

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON HUMAN RESOURCES AND FACILITIES

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 11, 1981

The Senate Committee on Human Resources and Facilities was called to order by Chairman Joe Neal at 8:06 a.m., Wednesday, March 11, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Joe Neal, Chairman
Senator James N. Kosinski, Vice Chairman
Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator Virgil M. Getto
Senator James H. Bilbray

GUEST LEGISLATORS:

Senator William Hernstadt

STAFF MEMBERS PRESENT:

Will Crocket, Senate Bill Drafting Advisor
Connie Richards, Committee Secretary

SENATE BILL NUMBER 201 (EXHIBIT C)

Senator William Hernstadt presented to the committee a copy of a letter he received from Mr. Will Crocket, Senate Bill Drafting Advisor. This letter states that Senate Bill No. 201 is unconstitutional. (See Exhibit D).

Senator Bilbray asked Senator Hernstadt whether an opinion had been solicited from the attorney general.

Senator Hernstadt said that he had not done so.

Senator Hernstadt suggested a stateline inspection be made of all radioactive waste being transported into the state. He said the funds for the implementation of such a program

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could come from taxes levied on the originators of the waste. He added that if these taxes are too burdensome on those companies they can take their waste elsewhere, and in either case the citizens of Nevada will benefit.

Senator Kosinski asked Mr. Will Crocket how far, in his opinion, the State of Nevada can go in restricting or prohibiting the flow of low level and/or high level waste into and through the State of Nevada.

Mr. Crocket said high level waste has been pre-empted by the federal government since 1946 when the Atomic Energy Act created the field, and in 1959 the act was amended to allow the states to regulate low level waste.

Senator Faiss asked Mr. Crocket if all federal references in Section 1, Subsection 2 were taken out whether the bill would then be constitutional.

Mr. Crocket said there are additional problems besides the federal reference, he referred to the words "any waste" in line 14 which could also refer to high level waste which is pre-empted by federal law. Secondly, Subsection 1 of Section 1 refers to transport through or into Nevada; this would constitute an embargo of interstate commerce. He referred to Public Law 96-573 (See Exhibit D).

Senator Kosinski asked Mr. Crocket if the act could allow Nevada to prohibit the use of the Nevada test site for the dumping of low level waste.

Mr. Crocket said he doesn't think the state can prohibit the activities of the test site as long as it is under federal direction.

Senator Kosinski asked what the act actually does.

Mr. Crocket said the act holds the status quo until a regional compact can be developed and regional sites can be established.

Senator Kosinski asked Mr. Crocket whether Nevada could stop another state's waste from entering Nevada if Nevada refused to enter a regional compact with that other state.

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Mr. Crocket referred to Public Law 96-573, (Exhibit D),
Section 4 (A).

Senator Kosinski said he does not understand how the act
changes the state's powers from those the state has today.

Mr. Crocket said the greatest immediate affect is on the
State of Oregon and other states which have prohibited
disposal of waste within their own states; the act states
that each state is responsible for its own waste disposal.
He added that in 1986 regional sites may be formed, at which
time a state may dispose of its own waste (within that state)
and no other state's waste.

Senator Kosinski said Nevada already has that power.

Mr. Crocket said he could see no intent in the federal law
to permit any embargoes until 1986.

Senator Kosinski asked whether the state would in effect be
embargoing if it chose not to license a site in Nevada.

Mr. Crocket replied that as the law stands today; if only in-
state waste is licensed, that can be deemed discrimination a-
gainst interstate commerce.

Dr. John Vaden, Health Division noted that the State of Texas
is establishing a dumpsite for the use of that state only. He
added that the state will operate the site as a state agency
for the benefit of Texas citizens.

Senator Getto asked whether he was correct in assuming this
would not prohibit the transportation of radioactive waste
through the State of Texas.

Dr. Vaden said Senator Getto's assumption was correct.

Senator Faiss asked whether any studies are being made rela-
tive to the formulation of regional dumpsites.

Dr. Vaden said the Department of Energy as well as the U. S.
Geological Survey are in the process of determining what
would be necessary for the establishment of regional dump-
sites.

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The Chairman asked Dr. Vaden when the state got involved in the U. S. Ecology site and who had control of the site before that time.

Dr. Vaden said the site was licensed by the atomic energy commission in 1962 which had control until 1972 at which time the State of Nevada assumed the responsibility for licensing of the site.

