

SB

269

SB 269 "An act prohibiting the disposal of nuclear waste" ^{SHSS 79-80}

Introduced 4-18-79

Logged 4-18-79

Referrals - Judiciary 3-3-80 read

Cohen. Hearing 3-24-80 CS suggested - Recd LA for added "high level" 4-4 Sent letter X A.C. for 4-16-80 hearing
4-16-80 - held in house
action 5-1-80 opinion enclosed copy of CS

Passed out of Committee

ATTY GENERAL OPINION - Review
Dept of Health & S.S. new paper on CS 269

Notified Eugene McQueen Civil Defense
Ext 56-586-3300 City

" Environmental Conservation
Sponsor notified.

3-25-80 Tom Hanna with Environmental
ad the amendments as per fact
in position paper by HSS excellent &
also the amendments to his dept. would have
made.

3-16-80 Sp in Ron Lind - he took out a bill from
House in House (Highways) and use some
language to incorporate in CS to prevent
highways from being used. He sending

4-1-80. 2 LA for CS.

NOTIFY LYNN RICE
586-3121
DORIS LYNCH
586-6865

Nuclear
Waste
Material
(disposal)

SENATE BILL NO. 269, by Senator Kerttula. Amends AS 18.45.025 (Ch. 45, "Atomic Energy," "Facilities Siting Permit Required") to read: "No person may construct a nuclear fuel production facility, utilization facility, and reprocessing facility [, OR NUCLEAR WASTE DISPOSAL FACILITY] in the state unless he has first obtained a permit from the Department of Environmental Conservation" Adds new section to AS 18.45 which prohibits storage and disposal of nuclear waste material in Alaska. Does not provide for effective date.

Introduced April 18 and referred to HESS, then to Judiciary.

3-25-80
2:10 PM

Glenn -

Just what is going to happen
to this bill - Is it CS which part
is involved? Please.

M.

def

OK
Henry
Thompson

3/16/80 Ron Lind will
get on this & have

Some one write or call in language-governing
Heard

Nuc. Reg Comm. would be sensitive to state

Can transp. be prohibited over state & CS
road system? //

Dr. Rooney - local doc.

Licensed by Nuc. Reg. Comm.

Suggested language to prohibit transportation of nuclear waste material yet allow Alaskan users, such as hospitals, to dispose of their material:

18.45.028 TRANSPORTATION OF NUCLEAR WASTE MATERIAL. The transportation of nuclear wastes, other than for disposal outside the boundaries of Alaska, are prohibited on the State highway system.

This act becomes effective immediately.

*Proposed
by DOT*

POSITION PAPER

SENATE BILL NO. 269

"An Act prohibiting the disposal of nuclear waste material."

Senate Bill No. 269 prohibits the storage and disposal of nuclear waste material in Alaska. This prohibition is without qualification as to quantity, origin, and kind.

Alaska has approximately 35 licensed users of radioactive materials. Since Alaska is not an Agreement State under the Atomic Energy Act, the Department of Health and Social Services does not have jurisdiction over these sources. They are licensed and controlled by the United States Nuclear Regulatory Commission.

Presently, nuclear waste material in some form or other is either stored and/or disposed of in Alaska. It is estimated that from eight to ten of the facilities licensed in the State by the Nuclear Regulatory Commission use unsealed sources which require some storage and disposal following use.

Unsealed sources, as differentiated from sealed sources, are those not encapsulated in a container. Unsealed sources, kept in openable bottles or other containers, are necessary in research and nuclear medicine so they can be used in various laboratory procedures or in medical practice by ingestion, inhalation or injection. This use results in various kinds of radioactive wastes. Facilities presently using unsealed sources are four hospitals located in Juneau, Anchorage, and Fairbanks. Unsealed sources are also frequently used in private, Federal, and State research and/or educational facilities carrying out activities such as those conducted by the NOAA Auke Bay Fisheries Laboratory, U.S. Geological Survey, and the University of Alaska Institutes of Marine Science and Arctic Biology. Some of these unsealed sources may also be used in industrial applications--for example, activities related to the oil industry.

