

26:2D-23.1 to 26:2D-23.4

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:2D-23.1 to 26:2D-23.4

(Radioactive materials - prohibit transportation of storage in densely populated areas)

LAWS OF: 1983

CHAPTER: 345

Bill No: A218

Sponsor(s): Baer

Date Introduced: Pre-filed

Committee: Assembly: Agriculture and Environment

Senate: Energy and Environment

Amended during passage: YES Amendments denoted by asterisks according to Governor's recommendations

Date of Passage: Assembly: January 31, 1983 Re-enacted 9/15/83

Senate: June 16, 1983 Re-enacted 9/15/83

Date of Approval: September 22, 1983

Following statements are attached if available:

Sponsor statement: YES

Committee statement: Assembly YES

Senate YES

Fiscal Note: NO

Veto Message: YES

Message on Signing: NO

Following were printed:

Reports: NO

Hearings: NO

Nuclear Regulatory Commission regulations of 7/16/79 (mentioned in Assembly Committee statement: 10 CFR Pt 73, 44 FR 34466.

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9-22-83

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ASSEMBLY, No. 218

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Assemblymen BAER and LESNIAK

A SUPPLEMENT to "An act concerning the handling of radioactive materials in this State and supplementing the 'Radiation Protection Act' (P. L. 1958, c. 116)," approved September 26, 1977 (P. L. 1977, c. 233, C. 26:2D-18 et seq.).

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. It shall be unlawful for any person to transport or ****[tempo-**
2 **rarily store]**** ***store in transit*** the following radioactive
3 materials in any county in New Jersey which has an average
4 population density exceeding 1,000 persons per square mile as
5 measured in the most recent decennial census:

6 a. Plutonium isotopes in any quantity and form exceeding *****[2**
7 **grams or]**** 20 curies***** [whichever is less]***;

8 b. Uranium enriched in the isotope U-235 exceeding 25 atomic
9 per cent of the total uranium content in quantities where the
10 U-235 content exceeds 1 kilogram;

11 c. Any of the actinides (i.e., elements with atomic number 89 or
12 greater) the activity of which exceeds 20 curies; ****or****

13 d. Spent reactor fuel elements or mixed fission products associ-
14 ated with such spent fuel elements the activity of which exceeds 20
15 curies****[; or]** **.***

16 ****[e. Any quantity of radioactive material*, other than radio-**
17 **active substances, the principal purpose of which is associated with**
18 **the manufacture of radiopharmaceuticals,*** specified as a "Large
19 Quantity" by the Nuclear Regulatory Commission in 10 CFR Part
20 71, entitled "Packaging of Radioactive Material for Trans-
20A port."]**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

- Matter enclosed in asterisks or stars has been adopted as follows:
*—Assembly committee amendments adopted October 25, 1982.
**—Senate committee amendments adopted May 23, 1983.
***—Assembly amendments adopted in accordance with Governor's recommendations September 15, 1983.

21 **Any quantity of radioactive material specified as "Low Specific*
 22 *Activity" by the Nuclear Regulatory Commission in 10 CFR*
 23 *Part 71, entitled "Packaging of Radioactive Material for Trans-*
 24 *port" shall be exempt from the provisions of this act.**

1 2. The **[Department of Environmental Protection may by rules*
 2 *and regulations, in accordance with]* *department may, pursuant*
 3 *to* the "Administrative Procedure Act" P. L. 1968, c. 410 (C.*
 4 *52:14B-1 et seq.)*,* designate or define any categories or sub-*
 5 *categories of radioactive material covered under *[the act to*
 6 *which]* this act *[is supplement]*, except radiopharmaceuticals*
 7 **and radioactive substances, the principal purpose of which is*
 8 *associated with the manufacture of radiopharmaceuticals*, to be*
 9 *banned from areas *[it so]* designated *by the department*. The*
 10 *department shall only do so where it finds that such material may*
 11 *create an unwarranted hazard to public safety and where the*
 12 *transportation of the material in the area is not essential to the*
 13 *public welfare.*

1 ****[3. *a.* The *[Commissioner of Environmental Protection]**
 2 **department* may *[authorize]* *issue* a "certificate of han-*
 3 *dling" only for the most compelling reasons involving urgent*
 4 *public policy or national security **[interest]** **interests***
 5 *transcending public health and safety concerns, notwithstanding*
 6 *the provisions of sections 1 and 2 of this act. Economic considera-*
 7 *tion alone will not be an acceptable basis for justifying an excep-*
 8 *tion to sections 1 or 2 *of this act* in the issuing of a certificate.*