Senator Kosinski asked whether a use permit system for shippers had been implemented as of this date.

Dr. Vaden said the system was implemented approximately six months ago.

Senator Kosinski asked whether cases of faulty packaging have been identified through the program.

Dr. Vaden said there have been several incidents of faulty packaging. He identified the cause of this faulty packaging as the lack of an adequate insurance program within the packaging company.

Senator Kosinski asked whether those packagers' permits were revoked or suspended.

Dr. Vaden said the permits were suspended until they could insure that the procedures for loading and packaging met NRC regulations.

Senator Kosinski asked whether there had ever been a second incident occur after the suspension and reissuance of a permit.

Dr. Vaden said there have been two such cases; both had their licenses permanently revoked after the second incident.

The Chairman asked Dr. Vaden to define the word "millicurie".

Dr. Vaden said the term "curie" is a measure of the amount of radioactivity of the waste; the intensity. He said the hazard of the waste cannot be determined entirely by this number, but the greater the degree of activity within the waste, the greater the hazard of the waste itself. This recorded activity is the number of disintegrations per second.

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Senator Kosinski asked Dr. Vaden whether the State of Nevada derives any revenue from the Beatty dumpsite.

Dr. Vaden said the state is paid \$20,000 per year rent for the use of the site and the long term care and maintenance fund is paid \$.25 per cubic foot of waste that is deposited.

The Chairman asked Dr. Vaden if he had any opinion as to the merit of the bill.

Dr. Vaden said he did not have an opinion and only deals with licensing.

Mr. Al Edmundson, Bureau Chief, Health Division stated that the long term care and maintenance fund for the Beatty dumpsite actually receives \$.25 per cubic foot of radioactive waste and \$.07 per cubic foot of chemical waste that is deposited.

Ms. JoAnne Buehler, U. S. Ecology, said in 1980, the Department of Transportation passed regulations stating that states cannot prohibit the transportation of hazardous materials through their states. She added that the department has said they will work with states to establish preferred routes.

Ms. Buehler said the Department of Defense and the Department of Energy have agreed that if there is an emergency situation in terms of the commercial low level sites in the nation being shut to use, they would open Department of Defense low level sites for commercial use. This would include the Nevada test site as well as the Hanford Reservation in Washington; there being a total of 16 to 20 low level sites that are under Department of Defense/Department of Energy contracts at this time.

Ms. Buehler accounted for the committee a federal supreme court case, Philadelphia vs. the State of New Jersey referring to hazardous waste in which the state was trying to forbid the importation of waste for disposal within the state. She said this case of prohibition was found unconstitutional.

Senator Kosinski asked Ms. Buehler whether that supreme court case dealt with a commercially or state operated site.

Ms. Buehler said the case dealt with a commercially operated site.

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Senator Kosinski asked Ms. Buehler when the contract between U. S. Ecology and the State of Nevada expires.

Ms. Buehler said the license is up for renewal this fall and will be renewed for either one or three years. She said the lease is for 20 years and it began in 1977.

Senator Kosinski asked Ms. Buehler whether there is enough land, at the present rate of dumping, for the lease to last until 1997.

Ms. Buehler said there is enough room in the radiological facility to operate until sometime near the end of the century if the rate is not escalated. She said the chemical site may be somewhat different due to the projected increase in the amount of chemical waste being disposed of at all chemical facilities. She added that less than 20 percent of all chemical waste in the U. S. is currently being properly disposed of.

Ms. Buehler said the initiative in the State of Washington attempting to close the site to anything but medical wastes outside the site will most likely be found unconstitutional on two or three grounds and will probably be taken to court by a consortium of interested parties sometime this spring.

Mr. Bob Warren, Executive Secretary, Nevada Mining Association suggested a subsection 5 be added to the bill: "As used in this section, "radioactive waste" does not mean radioactive waste resulting in mining or milling."

SENATE BILL NUMBER 86 (EXHIBIT E)

Ms. JoAnne Buehler referred to page 2, Section 3, Subsections 1 and 2; she said the state employees who monitor the facility have a trailer outside of the fence of the site; they take their monitoring equipment to the site and return it to the trailer each day. She asked that the bill be amended so these people would not be fined for the removal of this equipment.

The Chairman asked Ms. Buehler whether she could provide some suggested language to make this change.

Ms. Buehler said she would provide the suggested language.

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SENATE BILL NUMBER 201 (EXHIBIT C)


Senator Getto moved to "Indefinitely Postpone" Senate Bill Number 201.

