

13:1E-179

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 13:1E-179

(Low Level
Radioactive
Waste)

LAWS OF: 1991

CHAPTER: 166

Bill No: S3054

Sponsor(s): Bennett

Date Introduced: October 15, 1990

Committee: Assembly: Appropriations; Conservation

Senate: Land Use

Amended during passage: Yes Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: April 25, 1991

Senate: January 14, 1991

Date of Approval: June 19, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes 4-15-91 & 3-7-91

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

STATE OF NEW JERSEY

INTRODUCED OCTOBER 15, 1990

By Senator BENNETT

1 AN ACT concerning low-level radioactive waste generator fees
2 and amending and supplementing P.L.1987, c.333.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 3 of P.L.1987, c.333 (C.13:1E-179) is amended to
7 read as follows:

8 3. As used in this act:

9 a. "Board" means the New Jersey Low-Level Radioactive
10 Waste Disposal Facility Siting Board created pursuant to section
11 4 of this act;

12 b. "Commission" means the Northeast Interstate Low-Level
13 Radioactive Waste Commission created pursuant to Article IV of
14 P.L.1983, c.329 (C.32:31-5);

15 c. "Committee" means the New Jersey Radioactive Waste
16 Advisory Committee created pursuant to section 6 of this act;

17 d. "Department" means the Department of Environmental
18 Protection;

19 e. "Disposal" means the isolation of low-level radioactive
20 waste from the biosphere for the hazardous life of the waste;

21 f. "Environmental and health impact statement" means a
22 statement of likely environmental and public health impacts
23 resulting from the construction and operation of the regional
24 low-level radioactive waste disposal facility, and includes an
25 inventory of existing environmental conditions at the site, a
26 project description, an assessment of the impact of the project on
27 the environment and on public health, a listing of unavoidable
28 environmental and public health impacts, and steps to be taken to
29 minimize environmental and public health impacts during
30 construction and operation;

31 g. "Host municipality" means the municipality in which a
32 regional low-level radioactive waste disposal facility is to be
33 located;

34 h. "Facility" means the land, buildings, equipment, and
35 improvements used or developed for the treatment, storage, or
36 disposal of the low-level radioactive wastes generated within the
37 party states to the Northeast ²Interstate² Low-Level
38 Radioactive Waste Management Compact;

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLM committee amendments adopted December 3, 1990.

² Assembly ANR committee amendments adopted March 7, 1991.

1 i. "Low-level radioactive waste" means radioactive waste that
2 (1) is neither high-level waste nor spent fuel, nor by-product
3 material as defined in ¹paragraph (2) of subsection ²[e. of section
4 11 of¹ the "Atomic Energy Act of 1954," 68 Stat. 921 (42 U.S.C.
5 §2011 et seq.)] (e) of 42 U.S.C. §2014² ; and (2) is classified by
6 the federal government as low-level waste, consistent with
7 existing law; but does not include waste generated as a result of
8 atomic energy defense activities of the federal government, as
9 defined in the "Low-Level Radioactive Waste Policy Act,"
10 Pub.L.96-573 (42 U.S.C. §2021b et seq.) and the "Low-Level
11 Radioactive Waste Policy ²[Act]² Amendments ²Act² of 1985,"
12 Pub.L.99-240 ²[(42 U.S.C. §2021d et seq.)] (42 U.S.C. §2021b et
13 seq.)² or federal research and development activities;

14 j. "Owner or operator" means, in addition to the usual
15 meanings thereof, every owner of record of any interest in land
16 whereon the facility is located;

17 k. "Plan" means the Low-Level Radioactive Waste Disposal
18 Plan adopted by the board pursuant to section 10 of this act;

19 l. "Region" means the geographical area encompassed by the
20 combined jurisdictions of the party states to the Northeast
21 Interstate Low-Level Radioactive Waste Management Compact;
22 [and]

23 m. "Site" means both the physical location with a buffer zone
24 and the technology employed to isolate low-level radioactive
25 waste at that location; ²and²

26 n. "Generator" means any person, association, public utility,
27 hospital, clinic, research laboratory, corporation, society,
28 radiopharmaceutical facility, ¹academic facility,¹ or nuclear
29 medical research facility that produces low-level radioactive
30 waste, or any other entity identified by the board that produces
31 low-level radioactive waste, or that is licensed by the United
32 States Nuclear Regulatory Commission to use, possess, handle or
33 dispose of radioactive materials.