9 **b. The provisions of sections 1 and 2 of this act notwithstand-*
 10 *ing, the department may issue a "certificate of handling" for the*
 11 *transportation of nuclear fuel to, and nuclear waste from, any*
 12 *nuclear electricity generating facility upon a finding that there is*
 13 *no feasible alternate route which involves less risk to the public*
 14 *health and safety.****

1 ****3. Notwithstanding the provisions of sections 1 and 2 of this*
 2 *act, the department may issue "certificates of handling" on a*
 3 *case-by-case basis for radioactive materials covered under this act:*

4 *a. For compelling reasons involving urgent public policy or*
 5 *national security interests which transcend public health and safety*
 6 *concerns;*

7 *b. For research or development activities, medical therapy, or*
 8 *educational purposes which the department determines do not pose*
 9 *significant threats to public health and safety;*

10 *c. For the transportation of fresh or non-irradiated nuclear*
 11 *fuel to any nuclear generating facility upon a finding by the depart-*
 12 *ment that there is no feasible alternate route or mode of transporta-*
 13 *tion which involves less risk to the public; or*

14 *d. For the transportation of spent or irradiated nuclear fuel from*
15 *any nuclear electricity generating facility upon a finding by the*
16 *department that there is no feasible alternate route or mode of*
17 *transportation or method of disposition which involves less risk to*
18 *the public health and safety; provided, however, that no certificate*
19 *of handling shall be issued for the transportation of any spent or*
20 *irradiated nuclear fuel in New Jersey unless the department and the*
21 *State Police have jointly determined that adequate safety precau-*
22 *tions have been taken by the transporter and that adequate emer-*
23 *gency response capabilities exist to protect the public during such*
24 *transportation, and the department has further determined that the*
25 *shipment of such fuel is secured by a limit of insurance or other*
26 *form of indemnification, either by law or privately obtained, which is*
27 *appropriate for the protection of the public in view of the risks*
28 *associated with such transportation.****

1 4. Any person who violates **[sections 1 and 2]** **the provisions**
2 *of this act shall**, in addition to any penalties imposed pursuant to
3 *section 13 of P. L. 1958, c. 116 (C. 26:2D-13),** have all certificates
4 of handling **in the possession of that person** revoked and shall
5 be ineligible to receive any certificate of handling for 3 years.

1 5. This act shall take effect 60 days after enactment ****[*, except
2 *for section 1 which shall take effect immediately]****.

8 unwarranted hazard to public safety and where the transportation
9 of the material in the area is not essential to the public welfare.

1 3. The Commissioner of Environmental Protection may authorize
2 a "certificate of handling" only for the most compelling reasons
3 involving urgent public policy or national security interest trans-
4 cending public health and safety concerns, notwithstanding the
5 provisions of sections 1 and 2 of this act. Economic consideration
6 alone will not be an acceptable basis for justifying an exception to
7 sections 1 or 2 in the issuing of a certificate.

1 4. Any person who violates sections 1 and 2 of this act shall
2 have all certificates of handling revoked and shall be ineligible to
3 receive any certificate of handling for 3 years.

1 5. This act shall take effect 60 days after enactment, except for
2 section 1 which shall take effect immediately.

STATEMENT

This bill bans the transport or intransit storage of the most dangerous radioactive and nuclear materials from the most densely populated counties of New Jersey: Bergen, Camden, Essex, Hudson, Passaic, Mercer, Middlesex and Monmouth. It also permits the DEP by regulation to additionally ban specific radioactive materials where a special need exists. Approximately 68% of the people of New Jersey reside in these counties.

An amendment to the NYC Health Code in 1976 provided similar protection to the people of that city. Certain areas in New York protected by the resolution, specifically Staten Island, has lesser or nearly equal population density than 4 New Jersey counties: Hudson, Essex, Union and Bergen. It is senseless to allow densely populated areas of New Jersey to go unprotected while other areas nearby are enjoying such protection. This legislation provides that needed protection for New Jersey residents.

This bill is needed to restrict the potential movement of large numbers of shipment of hi-level wastes and spent fuel as the NRC begins approving proposed routes.

The rules by the Nuclear Regulatory Commission (NRC) effective July 16, 1979 are not adequate to cover New Jersey's needs by themselves, however these rules respect local restrictions and do not preempt State action.