Senator Blakemore seconded the motion.

The motion carried. (Senator Bilbray voted "No".)

There being no further business, the meeting adjourned at 10:03 a.m.

Respectfully submitted:


Connie S. Richards, Committee Secretary

APPROVED BY:


Senator Joe Neal, Chairman

DATE: 3-25-81

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Human Resources and Facilities , Room 323 .

Day Wednesday , Date March 11 , Time 8:00 a.m.

S. B. No. 86--Provides for regulation of transport and disposal of radioactive, chemical and other hazardous materials.

S. B. No. 201--Prohibits transport of radioactive waste through Nevada or its disposal within Nevada if generated outside the state.

S. B. 201

**SENATE BILL NO. 201—SENATORS HERNSTADT
AND BILBRAY**

FEBRUARY 10, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Prohibits transport of radioactive waste through Nevada or its disposal within Nevada if generated outside the state. (BDR 40-418)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to radioactive waste; prohibiting transport of such waste through Nevada or disposal of such waste in Nevada if it has been generated outside this state; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. Chapter 459 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 1. *The legislature finds that the transport of radioactive waste through*
4 *the State of Nevada or into Nevada for disposal within this state poses a*
5 *risk to the health and welfare of the citizens of Nevada.*
6 2. *No federal, state or local governmental agency or other person*
7 *outside the State of Nevada may transport or cause to be transported*
8 *through Nevada or into Nevada for disposal in this state any radioactive*
9 *waste. The health division shall not issue a license or permit to such an*
10 *agency or person to engage in such transport or disposal.*
11 3. *A person who operates an area for the disposal of radioactive*
12 *waste which is located in this state shall not accept for disposal any radio-*
13 *active waste generated outside this state.*
14 4. *As used in this section, "radioactive waste" means any waste mate-*
15 *rial which emits any ionizing radiation.*

STATE OF NEVADA
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February 5, 1981

EXHIBIT D

Senator Bill Hernstadt
Senate Chambers
Legislative Building
Carson City, Nevada 89701

Dear Senator Hernstadt:

You have requested a bill which would ban the disposal in or transport through Nevada of radioactive waste which originates outside the state. In my opinion the bill you request is unconstitutional.

Radioactive materials and their use have been regulated by the Federal Government since the passage of the Atomic Energy Act of 1946. This act is based on the power of Congress to regulate interstate commerce and federal lands and to provide for national defense and security, and its constitutionality is not seriously open to question. Notwithstanding the legality of that Act, Nevada may exercise its police power regarding such disposal as long as the state law does not conflict with existing federal law and does not discriminate against or embargo interstate commerce.

A state law which conflicts with federal law is void, or preempted, on the basis of the Supremacy Clause which provides that the Constitution and federal law shall be the supreme law of the land. The Atomic Energy Act of 1946 provided for federal ownership of all fissionable materials and related facilities, and that Act preempted the field. The Atomic Energy Act of 1954 provided for private ownership, production and use of fissionable materials under federal license, but federal preemption of the field continued respecting radiological health and safety. Regulations adopted pursuant to the

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Atomic Energy Act, as amended, provide that high-level radioactive waste which is intended for disposal must be transferred to a federal repository on federally owned and controlled land, at which time the Nuclear Regulatory Commission takes title to the waste. 10 C.F.R. Part 50, Appx. Thus, Nevada is preempted by federal law from banning the disposal in or transport through Nevada of high-level radioactive waste, regardless of where it originates. The transport and disposal of such waste is exclusively a federal activity.

The Atomic Energy Act of 1959 ended federal preemption of the field, however, by permitting a state which has entered into an agreement with the Atomic Energy Commission (or its successor agency, the Nuclear Regulatory Commission) to regulate certain radioactive materials. The Governor of Nevada, pursuant to NRS 459.080, entered into such an agreement with the Commission which became effective July 1, 1972. The Commission's program includes a requirement that it approve procedures for the disposal of "licensed materials," including most low-level radioactive wastes. 10 C.F.R. § 20.302. Arguably, the Commission may hold a hearing, suspend or terminate its agreement with Nevada and resume its regulation of these materials, if it finds that a Nevada ban on the transport or disposal of low-level radioactive waste which originates outside the state is not compatible with the Commission's program of regulation. Unless the Commission takes that action, such a ban against low-level waste by Nevada is not preempted by federal law.

