

Act No. 434  
Public Acts of 1994  
Approved by the Governor  
January 5, 1995  
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January 6, 1995

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

Introduced by Senator Ehlers

# **ENROLLED SENATE BILL No. 20**

AN ACT to amend sections 2 3 4 5 6 9 11 12 13 14 15 16 17 19 and 20 of Act No 204 of the Public Acts of 1987 entitled An act to provide for matters pertaining to a low level radioactive waste disposal site in this state to create a low level radioactive waste authority and prescribe its powers and duties to create certain boards committees and institutes and prescribe their powers and duties to prescribe the powers and duties of certain persons municipalities and counties and state departments and agencies to provide for certain methods of dispute resolution to create certain funds and to provide for an appropriation and the expenditure of certain funds being sections 333 26202 333 26203 333 26204 333 26205 333 26206 333 26209 333 26211 333 26212 333 26213 333 26214 333 26215 333 26216 333 26217 333 26219 and 333 26220 of the Michigan Compiled Laws to add sections 18a and 19a and to repeal certain parts of the act

*The People of the State of Michigan enact*

Section 1 Sections 2 3 4 5 6 9 11 12 13 14 15 16 17 19 and 20 of Act No 204 of the Public Acts of 1987 being sections 333 26202 333 26203 333 26204 333 26205 333 26206 333 26209 333 26211 333 26212 333 26213 333 26214 333 26215 333 26216 333 26217 333 26219 and 333 26220 of the Michigan Compiled Laws are amended and sections 18a and 19a are added to read as follows

Sec 2 As used in this act

- (a) Authority' means the low level radioactive waste authority established in section 3
- (b) Candidate site means a site designated by the authority as a possible host site pursuant to section 11
- (c) Carrier means a person authorized pursuant to part 137 who is engaged in the transportation of waste by air rail highway or water
- (d) Commissioner means the head of the authority
- (e) Compact means a contractual cooperative agreement among 2 or more states to provide for the disposal of low level radioactive waste that is reflected by the passage of statutes by the participating states
- (f) Department means the department of public health
- (g) Director means the director of public health
- (h) Disposal means the isolation of waste from the biosphere by emplacement in the disposal site or as otherwise authorized in section 13709(3) of part 137
- (i) Disposal site means a geographic location in this state upon which the disposal unit and any other structures and appurtenances are located the property upon which any monitoring equipment is located and the isolation distance from the disposal unit to adjacent property lines

- (j) Disposal unit means the portion of the disposal site into which waste is placed for disposal
- (k) Generator means any person licensed as a generator by the nuclear regulatory commission and authorized pursuant to part 137 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
- (l) Groundwater means water below the land surface in a zone of saturation
- (m) Host site means the candidate site that is designated by the commissioner as the location for the disposal site in this state
- (n) Host site community means the municipality that is designated by the commissioner as the host site
- (o) Institute means the international low level radioactive waste research and education institute
- (p) Institutional control means the continued surveillance monitoring and care of the disposal site after site closure and stabilization to insure the protection of the public health safety and welfare and the environment until the contents of the disposal site no longer have a radioactive content that is greater than the natural background radiation of the host site as determined during its site characterization
- (q) Local monitoring committee means a committee established pursuant to section 14 to represent a candidate site
- (r) Low level radioactive waste or waste means radioactive material that consists of or contains class A B or C radioactive waste as defined by 10 C F R 61.55 as in effect on January 26 1983 but does not include waste or material that is any of the following
  - (i) Owned or generated by the department of energy
  - (ii) Generated by or resulting from the operation or closure of a superconducting super collider
  - (iii) Owned or generated by the United States navy as a result of the decommissioning of vessels of the United States navy
  - (iv) Owned or generated as a result of any research development testing or production of an atomic weapon
  - (v) Identified under the formerly utilized sites remedial action program
  - (vi) High level radioactive waste spent nuclear fuel or byproduct material as defined in section 11(e)(2) of the atomic energy act of 1954 chapter 1073 68 Stat 922 42 U S C 2014
  - (vii) Contains greater than or equal to 100 nanocuries per gram of transuranic elements
  - (viii) Contains concentrations of radionuclides that exceed the limits established by the nuclear regulatory commission for class C radioactive waste as defined by 10 C F R 61.55 as in effect January 26 1983
  - (ix) Classified as naturally occurring or accelerator produced radioactive materials known as N A R M waste
  - (x) Waste that after December 22 1987 is determined by the nuclear regulatory commission to be waste that is beneath regulatory concern or B R C waste as defined by the nuclear regulatory commission unless the department and the authority concur with this designation
- (s) Low level radioactive waste management fund or fund means the fund created in section 20
- (t) Manifest means a form provided or approved by the department that is used for identifying the quantity composition including the class curie count and radioactive nuclides origin routing and destination of waste from the point of generation to the point of processing collection or disposal
- (u) Municipality means a city village township or Indian tribe
- (v) Operation means the control supervision or implementation of the actual physical activities involved in the acceptance storage disposal and monitoring of waste at the disposal site the maintenance of the disposal site and any other responsibility pertaining to the disposal unit and the disposal site
- (w) Part 137 means part 137 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13701 to 333 13741 of the Michigan Compiled Laws
- (x) Performance assessment means an analysis of the potential pathways for release of waste to the environment and the potential impacts of a release during the transportation of radioactive waste to the disposal site and during the handling and disposal of waste at the disposal site including but not limited to
  - (i) A description of the potential pathways for radioactive nuclide migration beyond the boundaries of the disposal site during the operation of the site and if there is a release
  - (ii) A description of the potential pathways for radioactive nuclide migration beyond the packaging boundaries if a release occurs during transportation
  - (iii) An analysis of safety factors pertaining to the transportation of waste
  - (iv) The identification of the potential impacts to air surface water and groundwater quality and vegetation animals and humans or any other living thing beyond the boundaries of the disposal site

