

ACT 357

AN ACT TO ENACT THE "ATLANTIC INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT IMPLEMENTATION ACT" INCLUDING PROVISIONS TO AMEND TITLE 48, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 46, SO AS TO PROVIDE A STATUTORY BASIS FOR SOUTH CAROLINA'S MEMBERSHIP IN THE ATLANTIC LOW-LEVEL RADIOACTIVE WASTE COMPACT; TO SPECIFY CONDITIONS PRECEDENT TO SOUTH CAROLINA'S MEMBERSHIP; TO AUTHORIZE AND PROVIDE PROCEDURES AND POLICIES NECESSARY TO ACHIEVE STATE OBJECTIVES WITH RESPECT TO THE COMPACT, INCLUDING STATE APPROVAL OF DISPOSAL RATES AND PROCEDURES FOR IDENTIFYING ALLOWABLE OPERATING COSTS SO AS TO DETERMINE REVENUES DUE TO THE STATE FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL; TO PROVIDE FOR THE APPOINTMENT OF THE STATE'S COMMISSIONERS TO THE COMPACT COMMISSION AND TO PROVIDE POLICIES APPLICABLE TO VOTING BY THE COMMISSIONERS; TO INCORPORATE BY REFERENCE THE NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT INTO THIS ACT; TO AMEND SECTION 13-7-10, AS AMENDED, RELATING TO DEFINITIONS USED IN THE ATOMIC ENERGY AND RADIATION CONTROL ACT SO AS TO DEFINE ADDITIONAL TERMS; TO AMEND SECTION 13-7-30, AS AMENDED, RELATING TO VARIOUS DUTIES OF THE BUDGET AND CONTROL BOARD INCLUDING DUTIES PERTAINING TO ASSESSMENTS, SURCHARGES, AND PENALTY CHARGES ON NONSITED WASTE RECEIVED AT THE REGIONAL DISPOSAL FACILITY SO AS TO DELETE THESE PROVISIONS; TO REPEAL, EFFECTIVE JULY 1, 2000, CERTAIN PROVISIONS OF SECTION 48-48-140, RELATING TO THE IMPOSITION AND DISTRIBUTION OF TAXES ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AND TO REPEAL THE REMAINING PROVISIONS OF CHAPTER 48, TITLE 48, RELATING TO THE MANAGEMENT AND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE, EFFECTIVE UPON THE STATE JOINING THE NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT AND TO FURTHER PROVIDE THAT SECTION 48-48-140 MUST BE REINSTATED OCTOBER 1, 2000, IF THE STATE HAS NOT BECOME A MEMBER OF THE COMPACT; TO AMEND ARTICLE 9, CHAPTER 7, TITLE 13, RELATING TO THE GOVERNOR'S NUCLEAR ADVISORY COUNCIL, SO AS TO REQUIRE THE COUNCIL TO ADVISE THE GOVERNOR ON MATTERS RELATING TO THE ATLANTIC COMPACT, TO INCREASE THE COUNCIL FROM FIVE TO NINE MEMBERS, AND TO DIRECT THAT SUPPORT STAFF MUST BE PROVIDED BY THE STATE ENERGY OFFICE; AND TO REPEAL THIS ACT IF THE STATE DOES NOT BECOME A MEMBER OF THE COMPACT BY OCTOBER 1, 2000.

Be it enacted by the General Assembly of the State of South Carolina:

Atlantic Compact

SECTION 1. Title 48 of the 1976 Code is amended by adding:

"CHAPTER 46

Atlantic Interstate Low-Level Radioactive Waste Compact

Implementation Act

Section 48-46-10. This chapter may be cited as the 'Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act'.

Section 48-46-20. The purpose of this act is to establish South Carolina as a member of the Atlantic Low-Level Radioactive Waste Compact, known in federal statute as the 'Northeast Interstate Low-Level Radioactive Waste Management Compact' and to authorize and direct specific processes and procedures that are necessary to implement South Carolina's responsibilities in the compact.

Section 48-46-30. As used in this chapter, unless the context clearly requires a different construction:

- (1) 'Allowable costs' means costs to a disposal site operator of operating a regional disposal facility. These costs are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations.
- (2) 'Atlantic Compact' means the Northeast Interstate Low-Level Radioactive Waste Management Compact as defined in the 'Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985', Public Law 99-240, Title II. Use of the term 'Atlantic Compact' does not change in any way the substance of and is to be considered identical to the Northeast Interstate Low-Level Radioactive Waste Management Compact.
- (3) 'Atlantic Compact Commission' or 'compact commission' means the governing body of the Atlantic Compact, consisting of voting members appointed by the governors of Connecticut, New Jersey, and South Carolina.
- (4) 'Board' means the South Carolina Budget and Control Board or its designated official.
- (5) 'Decommissioning trust fund' means the trust fund established pursuant to a Trust Agreement dated March 4, 1981, among Chem-Nuclear Systems, Inc. (grantor), the South Carolina Budget and Control Board (beneficiary), and the South Carolina State Treasurer (trustee), whose purpose is to assure adequate funding for decommissioning of the disposal site, or any successor fund with a similar purpose.
- (6) 'Disposal rates' means the price paid by customers of a regional disposal facility for disposal of waste, including any price schedule or breakdown of the price into discrete elements or cost components.

