

Introduced by

Government and Veterans Affairs Committee

(At the request of the State Department of Health)

1 | A BILL for an Act to create and enact ~~a new~~ subsection 3 to section 23-20.1-04.1 of the North
2 Dakota Century Code, relating to custody of land used for disposal of radioactive material; to
3 amend and reenact sections 23-01-36, 23-20.1-04.3, 23-20.1-04.4, 23-20.1-06, and 23-20.1-10
4 of the North Dakota Century Code, relating to the licensing and regulation of radioactive
5 material; to repeal section 23-20.1-09.1 of the North Dakota Century Code, relating to the
6 confidentiality of radioactive material records; and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 23-01-36 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **23-01-36. Appeal from permit proceedings.**

11 An appeal from the issuance, denial, modification, or revocation of a permit issued under
12 chapter 23-20.1, 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the
13 permit application, or by any person who is aggrieved by the permit application decision,
14 provided that person participated in or provided comments during the hearing process for the
15 permit application, modification, or revocation. An appeal must be taken within thirty days after
16 the final permit application determination is mailed by first-class mail to the permit applicant and
17 to any interested person who has requested a copy of the final permit determination during the
18 permit hearing process. Except as provided in this section, an appeal of the final permit
19 determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and
20 28-32-49. The department may substitute final permit conditions and written responses to public
21 comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.1,
22 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition,
23 rule, order, limitation, or other applicable requirement implementing those chapters which
24 occurs after the permit is issued, any challenge to the department's issuance, modification, or

1 revocation of the permit or permit conditions must be made in the permit hearing process and
2 may not be raised in any collateral or subsequent legal proceeding, and the applicant and any
3 aggrieved person may raise on appeal only issues that were raised to the department in the
4 permit hearing process.

5 **SECTION 2.** Subsection 3 to section 23-20.1-04.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 3. Land used for the disposal of technologically enhanced naturally occurring radioactive
8 material is not subject to the provisions of subsection 2.

9 **SECTION 3. AMENDMENT.** Section 23-20.1-04.3 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **23-20.1-04.3. Procedural requirements.**

12 In the licensing and regulation of the processing, generation, or disposal of source material,
13 byproduct material, or other radioactive material occurring naturally or produced artificially, the
14 department shall provide:

15 1. In the cases of licenses:

16 a. An opportunity, after public notice, for written comments and a public hearing,
17 with a transcript.

18 ~~b. An opportunity for cross-examination.~~

19 e. A written determination of the action to be taken which is based upon findings
20 included in the determination and upon evidence presented during the public
21 comment period and which is subject to judicial review.

22 ~~d.c.~~ For each licensed activity which has a significant impact on the human
23 environment, a written analysis prepared by the department, which must be
24 available to the public before commencement of hearings, of the impact of the
25 licensed activity on the environment. The analysis must include:

26 (1) An assessment of the radiological and nonradiological impacts to the public
27 health.

28 (2) An assessment of any impact on any waterway and ground water.

29 (3) Consideration of alternatives to the activities to be conducted.

30 (4) Consideration of the long-term impacts of the licensed activities.

- 1 e.d. A prohibition of any major construction with respect to the activities to be
2 conducted prior to completing the action stipulated in subdivisions a, b, c, and d.
3 f.e. An assurance that management of source material, byproduct material, or other
4 radioactive material occurring naturally or produced artificially is carried out in
5 conformance with applicable standards promulgated by the department, the
6 commission, and the United States environmental protection agency.

7 2. In the case of rulemaking:

8 a. An opportunity for public participation through written comments or a public
9 hearing.

10 b. An opportunity for judicial review ~~by rules a procedure for the handling of~~
11 ~~applications for specific licenses. As appropriate, the department shall provide an~~
12 ~~opportunity, after public notice, for written comments and a public hearing.~~

13 **SECTION 4. AMENDMENT.** Section 23-20.1-04.4 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23-20.1-04.4. Additional authorities.**

16 The department is authorized, ~~in carrying out its authority under subdivision f of subsection~~
17 ~~4 of section 23-20.1-04.3,~~ to require persons exempt from licensing to conduct monitoring,
18 perform remedial work, and to comply with any other measures the department deems
19 necessary or desirable to protect health or minimize danger to life or property.

20 **SECTION 5. AMENDMENT.** Section 23-20.1-06 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **23-20.1-06. Administrative procedures and judicial review.**

23 Any proceeding under this chapter for:

- 24 1. The issuance or modification of rules including emergency orders relating to control of
25 sources of ionizing radiation;
26 2. Granting, suspending, revoking, or amending any license; or
27 3. Determining compliance with rules of the department;

28 must be conducted in accordance with the provisions of chapter 28-32. If an emergency exists
29 requiring immediate action to protect the public health and safety, the department may, without
30 notice or hearing, issue an order reciting the existence of such emergency and requiring that
31 such action be taken as is necessary to meet this emergency. Notwithstanding any provision of

1 this chapter, such order is effective immediately. Any person to whom such order is directed
2 shall comply therewith immediately, but on application to the department must be afforded a
3 hearing before the ~~state health council~~department within ten days. On the basis of such
4 hearing, the emergency order must be continued, modified, or revoked within thirty days after
5 such hearing.

6 **SECTION 6. AMENDMENT.** Section 23-20.1-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-20.1-10. Penalties.**

9 ~~Any person who violates any provision of this chapter or any license condition or limitation~~
10 ~~implemented by this chapter is subject to a civil penalty of not more than ten thousand dollars~~
11 ~~per day of violation.~~

12 ~~In addition to any other penalty or remedy pursuant to this chapter, any person who~~
13 ~~knowingly violates any of the provisions of this chapter, or rules or orders of the department in~~
14 ~~effect pursuant thereto, is guilty of a class A misdemeanor.~~

15 1. Any person who violates this chapter or any permit condition, rule, order, limitation, or
16 other applicable requirement implementing this chapter is subject to a civil penalty not
17 to exceed twelve thousand five hundred dollars per day per violation, unless the
18 penalty for the violation is otherwise specifically provided for and made exclusive in
19 this chapter.

20 2. Any person who willfully violates any provision of this chapter or any permit condition,
21 rule, order, limitation, or other applicable requirement implementing this chapter is
22 guilty of a class C felony, unless the penalty for the violation is otherwise specifically
23 provided for and made exclusive in this chapter. ~~For multiple violations, penalties may~~
24 ~~be assessed up to the maximum amount specified in this subsection for each day of~~
25 ~~each separate violation.~~

26 3. Any person who ~~knowingly~~willingly makes any false statement, representation, or
27 certification in any application, record, report, plan, or other document filed or required
28 to be maintained under this chapter or any permit condition, rule, order, limitation, or
29 other applicable requirement implementing this chapter or who falsifies, tampers with,
30 or ~~knowingly~~willingly renders inaccurate any monitoring device or method required to
31 be maintained under this chapter or any permit condition, rule, order, limitation, or

1 other applicable requirement implementing this chapter is guilty of a class C felony,
2 unless the penalty for the violation is otherwise specifically provided for and made
3 exclusive in this chapter. ~~For multiple violations, penalties may be assessed up to the~~
4 ~~maximum amount specified in this subsection for each day of each separate violation.~~
5 **SECTION 7. REPEAL.** Section 23-20.1-09.1 of the North Dakota Century Code is repealed.