The federal rules apply only to irradiated fuel, leaving unregulated many other highly dangerous nuclear substances. NRC rules do not specifically cover all areas covered in this bill. In addition, they cover an irregular patchwork of census tracts and small

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municipalities thereby causing difficulty in enforcement due to irregular boundaries.

Another shortcoming of the federal rules is that shipments through designated heavily populated areas would be permitted if "alternate routes would (i) result in excessive increase in transit time" or "there were no routes along which the vehicle would be allowed on the basis of its size, weight, or cargo description."

Such loose exception might justify a hazardous shipment of nuclear material through any heavily populated area. The economics of additional travel time doesn't justify subjecting these areas to the danger of radioactive material. The exception regarding weight of the cargo is also too broad making no distinction when there is a possibility of dividing the cargo to be within weight restrictions.

In contrast this bill allows an exception for a certificate of handling to be issued by the Commissioner of Environmental Protection through prohibited areas only for the most urgent public policy considerations similar to the NYC exception which has withstood legal challenge.

Violators of this bill will be subject to the penalty that is applicable to violators of Chapter 233 Laws of New Jersey 1977 regarding handlers of nuclear cargo.

In addition due to the hazards resulting from unnecessary introduction of extraordinarily hazardous materials in highly populated areas this act provides the additional and potentially economically greater penalty of disqualifying the violator from obtaining any certificate of handling for a period of 3 years.

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 218

with Assembly committee amendment

STATE OF NEW JERSEY

DATED: OCTOBER 25, 1982

On July 16, 1979 the Nuclear Regulatory Commission adopted regulations concerning the transportation of irradiated nuclear fuel through densely populated areas of the nation. The regulations, however, left many other highly dangerous nuclear substances which could pose serious public health and safety risks unregulated. Moreover, the federal rules permitted the transportation through restricted areas if alternate routes would increase transit time excessively or there were no other routes available due to the size or weight of the vehicle, or cargo description.

An amendment to the New York City Health Code providing for similar protections afforded by this bill to the residents of New York City has recently withstood a legal challenge in U. S. District Court, Southern District of New York. In that case (*New York City v. U. S. Department of Transportation*, unreported) there were two tests which had to be met: population density and the availability of an alternate route.

This bill bans the transport or in-transit storage of the most dangerous radioactive and nuclear materials in the most densely populated counties of New Jersey: Union, Bergen, Camden, Essex, Hudson, Passaic, Mercer, Middlesex and Monmouth. Approximately 68% of the people of New Jersey reside in these counties.

The bill further authorizes the Department of Environmental Protection to ban specific radioactive materials where a special need to do so exists or to issue a certificate of handling through prohibited areas for national security interests or urgent policy objectives transcending public health and safety concerns.

In addition to the penalties for violations prescribed by the "Radiation Protection Act," P. L. 1958, c. 116 (C. 26:2D-1 et seq.), violators of the provisions of this bill would also be liable to revocation of all certificates of handling in their possession and ineligibility for three years from obtaining any certificate of handling.

The Committee amended the bill to correct certain technical deficiencies and to permit the transportation of radio-pharmaceuticals and substances associated with the manufacture of radio-pharmaceuticals.

The Committee further amended the bill to provide that certain low level radioactive waste would be exempt from the provisions of the bill and to provide that the Department of Environmental Protection may issue a "certificate of handling" for the transport of nuclear fuel to, and nuclear wastes from, any nuclear electricity generating facility upon a finding that there is no feasible alternate route which involves less risk to the public health and safety.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 218

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STATE OF NEW JERSEY

DATED: MAY 23, 1983

Assembly Bill No. 218 (Official Copy Reprint) bans the transport or in-transit storage of the high level radioactive materials in the nine New Jersey counties with an average population density in excess of 1,000 persons per square mile: Essex, Bergen, Hudson, Middlesex, Union, Camden, Passaic, Mercer and Monmouth. This ban does not apply to low level radioactive waste.

Assembly Bill No. 218 (Official Copy Reprint) also authorizes the Department of Environmental Protection to ban specific classifications of radioactive material, except radiopharmaceuticals, from transportation in any area in the State, or to allow the transportation through the nine most populous counties, upon a finding that national security interests or urgent public policy objectives supported such action. Assembly Bill No. 218 (Official Copy Reprint) also authorizes the Department of Environmental Protection to allow the transportation of nuclear fuel to, and the transportation of nuclear waste from, nuclear generating plants.