Although not preempted by federal law, such a ban is still unlawful if it violates the Commerce Clause by discriminating against or impeding the free flow of interstate commerce. A state regulation discriminates if it places a more onerous burden on interstate commerce than on intrastate commerce. The burden, in the case of such a ban, would be that out-of-state waste is embargoed from entry into the state while waste from within the state may still be transported and disposed of in the state.

The Commerce Clause does not prohibit all state embargos. Certain embargos have been upheld by the courts even though

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they discriminate against interstate commerce, for example, state quarantine laws which prohibit the import of diseased animals. Mintz v. Baldwin, 289 U.S. 346 (1933). On the other hand, in Philadelphia v. New Jersey, a statute which embargoed out-of-state solid waste was found to violate the Commerce Clause because it discriminated against interstate commerce. 98 S.Ct. 2531 (1978). In the New Jersey case, the Supreme Court distinguished between diseased livestock, which required destruction as soon as possible because the risk of contagion was present in the very movement of the livestock, and solid waste, in which no risk to health was present in its movement.

A Nevada ban on the disposal of radioactive waste which originates outside the state would have to be based on the increased risk to public health inherent in the transport of that waste over the state's highways. Such a showing would be factually difficult because the risk to health of properly packaged low-level radioactive waste is minimal. In addition, the risk created by such waste is distinguishable from livestock which are infected with a contagious disease, in that the waste need not be disposed of as soon and as close to its point of generation as possible. Thus, a Nevada ban against the disposal of low-level radioactive waste which originates outside the state would not be justifiable, based on the risk to health created by the transport over the highways of the state, and would discriminate against interstate commerce.

In addition, I understand that Congress at the end of its last session enacted Public Law 96-573 which makes each state responsible for the disposal of its own radioactive waste. (Due to slowness in printing, the legal division has not yet received a copy of this act.) The act apparently provides for the establishment of regional disposal areas by interstate compact several years hence, at which time the embargo of waste from states which are not members of such a compact would be permissible. Until the time when the provision for regional disposal areas becomes effective, the embargo of another state's waste will apparently continue to be an unlawful discrimination against interstate commerce, as explained above.

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In summary, a Nevada ban against the disposal in Nevada of high-level radioactive waste which originates outside the state is preempted by the Atomic Energy Act of 1946, as amended. Such a ban against low-level radioactive waste, although not preempted by federal law, would be violative of the Commerce Clause because of discrimination against interstate commerce.

Very truly yours,

FRANK W. DAYKIN
Legislative Counsel

By *Will G. Crocket*
Will G. Crocket
Deputy Legislative Counsel

WGC:ab

Public Law 96-573
96th Congress

An Act

To set forth a Federal policy for the disposal of low-level radioactive wastes, and for other purposes.

Dec. 22, 1980
[S. 2189]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Low-Level
Radioactive
Waste Policy
Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Low-Level Radioactive Waste Policy Act".

42 USC 2021b
note.

DEFINITIONS

Sec. 2. As used in this Act—

42 USC 2021b.

(1) The term "disposal" means the isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission under applicable laws.

(2) The term "low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(3) The term "State" means any State of the United States, the District of Columbia, and, subject to the provisions of Public Law 96-205, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(4) For purposes of this Act the term "atomic energy defense activities of the Secretary" includes those activities and facilities of the Department of Energy carrying out the function of—

- (i) Naval reactors development and propulsion,
- (ii) weapons activities, verification and control technology,
- (iii) defense materials production,
- (iv) inertial confinement fusion,
- (v) defense waste management, and
- (vi) defense nuclear materials security and safeguards (all as included in the Department of Energy appropriations account in any fiscal year for atomic energy defense activities).

GENERAL PROVISIONS

Sec. 3. (a) Compacts established under this Act or actions taken under such compacts shall not be applicable to the transportation, management, or disposal of low-level radioactive waste from atomic energy defense activities of the Secretary or Federal research and development activities.

42 USC 2021c.

(b) Any facility established or operated exclusively for the disposal of low-level radioactive waste produced by atomic energy defense activities of the Secretary or Federal research and development

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activities shall not be subject to compacts established under this Act or actions taken under such compacts.

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

Sec. 4. (a)(1) It is the policy of the Federal Government that—

(A) each State is responsible for providing for the availability of capacity either within or outside the State for the disposal of low-level radioactive waste generated within its borders except for waste generated as a result of defense activities of the Secretary or Federal research and development activities; and

(B) low-level radioactive waste can be most safely and efficiently managed on a regional basis.

