, 1993, if a person obtained a waiver under federal law, the requirement that waste be disposed of only in the disposal site had to be waived by the director of DPH upon receipt of notice and evidence of the waiver. On and after that date, the director with the concurrence of the authority may grant or deny a waiver application under certain circumstances. The bill would delete the January 1, 1993, date. The requirement that the director grant a waiver if one had been obtained under federal law would apply before the issuance of a construction and operating license under Part 137. The authority of the director to grant or deny a waiver application would apply following the issuance of a construction and operating license.

Currently, a person cannot generate waste in Michigan, transport waste in the state, collect waste for disposal in the state, or process waste in the state after June 1, 1992 without obtaining certain state-issued permits. The bill would delete the date and require, instead, that a person not perform these activities "after the issuance of a construction and operating license for a disposal site" unless he or she held the required permits.

In addition, the bill would delete the now-passed deadline on several requirements, and would make various requirements contingent upon this state's being a member of a compact.

MCL 333.13702 et al.

HOUSE COMMITTEE ACTION:

The House Conservation, Environment, and Great Lakes Committee adopted a substitute version of Senate Bill 20 that differs from the Senate-passed version in a number of respects, including a requirement that the Low-Level Radioactive Waste (LLRW) Authority assist generators in sharing policies to reduce waste, including policies on switching from long-lived to short-lived radioactive

materials; switching to nonradioactive materials and processes; waste stream screening and separation; and curtailment of waste producing operations. The House committee version also requires that the authority inform potential host site communities of the additional benefits available if a community volunteers as a host site, and that it provide grants to Michigan State University (MSU) to conduct studies of potential host site communities that respond; and that the director of the Department of Public Health and the attorney general -- or their authorized representatives -- be members of the Low-Level Radioactive Waste Research and Education Institute Board of Governors.

The House committee substitute also specifies additional information that must be included in the board of governors' initial report on management options; requires that the appropriate House and Senate standing committees receive copies of the report; requires that the institute's board of governors operate under the provisions of the Freedom of Information Act; and requires detailed reports from generators regarding their handling of waste. The committee substitute also modifies the definition of "host site community".

BACKGROUND INFORMATION:

In 1980, Congress passed the Low-Level Radioactive Waste Policy Act. The legislation required each state to be responsible for the safe and adequate disposal of low-level radioactive waste generated within its borders. In addition, states were authorized to enter into regional compacts for the disposal of this waste. Low-level waste comes primarily from nuclear power plants in the form of filters, resins, protective clothing, tools, and internal reactor components. Approximately 60 percent of the waste is produced by nuclear plants. Other low-level waste material needing disposal includes radioactive contaminated gloves, vials and syringes from hospitals, biowaste from research institutions, and refuse from industry.

The federal act states that a regional approach, in which states enter into interstate compacts, is the safest, most effective means of waste disposal. By 1985, however, only three federally approved regional compacts, with operating disposal facilities, existed in the country. Compacts had been formed with Nevada, South Carolina, and Washington--states that had well-established disposal sites. Under the federal act, the three compacts as of

1986 could have refused to accept waste generated in the nonmember states. Thus, the 31 states, including Michigan, that were not members of a compact with any of these states would not have had an outlet for disposal of their low-level radioactive wastes until their regional sites became operational. Facing this situation, Congress responded by enacting the Low-Level Radioactive Waste Policy Amendments Act of 1985, in which states with disposal sites agreed to extend for seven years (until 1992) the period during which they would accept other states' low-level radioactive waste. Under these amendments, the three states with operating disposal facilities were given the authority to refuse access to waste generated in another state, under the condition that a finding by these states indicated that the requesting state was not in compliance with a federal milestone in the law.

In Michigan, the legislature enacted Public Act 460 of 1982, which provided for the state's participation in the Midwest Interstate Low-Level Radioactive Waste Compact. In June 1987, Michigan was selected as the host state by the Midwest Interstate Low-Level Radioactive Waste Commission, and two months later the Office of Low-Level Radioactive Waste Management was established within the Department of Management and Budget (DMB). Public Act 204 of 1987 created the Low-Level Radioactive Waste Management Authority within the DMB, established the process for selecting by May 1, 1989, a host site for a disposal facility within the state, and provided for the establishment of the International Low-Level Radioactive Waste Research and Education Institute.

By October 1989, the authority had implemented the initial stages of the siting plan and named Lenawee, Ontonagon, and St. Clair counties as candidate areas for construction of a low-level waste disposal facility. By May 1990, however, all three candidate areas were eliminated from further consideration because of concerns about siting criteria involving wetlands, flooding, and certain manmade features. In August 1990, the commission became concerned that the Michigan siting criteria were overly stringent and designed to prevent siting of a facility. As a result, the commission tied further funding for the Michigan siting process to changes in the state's siting criteria. South Carolina, Nevada, and Washington subsequently issued to Michigan an ultimatum that if the state did not identify sites or revise its siting criteria, the

state would be denied access to the disposal facilities in these states. Access was denied in November 1990. In July 1991, the commission revoked Michigan's membership in the compact, citing as the cause Michigan's failure to fulfill its obligations as a host site. Exclusion from the compact also resulted in Michigan's losing its major funding source for the operation of the authority.

FISCAL IMPLICATIONS:

From its inception, the Low-Level Radioactive Waste (LLRW) Authority's major funding source was the Midwest Compact. Since Michigan's membership in the compact was revoked, the authority has received annual appropriations of \$400,000 through the Department of Commerce from public utility assessments, and currently has a budget surplus of \$100,000. The act specifies that up to \$1 million annually may be appropriated for the operating expenses of the International Low-Level Radioactive Waste Research and Education Institute; under Senate Bill 20, this appropriation would be reduced to \$250,000. However, according to the authority, the institute has not functioned since 1990; Senate Bill 20 would, in effect, recreate the institute. The authority estimates that current appropriations would cover the initial administrative costs incurred by the reinstatement of the institute. However, additional appropriations would be required to finance the institute's research projects.

In addition, Senate Bill 20 requires that the authority provide Michigan State University (MSU) with at least three \$100,000 grants to conduct studies for potential host site communities. If, after the research had been conducted, these communities decided not to volunteer as host sites, then additional grants would be provided other communities. The authority estimates that additional appropriations would be required for these grants. (6-17-94)

ARGUMENTS:

For:

Under the Low-Level Radioactive Waste Authority Act, the LLRW authority is required to establish a Low-Level Radioactive Waste Research and Education Institute. The institute is charged with conducting research on waste issues, training personnel for managing the disposal site, and developing and operating technical resource and public education programs. The institute reportedly

has not been able to seek and receive funds as an independent entity. Private foundations, which have been solicited for contributions, have indicated that the institute must be incorporated as a nonprofit organization in order to receive the funds. By permitting it to form a private nonprofit corporation, Senate Bill 20 would allow the institute to receive private contributions for research and educational activities.

For:

Since Michigan was excluded from the Midwest Compact, the state's activities in locating a disposal site have come to a virtual halt. This is due to a number of factors. One involved the resolution of a lawsuit by New York challenging provisions of the Federal Low-Level Radioactive Waste Policy Act. In June 1992, the U.S. Supreme Court upheld the act's monetary and access incentive provisions, but vacated the act's "take title" provision. Under this provision, a state that is unable to provide for the disposal of waste generated within its borders or compact region by January 1, 1996, is obligated to take title to and possession of the waste, upon request of the waste generator or owner. In addition, a state is liable for all damage incurred directly or indirectly by an owner or generator for the state's failure to take possession of the waste after the deadline. This provision had been considered to be a major motivator for states to form a compact or develop a means for disposing of low-level radioactive waste. Now that the issue of the provision's validity has been resolved, Michigan officials are better able to determine how to proceed.

Another factor in the state's delay in dealing with the waste disposal issue results from uncertainty as to when Michigan's removal from the Midwest Compact took effect. Some people have argued that the compact provides that a state's membership is revoked one year after compact members voted to oust the state. At the time that Michigan was voted out of the Midwest Compact, members of the compact contended that the revocation in July 1991 took immediate effect. Regardless, sufficient time has elapsed to make the revocation a certainty. Given the resolution of these issues, Michigan should begin researching alternatives for disposing of its low-level radioactive waste. The U.S. Supreme Court ruling alleviated concerns about states' having to take possession of and title to the waste. Waste generators in Michigan, however, have been denied access to the three operating

facilities, and the state still must determine how it will handle future generation of low-level radioactive waste. Furthermore, the 55 facilities in Michigan that generate and store their own waste have indicated that while they currently have adequate storage space, they predict that less space will be available in the near future. Senate Bill 20 would bring together a panel of experts in the Low-Level Radioactive Waste Research and Education Institute's Board of Governors that could study the disposal issue, make recommendations for disposing of the waste, and create legal mechanisms for the state's generators of waste to enter into relationships to dispose of waste in other states. The bills would also make statutory changes to reflect Michigan's exclusion from the Midwest Compact, and to open the door for Michigan to enter into a different compact.

Against:

The bill would define "host site community" to mean the city, village, or township designated by the commissioner, or head of the LLRW authority, as the host site. Since federal law recognizes that Native American tribes have jurisdiction over the lands in their possession, the bill should be amended to include tribal lands under the definition of "host site community" so that each Native American tribe would have the opportunity to decide whether it wished to volunteer its community as a host site.

Against:

Some people argue that Senate Bill 20 contains inadequate provisions for public participation in the process established for selecting a disposal site. The International Low-Level Radioactive Waste Research and Education Institute Board of Governors, for example, is heavily weighted in favor of licensed waste generators. (Under the bill, three of the twelve members of the board would represent waste generators, two individuals would represent environmental or public interest organizations, three individuals would represent the academic community that had expertise in nuclear physics or chemistry, two individuals would represent state government, and one individual would represent the governing body of a compact if the state were a member; only one individual would represent the general public.) It is argued that the citizens of a township, city, or village that volunteers as a potential host site community should be allowed to vote on the issue. Those who raise this objection argue that if this option is not provided,

then the citizens of the proposed host community would be forced to take legal measures to have their concerns addressed.

Against:

Some people fear that Senate Bill 20 could be the first step in locating in Michigan a disposal site for waste generated in this state and perhaps other states as well.

Response:

Under the bill, if Michigan did not enter into a compact, the state could refuse to accept waste generated in another state. Furthermore, if Michigan entered into a compact with other states, Michigan could refuse waste generated in states that were not members of the compact. The bill's supporters acknowledge that federal law could preempt these provisions and waste generated in other states still could come into Michigan. They believe, however, that the bill would clarify Michigan's sentiments about accepting waste from other states.

POSITIONS:

The Michigan Coalition of Radioactive Material Users, Inc. (MICHRAD) supports the bills. (6-17-94)

The Michigan Hospital Association (MHA) supports the bills. (6-17-94)

Consumers Power Company supports the bills. (6-20-94)

The League of Women Voters of Michigan supports the bills. (6-17-94)

The Low-Level Radioactive Waste Authority supports the bills, but is concerned that the three \$100,000 grants required under Senate Bill 20 for host site communities could not be accommodated under its current budget. (6-17-94)

The Department of Commerce has no position on the bills. (6-15-94)

Don't Waste Michigan (DWM) opposes the bills. (6-17-94)