(v) A description of potential mechanisms for radioactive release including but not limited to mechanical failure structural failure and human error

(y) Person means an individual partnership cooperative association corporation receiver trustee or assignee

(z) Postclosure observation and maintenance means the surveillance monitoring and maintenance of the disposal site after it has been closed and continuing through site closure and stabilization and institutional control

(aa) Release means any intentional or unintentional spilling leaking pumping emitting emptying discharging injecting escaping leaching dumping disposing or placing of waste into the environment except in compliance with all of the following

(i) Part 137

(u) The rules promulgated under part 135 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13501 to 333 13536 of the Michigan Compiled Laws

(m) A permit or license issued pursuant to federal law if the person who is responsible for the release holds such a permit or license

(w) A permit or license issued pursuant to part 137 if the person who is responsible for the release holds such a permit or license

(v) The rules promulgated under this part

(bb) Remedial actions means those actions taken in the event of a radioactive release or threatened release into the environment to prevent or minimize the radioactive release so that it does not migrate and cause significant danger to the present or future public health safety or welfare or to the environment Remedial action includes but is not limited to actions at the location of the release such as storage confinement perimeter protection which may include using dikes trenches and ditches clay cover neutralization dredging or excavation repair or replacement of leaking containers collection of leachate and runoff efforts to minimize the social and economic harm of processing provision of alternative water supplies and any required monitoring to assure that the actions taken are sufficient to protect the public health safety and welfare and the environment

(cc) Site characterization means the site specific investigation of a candidate site undertaken pursuant to section 12

(dd) Site closure and stabilization means the actions taken at the disposal site during the time period after the closure of the disposal unit during which on site low level radioactive waste is disposed in accordance with part 137 equipment is dismantled decontaminated removed for reuse or disposed of and radioactive residues are removed from or properly isolated on the disposal site in preparation for transfer of ownership of the disposal site to the federal government

Sec 3 (1) An authority is created to be known as the low level radioactive waste authority The authority is an autonomous entity within the department of commerce The authority shall exercise its powers and duties independently of the department of commerce including the budgeting procurement contracting for and actual purchase of all equipment supplies and services of whatever kind necessary to implement this act

(2) The head of the authority is the commissioner who shall be qualified by training and experience to direct the work of the authority The commissioner shall be appointed by the governor by and with the advice and consent of the senate and shall serve a 2 year term at the pleasure of the governor A vacancy occurring in the office of the commissioner shall be filled in the same manner as the original appointment The commissioner shall receive a salary as provided by annual appropriation by the legislature from the low level radioactive waste management fund

(3) The commissioner is exempt from civil service The commissioner is responsible directly to the governor to ensure the accountability and integrity of the authority and accordingly should be a position within the department of commerce that is exempt from the classified state civil service The department of commerce shall request that the civil service commission establish the commissioner's position as a position that is exempt from the classified state civil service

(4) The commissioner shall employ personnel as necessary to implement this act

Sec 4 In addition to the powers provided in this act and part 137 subject to other applicable requirements of law the powers of the authority include all of the following

(a) Hold public meetings in compliance with the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws

(b) Accept assistance from public agencies colleges and universities private foundations individuals corporations or associations

(c) Accept and utilize a donation loan grant or reimbursement of money to obtain equipment supplies materials or services from any state or the United States or an agency or a political subdivision of the state or the United States or from any person The nature amount and conditions if any attached to a donation loan or grant accepted pursuant

to this subdivision together with the identity of the donor grantor or lender is public information. A donor lender or grantor shall not derive any advantage in any matter under this act. Part 137 rules promulgated under part 137 or federal law by reason of a donation loan or grant. The authority shall forward money obtained under this subdivision to the state treasurer for deposit in the low level radioactive waste management fund.

(d) Form 1 or more advisory committees as considered appropriate to make recommendations to the authority regarding the performance of 1 or more of the responsibilities of the authority.

(e) Exercise the power of eminent domain under the uniform condemnation procedures act. Act No. 87 of the Public Acts of 1980 being sections 213.51 to 213.77 of the Michigan Compiled Laws.

(f) Perform other functions considered necessary to implement this act.

(g) Establish and use a computer system to maintain receive or transmit any of the following:

(i) A manifest report or other record required by this act or part 137 or the rules promulgated under part 137.

(ii) A disposal shipment certificate.

(iii) The application or a portion of the application for a construction and operating license for the disposal site.

(iv) Information the authority is required to provide to the public under this act.