(2)(A) To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(B) A compact entered into under subparagraph (A) shall not take effect until the Congress has by law consented to the compact. Each such compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent. After January 1, 1986, any such compact may restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the region.

(b)(1) In order to assist the States in carrying out the policy set forth in subsection (a)(1), the Secretary shall prepare and submit to Congress and to each of the States within 120 days after the date of the enactment of this Act a report which—

(A) defines the disposal capacity needed for present and future low-level radioactive waste on a regional basis;

(B) defines the status of all commercial low-level radioactive waste disposal sites and includes an evaluation of the license status of each such site, the state of operation of each site, including operating history, an analysis of the adequacy of disposal technology employed at each site to contain low-level radioactive wastes for their hazardous lifetimes, and such recommendations as the Secretary considers appropriate to assure protection of the public health and safety from wastes transported to such sites;

(C) evaluates the transportation requirements on a regional basis and in comparison with performance of present transportation practices for the shipment of low-level radioactive wastes, including an inventory of types and quantities of low-level wastes, and evaluation of shipment requirements for each type of waste and an evaluation of the ability of generators, shippers, and carriers to meet such requirements; and

(D) evaluates the capability of the low-level radioactive waste disposal facilities owned and operated by the Department of Energy to provide interim storage for commercially generated low-level waste and estimates the costs associated with such interim storage.

(2) In carrying out this subsection, the Secretary shall consult with the Governors of the States, the Nuclear Regulatory Commission, the Environmental Protection Agency, the United States Geological Survey, and the Secretary of Transportation, and such other agencies and departments as he finds appropriate.

Approved December 22, 1980.

State compacts
regarding
regional
facilities.
42 USC 2021d.

Congressional
consent.

Report to
Congress and
States.

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LEGISLATIVE HISTORY:

SENATE REPORT No. 96-548 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 126 (1980):

July 28-30, considered and passed Senate.

Dec. 3, H.R. 8378 considered and passed House; passage vacated and S. 2189, amended, passed in lieu.

Dec. 18, Senate agreed to the House amendment with amendments; House agreed to Senate amendments.

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S. B. 86

SENATE BILL NO. 86—SENATORS JACOBSEN,
GETTO AND NEAL

JANUARY 27, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Provides for regulation of transport and disposal of radioactive, chemical and other hazardous materials. (BDR 40-6)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to radioactive, chemical and other hazardous materials; providing for the regulation of their transport and disposal; clarifying the respective power to adopt regulations respecting nuclear affairs of the state board of health and the health division of the department of human resources; providing penalties; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 459 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 4, inclusive, of this act.
- 3 SEC. 2. 1. *A shipper or producer of radioactive waste, or a broker*
4 *who receives such waste from another person for the purpose of disposal,*
5 *shall not dispose of the waste in this state until he obtains a license from*
6 *the health division to use the disposal area. The health division shall order*
7 *a shipment of such waste from an unlicensed shipper or broker to be*
8 *returned to him, except for a package which has leaked or spilled its*
9 *contents, unless the package has been securely repackaged for return.*
- 10 2. *The health division shall issue a license to use a disposal area to a*
11 *shipper or broker who demonstrates to the satisfaction of the division*
12 *that he will package and label the waste he transports or causes to be*
13 *transported to the disposal area in conformity with the regulations of the*
14 *state board of health;*
- 15 3. *A shipper or broker violates this section if he transports or causes*
16 *to be transported to a disposal area any such waste:*
- 17 (a) *Which is not packaged or labeled in conformity with regulations*
18 *of the state board of health;*
- 19 (b) *Which is not accompanied by a bill of lading or other shipping*
20 *document prescribed by that board; or*
- 21 (c) *Which leaks or spills from its package, unless, by way of affirmative*

1 defense, the shipper or broker proves that the carrier of the waste was
2 responsible for the leak or spill,
3 and if licensed by the board, he may be assessed an administrative penalty
4 by the health division of not more than \$500, or if not licensed, he is
5 guilty of a misdemeanor.

6 4. Each container of such waste which is not properly packaged or
7 labeled, or leaks or spills its contents, constitutes a separate violation, but
8 the total amount of the penalty or fine for any one shipment must not
9 exceed \$10,000. In imposing a penalty or fine, the health division or the
10 court shall consider the substantiality of the violation and the injury or
11 risk of injury to persons or property in this state.