Radioactive wastes are in the form of liquids, contaminated laboratory articles, biological samples, and such items as towels and clothing. Generally these would be stored in liquid-tight barrels, on site, in an area with limited and controlled access. Storage is necessary until materials can be shipped to a licensed radioactive waste disposal site, such as the one in Rickland, Washington. Alaska does not have an approved waste disposal site, and the present low volume of such waste has not yet caused a problem for users in Alaska.

Presently, hospitals in Alaska store radioactive waste until it has decayed to very low levels (near background). The material is then either incinerated or disposed of in sanitary sewerage systems according to regulations established by the Nuclear Regulatory Commission.

This Bill, if passed as presently worded, will eliminate the use of unsealed radioactive sources in Alaska--a situation which will have a harmful impact on the delivery of medical services and research activities within the State. Accordingly, the following changes in wording are recommended:

Line 12: Leave in the phrase "OR NUCLEAR WASTE DISPOSAL FACILITY".

Lines 26-28: Section 18.45.027. ^{STORAGE & DISPOSAL} DISPOSAL OF NUCLEAR WASTE MATERIAL. The disposal of high levels of nuclear waste material in the State from nuclear power plants is prohibited.

The changes recommended above are suggested only to protect the use of radioactive materials in nuclear medicine facilities, research, and education. It is recognized that the prohibition of the disposal of high level waste from nuclear power plants may directly affect future State policy and the interest of other State agencies. This matter of State policy regarding disposal of high level waste has ramifications far beyond the authority of this Department, and consequently is not addressed by this position paper.

With the above recommended changes, the Department of Health and Social Services takes a neutral stand on Senate Bill No. 269.

Recommended by: Dean F. Tirador
Dean F. Tirador, M.D.
Director, Division
of Public Health

Date: 17 Mar 80

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner

Date: 3/22/80

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 269
 Title "An Act prohibiting the disposal of nuclear waste material."
 Requested by Commissioner's Office Date 2/26/80

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Health/Division of Public Health
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Original: Legislative Finance Prepared by: M. Deaver Date: 2/26/80
 cc: Budget and Management Division/Office: PH Admin PH: 3090
 Prime Sponsor (First Legislator Named) Department of Health & Social Services

33-001 (Rev. 12/79)
 Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt. John Ouelton Date: 2/29/80

Sub
4-4-80

Arvin Press
Attorney General
State Capitol - Rm. 410

In committee discussion of the
S.B. 269 the possibility that the Federal
Government might wish to open a
nuclear disposal site on federal land
in at least two or three

Such reports to Section "2 Transportation
of Nuclear Waste Material". Council State
of Report present the U.S. in an effort
to find a way to do to transport
nuclear waste for disposal.

You are invited to attend the meeting
on 4/10/80

Tape AB 269 CS.

Sid Herder of mentioned nuclear regulatory
Commission being penitence & state right.

Another member questioned if State & Municipal
Codes supersede Gov't.

Allen: Yes Federal Gov't. have right & dispose
on federal land regardless of state law.

A G. to see her his opinion

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH 0 - JUNEAU 99811

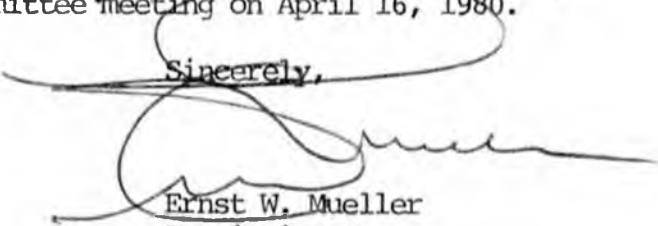
April 15, 1980

The Honorable Glenn Hackney
Chairman
Senate Health & Social
Services Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

The Alaska Department of Environmental Conservation would like to submit the following comments and recommendations on SB 269 concerning the disposal of nuclear wastes in Alaska. We support this bill and the several minor changes which have been recommended. We would be more than willing to present these comments and answer any questions you might have at the 3:00 pm Committee meeting on April 16, 1980.