(h) Issue revenue bonds pursuant to section 20a.

(i) Negotiate create legal mechanisms for the state or private waste generators or both or enter into relationships with out of state entities for the out of state disposal of low level radioactive waste generated in this state. However prior to entering into a contractual relationship obligating the state the authority in addition to other requirements of law shall first submit the proposed contract to the attorney general for review.

Sec. 5 (1) In addition to the duties provided in this act and in part 137 subject to other applicable requirements of law the duties of the authority include all of the following:

(a) Select the host site.

(b) Submit an application to the department for a construction and operating license for the disposal site that meets the requirements of part 137.

(c) Acquire purchase hold lease or manage real property easements and rights of way to implement this act.

(d) Make available and negotiate on behalf of the state monetary and nonmonetary incentives and benefits for the state the host site community the county in which the host site community is located and the municipalities that have a common border with the host site community.

(e) Make available to local monitoring committees sufficient funding to enable the local monitoring committees to fulfill their responsibilities under section 14.

(f) Establish just and reasonable waste disposal fees and surcharges subject to the requirements of section 19.

(g) Negotiate and arbitrate with the local monitoring committee for the host site as provided in section 16.

(h) Establish and implement a disposal shipment registration system.

(i) Make a continuous study and investigation of the disposal site in order to ascertain and provide remedies for any defects in the disposal site through institutional control.

(j) If this state does not enter a compact refuse to accept waste that is not generated in this state.

(k) If this state does enter into a compact refuse to accept waste generated in any state that is not a member of the compact in which this state is a member. In addition the authority shall refuse to accept waste for disposal in the disposal site from any member of the compact who does either of the following:

(i) Is delinquent in paying dues or fees payable under the compact.

(ii) Fails to establish or maintain a permitting and regulatory system including penalties and remedies that equals or exceeds the laws and rules of this state as they apply to generators carriers processors and collectors of waste.

(l) Inspect the construction of the disposal site until construction is completed on a weekly basis and submit to the department the results of the inspection and the date on which the inspection occurred.

(m) Hold public hearings every other month during the process for selecting a site for the disposal site and every 6 months after the site for the disposal site is selected through the period of institutional control.

(n) 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.

(2) In addition to the duties provided in this act and in part 137 and the rules promulgated under part 137 the authority shall do all of the following or enter into contracts to assure that all of the following are accomplished:

(a) Site characterization.

- (b) Performance assessment
- (c) Development of siting criteria
- (d) Disposal site monitoring
- (e) Disposal site design construction engineering and inspection
- (f) Selection of disposal technology
- (g) Prepare an application for a construction and operating license for the disposal site
- (h) Disposal site operation
- (i) Site closure and stabilization
- (j) Postclosure observation and maintenance
- (k) Institutional control

Sec 6 (1) The authority shall submit an application to the department for a construction and operating license pursuant to the requirements of part 137. If this state is not a full agreement state, the authority shall also apply to the nuclear regulatory commission for a construction and operating license.

(2) If the authority elects to enter into agreements or contracts with a person to perform a responsibility of the authority, the authority shall do all of the following:

- (a) Establish minimum qualifications for the person
- (b) Establish the responsibilities of the person and specify the responsibilities that the authority retains
- (c) Determine whether the person is required to obtain a surety bond, a secured trust fund, or other suitable security instrument or mechanism
- (d) Comply with all the requirements in part 137 and the rules promulgated under part 137

(3) If the authority elects to enter into a contract to prepare an application for a construction and operating license for the disposal site or for the operation of the disposal site, in addition to the requirements under subsection (2), the authority shall provide public notice and an opportunity for public comment on the minimum qualifications required of the person. The authority shall forward a copy of each contract entered into by the authority to perform a responsibility of the authority to the department, the department of natural resources, and the attorney general.

Sec 9 (1) The authority shall establish final siting criteria.

(2) In establishing final siting criteria, the authority shall review and consider the proposed siting criteria that may be presented by the siting criteria advisory committee established pursuant to section 8. Thirty days before establishing final siting criteria, the authority shall prepare a draft version of the final siting criteria and shall make this draft siting criteria available for public comment. During that 30-day period, the authority shall hold a public hearing.

Sec 11 (1) The authority shall utilize the powers and exercise the duties provided in this act to designate 3 qualified and available candidate sites in this state.

(2) In designating 3 candidate sites, the authority shall exclude any site that is not all of the following:

- (a) Suitable for providing a stable foundation for engineered containment structures that comprise the disposal unit
- (b) Located where the groundwater travel time along any 100-foot flow path from the edge of the disposal unit is greater than approximately 100 years
- (c) Located where there is 6 or more meters of soil with a maximum permeability of  $1.0 \times 10^{-6}$  cm/sec at all points below and lateral to the bottommost portions of the leak detection system of the disposal unit or an area that provides equivalent environmental protection to the public health, safety, and welfare and the environment
- (d) Located where the unconfined water table, which is not the potentiometric surface, is sufficiently low to prevent the intrusion of groundwater into the disposal unit, except as outlined under 10 C.F.R. 61.50(a)(7)
- (e) Located in an area that is not above an aquifer that is the primary source of water for a municipality or county or for persons residing or doing business in the municipality or county where a candidate site is located
- (f) Free of ponding or capable of being drained in a manner that insures the integrity of the disposal unit
- (g) Suitable to insure the isolation of the waste

