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Sixty-fifth
Legislative Assembly
of North Dakota

# SENATE BILL NO. 2156
# with House Amendments
# SENATE BILL NO. 2156

Introduced by

Senators Klein, Burckhard, Robinson

Representatives J. Nelson, Pollert, Weisz

A BILL for an Act to amend and reenact sections 23-20.2-02, 23-20.2-04, and 23-20.2-09 of the North Dakota Century Code, relating to definitions, permitting required for underground storage and retrieval or waste disposal facilities, and the disposal of radioactive waste material; and to provide for a legislative management study.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.2-02. Definitions.**

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "High-level radioactive waste material" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, which contains fission products in sufficient concentrations to require permanent isolation under federal law, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste.
3. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
~~3.~~4. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.

~~4.~~5. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.

~~5.~~6. "Waste" includes liquid wastes, gaseous wastes, and solid wastes ~~as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal~~.

**SECTION 2. AMENDMENT.** Section 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.2-04. Permit required - Denial of permit - Review.**

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

**SECTION 3. AMENDMENT.** Section 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.2-09. Deposit of high-level radioactive waste material - Legislative and local zoning approval required.**

1. ~~No~~A person~~, firm, corporation, limited liability company, or other legal entity~~ may not deposit, or cause or permit to be deposited in this state, any high-level radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly .~~Radioactive waste material means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides.~~ A county's zoning approval may not preclude the disposal development if approved by the legislative assembly, but may regulate the size, scope, and location.
2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY.** During the 2017-18 interim, the legislative management shall consider studying, in consultation with the geological division of the department of mineral resources and the environmental health section of the state department of health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal

law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the commerce clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.