Sincerely,



Ernst W. Mueller
Commissioner

Enclosure

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

REVIEW OF SB-269
AN ACT PROHIBITING THE DISPOSAL OF NUCLEAR WASTE MATERIAL

Submitted to the
Senate Health, Education and Social Services Committee

SB 269 makes changes in the current Alaska Statutes 18.45.025 FACILITIES SITING PERMIT REQUIRED, to prohibit the siting of any facilities which would allow the storage or disposal of radioactive waste materials within the State of Alaska. The Department strongly supports this legislation, particularly as it relates to the disposal of highly radioactive waste materials from nuclear power plants.

Wastes from nuclear power generating facilities require extremely long storage times before their radioactivity is reduced to safe levels. These wastes are difficult to contain in a safe manner, require extremely expensive containment technology which up to now has not proven reliable for long-term storage. While wastes from existing plants in other states will require some form of disposal method, Alaska should not become a dumping ground for these wastes. SB 267 would prohibit this from occurring, except in the unlikely event of federal preemption.

In supporting this legislation, we understand that a change has been or is going to be made in the legislation to expressly prohibit only the disposal of high level radioactive wastes from nuclear power plants. We support this change, because the disposal of small amounts of low level radioactive wastes generated from medical, laboratory and industrial facilities can be accomplished without creating a hazard to public health and the environment. Many of these low-level wastes cause no danger to the public if they are disposed in a safe and environmentally sound manner. Therefore, the existing authority to establish regulations under AS 46.03.250 should be adequate to assure proper handling and safe disposal of the low-level radioactive waste materials presently being generated in Alaska.

We thank you for the opportunity to comment on this legislation.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

opinion

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3686

April 15, 1980

The Honorable Glenn Hackney
Alaska State Legislature
Senate
Pouch V
Juneau, Alaska 99811

Re: Nuclear Waste Transportation
Our file J-66-606-30

Dear Senator Hackney:

On April 4, you requested this department's views on whether the State of Alaska could prohibit the Federal Government from utilizing state roads to transport nuclear waste for disposal within the state. The state of the law in this matter is fluid, and we cannot give a definitive answer.

Many states, and local governments, have enacted legislation prohibiting or restricting the transportation of radioactive wastes across their roads. In response, the Federal Department of Transportation has proposed regulations which, if enacted, would preempt states from imposing outright prohibitions on nuclear waste transport, at least on federal aid highways, although states would be allowed a voice in particular routing decisions. A copy of these regulations is enclosed. Several states are actively protesting these

regulations, and are contemplating litigation in the event that they are adopted -- on the grounds that the regulations are statutorily and constitutionally unauthorized.

Absent the adoption of these regulations, the state probably could prohibit private carriers from transporting nuclear wastes across state roads. A different problem exists with respect to transportation by the Federal Government and its instrumentalities. Unless a specific statutory waiver could be found, direct federal transport would be immune from state regulation. Hancock v. Train, 426 U.S. 167 (1976). Congress has waived federal sovereign immunity with respect to solid waste activities in section 6001 of the Resource Conservation Recovery Act of 1976 (P.L. 94-950). The applicability of that waiver to nuclear waste transportation by the Federal Government would be questioned under section 1006(a) of the Act, which provides that:

Nothing in this Act shall be construed to apply to (or to authorize any state, interstate, or local authority to regulate) any activity or substance which is subject to the . . . Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such acts.

As implemented, the regulation of the transportation of nuclear wastes is governed not by the Atomic Energy Act, but rather by the Hazardous Materials Transportation Act.

49 U.S.C. § 1801 et seq. Thus, the exceptions to the sovereign immunity waiver contained in the Resource Conservation and Recovery Act, at least potentially, may not include the transportation of nuclear waste materials. However, because sovereign immunity waivers are strictly construed in favor of the Federal Government (Hancock v. Train, supra) the argument may be a difficult one to make. */

As I hope this letter indicates, the subject of the permissible scope of state regulation with respect to nuclear power involves an accommodation of several major federal regulatory programs, and ongoing federal agency activities. Certainly, 42 U.S.C. § 2021 -- the state cooperation section of the Atomic Energy Act -- has certain preemptive effects. For example, it has been held that states may not prohibit the construction of a nuclear plant for reasons premised on radioactivity hazards, although it may deny siting approval on other environmental or land use grounds. See Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971); United States v. City of New York, ___ F. Supp. ___, 12 ERC 1600 (SDNY, December 26, 1978); Pacific Legal Foundation v. California State Energy Comm'n,

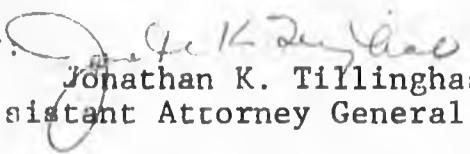
*/ The sovereign immunity waiver in the Clean Air Act (sec. 118: P.L. 95-95) may also be applicable, to the extent that transportation of nuclear waste poses a threat of atmospheric radioactive release.

___ F. Supp. ___ 12 ERC 1899 (S.D. Cal., March 6, 1979).

The extent to which this rationale is applicable to direct regulation of nuclear waste disposal activities is unclear. Because it is unsettled, many state and local governments have chosen to legislate in this area. Moreover, it is my understanding the Nuclear Regulatory Commission has taken a cooperative attitude in this respect -- although the Department of Transportation, as noted previously, may differ. In sum, it does not appear from initial review that there exists any clear legal obstacle at this time which would override the public interest which would be served by state nuclear power regulation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Jonathan K. Tillinghast
Assistant Attorney General

JKT:dlm

Enc.

cc: Ernst W. Mueller, w/enc.
Commissioner
Department of Environmental
Conservation

POSITION PAPER

SENATE BILL NO. 269

"An Act prohibiting the disposal of nuclear waste material."

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This Bill, if passed as presently worded, will eliminate the use of unsealed radioactive sources in Alaska--a situation which will have a harmful impact on the delivery of medical services and research activities within the State. Accordingly, the following changes in wording are recommended:

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The changes recommended above are suggested only to protect the use of radioactive materials in nuclear medicine facilities, research, and education. It is recognized that the prohibition of the disposal of high level waste from nuclear power plants may directly affect future State policy and the interest of other State agencies. This matter of State policy regarding disposal of high level waste has ramifications far beyond the authority of this Department, and consequently is not addressed by this position paper.

With the above recommended changes, the Department of Health and Social Services takes a neutral stand on Senate Bill No. 269.

Recommended by: DF Tirador
Dean F. Tirador, M.D.
Director, Division
of Public Health

Date: 17 Nov 80

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner

Date: 3/20/80

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 269

Title "An Act prohibiting the disposal of nuclear waste material."

Requested by Commissioner's Office

Date 2/26/80

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health/Division of Public Health

BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
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500 EQUIPMENT	0	0	0	0	0	0
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TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: M. Deaver Date: 2/26/80
Division/Office: PH Admin PH: 3090
Department of Health & Social Services

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt: John Oulene Date: 2/29/80

Page ____ of ____

- Section: 18.45.025 Permit required from Environmental Conservation to construct a nuclear fuel production facility and reprocessing facility.
- 18.45.027 Prohibits transportation of nuclear waste in State except for purposes of disposal outside the State.
- 18.45.029 Prohibits disposal of "High Level Nuclear Waste". Nuclear waste means - nuclear waste produced by nuclear power plants. Does not prohibit radioactive materials used in medicine, scientific research or education.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

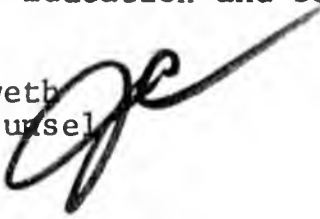
MEMORANDUM

April 4, 1980

SUBJECT: CSSB 269, relating to nuclear wastes

TO: Senator Glenn Hackney, Chairman
Senate Health, Education and Social Services
Committee

FROM: John B. Chenoweth
Legislative Counsel



There was some confusion concerning instructions to complete the second redraft of this committee substitute. While the department's "position paper" wanted a ban only on "high level nuclear wastes" from nuclear power plants, your committee's actual request was limited to "high level nuclear wastes", presumably from any source. I do not know how to quantify "high level" with precision. Not wanting to tie to a figure expressed in terms of measurements that delight physicists and trouble legislators, I have suggested language in the draft that leaves the determination (other than as to wastes from nuclear plants) to an administrative agency. I note that, at 18 AAC 85, the Department of Environmental Conservation has already defined permissible disposable nuclear wastes.

The bill draft also makes clear that the prohibition is not intended to preclude storage and disposal of quantities of nuclear wastes generally used in education, research and medicine.

JBC:ljb

Enclosure

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

POUCH H-06-JUNEAU 99811

~~POUCH H-06-JUNEAU 99811~~

April 15, 1980

The Honorable Glenn Hackney
Chairman
Health, Education
and Social Services Committee
Alaska State Senate
Pouch "V", State Capitol Building
Juneau, Alaska 99811

Document# 79-80

Dear Senator Hackney:

Sid Heidersdorf, Radiological Physicist for the Division of Public Health, is out of town this week and therefore unable to testify at the Wednesday hearing on CSSB 269. He has asked that I convey his concerns regarding this bill to you for consideration by your committee.

We are pleased to note that the Committee Substitute for Senate Bill 269 allows the storage and disposal of nuclear waste resulting from medicine, scientific research and education. We have a few additional concerns we feel should be weighed by the committee in their deliberations on this bill.

Consideration No. 1

Section 18.45.025 removes nuclear waste disposal facilities from the permit requirements listing. At some time in the future, if disposal requirements from medical, scientific and educational sources become great enough, a waste disposal facility may be required within the state for wastes generated from these sources. In that event, any such facility should be required to receive a permit from the Department of Environmental Conservation.

Consideration No. 2

Section 18.45.027 prohibits the transportation of nuclear waste material in the state except for purposes of disposal outside the state. It is suggested that the prohibition should be directed against high level nuclear waste materials since there may be necessity to transport low level wastes from medical, scientific and educational sources. The State has regulations covering the transportation of nuclear materials (18 AAC 85.320).

Consideration No. 3

Section 18.45.029(b)(1)(B) seems to add to the potential for confusion

The Honorable Glenn Hackney

Page 2

April 15, 1980

over the term "high level nuclear material" rather than to clarify the definition as intended. For example, low level wastes from medical, research and educational uses, when improperly stored or disposed of, could be "material of a kind or quantity which would constitute a threat to the health or safety of the public....". Safe disposal of radioactive wastes is already covered by regulation in 18 AAC 85.270 - 310.

Recommendations

1. In Section 18.45.025, retain the requirement for a permit for the siting of a nuclear waste disposal facility.
2. In Section 18.45.029, delete subpart (1) (B) since it does not appear to add clarity to the definition of "high level nuclear material" and rephrase 18.45.029 (1) (A) to read "nuclear waste material produced by nuclear power plants and nuclear fuel processing facilities".
3. A preferable alternative to Recommendations 1 and 2 is to delete Section 18.45.029 in its entirety and rephrase Section 18.45.027 as follows:

Section 18.45.027. TRANSPORTATION, STORAGE AND DISPOSAL OF NUCLEAR WASTE MATERIAL. The transportation, except for purposes of disposal outside the state, storage and disposal of high level nuclear waste material from nuclear power plants or nuclear fuel processing facilities is prohibited.

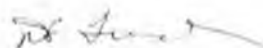
Such phrasing would be consistent with the continued use of low level nuclear materials for medical, scientific or educational purposes and would eliminate the need for defining "high level nuclear waste".

Department's Position:

The Department of Health and Social Services is neutral on CSSB No. 269 if these recommendations are incorporated in the final draft.

Thank you for the opportunity to present Mr. Heidersdorf's testimony to you in this letter. He will be back in his office Monday, April 21st and will be able to provide you or your committee members with any additional information you may require.

Sincerely,



Dean F. Tirador, M.D.
Director
Division of Public Health