The committee amended Assembly Bill No. 218 (Official Copy Reprint) to remove shipments designated as "Large Quantity" by the Nuclear Regulatory Commission, from the list of prohibited shipments. This classification of radioactive material is the least dangerous, and also encompasses many shipments used for medical purposes. In addition, the committee clarified that the prohibition of shipments of radioactive material applies to shipments "stored in transit", as opposed to "temporarily stored".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 6, 1983

ASSEMBLY BILL NO. 218 (2nd OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 218 (2nd OCR) with my objections for reconsideration.

This bill would ban the transport or in transit storage of high-level radioactive materials in any county of New Jersey which has an average population density exceeding 1,000 persons per square mile as measured in the most recent decennial census. The bill currently would effect Essex, Bergen, Hudson, Middlesex, Union, Camden, Passaic, Mercer and Monmouth counties. The bill also authorizes the Department of Environmental Protection to ban specific classifications of radioactive materials covered by the act from any area of the State upon a finding that the protection of the public requires it, but authorizes the department to allow the transportation of the radioactive materials through these populous counties upon a finding that national security interests or urgent public policy objectives necessitate it. The department may also allow the transportation of nuclear fuel to, and waste from, nuclear electricity generating plants upon a finding that there is no feasible alternate route which involves less risk to the public.

My principle objection to the bill is that it would inadvertently prohibit the transportation of certain scientific equipment and materials used for research, medical therapeutic and educational purposes in New Jersey. It is appropriate that the Department of Environmental Protection be given authority to issue certificates of handling for these materials on a case-by-case basis for transportation through the populous counties covered by this bill if the department is satisfied, after closely examining the intended uses of the materials and the methods in which they will be transported, that their transportation will not pose a significant threat to public health and safety.

Also, while the bill only allows the transportation of new and spent nuclear fuel to and from electricity generating facilities upon a determination

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that no less hazardous route can feasibly be utilized, the bill should impose a requirement that transporters of nuclear fuel consider all alternate modes as well as routes of transportation, as well as alternatives to the shipments themselves, before certificates of handling are issued to them. Moreover, these shipments, which could pose the greatest threat to public safety, should only be allowed if the department and the State Police have determined that adequate safety precautions have been taken and emergency response capabilities exist to protect the public during the transportation of these materials through the State. It should also be established by the department as a precondition to issuing such certificates of handling that the shipments are secured by adequate insurance or other forms of indemnification given the risks posed by the transportation of spent nuclear fuel to the public.

Additionally, there are two changes I would recommend which are technical in nature. The effective date of this bill, which puts section 1 into effect immediately but leaves the rest of the bill inoperative for 60 days, should be amended to make the entire bill effective 60 days after enactment. Also, the provision that restricts the transportation of plutonium isotopes should be made consistent with the bill's other restrictions which only apply to amounts of radioactive material having activity in excess of 20 curies.

Accordingly, I herewith recommend the following amendments for concurrence by the Legislature:

Page 1, Section 1, Line 6: After "exceeding" DELETE "2" and INSERT "20 curies;"

Page 1, Section 1, Line 7: DELETE entirely.

Page 2, Section 3, Lines 1 through 14: DELETE entirely and insert:

3. Notwithstanding the provisions of sections 1 and 2 of this act, the department may issue "certificates of handling" on a case-by-case basis for radioactive materials covered under this act:

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EXECUTIVE DEPARTMENT

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- a. for compelling reasons involving urgent public policy or national security interests which transcend public health and safety concerns;
- b. for research or development activities, medical therapy, or educational purposes which the department determines do not pose significant threats to public health and safety;
- c. for the transportation of nuclear fuel to any nuclear generating facility upon a finding by the department that there is no feasible alternate route or mode of transportation which involves less risk to the public; or
- d. for the transportation of spent or irradiated nuclear fuel to or from any nuclear electricity generating facility upon a finding by the department that there is no feasible alternate route or mode of transportation or method of disposition which involves less risk to the public health and safety; provided, however, that no certificate of handling shall be issued for the transportation of such fuel unless the department and the State Police have jointly determined that adequate safety precautions have been taken by the transporter and that adequate emergency response capabilities exist to protect the public during such transportation, and the department has further determined that the shipment of such fuel is secured by a limit of insurance or other form of indemnification, either by law or privately obtained, which is appropriate for the protection of the public in view of the risks associated with such transportation.

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EXECUTIVE DEPARTMENT

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Page 2, Section 5, Line 2: DELETE entirely.

Respectfully,

/s/ Thomas H. Kean
GOVERNOR

[seal]

/s/ W. Cary Edwards

Chief Counsel