(3) In designating 3 candidate sites, the authority shall give preference to sites that are all of the following:

- (a) Able to meet the long-term performance objectives of subpart C of 10 C.F.R. part 61
- (b) Able to be characterized, modeled, analyzed, and monitored
- (c) Located where natural resources do not exist on or significantly near to the candidate site that, if exploited, would result in failure to meet the performance objectives in subpart C of 10 C.F.R. part 61

(d) Located where projected population growth and future developments within the municipality and county where the candidate site is located are not likely to affect the ability of the disposal site to meet the performance objectives in subpart C of 10 C F R part 61 or could not significantly interfere with an environmental monitoring program

(e) Consistent with the requirements of federal laws including all of the following

(i) Atomic energy act of 1954 chapter 1073 68 Stat 919

(ii) Federal water pollution control act chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1271 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387

(iii) Coastal zone management act of 1972 title III of the marine resources and engineering development act of 1966 Public Law 89 454 16 U S C 1451 to 1455a 1456 to 1463 and 1464

(iv) Endangered species act of 1973 Public Law 93 205 87 Stat 884

(v) Wild and scenic rivers act Public Law 90 542 16 U S C 1271 to 1287

(vi) Wilderness act Public Law 88 577 16 U S C 1131 to 1136

(vii) National wildlife refuge system administration act of 1966 sections 4 and 5 of Public Law 89 669 16 U S C 668dd and 668ee

(viii) Chapter 593 49 Stat 666 16 U S C 461 to 467

(ix) National historic preservation act Public Law 89 665 16 U S C 470 to 470a 470b and 470c to 470x 6

(h) Located so that the upstream drainage area is minimized to decrease runoff that could erode or inundate waste placed in the disposal unit

(i) Located where geologic processes such as mass wasting erosion slumping landsliding or weathering do not occur to the extent and with such frequency that the ability of the disposal site to meet the performance objectives in subpart C 10 C F R 61 40 to 61 44 is significantly affected or may preclude defensible modeling and prediction of the long term impact of such occurrences

(4) The authority may waive 1 or more of the criteria in subsection (3) if the authority obtains written approval for the waiver from the director and the authority and the director determine that the waiver will not compromise the public health safety or welfare or the environment and that a site for which a waiver is sought is an appropriate candidate site despite the site's inability to meet 1 or more of the criteria in subsection (3) In addition prior to waiving 1 or more of the criteria in subsection (3) the authority shall provide public notice of a proposed waiver of 1 or more of the criteria in subsection (3) and shall conduct a public hearing to provide for public comment regarding the waiver

Sec 12 (1) Immediately following designation of the candidate sites by the authority the authority after consultation with the department and the department of natural resources shall begin site characterization at each candidate site The site characterization shall establish a comprehensive baseline environmental monitoring program at each of the candidate sites

(2) The monitoring program at each candidate site shall provide to the maximum extent feasible for the participation of the local monitoring committee for each candidate site and the training of the members to facilitate their participation The program shall be designed to establish baseline environmental data for at least 1 year at each candidate site to determine compliance with the applicable final siting criteria provided for in section 10 to provide early warning of the magnitude and extent of any release and to provide reliable environmental data to be utilized in preparing the construction and operating license submitted to the department by the authority and to be utilized in the design construction operation site closure and stabilization postclosure observation and maintenance and institutional control of the disposal site The monitoring program for each candidate site shall include collected and analyzed data concerning standing and running surface water and drainage groundwater samples off site and at the candidate site boundary soil vegetation animal and insect samples atmospheric samples and radiological measurements off site at the candidate site boundary and within the candidate site Each local monitoring committee shall be entitled to obtain portions of all samples collected pursuant to the monitoring program for the candidate site which that local monitoring committee represents for analysis by an independent laboratory Each local monitoring committee is entitled to receive a copy of the results of each test prepared as a part of site characterization by any state department or agency

(3) The authority shall provide the review board established pursuant to section 13 with 12 months of site characterization data as soon as 12 months of data for each site are available

(4) The authority and authorized representatives of the authority and the authorized representatives of the department the department of natural resources and the department of agriculture shall have access to each candidate site for the purpose of conducting site characterization and performing any of the authority's responsibilities or duties provided in this act

Sec 13 (1) Not more than 90 days following the designation of each candidate site a review board shall be established to provide recommendations to the authority regarding provisions and stipulations that would mitigate the concerns of the municipality in which each candidate site is located if that municipality is selected as the host site The

review board shall hold public hearings to provide for the participation of each local monitoring committee and to provide the opportunity for public participation. The review board shall make its recommendations to the authority no later than 30 days after 12 months of site characterization data are available. The recommendations of the review board shall also be made available to each local monitoring committee. The review board may recommend to the authority 1 of the 3 candidate sites as the proposed host site.