34 (cf: P.L.1987, c.333, s.3)

35 2. Section 5 of P.L.1987, c.333 (C.13:1E-181) is amended to
36 read as follows:

37 5. The board shall have the following powers and duties:

38 a. To adopt bylaws for the regulation of its affairs and the
39 conduct of its business;

40 b. To adopt and have a seal and to alter the same at its
41 pleasure;

42 c. To enter into contracts upon such terms and conditions as
43 the board shall determine to be reasonable, and to pay or
44 compromise any claim arising therefrom;

45 d. To call to its assistance and avail itself of the services of
46 such employees of any State, county or municipal department,
47 board, commission or agency as may be required and made
48 available for these purposes;

49 e. To contract for and to accept any gifts or grants or loans of

1 funds or financial or other aid in any form from the United States
2 of America or any agency, instrumentality or political subdivision
3 thereof, and to comply, subject to the provisions of the act, with
4 terms and conditions thereof;

5 f. To employ an executive director, consulting engineers,
6 attorneys, real estate counselors, appraisers, and such other
7 consultants and employees as may be required in the judgment of
8 the board to carry out the purposes of this act, and to fix and pay
9 their compensation from funds available to the board therefor, all
10 without regard to the provisions of Title 11A of the New Jersey
11 Statutes;

12 g. To hold public meetings or hearings within this State on any
13 matter related to the siting of a regional low-level radioactive
14 waste facility;

15 h. To administer the regional low-level radioactive waste
16 disposal facility siting process established in this act, and to
17 instruct all participants in the process as to methods and actions
18 designed to provide for an effective and efficient implementation
19 of the process;

20 i. To take actions necessary or appropriate to maximize the
21 source and volume reduction of low-level radioactive waste
22 generated within the region;

23 j. To seek and review proposals for the construction,
24 maintenance, operation, closure, and post-closure observation
25 and maintenance of the regional low-level radioactive waste
26 disposal facility on the established site, and make
27 recommendations as appropriate;

28 k. To do and perform any acts and things authorized by this
29 act under, through, or by means of its own officers, agents, and
30 employees, or by contract with any person;

31 l. To provide such information as necessary to both the
32 department and the commission; [and]

33 m. To use such information as may be developed by the
34 commission or its contract agents;

35 n. To ¹construct, maintain, own and operate maintain
36 oversight and supervision of the construction, maintenance,
37 operation, closure, and post-closure observation and maintenance
38 of¹ a facility sited pursuant to the provisions of this act; and

39 o. To assess and collect fees from generators sufficient to
40 meet all expenses incurred by the board and the department in
41 implementing the provisions of this act.

42 In addition, the board and its representatives, agents, or
43 employees shall have the right of entry to perform any and all
44 actions necessary and contingent to its site selection duties.

45 (cf: P.L.1987, c.333, s.5)

46 3. (New section) a. Every generator shall register with the
47 board, on a form and in a manner prescribed by the board, and
48 pay an annual fee in an amount set by the board pursuant to rules
49 and regulations adopted pursuant to the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The board
2 may set annual fees in accordance with a sliding scale based upon
3 the activity and the volume of the low-level radioactive waste
4 produced by the generator, and on any other factors the board
5 deems relevant.

6 b. The fees authorized pursuant to this section may be
7 assessed on the basis of calculations which shall include, but need
8 not be limited to, the cost of site selection, characterization,
9 design and engineering, land acquisition, the construction,
10 operation and closure of a facility, and any other costs associated
11 with the license application required to be submitted by the board
12 to the United States Nuclear Regulatory Commission pursuant to
13 the "Low-Level Radioactive Waste Policy Amendments Act of
14 1985," Pub.L.99-240 ²[(42 U.S.C. §2021d et seq.)] (42 U.S.C.
15 §2021b et seq.)². The board may also assess and collect fees in
16 amounts necessary to defray costs incurred by the department in
17 implementing the relevant provisions of P.L.1987, c.333
18 (C.13:1E-177 et seq.), and costs incurred by the department in
19 complying with the provisions of the "Low-Level Radioactive
20 Waste Policy Act," Pub.L.96-573 (42 U.S.C. §2021b et seq.) and
21 the "Low-Level Radioactive Waste Policy Amendments Act of
22 1985," Pub.L.99-240 ²[(42 U.S.C. §2021d et seq.)] (42 U.S.C.
23 §2021b et seq.)².

24 4. (New section) a. The Board of Public Utilities shall
25 consider all fees paid to the board by a public utility pursuant to
26 section 3 of this act as a current expense of providing utility
27 service, which shall be charged to all ratepayers of the utility in
28 the same manner as other current operating expenses of providing
29 utility service.