12 5. The health division, or the board pursuant to NRS 459.100, may
13 suspend or revoke a license to use a disposal area if it finds that the licen-
14 see has violated any provision of this chapter. If a license has been
15 revoked, it may be reinstated only if the licensee demonstrates to the
16 health division that he will comply with the provisions of this chapter in
17 all future shipments of waste.

18 SEC. 3. 1. A person who is employed at an area used for the disposal
19 of radioactive waste and removes from the disposal area any of that
20 waste, or removes from the disposal area for his own personal use any
21 machinery or equipment belonging to the operator of the area, shall be
22 punished by imprisonment in the county jail for not more than 1 year, or
23 by a fine of not more than \$10,000, or by both fine and imprisonment.

24 2. If a person who violates this section is employed by the operator
25 of the disposal area, the operator may be fined not more than \$10,000,
26 in addition to any other penalty provided by law.

27 SEC. 4. 1. Inspectors and peace officers of the motor carrier division
28 of the department of motor vehicles, the public service commission of
29 Nevada and the Nevada highway patrol shall enforce those provisions of
30 sections 2 and 11 of this act which govern the transport and handling
31 of radioactive waste as they affect the safety of drivers or vehicles, the
32 leakage or spill of radioactive waste from its package or the emission of
33 ionizing radiation in an unsafe amount as established by the regulations
34 of the state board of health.

35 2. The inspector or peace officer may:

36 (a) Impound a vehicle with unsafe equipment; or

37 (b) Detain a vehicle, if any such waste has leaked or spilled from its
38 package or if he has detected the emission of ionizing radiation in an
39 unsafe amount, and order the driver of the vehicle to park it in a safe
40 place, as determined by an officer designated by the state board of health,
41 pending remedial action by that board.

42 3. After a vehicle has been so detained, an officer designated by the
43 state board of health may order:

44 (a) The vehicle to be impounded;

45 (b) The leaked or spilled waste to be cleaned up;

46 (c) The contents of any unsafe or leaking package to be repackaged; or

47 (d) Any other appropriate precaution or remedy,

48 at the expense of the shipper or broker, carrier or other person who is
49 responsible as determined by the health division of the department of
50 human resources.

1 SEC. 5. NRS 459.030 is hereby amended to read as follows:
2 459.030 For the protection of public health and safety, the health
3 division shall:

4 1. Develop and conduct programs for the evaluation of hazards asso-
5 ciated with the use of sources of ionizing radiation.

6 2. Develop programs and formulate, [adopt and promulgate rules
7 and regulations,] with due regard for compatibility with federal programs,
8 [for:] *regulations for adoption by the state board of health regarding:*

9 (a) Licensing and regulation of byproduct materials, source materials,
10 special nuclear materials and other radioactive materials [.] , *including*
11 *radioactive waste.*

12 (b) Control of other sources of ionizing radiation.

13 3. [Formulate, adopt and promulgate] *Adopt* such [additional rules
14 and] regulations as may be necessary to administer the provisions of
15 NRS 459.010 to 459.160, inclusive.

16 4. Collect and disseminate information relating to control of sources
17 of ionizing radiation, including:

18 (a) Maintenance of a file of all license applications, issuances, denials,
19 amendments, transfers, renewals, modifications, suspensions and revoca-
20 tions.

21 (b) Maintenance of a file of registrants possessing sources of ionizing
22 radiation which require registration under the provisions of NRS 459.010
23 to 459.160, inclusive, such file to include a record of any administrative
24 or judicial action pertaining to such registrants.

25 (c) Maintenance of a file of all [rules and] regulations, pending or
26 promulgated, relating to the regulation of sources of ionizing radiation,
27 and any proceedings pertaining to [such rules and] *the* regulations.

28 SEC. 6. NRS 459.040 is hereby amended to read as follows:

29 459.040 1. The state board of health shall [provide by rule or regu-
30 lation] , *with due regard for compatibility with federal programs, adopt*
31 *regulations* for:

32 (a) General or specific licensing of persons to receive, possess or trans-
33 fer radioactive materials, or devices or equipment utilizing such materials.
34 Every such [rule or] regulation shall provide for amendment, suspension
35 or revocation of licenses.

36 (b) Licensing and regulation of byproduct materials, source materials,
37 special nuclear materials and other radioactive materials [.] , *including*
38 *radioactive waste.*

39 (c) Control of other sources of ionizing radiation.