(2) The review board shall consist of the following 7 voting members and 1 nonvoting chairperson:

(a) Four members shall be members appointed by the governor with the advice and consent of the senate. The 4 members shall include:

(i) One representative of county governments at large;

(ii) Two individuals who by education and experience are knowledgeable in a technical specialty that is pertinent to issues related to a disposal site, such as a hydrogeologist, health physicist, radiation engineer, or a biologist;

(iii) One individual who by education and experience is knowledgeable in a specialty that is pertinent to issues concerning the assessment of social, economic, and community impacts related to a disposal site.

(b) Three members shall be representatives for the municipalities in which the 3 candidate sites are located. The governing body of each of the municipalities where the 3 candidate sites are located shall appoint 1 member to serve on the review board.

(c) An attorney shall be appointed by the governor with the advice and consent of the senate to serve as the nonvoting chairperson of the review board. The chairperson shall have experience in conducting public meetings.

(3) Four of the 7 voting members of the board constitutes a quorum for the transaction of the business of the board, and the concurrence of 4 members shall constitute a legal action of the board. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(4) A member of the board shall not receive compensation for his or her services, but shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the board.

Sec. 14. (1) Within 30 days of the designation by the authority of the candidate sites, the governing body of a municipality in which a candidate site is located shall establish a local monitoring committee to represent the interests of the citizens of the municipality in which the candidate site is located. Each governing body shall determine the size and membership of its local monitoring committee. The local monitoring committees shall assure the protection of the public health, safety, and welfare and the protection of the environment in the municipality in which the candidate site is located. Each of the local monitoring committees may do all of the following:

(a) Represent the interests of the municipality in which the candidate site is located in proceedings regarding the selection of the host site;

(b) Independently review site characterization data;

(c) Prepare for the possible designation of the candidate site as the host site;

(d) Seek funding from the authority to fulfill the responsibilities of the local monitoring committee;

(e) Provide for independent technical assistance to fulfill the responsibilities of the local monitoring committee;

(f) Present recommendations to the authority and the review board established pursuant to section 13 regarding provisions and stipulations that would mitigate the concerns of the municipality that is represented by the local monitoring committee if it is selected as the host site.

(2) The local monitoring committees for the municipalities that are not selected as the host site community shall disband upon the designation by the commissioner of the host site community.

(3) The local monitoring committee of the host site shall continue in existence through the period of institutional control. The local monitoring committee for the host site community may do all of the following:

(a) Evaluate and submit comments to the department, department of natural resources, and the authority regarding the application for a construction and operating license submitted by the authority;

(b) Select a representative for the local monitoring committee or a technical advisor, or both, to inspect and monitor at reasonable times and in a reasonable manner the construction of the disposal site and the monitoring and operation of the completed disposal site, site closure and stabilization, postclosure operation and maintenance, and institutional control, with due regard as determined by the authority to the safety of the representative of the committee and the technical advisor;

(c) Engage in any other activities that are mutually agreed upon between the local monitoring committee and the authority or the department, or both;

(d) Negotiate and enter arbitration with the authority as provided in section 16.

Sec 15 (1) The commissioner shall make a preliminary designation of the host site. Immediately following the preliminary designation of the host site, the authority shall transmit to the secretary of the senate and the clerk of the house of representatives the name and location of that site and any other information that the authority has regarding that site and the 2 remaining candidate sites. Upon request, the authority shall also make any information that the authority has regarding the preliminarily designated host site and the 2 remaining candidate sites available to members of the legislature. Upon the expiration of 30 days after transmittal, that 30 days to commence on the first legislative working day after the designation is transmitted, the preliminary host site designated by the commissioner shall be the host site unless within that time period the legislature either rejects the designated host site or rejects the designated host site and designates 1 of the 2 remaining candidate sites. If the legislature rejects the preliminarily designated host site but does not designate 1 of the 2 remaining candidate sites as the host site, the commissioner shall designate 1 of the 2 remaining candidate sites as the host site. Once the host site is designated by the commissioner, the terms of the final complete agreement reached with the authority pursuant to section 16 for the host site community shall commence.

(2) The authority shall assure that the design and construction of the disposal site is completed in accord with the minimum criteria established by the department in part 137.

(3) As used in this section, legislative working day means a day on which both the senate and the house of representatives are called to order and a quorum of both the senate and the house of representatives is present.

Sec 16 (1) The local monitoring committee for the host site community may negotiate with the authority regarding any of the following:

- (a) Monetary and nonmonetary forms of compensation
- (b) Matters pertaining to disposal site access and transportation issues resulting from the siting of the disposal site
- (c) The landscaping and appearance of the disposal site
- (d) Technical assistance available to the municipality and the local monitoring committee of the candidate site and the host site community
- (e) Matters pertaining to host site community utility and natural resource utilization

(2) Negotiations between the local monitoring committee for the host site and the authority may commence no later than 30 days after the designation of the host site. The time and place of negotiating sessions shall be determined by agreement between the local monitoring committee and the authority.

(3) If negotiations are conducted between the local monitoring committee for the host site and the authority, the local monitoring committee and the authority shall prepare a final report summarizing the agreements reached during negotiation. The final report shall be signed by the authority and by a member of the local monitoring committee who is designated by that local monitoring committee. The final report shall be a public document which shall be the subject of a public meeting conducted by the authority.