30 b. (1) The Commissioner of Health shall recommend to the
31 Hospital Rate Setting Commission adjustments to the
32 reimbursement rates for affected generators for fees imposed
33 pursuant to section 3 of this act, but that are not currently
34 reimbursed under the rate setting system established by section 5
35 of P.L.1978, c.83 (C.26:2H-4.1). The Division of Medical
36 Assistance and Health Services shall recommend to the
37 Commissioner of Human Services adjustments to the
38 reimbursement rates under Medicaid for affected generators for
39 fees that are imposed pursuant to section 3 of this act, but that
40 are not currently reimbursed under the Medicaid rate setting
41 system.

42 (2) The Commissioner of Health shall develop and implement a
43 generic appeal process, under which any hospital may petition the
44 Hospital Rate Setting Commission under the appropriate appeal
45 option for the expeditious reimbursement of the fees imposed
46 pursuant to section 3 of this act, to the extent that the fees are
47 not currently reimbursed under the rate setting established by
48 P.L.1971, c.136 ²[(c.26:2H-1 et seq.)] (C.26:2H-1 et seq.)² or
49 section 5 of P.L.1978, c.83 (C.26:2H-4.1), as the case may be.

1 5. (New section) ²a.² The Low-level Radioactive Waste
2 Disposal Facility Fund is established as a nonlapsing revolving
3 fund in the Department of Environmental Protection. The fund
4 shall be administered by the New Jersey Low-Level Radioactive
5 Waste Disposal Facility Siting Board, and shall be credited with
6 all fees collected pursuant to section 3 of this act. Moneys in the
7 fund shall be used by the board, or the department, as the case
8 may be, to implement the provisions of P.L.1987, c.333
9 ¹[(C.13:1E-181)] (C.13:1E-177 et seq.)¹, the "Low-Level
10 Radioactive Waste Policy Act," Pub.L.96-573 (42 U.S.C. §2021b
11 et seq.) and the "Low-Level Radioactive Waste Policy
12 Amendments Act of 1985," Pub.L.99-240 ²[(42 U.S.C. §2021d et
13 seq.)] (42 U.S.C. §2021b et seq.)². ¹The expenditure of moneys in
14 the fund shall be subject to the approval of the Director of the
15 Division of Budget and Accounting in the Department of the
16 Treasury. In the event that the board ceases operation or that
17 additional expenditures are not otherwise required, any moneys
18 remaining in the fund shall be returned to generators in the same
19 proportion in which the fees were assessed and paid.¹

20 ²b. The board shall cause an annual audit to be made of the
21 fund and all expenditures of moneys from the fund. The audit
22 shall include a determination of the extent to which the
23 expenditures directly relate to costs incurred in the
24 implementation of the relevant provisions of P.L.1987, c.333
25 (C.13:1E-177 et seq.), the "Low-Level Radioactive Waste Policy
26 Act," Pub.L.96-573 (42 U.S.C. §2021b et seq.), and the
27 "Low-Level Radioactive Waste Policy Amendments Act of 1985,"
28 Pub.L.99-240 (42 U.S.C. §2021b et seq.), including, but not
29 limited to, salaries and administrative expenses. Each annual
30 audit shall be subject to review by the State Auditor, and shall be
31 transmitted to the presiding officer of each House of the
32 Legislature and to the respective chairpersons of the Senate Land
33 Use Management and Regional Affairs Committee, the Senate
34 Environmental Quality Committee, the Assembly Waste
35 Management, Planning and Recycling Committee, the Assembly
36 Energy and Environment Committee, and the Assembly
37 Conservation and Natural Resources Committee, or their
38 successors.²

39 ²[6. (New section) The New Jersey Low-Level Radioactive
40 Waste Disposal Facility Siting Board shall adopt, pursuant to the
41 "Administrative Procedure Act," rules and regulations necessary
42 to implement the provisions of this act.]²

43 ²[7.] 6.² This act shall take effect immediately.

46 WASTE MANAGEMENT

47
48 Authorizes imposition of fees upon low-level radioactive waste
49 generators.

1 be, to implement the provisions of P.L.1987, c.333 (C.13:1E-181),
2 the "Low-Level Radioactive Waste Policy Act," Pub.L.96-573 (42
3 U.S.C. §2021b et seq.) and the "Low-Level Radioactive Waste
4 Policy Amendments Act of 1985," Pub.L.99-240 (42 U.S.C.
5 §2021d et seq.).

6 6. (New section) The New Jersey Low-Level Radioactive
7 Waste Disposal Facility Siting Board shall adopt, pursuant to the
8 "Administrative Procedure Act," rules and regulations necessary
9 to implement the provisions of this act.

10 7. This act shall take effect immediately.