40 2. The health division of the department of human resources may
41 require:

42 (a) Registration and inspection of sources of ionizing radiation which
43 do not require specific licensing.

44 (b) Compliance with specific standards to be promulgated by the state
45 board of health.

46 3. The state board of health may exempt certain sources of ionizing
47 radiation, or kinds of uses or users of such sources, from the licensing or
48 registration requirements set forth in this section if the board makes a
49 finding that the exemption of such sources of ionizing radiation, or kinds

1 of uses or users of such sources, will not constitute a significant risk to
2 the health and safety of the public.

3 4. [Rules and regulations] *Regulations* promulgated pursuant to
4 NRS 459.010 to 459.160, inclusive, may provide for recognition of such
5 other state or federal licenses as the state board of health may consider
6 desirable, subject to such registration requirements as the state board of
7 health may prescribe.

8 SEC. 7. NRS 459.045 is hereby amended to read as follows:

9 459.045 The state board of health [may] *shall* establish by regula-
10 tion:

11 1. License fees and any other fees for the [use] *operation* of state-
12 owned [disposal] areas in an amount sufficient to defray all costs of
13 monitoring, securing or otherwise regulating the storage or disposal of
14 radioactive materials and chemical wastes. The person who contracts
15 with the state for the [use] *operation* of such an area is responsible for
16 the payment of these fees.

17 2. Procedures for the collection of interest on delinquent fees and
18 other accounts for the [use] *operation* of disposal areas.

19 3. Penalties of no more than \$3,000 per day for each separate failure
20 to comply with [a license or agreement or \$25,000 for any 30-day period
21 for all such failures.] *an agreement, license, regulation or statute govern-*
22 *ing the operation of a disposal area.*

23 4. *License fees and other fees for the use of such an area to store or*
24 *dispose of radioactive materials, which are chargeable against shippers or*
25 *brokers in amounts sufficient to defray the costs to the state of inspecting,*
26 *monitoring, securing or otherwise regulating their use of the area. In*
27 *addition, the board may establish by regulation a fee chargeable against*
28 *shippers and brokers for revenue for the State of Nevada. Before estab-*
29 *lishing a fee for revenue, the board must consider the amounts of the fees*
30 *for licensing and disposal which are chargeable against the users of such*
31 *areas in other states, in order that a shipper or broker be neither encour-*
32 *aged nor discouraged from disposing of such waste in this state, and that*
33 *he base his decision about where to dispose of the waste primarily on the*
34 *cost of transportation to the areas which are available for disposal. The*
35 *regulations adopted pursuant to this subsection may include a method for*
36 *the collection of fees from the users of an area, and each of the fees may*
37 *be a percentage of the fee paid by a user to the operator of the area. The*
38 *board shall report to the legislature at the end of January of odd-*
39 *numbered years the amounts of revenue paid to the state for the use of*
40 *such areas in the preceding biennium.*

41 SEC. 8. NRS 408.125 is hereby amended to read as follows:

42 408.125 The board may:

43 1. Adopt such rules, bylaws, motions and resolutions, not inconsis-
44 tent with this chapter, as may be necessary to govern the administration,
45 activities and proceedings of the department.

46 2. On behalf of the State of Nevada, enter into agreements with any
47 adjoining state, or any proper agency of such state, for the construction,
48 reconstruction, improvement, operation and maintenance by any party to
49 such agreement, in such manner and by such means as may be provided in
50 the agreement, of bridges over interstate waters, and may enter into like

1 agreements with respect to construction, reconstruction, improvement,
2 operation and maintenance of highways within the State of Nevada or
3 such adjoining state, when such highways are at or near the common
4 boundary of the states.

5 3. Authorize the department to join associations of highway offi-
6 cials of other states and other organizations which have been heretofore
7 or may hereafter be established, having as their purpose the interchange
8 of information, establishment of standards and policies relating to high-
9 way construction, reconstruction, improvement, maintenance and admin-
10 istration.

11 4. *Designate by regulation alternative routes for the transport of*
12 *radioactive, chemical or other hazardous materials over the highways or*
13 *county roads of this state, in lieu of the preferred highways for such*
14 *transport designated by the United States Department of Transportation,*
15 *or approve alternative routes set forth in a proposed county or city ordi-*
16 *nance if the regulation or ordinance does not conflict with the standards*
17 *for alternative routes established by the United States Department of*
18 *Transportation.*

19 SEC. 9. NRS 484.773 is hereby amended to read as follows:

20 484.773 The department of motor vehicles shall adopt reasonable
21 regulations providing for:

22 1. Minimum binder requirements to secure loads on vehicles against
23 dangerous displacement and governing the loading and securing of
24 loads for transportation over public highways by vehicles [.] , *except*
25 *loads containing radioactive waste.*

26 2. Safety chains and cables for combinations of vehicles.