(4) If the local monitoring committee and the authority cannot resolve an issue considered during negotiation, the local monitoring committee and the authority shall each prepare a final summary of each issue on which there is disagreement. That final summary shall include both of the following:

- (a) A statement of the party to negotiation's final best offer on each issue on which there is disagreement.
- (b) Information and documentation that supports the party to negotiation's final best offer on each issue on which there is disagreement.

(5) If the local monitoring committee and the authority cannot reach agreement on an issue that has been raised during negotiations, the local monitoring committee or the authority may require the appointment of an arbitration committee for the purpose of the arbitration of each issue that was considered but unresolved during negotiations. Arbitration as provided for under this subsection shall not occur unless the local monitoring committee or the authority requires the appointment of an arbitration committee. Arbitration shall pertain to only an unresolved issue included in the summary prepared pursuant to subsection (4). The arbitration committee shall consist of 3 members and shall include a representative designated by the local monitoring committee, a representative designated by the authority, and a chairperson who shall be an arbitrator and shall be selected pursuant to the rules and procedures of the American arbitration association.

(6) All issues resolved during arbitration to the satisfaction of both the representative of the local monitoring committee and the representative of the authority shall be incorporated into a written final agreement to be signed by each member of the arbitration committee. A copy of the agreement shall be made available to each member of the arbitration committee, the local monitoring committee, and the authority, and shall be considered a public document.

(7) The arbitration committee shall meet on a schedule and at a time and place that shall be established by agreement between the members of the arbitration committee. If the arbitration committee cannot agree on the schedule, time, and place of the arbitration meetings, the chairperson shall determine the schedule, time, and place for the meetings.



(8) If there is 1 or more issues that are not resolved to the satisfaction of both the representative of the local monitoring committee and the representative of the authority within 45 days of the commencement of arbitration arbitration shall cease and each unresolved issue shall be decided by the chairperson. The decision of the chairperson as to each unresolved issue shall be limited to the chairperson's choice of either the final best offer of the local monitoring committee on an unresolved issue prepared pursuant to subsection (4) or the final best offer of the authority on an unresolved issue prepared pursuant to subsection (4). The decision of the chairperson is final and binding and shall be incorporated into a final arbitration report issued within 30 days of the date on which arbitration ceased. The final arbitration report shall include a final report prepared pursuant to subsection (3), a final summary prepared pursuant to subsection (4), a final agreement prepared pursuant to subsection (6), and a final decision made by the chairperson pursuant to this subsection. To be valid the final arbitration report shall be signed by the chairperson. A copy of the final arbitration report shall be made available immediately to each member of the arbitration committee, the local monitoring committee, and the authority, and shall be considered a public document.

(9) The chairperson shall submit a statement of his or her costs to the authority. The costs of the chairperson shall be paid by the authority.

(10) Each final determination of an issue negotiated or arbitrated under this section shall be incorporated into a final complete agreement between the authority and the local monitoring committee for the host site.

Sec 17 (1) No later than October 1, 1988, the authority shall organize the establishment of an international low level radioactive waste research and education institute. The authority may enter into agreements with a state university or college or a consortium of universities or colleges as may be necessary to establish the institute in accordance with this section. The authority shall establish a process by which a state university or college or a consortium of universities or colleges may indicate an interest in accepting the institute as an independent entity. The institute shall be governed by a board of governors who are jointly selected and appointed by the authority and the designated representative of the university, college, or consortium. The governors shall be as follows:

(a) One individual from a public utility that produces low level radioactive waste as a result of the generation of electrical power.

(b) One individual from a business that is not a public utility but produces low level radioactive waste.

(c) One individual from a medical facility that generates radioactive waste.

(d) Two individuals from environmental or public interest organizations.

(e) Three college or university faculty or staff members who have expertise in nuclear physics or nuclear chemistry and in the handling, processing, or reduction of low level radioactive waste.

(f) One individual representing the general public.

(g) The director of public health or his or her authorized representative.

(h) The attorney general or his or her authorized representative.

(2) In addition to the governors appointed under subsection (1), if this state is a member of a compact, the governing body of the compact may appoint 1 representative to the board of governors who shall serve as an ex officio nonvoting member.

(3) The powers and duties of the institute shall include all of the following:

(a) To develop contracts with universities and other research institutions to conduct research on waste issues including, but not limited to, all of the following:

(i) The method by which a determination can be made regarding the amounts of wastes specified by radionuclide that are generated within this state and within compact member states as long as this state remains a member of a compact, to be disposed of in the disposal site in order to provide an inventory and guide disposal options and risk assessments.

(ii) The construction media, waste forms, and other engineering features necessary to assure containment of wastes to reduce the potential for a release of waste.

(iii) The development of features to detect and control a release of waste.

(iv) The cost versus risk analysis of available waste treatment methods, with an emphasis on waste treatment methods that could adversely or positively affect the long term performance of the disposal site.

(v) Transportation management systems that prevent public radiation exposure and facilitate incident response planning.

(vi) The use of mediation and human resource methods to facilitate positive interaction between the operators of the disposal site and the public.

(vii) The basic frameworks to provide for institutional control and the accumulation and use of economic resources necessary for institutional control.