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STATEMENT

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15 This bill would allow the Low-level Radioactive Waste Disposal
16 Siting Board to assess and collect fees upon generators of
17 low-level radioactive waste in order to obtain funds for the site
18 selection, site characterization studies, design, engineering, land
19 acquisition, construction, operation and closure of a low-level
20 radioactive waste disposal facility, any other costs associated
21 with the license application required pursuant to the Low-Level
22 Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C.
23 §2021d et seq. and costs incurred by the Department of
24 Environmental Protection related to the New Jersey Regional
25 Low-Level Radioactive Waste Disposal Facility Siting Act,
26 P.L.1987, c.333 et seq. and the federal law. The federal law
27 requires that a complete application to operate a low-level
28 radioactive waste disposal facility be submitted by January 1,
29 1992. The license application requires that extensive geology,
30 hydrology, meteorology, ecology, and land use studies be
31 conducted. Further, preliminary design and engineering studies
32 must be conducted.

33 The failure to submit a timely application will result in a
34 surcharge of \$120 per square foot for disposal of low-level
35 radioactive waste in the three existing facilities. If future
36 federal deadlines are not met, the three existing disposal
37 facilities will be able to exclude New Jersey waste and the State
38 will be required to take possession. Generators of this waste
39 include nuclear power plants, hospitals, research development
40 facilities, and universities. This bill would enable the siting board
41 to impose fees upon the generators of the waste to develop and
42 operate the waste disposal facility.

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WASTE MANAGEMENT

46

47 Authorizes imposition of fees upon low-level radioactive waste
48 generators.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[SECOND REPRINT]

SENATE, No. 3054

STATE OF NEW JERSEY

DATED: APRIL 15, 1991

The Assembly Appropriations Committee reports favorably Senate Bill No. 3054 [2R].

Senate Bill No. 3054 [2R] authorizes the Low-Level Radioactive Waste Disposal Siting Board to assess and collect fees from generators of low-level radioactive waste and creates a Low-Level Radioactive Waste Disposal Facility Fund for deposit of fee revenues. The fee revenues will be used to fund the site selection, site characterization, design, engineering, land acquisition, construction, operation, and closure of a low-level radioactive waste disposal facility in the State. The revenues will also fund any other costs associated with the license application required pursuant to the federal "Low-Level Radioactive Waste Policy Amendments Act of 1985," 42 U.S.C. §2021b et seq., and costs incurred by the Department of Environmental Protection related to the New Jersey "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.) and the federal law.

The federal law requires that a complete application to operate a low-level radioactive waste disposal facility be submitted by January 1, 1992. The license application requires that extensive geology, hydrology, meteorology, ecology, and land use studies be conducted. Further, preliminary design and engineering studies must be conducted. Failure to submit a timely application will result in a tripling of the existing surcharge on waste generators to \$120 per cubic foot for disposal of low-level radioactive waste in the three existing facilities in the nation. If future federal deadlines are not met, the three existing disposal facilities in the nation will be able to exclude New Jersey waste and the State will be required to take possession. Generators of this waste include nuclear power plants, hospitals, research development facilities, and universities.

This bill authorizes the board to oversee and supervise the construction, maintenance, operation, closure, and post-closure observation and maintenance of a disposal facility, make expenditures of fee revenues in the fund subject to the approval of the Director of the Division of Budget and Accounting, and provide for a refund of excess fee revenues in the event that the board ceases operation or other expenditures are not required.

The bill also requires an annual audit of the fund and all expenditures of fund monies. The audit would include a determination of the extent to which the expenditures directly relate to costs incurred in the implementation of the relevant provisions of applicable State and federal laws, including to salaries and administrative expenses.

Senate Bill No. 3054 [2R] is identical to Assembly Bill No. 4419 [1R].

FISCAL IMPACT

A fiscal note has not been completed for this bill at this time. The bill specifies the purposes for which fees may be assessed and expended, but not the amount of such fees. However, the FY 1992 Budget Request documents submitted by the Low-Level Radioactive Waste Disposal Siting Board indicate that \$13,459,531 will be required in FY 1992 and \$12,589,853 in FY 1993 to fund its mandated operations. These amounts include \$416,000 in FY 1992 and \$433,000 in FY 1993 for the board's administrative expenses. In FY 1990, the board expended \$1,427,000 out of total available funds of \$1,663,000; in FY 1991, \$450,000 was appropriated to the board; in FY 1992 the board's approved request was \$414,000, but the Governor's Budget Recommendation provides no funding.

The board's FY 1992 Budget Request documents also indicated that approximately \$70,000,000 to \$75,000,000 will be required over the next five to seven years to comply with the federal mandate to construct and operate a disposal facility.