(7) 'Extended care maintenance fund' means the 'escrow fund for perpetual care' that is used for custodial, surveillance, and maintenance costs during the period of institutional control and any post-closure observation period specified by the Department of Health and Environmental Control, and for activities associated with closure of the site as provided for in Section 13-7-30(4).

(8) 'Facility operator' means a public or private organization, corporation, or agency that operates a regional disposal facility in South Carolina.

(9) 'Generator' means a person, organization, institution, private corporation, and government agency that produces Class A, B, or C radioactive waste.

(10) 'Maintenance' means active maintenance activities as specified by the Department of Health and Environmental Control, including pumping and treatment of groundwater and the repair and replacement of disposal unit covers.

(11) 'Nonregional generator' means a waste generator who produces waste within a state that is not a member of the Atlantic Compact, whether or not this waste is sent to facilities located within the Atlantic Compact region for purposes of consolidation, treatment, or processing for disposal.

(12) 'Nonregional waste' means waste produced by a nonregional generator.

(13) 'Person' means an individual, corporation, business enterprise, or other legal entity, either public or private, and expressly includes states.

(14) 'Price schedule' means disposal rates.

(15) 'PSC' means the South Carolina Public Service Commission.

(16) 'Receipts' means the total amount of money collected by the site operator for waste disposal over a given period of time.

(17) 'Regional disposal facility' means a disposal facility that has been designated or accepted by the Atlantic Compact Commission as a regional disposal facility.

(18) 'Regional generator' means a waste generator who produces waste within the Atlantic Compact, whether or not this waste is sent to facilities outside the Atlantic Compact region for purposes of consolidation, treatment, or processing for disposal.

(19) 'Regional waste' means waste generated within a member state of the Atlantic Compact. Consistent with the regulatory position of the Department of Health and Environmental Control, Bureau of Radiological Health, dated May 1, 1986, some waste byproducts shipped for disposal that are derived from wastes generated within the Atlantic Compact region, such as residues from recycling, processing, compacting,

incineration, collection, and brokering facilities located outside the Atlantic Compact region may also be considered regional waste.

(20) 'Site operator' means a facility operator.

(21) 'South Carolina generator' means a waste generator that produces waste within the boundaries of the State of South Carolina, whether or not this waste is sent to facilities outside South Carolina for purposes of consolidation, treatment, or processing for disposal.

(22) 'Waste' means Class A, B, or C low-level radioactive waste, as defined in Title I of Public Law 99-240 and Department of Health and Environmental Control Regulation 61-63, 7.2.22, that is eligible for acceptance for disposal at a regional disposal facility.

Section 48-46-40. (A)(1) The board shall approve disposal rates for low-level radioactive waste disposed at any regional disposal facility located within the State. The approval of disposal rates pursuant to this Chapter is neither a regulation nor the promulgation of a regulation as those terms are specially used in Title 1, Chapter 23.

(2) The board shall adopt a maximum uniform rate schedule for regional generators containing disposal rates that include the administrative surcharges specified in Section 48-46-60(B) and surcharges for the extended custody and maintenance of the facility pursuant to Section 13-7-30(4) and that do not exceed the approximate disposal rates, excluding any access fees and including a specification of the methodology for calculating fees for large components, generally applicable to regional generators on September 7, 1999. Any disposal rates contained in a valid written agreement that were applicable to a regional generator on September 7, 1999, that differ from rates in the maximum uniform rate schedule will continue to be honored through the term of such agreement. The maximum uniform rate schedule approved under this section becomes effective immediately upon South Carolina's membership in the Atlantic Compact. The maximum uniform rate schedule shall be the rate schedule applicable to regional waste whenever it is not superseded by an adjusted rate approved by the board pursuant to paragraph (3) of this subsection or by special disposal rates approved pursuant to paragraphs (5) or 6(e) of this subsection.

(3) The board may at any time of its own initiative, at the request of a site operator, or at the request of the compact commission, adjust the disposal rate or the relative proportions of the individual components that constitute the overall rate schedule. Except as adjusted for inflation in subsection (4), rates adjusted in accordance with this section, that include the administrative surcharges specified in Section 48-46-60(B) and surcharges for the extended custody and maintenance of the facility pursuant to Section 13-7-30(4), may not exceed initial disposal rates set by the board pursuant to subsection (2).

(4) In March of each year the board shall adjust the rate schedule based on the most recent changes in the most nearly applicable Producer Price Index published by the Bureau of Labor Statistics as chosen by the board, or a successor index.

(5) In consultation with the site operator, the board or its designee, on a case-by-case basis, may approve special disposal rates for regional waste that differ from the disposal rate schedule for regional generators set by the board pursuant to subsections (2) and (3). Requests by the site operator for such approval shall be in writing to the board. In approving such special rates, the board or its designee, shall consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State or other relevant factors; provided, however, that the board shall not approve any special rate for an entity owned by or affiliated with the site operator. Special disposal rates approved by the board under this subsection shall be in writing and shall be kept confidential as proprietary business information for one year from the date when the bid or the request for proposal containing the special rate is accepted by the regional generator; provided, however, that such special rates when accepted by a regional generator shall be disclosed to the compact commission and to all other regional generators, which shall, to the extent permitted by applicable law, keep them confidential as proprietary business information for one year from the date when the bid or request for proposal containing this special rate is accepted by the regional generator. Within one business day of a special disposal rate's acceptance, the site operator shall notify the board, the compact commission, and the regional generators of each special rate that has been accepted by a regional generator, and the board, the compact commission, and regional generators may communicate with each other about such special rates. If any special rate approved by the board for a regional generator is lower than a disposal rate approved by the board for regional generators pursuant to subsections (2) and (3) for waste that is generally similar in characteristics and volume, the disposal rate for all regional generators shall be revised to equal the special rate for the regional generator. Regional generators may enter into contracts for waste disposal at such special rates and on comparable terms for a period of not less than six months. An officer of the site operator shall certify in writing to the board and the compact commission each month that no regional generator's disposal rate exceeds any other regional generator's special rate for waste that is generally similar in characteristics and volume, and such certification shall be subject to periodic audit by the board and the compact commission.

(6)(a) To the extent authorized by the compact commission, the board on behalf of the State of South Carolina may enter into agreements with any person in the United States or its territories or any interstate compact, state, U.S. territory, or U.S. Department of Defense military installation abroad for the importation of waste into the region for purposes of disposal at a regional disposal facility within South Carolina. No waste from outside the Atlantic Compact region may be disposed at a regional disposal facility within South Carolina, except to the extent that the board is authorized by the compact commission to enter into agreements for importation of waste.

The board shall authorize the importation of nonregional waste into the region for purposes of disposal at the regional disposal facility in South Carolina so long as nonregional waste would not result in the facility accepting more than the following total volumes of all waste:

- (i) 160,000 cubic feet in fiscal year 2001;
- (ii) 80,000 cubic feet in fiscal year 2002;
- (iii) 70,000 cubic feet in fiscal year 2003;
- (iv) 60,000 cubic feet in fiscal year 2004;
- (v) 50,000 cubic feet in fiscal year 2005;
- (vi) 45,000 cubic feet in fiscal year 2006;
- (vii) 40,000 cubic feet in fiscal year 2007;
- (viii) 35,000 cubic feet in fiscal year 2008.

After fiscal year 2008, the board shall not authorize the importation of nonregional waste for purposes of disposal.

(b) The board may approve disposal rates applicable to nonregional generators. In approving disposal rates applicable to nonregional generators, the board may consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors.

(c) Absent action by the board under subsection (b) above to establish disposal rates for nonregional generators, rates applicable to these generators must be equal to those contained in the maximum uniform rate schedule approved by the board pursuant to paragraph (2) or (3) of this subsection for regional generators unless these rates are superseded by special disposal rates approved by the board pursuant to paragraph (6)(e) of this subsection.

(d) Regional generators shall not pay disposal rates that are higher than disposal rates for nonregional generators in any fiscal quarter.

(e) In consultation with the site operator, the board or its designee, on a case-by-case basis, may approve special disposal rates for nonregional waste that differ from the disposal rate schedule for nonregional generators set by the board. Requests by the site operator for such approval shall be in writing to the board. In approving such special rates, the board or its designee shall consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors; provided, however, that the board shall not approve any special rate for an entity owned by or affiliated with the site operator. Special disposal rates approved by the board under this subsection shall be in writing and shall be kept confidential as proprietary business information for one year from the date when the bid or request for proposal containing the special rate is accepted by the nonregional

generator; provided, however, that such special rates when accepted by a nonregional generator shall be disclosed to the compact commission and to all regional generators, which shall, to the extent permitted by applicable law, keep them confidential as proprietary business information for one year from the date when the bid or request for proposal containing the special rate is accepted by the nonregional generator. Within one business day of a special disposal rate's acceptance, the site operator shall notify the board, the compact commission, and the regional generators in writing of each special rate that has been accepted by a nonregional generator, and the board, the compact commission, and regional generators may communicate with each other about such special rates. If any special rate approved by the board for a nonregional generator is lower than a disposal rate approved by the board for regional generators for waste that is generally similar in characteristics and volume, the disposal rate for all regional generators shall be revised to equal the special rate for the nonregional generator. Regional generators may enter into contracts for waste disposal at such special rate and on comparable terms for a period of not less than six months. An officer of the site operator shall certify in writing to the board and the compact commission each month that no regional generator disposal rate exceeds any nonregional generator's special rate for waste that is generally similar in characteristics and volume, and such certification shall be subject to periodic audit by the board and the compact commission.

(B)(1) Effective upon the implementation of initial disposal rates by the board under Section 48-46-40(A), the PSC is authorized and directed to identify allowable costs for operating a regional low-level radioactive waste disposal facility in South Carolina.

(2) In identifying the allowable costs for operating a regional disposal facility, the PSC shall:

(a) prescribe a system of accounts, using generally accepted accounting principles, for disposal site operators, using as a starting point the existing system used by site operators;

(b) obtain and audit the books and records of the site operators associated with disposal operations as determined applicable by the PSC;

(c) assess penalties against disposal site operators if the PSC determines that they have failed to comply with regulations pursuant to this section; and

(d) require periodic reports from site operators that provide information and data to the PSC and parties to these proceedings.

(3) Allowable costs include the costs of those activities necessary for:

(a) the receipt of waste;

(b) the construction of disposal trenches, vaults, and overpacks;

- (c) construction and maintenance of necessary physical facilities;
- (d) the purchase or amortization of necessary equipment;
- (e) purchase of supplies that are consumed in support of waste disposal activities;
- (f) accounting and billing for waste disposal;
- (g) creating and maintaining records related to disposed waste;
- (h) the administrative costs directly associated with disposal operations including, but not limited to, salaries, wages, and employee benefits;
- (i) site surveillance and maintenance required by the State of South Carolina, other than site surveillance and maintenance costs covered by the balance of funds in the decommissioning trust fund or the extended care maintenance fund;
- (j) compliance with the license, lease, and regulatory requirements of all jurisdictional agencies;
- (k) administrative costs associated with collecting the surcharges provided for in subsections (B) and (C) of Section 48-46-60;
- (l) taxes other than income taxes;
- (m) licensing and permitting fees; and
- (n) any other costs directly associated with disposal operations determined by the PSC to be allowable.

Allowable costs do not include the costs of activities associated with lobbying and public relations, clean-up and remediation activities caused by errors or accidents in violation of laws, regulations, or violations of the facility operating license or permits, activities of the site operator not directly in support of waste disposal, and other costs determined by the PSC to be unallowable.

(4) Within 90 days following the end of a fiscal year, a site operator may file an application with the PSC to adjust the level of an allowable cost under subsection (3), or to allow a cost not previously designated an allowable cost. The PSC shall process such application in accordance with its procedures. If such application is approved by the PSC, the PSC shall authorize the site operator to adjust allowable costs for the current fiscal year so as to compensate the site operator for revenues lost during the previous fiscal year.

(5) A private operator of a regional disposal facility in South Carolina is authorized to charge an operating margin of twenty-nine percent. The operating margin for a given

period must be determined by multiplying twenty-nine percent by the total amount of allowable costs as determined in this subsection, excluding allowable costs for taxes and licensing and permitting fees paid to governmental entities.

(6) The site operator shall prepare and file with the PSC a Least Cost Operating Plan. The plan must be filed within forty-five days of enactment of this chapter and must be revised annually. The plan shall include information concerning anticipated operations over the next ten years and shall evaluate all options for future staffing and operation of the site to ensure least cost operation, including information related to the possible interim suspension of operations in accordance with subsection (B)(7).

(7)(a) If the board, upon the advice of the compact commission or the site operator, concludes based on information provided to the board, that the volume of waste to be disposed during a forthcoming period of time does not appear sufficient to generate receipts that will be adequate to reimburse the site operator for its costs of operating the facility and its operating margin, then the board shall direct the site operator to propose to the compact commission plans including, but not necessarily limited to, a proposal for discontinuing acceptance of waste until such time as there is sufficient waste to cover the site operator's operating costs and operating margin. Any proposal to suspend operations must detail plans of the site operator to minimize its costs during the suspension of operations. Any such proposal to suspend operations must be approved by the Department of Health and Environmental Control with respect to safety and environmental protection.

(b) Allowable costs applicable to any period of suspended operations must be approved by the PSC according to procedures similar to those provided herein for allowable operating costs. During any such suspension of operations, the site operator must be reimbursed by the board from the extended care maintenance fund for its allowable costs and its operating margin. During the suspension funding to reimburse the board, the PSC, and the State Treasurer under Section 48-46-60(B) and funding of the compact commission under Section 48-46-60(C) must also be allocated from the extended care maintenance fund as approved by the board based on revised budgets submitted by the PSC, State Treasurer, and the compact commission.

(c) Notwithstanding any disbursements from the extended care maintenance fund in accordance with any provision of this act, the board shall continue to ensure, in accordance with Section 13-7-30, that the fund remains adequate to defray the costs for future maintenance costs or custodial and maintenance obligations of the site and other obligations imposed on the fund by this chapter.

(d) The PSC may promulgate regulations and policies necessary to execute the provisions of this section.

(8) The PSC may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of identifying allowable costs associated with waste

disposal. The PSC may consider standards, precedents, findings, and decisions in other jurisdictions that regulate allowable costs for radioactive waste disposal.

(9) In all proceedings held pursuant to this section, the board shall participate as a party representing the interests of the State of South Carolina, and the compact commission may participate as a party representing the interests of the compact states. The Consumer Advocate and the Attorney General of the State of South Carolina shall be parties to any such proceeding. Representatives from the Department of Health and Environmental Control shall participate in proceedings where necessary to determine or define the activities that a site operator must conduct in order to comply with the regulations and license conditions imposed by the department. Other parties may participate in the PSC's proceedings upon satisfaction of standing requirements and compliance with the PSC's procedures. Any site operator submitting records and information to the PSC may request that the PSC treat such records and information as confidential and not subject to disclosure in accordance with the PSC's procedures.

(10) In all respects in which the PSC has power and authority under this chapter, it shall conduct its proceedings under the South Carolina Administrative Procedures Act and the PSC's rules and regulations. The PSC is authorized to compel attendance and testimony of a site operator's directors, officers, agents, or employees.

(11) At any time the compact commission, the board, or any generator subject to payment of rates set pursuant to this chapter may file a complaint against a site operator alleging that allowable costs identified pursuant to this chapter are not in conformity with the directives of this chapter or the directives of the PSC or that the site operator is otherwise not acting in conformity with the requirements of this chapter or directives of the PSC. Upon filing of the complaint, the PSC shall cause a copy of the complaint to be served upon the site operator. The complaining party has the burden of proving that allowable costs or the actions of the site operator do not conform. The hearing shall conform to the rules of practice and procedure of the PSC for other complaint cases.

(12) The PSC shall encourage alternate forms of dispute resolution including, but not limited to, mediation or arbitration to resolve disputes between a site operator and any other person regarding matters covered by this chapter.

(C) The operator of a regional disposal facility shall submit to the South Carolina Department of Revenue, the PSC, and the board within thirty days following the end of each quarter a report detailing actual revenues received in the previous fiscal quarter and allowable costs incurred for operation of the disposal facility.

(D)(1) Within 30 days following the end of the fiscal year the operator of a regional disposal facility shall submit a payment made payable to the South Carolina Department of Revenue in an amount that is equal to the total revenues received for waste disposed in that fiscal year (with interest accrued on cash flows in accordance with instructions from the State Treasurer) minus allowable costs, operating margin, and any payments already made from such revenues pursuant to Section 48-46-60(B) and (C) for reimbursement of

administrative costs to state agencies and the compact commission. The Department of Revenue shall deposit the payment with the State Treasurer.

(2) If in any fiscal year total revenues do not cover allowable costs plus the operating margin, the board must reimburse the site operator its allowable costs and operating margin from the extended care maintenance fund within thirty days after the end of the fiscal year. The board shall as soon as practicable authorize a surcharge on waste disposed in an amount that will fully compensate the fund for the reimbursement to the site operator. In the event that total revenues for a fiscal year do not cover allowable costs plus the operating margin, or quarterly reports submitted pursuant to subsection (C) indicate that such annual revenue may be insufficient, the board shall consult with the compact commission and the site operator as early as practicable on whether the provisions of Section 48-46-40(B)(7) pertaining to suspension of operations during periods of insufficient revenues should be invoked.

(E) Revenues received pursuant to item (1) of subsection (D) must be allocated as follows:

(1) The South Carolina State Treasurer shall distribute the first two million dollars received for waste disposed during a fiscal year to the County Treasurer of Barnwell County for distribution to each of the parties to and beneficiaries of the order of the United States District Court in C.A. No. 1:90-2912-6 on the same schedule of allocation as is established within that order for the distribution of 'payments in lieu of taxes' paid by the United States Department of Energy.

(2) All revenues in excess of two million dollars received from waste disposed during the previous fiscal year must be deposited in a fund called the 'Nuclear Waste Disposal Receipts Distribution Fund'. Any South Carolina waste generator whose disposal fees contributed to the fund during the previous fiscal year may submit a request for a rebate of 33.33 percent of the funds paid by the generator during the previous fiscal year for disposal of waste at a regional disposal facility. These requests along with invoices or other supporting material must be submitted in writing to the State Treasurer within fifteen days of the end of the fiscal year. For this purpose disposal fees paid by the generator must exclude any fees paid pursuant to Section 48-46-60(C) for compact administration and fees paid pursuant to Section 48-46-60(B) for reimbursement of the PSC, the State Treasurer, and the board for administrative expenses under this chapter. Upon validation of the request and supporting documentation by the State Treasurer, the State Treasurer shall issue a rebate of the applicable funds to qualified waste generators within sixty days of the receipt of the request. If funds in the Nuclear Waste Disposal Receipts Distribution Fund are insufficient to provide a rebate of 33.33 percent to each generator, then each generator's rebate must be reduced in proportion to the amount of funds in the account for the applicable fiscal year.

(3) All funds deposited in the Nuclear Waste Disposal Receipts Distribution Fund for waste disposed for each fiscal year, less the amount needed to provide generators rebates pursuant to item (2), shall be deposited by the State Treasurer in the 'Children's Education

Endowment Fund'. Thirty percent of these monies must be allocated to Higher Education Scholarship Grants and used as provided in Section 59-143-30, and seventy percent of these monies must be allocated to Public School Facility Assistance and used as provided in Chapter 144 of Title 59.

(F) Effective beginning fiscal year 2001-2002, there is appropriated annually from the general fund of the State to the Higher Education Scholarship Grants share of the Children's Education Endowment whatever amount is necessary to credit to the Higher Education Scholarship Grants share an amount not less than the amount credited to that portion of the endowment in fiscal year 1999-2000. Revenues credited to the endowment pursuant to this subsection, for purposes of Section 59-143-10, are deemed to be received by the endowment pursuant to the former provisions of Section 48-48-140(C).

Section 48-46-50. (A) The Governor shall appoint two commissioners to the Atlantic Compact Commission and may appoint up to two alternate commissioners. These alternate commissioners may participate in meetings of the compact commission in lieu of and upon the request of a South Carolina commissioner. Technical representatives from the Department of Health and Environmental Control, the board, the PSC, and other state agencies may participate in relevant portions of meetings of the compact commission upon the request of a commissioner, alternate commissioner, or staff of the compact commission, or as called for in the compact commission bylaws.

(B) South Carolina commissioners or alternate commissioners to the compact commission may not vote affirmatively on any motion to admit new member states to the compact unless that state volunteers to host a regional disposal facility.

(C) Compact commissioners or alternate commissioners to the Atlantic Compact Commission may not vote to approve a regional management plan or any other plan or policy that allows for acceptance at the Barnwell regional disposal facility of more than a total of 800,000 cubic feet of waste from Connecticut and New Jersey.

(D) South Carolina's commissioners or alternate commissioners to the compact commission shall cast any applicable votes on the compact commission in a manner that authorizes the importation of waste into the region for purposes of disposal at a regional disposal facility in South Carolina so long as importation would not result in the facility accepting more than the following total volumes of all waste:

- (1) 160,000 cubic feet in fiscal year 2001;
- (2) 80,000 cubic feet in fiscal year 2002;
- (3) 70,000 cubic feet in fiscal year 2003;
- (4) 60,000 cubic feet in fiscal year 2004;
- (5) 50,000 cubic feet in fiscal year 2005;

(6) 45,000 cubic feet in fiscal year 2006;

(7) 40,000 cubic feet in fiscal year 2007;

(8) 35,000 cubic feet in fiscal year 2008.

South Carolina's commissioners or alternate commissioners shall not vote to approve the importation of waste into the region for purposes of disposal in any fiscal year after 2008.

Section 48-46-60. (A) The Governor and the board are authorized to take such actions as are necessary to join the Atlantic Compact including, but not limited to, petitioning the Compact Commission for membership and participating in any and all rulemaking processes. South Carolina's membership in the Atlantic Compact pursuant to this chapter is effective July 1, 2000, if by that date the Governor certifies to the General Assembly that the Compact Commission has taken each of the actions specified below. If the Compact Commission by July 1, 2000, has not taken each of the actions specified below, then South Carolina's membership shall become effective as soon thereafter as the Governor certifies that the Atlantic Compact Commission has taken these actions:

(1) adopted a binding regulation or policy in accordance with Article VII(e) of the compact establishing conditions for admission of a party state that are consistent with this act and ordered that South Carolina be declared eligible to be a party state consistent with those conditions;

(2) adopted a binding regulation or policy in accordance with Article IV(i)(11) of the Atlantic Compact authorizing a host state to enter into agreements on behalf of the compact and consistent with criteria established by the compact commission and consistent with the provisions of Section 48-46-40(A)(6)(a) and Section 48-46-50(D) with any person for the importation of waste into the region for purposes of disposal, to the extent that these agreements do not preclude the disposal facility from accepting all regional waste that can reasonably be projected to require disposal at the regional disposal facility consistent with subitem (5)(b) of this section;

(3) adopted a binding regulation or policy in accordance with Article IV(i)(12) of the Atlantic Compact authorizing each regional generator, at the generator's discretion, to ship waste to disposal facilities located outside the Atlantic Compact region;

(4) authorized South Carolina to proceed with plans to establish disposal rates for low-level radioactive waste disposal in a manner consistent with the procedures described in this chapter;

(5) adopted a binding regulation, policy, or order officially designating South Carolina as a volunteer host state for the region's disposal facility, contingent upon South Carolina's membership in the compact, in accordance with Article V.b.1. of the Atlantic Compact, thereby authorizing the following compensation and incentives to South Carolina:

(a) agreement, as evidenced in a policy, regulation, or order that the compact commission will issue a payment of twelve million dollars to the State of South Carolina. Before issuing the twelve million-dollar payment, the compact commission will deduct and retain from this amount seventy thousand dollars, which will be credited as full payment of South Carolina's membership dues in the Atlantic Compact. The remainder of the twelve million-dollar payment must be credited to an account in the State Treasurer's office, separate and distinct from the fund, styled 'Barnwell Economic Development Fund'. This fund, and earnings on this fund which must be credited to the fund, may only be expended for purposes of economic development in the Barnwell County area including, but not limited to, projects of the Barnwell County Economic Development Corporation and projects of the Tri-County alliance which includes Barnwell, Bamberg, and Allendale Counties and projects in the Williston area of Aiken County. Economic development includes, but is not limited to, industrial recruitment, infrastructure construction, improvement, and expansion, and public facilities construction, improvement, and expansion. These funds must be spent according to guidelines established by the Barnwell County governing body and upon approval of the board. Expenditures must be authorized by the Barnwell County governing body and with the approval of the board. Upon approval of the Barnwell County governing body and the board, the State Treasurer shall submit the approved funds to the Barnwell County Treasurer for disbursement pursuant to the authorization;

(b) adopted a binding regulation, policy, or order consistent with the regional management plan developed pursuant to Article V(a) of the Atlantic Compact, limiting Connecticut and New Jersey to the use of not more than 800,000 cubic feet of disposal capacity at the regional disposal facility located in Barnwell County, South Carolina, and also ensuring that up to 800,000 cubic feet of disposal capacity remains available for use by Connecticut and New Jersey unless this estimate of need is later revised downward by unanimous consent of the compact commission;

(c) agreement, as evidenced in a policy or regulation, that the compact commission headquarters and office will be relocated to South Carolina within six months of South Carolina's membership; and

(d) agreement, as evidenced in a policy or regulation, that the compact commission will, to the extent practicable, hold a majority of its meetings in the host state for the regional disposal facility.

(B) The board, the State Treasurer, and the PSC shall provide the required staff and may add additional permanent or temporary staff or contract for services, as well as provide for operating expenses, if necessary, to administer new responsibilities assigned under this chapter. In accordance with Article V.f.2. of the Atlantic Compact the compensation, costs, and expenses incurred incident to administering these responsibilities may be paid through a surcharge on waste disposed at regional disposal facilities within the State. To cover these costs the board shall impose a surcharge per unit of waste received at any regional disposal facility located within the State. A site operator shall collect and remit

these fees to the board in accordance with the board's directions. All such surcharges shall be included within the disposal rates set by the board pursuant to Section 48-46-40.

(C) In accordance with Article V.f.3. of the Atlantic Compact, the compact commission shall advise the board at least annually, but more frequently if the compact commission deems appropriate, of the compact commission's costs and expenses. To cover these costs the board shall impose a surcharge per unit of waste received at any regional disposal facility located within the State as determined in Section 48-46-40. A site operator shall collect and remit these fees to the board in accordance with the board's directions, and the board shall remit those fees to the compact commission.

Section 48-46-70. The Northeast Interstate Low-Level Radioactive Waste Management Compact, P.L. 99-240, Section 227, 99 Stat. 1909 (1985) as it existed on the date this act was enacted, is hereby incorporated by reference, and all terms and conditions contained therein shall have full force and effect as if set forth herein in their entirety. In addition to the express limitations on non-host state and compact commission liability provided in the Northeast Interstate Low-Level Radioactive Waste Management Compact, South Carolina will indemnify the Atlantic Compact Commission or any of the other party states for any damages incurred solely because of South Carolina's membership in the compact and for any damages associated with any injury to persons or property during the institutional control period resulting from the radioactive and waste management operations of the regional facility.

Section 48-46-80. Pursuant to Section 48-2-10 et seq., the Department of Health and Environmental Control may adjust the radioactive materials license fee for Low-Level Radioactive Waste Shallow Land Disposal in Regulation 61-30 in an amount that will offset changes to its annual operating budget caused by projected increases or decreases in the number of permittees expected to pay fees for Radioactive Waste Transport Permits under the same regulation for shipment of low-level radioactive waste for disposal within the State.

Section 48-46-90. (A) In accordance with Section 13-7-30, the board, or its designee, is responsible for extended custody and maintenance of the Barnwell site following closure and license transfer from the facility operator. The Department of Health and Environmental Control is responsible for continued site monitoring.

(B) Nothing in this chapter may be construed to alter or diminish the existing statutory authority of the Department of Health and Environmental Control to regulate activities involving radioactive materials and radioactive wastes."

#### Definitions

SECTION 2. Section 13-7-10 of the 1976 Code, as last amended by Act 552 of 1990, is further amended by adding at the end:

"(10) 'Decommissioning trust fund' means the trust fund established pursuant to a Trust Agreement dated March 4, 1981, among Chem-Nuclear Systems, Inc. (grantor), the South Carolina Budget and Control Board (beneficiary), and the South Carolina State Treasurer (trustee), whose purpose is to assure adequate funding for decommissioning of the disposal site, or any successor fund with a similar purpose.

(11) 'Extended care maintenance fund' means the 'escrow fund for perpetual care' that is used for custodial, surveillance, and maintenance costs during the period of institutional control and any post-closure observation period specified by the Department of Health and Environmental Control, and for activities associated with closure of the site as provided for in Section 13-7-30(4).

(12) 'Maintenance' means active maintenance activities as specified by the Department of Health and Environmental Control including pumping and treatment of groundwater and the repair and replacement of disposal unit covers."

#### Powers and duties of Budget and Control Board

SECTION 3. Section 13-7-30 of the 1976 Code, as last amended by Section 70A, Part II, Act 501 of 1992, is further amended to read:

"Section 13-7-30. For purposes of this article, the State Budget and Control Board, hereinafter in this section referred to as the board, is designated as the agency of the State which shall have the following powers and duties that are in accord with its already established responsibilities for custody of state properties, and for the management of all state sinking funds, insurance, and analogous fiscal matters that are relevant to state properties:

(1) expend state funds in order to acquire, develop, and operate land and facilities. This acquisition may be by lease, dedication, purchase, or other arrangements. However, the state's functions under the authority of this section are limited to the specific purposes of this article;

(2) lease, sublease, or sell real and personal properties to public or private bodies;

(3) assure the maintenance of insurance coverage by state licensees, lessees, or sublessees as will in the opinion of the board protect the citizens of the State against nuclear incident that may occur on state-controlled atomic energy facilities;

(4) assume responsibility for extended custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the State, in the event the parties operating these facilities abandon their responsibility, or when the license for the facility is ultimately transferred to an agency of the State, and whenever the federal government or any agency of the federal government has not assumed the responsibility.

In order to finance such extended custody and maintenance as the board may undertake, the board may collect fees from private or public parties holding radioactive materials for custodial purposes. These fees must be sufficient in each individual case to defray the estimated cost of the board's custodial management activities for that individual case. The fees collected for such custodial management activities shall also be sufficient to provide additional funds for the purchase of insurance which shall be purchased for the protection of the State and the general public for the period such radioactive material considering its isotope and curie content together with other factors may present a possible danger to the general public in the event of migration or dispersal of such radioactivity. All such fees, when received by the board, must be transmitted to the State Treasurer. The Treasurer must place the money in a special account, in the nature of a revolving trust fund, which may be designated 'extended care maintenance fund', to be disbursed on authorization of the board. Monies in the extended care maintenance funds must be invested by the board in the manner as other state monies. However, any interest accruing as a result of investment must accrue to this extended care maintenance fund. Except as authorized in Section 48-46-40(B)(7)(b) and (D)(2), the extended care maintenance fund must be used exclusively for custodial, surveillance, and maintenance costs during the period of institutional control and during any post-closure and observation period specified by the Department of Health and Environmental Control, and for activities associated with closure of the site. Funds from the extended care maintenance fund shall not be used for site closure activities or for custodial, surveillance, and maintenance performed during the post-closure observation period until all funds in the decommissioning trust account are exhausted.

(5) Enter into an agreement with the federal government or any of its authorized agencies to assume extended maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used for development of atomic energy resources or as custodial site for radioactive material."

#### Severability provisions

SECTION 4. The provisions of this act are to be liberally construed to effectuate its purpose. If any provisions of this act shall be determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, such provision shall be severable from the remaining portions of this chapter and shall not invalidate the remaining provisions of this chapter, which shall continue in full force and effect. If any provision of this act shall be determined by a court of competent jurisdiction to be in conflict with any other provision of this act, and particularly the provisions of the Northeast Interstate Low-Level Radioactive Waste Management Compact, P.L. 99-240, Section 227, 99 Stat. 1909 (1985), the provisions of the compact shall govern.

#### Repeals

SECTION 5. Title 48, Chapter 48 of the 1976 Code is repealed effective upon the date of South Carolina's membership in the Atlantic Compact, except that Section 48-48-140(F) is repealed effective July 1, 2000. The contingent annual license tax for fiscal year 1999-

2000 under Section 48-48-140(F) shall remain due and payable as described in that section for that fiscal year. In the event that South Carolina does not become a member of the Atlantic Compact by October 1, 2000, then Section 48-48-140(F) shall be reinstated as of October 1, 2000, except that the tax for fiscal year 2000-2001 shall be \$18 million. In the fiscal year that the site operator ceases to accept waste for disposal in preparation for permanent closure, the contingent annual license tax under Section 48-48-140(F) will be paid to the State on a pro rata basis for each quarter that the site is accepting waste for disposal. The tax does not apply when the site is in a closure mode.

#### Governor's Nuclear Advisory Council

SECTION 6. Chapter 7, Title 13 of the 1976 Code is amended to read:

#### "Article 9

#### Governor's Nuclear Advisory Council

Section 13-7-810. There is hereby established a Governor's Nuclear Advisory Council which shall be responsible to and report to the Governor.

Section 13-7-820. The duties of the council, in addition to such other duties as may be requested by the Governor, shall be:

(1) to provide advice and recommendations to the Governor on issues involving the use, handling, and management of the transportation, storage, or disposal of nuclear materials within South Carolina, or such use, handling, transportation, storage, or disposal of nuclear materials outside of the State which may affect the public health, welfare, safety, and environment of the citizens of South Carolina;

(2) to provide advice and recommendations to the Governor regarding matters pertaining to the Atlantic Compact Commission;

(3) to provide advice and recommendations to the Governor regarding the various programs of the United States Department of Energy pertaining to nuclear waste;

(4) to meet at the call of the chair or at a minimum twice a year.

Section 13-7-830. The recommendations described in Section 13-7-620 shall be made available to the General Assembly, the Governor, and the Budget and Control Board.

Section 13-7-840. The council shall consist of nine members. One at-large member shall be appointed by the Speaker of the House of Representatives and one at-large member shall be appointed by the President of the Senate. Seven members shall be appointed by the Governor with the advice and consent of the Senate as follows: Two shall be actively involved in the area of environmental protection; one shall have experience in the generation of power by nuclear means; one shall have experience in the field of nuclear

activities other than power generation; two shall be scientists or engineers from the faculties of institutions of higher learning in the State; and one shall be from the public at large. The terms of the members of the council appointed by the Governor shall be co-terminus with that of the appointing Governor, but they shall serve at the pleasure of the Governor.

Vacancies of the council shall be filled in the manner of the original appointment.

Section 13-7-850. The Governor shall designate the chairman from the membership. When on business of the council, members shall be entitled to receive such compensation as provided by law for boards and commissions.

Section 13-7-860. Staff support for the council shall be provided by the State Energy Office."

Contingent repeal

SECTION 7. In the event that South Carolina does not become a member of the Atlantic Compact by October 1, 2000, then Section 1 of this act is repealed.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 31st day of May, 2000.

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President of the Senate

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Speaker of the House of Representatives

Approved the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

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Governor

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