- (viii) Development of new materials and methods to reduce or eliminate the generation of waste
- (ix) Development of methods for state of the art environmental monitoring of the disposal site
- (x) Economic implications of different waste management and treatment options
- (b) To develop and operate a technical resource program to provide information and assistance to persons involved with public policy issues surrounding the management of the disposal of waste
- (c) To develop and implement education programs that assist the public in understanding issues surrounding the generation possession transportation processing collecting and disposal of waste and the site closure and stabilization post closure observation and maintenance and institutional control of the disposal site
- (4) The governors appointed as provided in subsections (1) and (2) shall serve for terms of 4 years or until a successor is appointed whichever is later except that of the members first appointed 3 shall serve for 2 years and 3 shall serve for 3 years
- (5) If a vacancy occurs on the board of governors an appointment shall be made for the unexpired term in the same manner as the original appointment
- (6) A majority of the governors of the institute shall constitute a quorum for the transaction of business at a meeting of the board Action by the board of governors shall be by a majority of the votes cast
- (7) A meeting of the board of governors shall be held in compliance with the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws and notice of the time date and place of the meeting shall be given in the manner required by that act
- (8) In addition to research grant awards not more than \$250 000 00 annually shall be available for appropriation from the low level radioactive waste management fund to meet the general operating expenses of the institute
- (9) A governor of the institute may receive compensation for his or her service and shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the institute
- (10) The board of governors shall meet at least quarterly
- (11) The institute may form a private nonprofit corporation if the board of governors determines that doing so will assist in fulfilling its functions under this section
- (12) The board of governors shall annually prepare a report that details the sources of funds amount of funds received from each source and the use of all funds that are received by the institute or a nonprofit corporation formed by the board of governors during the reporting year Any report prepared by or on behalf of the board of governors shall include a list of all of the sources that contribute funds for the operation of the institute
- (13) Within 180 days after the effective date of the amendatory act that added this subsection the board of governors shall prepare the following reports and provide these reports to the appropriate standing committees of the senate and house of representatives that primarily address issues pertaining to the environment and natural resources
  - (a) A report on waste management options available to this state The report shall also list and evaluate feasible options to encourage a reduction in the amount of waste generated in this state The board of governors shall identify and evaluate options and make recommendations to the authority regarding interim waste storage and provision of final disposal capacity
  - (b) A volunteer host community program plan which at a minimum incorporates the provisions of section 7 The authority shall obtain public comment in the preparation of this plan
- (14) A writing prepared owned used in possession of or retained by the board of governors in the performance of an official function is subject to the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

Sec 18a (1) By October 1 of each year or as otherwise required by the authority a generator shall report to the authority the following information about the waste it generates

- (a) Volume of waste
- (b) Curie content and principal radionuclides present
- (c) Form of waste
- (d) Methods used to store waste
- (e) Any other information about the waste that the authority considers necessary or helpful in implementing its duties under this act
- (2) A summary of information reported under subsection (1) shall be prepared by the authority and presented to the appropriate standing committees of the senate and house of representatives of the legislature that primarily address issues pertaining to the environment and natural resources

Sec 19 (1) The authority shall establish a fee system that is reasonable and equitable and that provides the authority with sufficient revenue to cover any and all costs associated with the disposal site including but not limited to the planning siting licensure operation regulation monitoring site closure and stabilization post closure monitoring and maintenance institutional control and liability pertaining to the disposal site In addition the authority shall assure that sufficient funds will be available in the low level radioactive waste fund for all of the following

(a) The authority and all of the expenses the authority incurs in meeting the requirements of this act part 137 and the rules promulgated under part 137

(b) The expenses of the department that pertain to the department s regulatory responsibility under part 137

(c) If this state is a member of a compact the expenses related to compact membership

(d) The international low level radioactive waste research and education institute established pursuant to section 17

(e) The review board established pursuant to section 13

(f) Local monitoring committees

(g) The siting criteria advisory committee established pursuant to section 8

(h) If this state is a member of a compact the expenses of compact member states that are incurred to obtain privileges in this state to enable waste generated in the compact member states to be disposed of in the disposal site

(i) If this state is a member of a compact the funds required to be paid to the commission by the compact member states

(j) Compensation to the host site community and any county or municipality in this state for the reasonable direct costs related to the disposal site including but not limited to necessary road and other capital improvements emergency response training and other specialized personnel training

(k) Benefits to the candidate sites and host site community including incentives available to candidate sites and the host site community pursuant to agreements reached by the commission and with the authority

(l) Provide funds sufficient to fulfill the provisions of sections 13714 and 13715 of part 137

(m) Annually to this state for unrestricted purposes \$500 000 00

(n) Annually to the host site community for unrestricted purposes \$800 000 00

(o) Costs incurred by a municipality or county as a result of externalities associated with the disposal site

(p) Revenue for the funds created in subsection (2)

(q) Paying debt service on revenue bonds issued pursuant to section 20a

(2) The remedial action fund the long term liability fund the long term care fund and the tax contingency fund are created as separate funds in the department of treasury The funds created in this subsection shall be administered by the authority The income and earnings of the funds created in this subsection shall be added to the assets of the fund which generated the income The funds created in this subsection shall be funded and expended as follows