27 SEC. 10. NRS 484.779 is hereby amended to read as follows:

28 484.779 1. Except as provided in subsection 3, a local authority may
29 adopt, by ordinance, regulations with respect to highways under its juris-
30 dition within the reasonable exercise of the police power.

31 (a) Regulating or prohibiting processions or assemblages on the high-
32 ways.

33 (b) Designating particular highways as one-way highways and requir-
34 ing that all vehicles thereon be moved in one specific direction.

35 (c) Designating any highway as a through highway, requiring that all
36 vehicles stop before entering or crossing the highway, or designating any
37 intersection as a stop or a yield intersection and requiring all vehicles to
38 stop or yield at one or more entrances to the intersection.

39 (d) Designating truck routes.

40 (e) Regulating the operation of bicycles and requiring the registration
41 and licensing thereof.

42 (f) Adopting such other traffic regulations as are specifically author-
43 ized by this chapter.

44 2. An ordinance relating to traffic control enacted under this section
45 is not effective until official traffic-control devices giving notice of such
46 local traffic regulations are posted upon or at the entrances to the highway
47 or part thereof affected as may be most appropriate.

48 3. An ordinance enacted under this section is not effective with
49 respect to [highways]:

1 (a) Highways constructed and maintained by the department of trans-
2 portation under the authority granted by chapter 408 of NRS; or

3 (b) Alternative routes for the transport of radioactive, chemical or other
4 hazardous materials which are governed by regulations of the United
5 States Department of Transportation,
6 until the ordinance has been approved by the board of directors of the
7 department of transportation.

8 SEC. 11. Chapter 706 of NRS is hereby amended by adding thereto
9 a new section which shall read as follows:

10 1. No common, contract or private motor carrier of property may
11 transport radioactive waste upon the highways of this state unless he
12 obtains from the commission a permit specifically allowing him to trans-
13 port radioactive waste. An interstate common or contract carrier must
14 register with the commission the certificate issued to him by the Inter-
15 state Commerce Commission when he applies for such a permit.

16 2. The commission shall issue a permit to a carrier allowing him to
17 transport radioactive waste if the carrier:

18 (a) Registers his certificate issued by the Interstate Commerce Commis-
19 sion and complies with the regulations of the public service commission
20 respecting the registration of interstate carriers; or

21 (b) Demonstrates to the satisfaction of the public service commission
22 that he complies and will continue to comply with all laws and regulations
23 of this state and the Federal Government respecting the handling and
24 transport of radioactive waste and the safety of drivers and vehicles.

25 3. A carrier of radioactive waste shall reject any package containing
26 such waste which is tendered to him for transport in this state if the pack-
27 age is leaking or spilling its contents, does not bear a shipping label pre-
28 scribed by the state board of health or is not accompanied by a bill of
29 lading or other shipping document in a form prescribed by that board. A
30 carrier who accepts such waste for transport in this state is liable for any
31 package in his custody which leaks or spills its contents, does not bear the
32 required shipping label or is not accompanied by the required shipping
33 documents, unless, in the case of a leak or spill of such waste and by way
34 of affirmative defense, the carrier proves that he did not and could not
35 know of the leak when he accepted the package for transport.

36 4. A carrier of radioactive waste shall notify the commission not less
37 than 4 nor more than 48 hours before he begins to transport the waste in
38 this state.

39 5. A carrier is exempt from obtaining the permit required by this sec-
40 tion if he transports only radioactive waste the possession of which is
41 exempt from licensing by the state board of health.

42 6. The commission may revoke a certificate issued pursuant to this
43 chapter, and shall revoke a permit to transport radioactive waste issued
44 pursuant to this section, or in the case of a carrier whose certificate is
45 issued by the Interstate Commerce Commission it may file a complaint
46 with that commission, if it finds that, while transporting radioactive waste,
47 the carrier has failed to comply with any laws or regulations of this state
48 or the Federal Government respecting the handling or transport of radio-
49 active waste and the safety of drivers or vehicles.