ASSEMBLY CONSERVATION AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 3054

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 1991

The Assembly Conservation and Natural Resources Committee favorably reports Senate Bill No. 3054 [1R] with Assembly committee amendments.

This bill would authorize the Low-level Radioactive Waste Disposal Siting Board to assess and collect fees from generators of low-level radioactive waste. The fee revenues would be used to fund the site selection, site characterization, design, engineering, land acquisition, construction, operation, and closure of a low-level radioactive waste disposal facility. In addition, the revenues would fund any other costs associated with the license application required pursuant to the "Low-Level Radioactive Waste Policy Amendments Act of 1985," 42 U.S.C. §2021b et seq., and the costs incurred by the Department of Environmental Protection related to the New Jersey "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.) and the federal law. The federal law requires that a complete application to operate a low-level radioactive waste disposal facility be submitted by January 1, 1992. The license application requires that extensive geology, hydrology, meteorology, ecology, and land use studies be conducted. Further, preliminary design and engineering studies must be conducted.

The failure to submit a timely application will result in a tripling of the existing surcharge to \$120 per cubic foot for disposal of low-level radioactive waste in the three existing facilities in the nation. If future federal deadlines are not met, the three existing disposal facilities in the nation will be able to exclude New Jersey waste and the State will be required to take possession. Generators of this waste include nuclear power plants, hospitals, research development facilities, and universities.

This bill would enable the Siting Board to impose fees upon the generators of the waste to develop the low-level radioactive waste disposal facility. It would also authorize the Siting Board to oversee and supervise the construction, maintenance, operation, closure, and post-closure observation and maintenance of a low-level radioactive waste disposal facility, make expenditures from the Low-Level Radioactive Waste Disposal Facility Fund established in the bill

subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury, and provide for a refund of excess fee revenues in the event that the Siting Board ceases operation or other expenditures are not required.

The committee amended the bill to provide for an annual audit of the fund established in the bill and all expenditures therefrom. The audit would include a determination of the extent to which the expenditures directly relate to costs incurred in the implementation of the relevant provisions of P.L.1987, c.333 (C.13:1E-177 et seq.), the "Low-Level Radioactive Waste Policy Act," Pub.L.96-573 (42 U.S.C. §2021b et seq.), and the "Low-Level Radioactive Waste Policy Amendments Act of 1985," Pub.L.99-240 (42 U.S.C. §2021b et seq.), including, but not limited to, salaries and administrative expenses. The committee also made technical amendments to the bill and deleted a section concerning the promulgation of rules and regulations by the Siting Board that was redundant with current law.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4419 of 1991 as also amended and reported by the committee.

SENATE LAND USE MANAGEMENT
AND REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 3054

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 3, 1990

The Senate Land Use Management and Regional Affairs Committee favorably reports Senate Bill No. 3054 with committee amendments.

Senate Bill No. 3054 would authorize the Low-level Radioactive Waste Disposal Siting Board to assess and collect fees from generators of low-level radioactive waste. The fee revenues would be used to fund the site selection, site characterization studies, design, engineering, land acquisition, construction, operation and closure of a low-level radioactive waste disposal facility. In addition, the revenues would fund any other costs associated with the license application required pursuant to the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. §2021d et seq., and the costs incurred by the Department of Environmental Protection related to the New Jersey Regional Low-Level Radioactive Waste Disposal Facility Siting Act, P.L.1987, c.333 and the federal law. The federal law requires that a complete application to operate a low-level radioactive waste disposal facility be submitted by January 1, 1992. The license application requires that extensive geology, hydrology, meteorology, ecology, and land use studies be conducted. Further, preliminary design and engineering studies must be conducted.

The failure to submit a timely application will result in a tripling of the existing surcharge to \$120 per cubic foot for disposal of low-level radioactive waste in the three existing facilities. If future federal deadlines are not met, the three existing disposal facilities will be able to exclude New Jersey waste and the State will be required to take possession. Generators of this waste include nuclear power plants, hospitals, research development facilities, and universities.

This bill would enable the Siting Board to impose fees upon the generators of the waste to develop and operate the low-level radioactive waste disposal facility.

Senate committee amendments would: (1) include academic facility within the definition of generator; (2) authorize the Siting Board to oversee and supervise (rather than own and operate) the construction, maintenance, operation, closure, and post-closure observation and maintenance of a low-level radioactive waste disposal facility; (3) make expenditures from the Low-Level Radioactive Waste Disposal Facility Fund established in the bill

subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury; (4) provide for a refund of excess fee revenues in the event that the Siting Board ceases operation or other expenditures are not required; and (5) make several technical changes to the bill.