(a) Not less than \$10 000 000 00 during the period the disposal site accepts waste for disposal for deposit in the remedial action fund which is available only to pay for remedial action taken by the authority in the event of a release or threatened release from the disposal site that presents a danger to the public health safety or welfare or the environment

(b) Not less than \$500 000 00 annually for deposit in the long term liability fund which shall be available only to pay judgments or judicially approved settlements of claims against the authority or if this state is a member of a compact any compact member state for death personal injury illness or property damage resulting from the disposal of low level radioactive waste at the disposal site The long term liability fund shall be used only after funds available pursuant to sections 13714 and 13715 of part 137 have been exhausted

(c) Not less than \$600 000 00 annually for deposit in the long term care fund which is available only to pay for the expenses of site closure and stabilization and institutional control

(d) Not more than \$100 000 00 annually for deposit in the tax contingency fund which is available for reasonable payments in lieu of real property taxes which but for ownership of the disposal site by the authority would be payable with respect to the disposal site for as long as the disposal site is not subject to pay property taxes

(3) The authority shall impose a 20% surcharge to be added to the disposal fees established under subsection (1) The surcharge shall be sufficient to cover the following expenses and shall be distributed by the authority according to the following

(a) The host site community shall receive 35% of the surcharge or \$400 000 00 whichever is greater

(b) One or more municipalities that share a boundary with the host site community shall receive 20% of the surcharge or \$400 000 00 whichever is greater If there is more than 1 municipality that is eligible for funding under this subdivision the eligible municipalities shall split equally that funding

(c) The county in which the host site is located shall receive 15% of the surcharge or \$300 000 00 whichever is greater

(d) The environmental response fund created in the environmental response act Act No 307 of the Public Acts of 1982 being sections 299 601 to 299 618 of the Michigan Compiled Laws shall receive 15% of the surcharge or \$400 000 00 whichever is greater

(e) The clean Michigan fund created in the clean Michigan fund act Act No 249 of the Public Acts of 1986 being sections 299 371 to 299 393 of the Michigan Compiled Laws shall receive 15% of the surcharge or \$200 000 00 whichever is greater

(4) The authority may impose a just and reasonable surcharge on any generator carrier processor or collector who does not comply with part 137 or the rules promulgated under part 137

(5) In the second and each subsequent year of the operation of the disposal site the amount of each fee established in subsection (1) shall be increased in proportion to each annual increase for the preceding year in the annual consumer price index for all urban consumers as defined and officially reported by the bureau of labor statistics of the United States department of labor for the north central region of the United States If the disposal site does not operate for the entire year during the second or last year the disposal site accepts waste the proportional increase provided for in this subsection shall be prorated according to the number of months of operation

(6) The fee system created by the authority under subsection (1) for the disposal of waste in the disposal site shall not be dependent on revenues received for the disposal of class C waste and shall be based on both of the following

(a) The volume radioactivity and half life of the waste deposited in the disposal site The fee shall be proportionately higher for waste that has higher levels of radioactivity as measured in curies and for waste that has longer half lives

(b) A realistic model of the projected cost of the disposal of each classification of waste

(7) All revenues in the fee system created under subsection (1) that result from the disposal of class C waste in the disposal site shall be deposited in the clean Michigan fund created in the clean Michigan fund act Act No 249 of the Public Acts of 1986 being sections 299 371 to 299 393 of the Michigan Compiled Laws

Sec 19a If this state enters into a compact and pursuant to agreements entered into by the compact members Michigan is selected as the host state for the disposal site and fulfills its obligations to serve as the host state the contractual agreement among the compact members shall include a provision that provides a penalty if any other compact member state subsequently defaults in any respect on its obligation to serve as the host state for the disposal site This penalty shall include at least all of the following

(a) Exemplary damages

(b) The costs estimated to be incurred by this state due to the default

(c) 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

(d) Other expenses and costs that this state will incur as a result of the default as determined by the authority

Sec 20 (1) There is hereby created in the state treasury a low level radioactive waste management fund that shall be administered by the authority The legislature shall make appropriations from the fund as provided in part 137 and as necessary to assure that the authority is able to fully implement its powers and responsibilities

(2) The authority may expend appropriations by the legislature from the low level radioactive waste fund for purposes listed in section 19 and as are otherwise reasonably related to the full implementation of the powers and duties of the authority

(3) The source of the revenue of the fund shall include revenue from the following sources

(a) Funds provided by other states if this state is a member of a compact and this state is the host state for the compact including export fees funds to be allocated to candidate site communities and any other revenue

(b) Rebates received from the United States department of energy

(c) Funds received pursuant to section 4(c)

(d) Disposal fees and surcharges established by the authority under section 19

(4) The assets of the low level radioactive waste management fund shall be exempt from all taxation by this state or any of its political subdivisions

(5) The assets of the low level radioactive waste management fund shall be preserved invested and expended solely pursuant to and for the purposes set forth in this act and in part 137 and shall not be loaned or otherwise transferred or used by the state for any other purpose

Section 2 Section 21 of Act No 204 of the Public Acts of 1987 being section 333 26221 of the Michigan Compiled Laws is repealed

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor