

# AN ACT

To amend sections 3747.05 and 3747.06 and to enact section 3747.061 of the Revised Code to clarify that the Board of Directors of the Ohio Low-Level Radioactive Waste Facility Development Authority may select more than one contractor to execute the duties assigned to a contractor for the development and operation of such a facility and to make other changes in the statutes governing the Board.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 3747.05 and 3747.06 be amended and section 3747.061 of the Revised Code be enacted to read as follows:

Sec. 3747.05. (A) There is hereby created the Ohio low-level radioactive waste facility development authority. The authority is a body both corporate and politic, constituting an instrumentality of the state. The exercise by it of the powers conferred by this chapter in the development, siting, construction, operation, closure, institutional control, and long-term care of a facility in this state is and shall be held to be an essential governmental function of the state.

(B) The authority shall be governed by a board of directors initially consisting of twelve members appointed as follows:

(1) Four members appointed by the governor, one of whom shall be a hydrogeologist, one of whom shall be a public health professional, one of whom shall be a biologist, and one of whom shall represent the public;

(2) Four members appointed by the speaker of the house of representatives, one of whom shall be a professional engineer, one of whom shall represent the public, one of whom shall be a health physicist, and one of whom shall be a member of a statewide environmental advocacy organization in this state;

(3) Four members appointed by the president of the senate, one of whom shall be a professional engineer, one of whom shall be a soil scientist, one of whom shall represent a generator of low-level radioactive waste in

this state, and one of whom shall be a geologist.

All members of the board appointed under division (B) of this section shall have recognized ability, credentials, and experience and shall be residents of this state.

Not later than thirty days after ~~the effective date of this section~~ September 8, 1995, the appointing authorities shall appoint the initial members of the board. Of those members, each appointing authority shall appoint one member for a term of three years, one member for a term of six years, and two members for a term of nine years. Thereafter, terms of office shall be for nine years with each term ending on the same day of the same month as did the term that it succeeds.

(C) Upon selection by the board under division (A)(12) of section 3747.06 and section 3747.11 of the Revised Code of the disposal site proposed for licensure as the facility under Chapter 3748. of the Revised Code, the speaker of the house of representatives shall appoint to the board one additional member representing the host community, who shall be an elected official of the host community, and the president of the senate shall appoint to the board one additional member representing the host community, who shall represent the public. The members appointed under this division shall be recommended by the legislative authority of the host community with the advice of the local monitoring committee established in the host community under section 3747.11 of the Revised Code and shall be residents of the host community and have been registered to vote in the county in which the proposed site is located for at least two years immediately preceding the date of their appointment. Terms of office of members appointed under this division shall be for nine years.

(D) Each member of the board appointed under division (B) or (C) of this section shall hold office from the date of ~~his~~ appointment until the end of the term for which ~~he~~ the member was appointed. Members may be reappointed for one term of office. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which ~~his~~ the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration of ~~his~~ the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first. An appointing authority shall remove a member of the board who fails to meet the applicable qualifications required by division (B) or (C) of this section or section 3747.22 of the Revised Code, but may otherwise remove a member only for misfeasance, nonfeasance, or malfeasance in office.

(E) The ~~chairman~~ chairperson and ~~vice-chairman~~ vice-chairperson of the board shall be elected annually by the members. The board shall appoint a secretary-treasurer who need not be a member of the board. The secretary-treasurer shall keep a written record of all of the board's proceedings. The board shall meet at least quarterly and at the call of the ~~chairman~~ chairperson or a majority of the members. Until members are appointed under division (C) of this section, a quorum shall consist of seven members. After the appointment of members under that division, a quorum shall consist of eight members. A simple majority vote of all the members of the board is necessary to take action on any matter, except that a three-fifths majority vote of all the members of the board is necessary to take action on any of the following:

(1) Selection or replacement of a contractor under division (A)(6) of section 3747.06 and section 3747.10 of the Revised Code;

(2) Approval of standards and procedures for screening and characterizing potentially suitable disposal sites;

(3) Approval of the facility design and revisions to it under division (A)(7) of section 3747.06 of the Revised Code;

(4) Approval of at least three potentially suitable disposal sites for site characterization under division (A)(11) of section 3747.06 and section 3747.11 of the Revised Code;

(5) Selection of the disposal site under division (A)(12) of section 3747.06 and section 3747.11 of the Revised Code to be submitted for licensure as the facility under Chapter 3748. of the Revised Code;

(6) Submission of a license application for a facility;

(7) Approval of an institutional control plan for a facility and modifications to that plan;

(8) Approval of a long-term care plan for a facility and modifications to that plan;

(9) Termination of institutional control of a facility;

(10) Termination of long-term care of a facility.

(F) The ~~chairman~~ chairperson of the board shall receive as compensation fifteen thousand dollars annually plus actual and necessary expenses incurred in the performance of the ~~chairman's~~ chairperson's duties. All other members shall receive as compensation ten thousand dollars annually plus actual and necessary expenses incurred in the performance of their duties.

(G) Except as otherwise provided in this division, serving as a member of the board does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for

removal of public officers or employees from their offices or positions of employment. Members of the board are public officials or employees for the purposes of section 102.02 and divisions (D), (E), and (F) of section 102.03 of the Revised Code, provided that a member's relationship with the entity that the member is representing on the board is not subject to divisions (D), (E), and (F) of section 102.03, section 2921.42, and section 2921.43 of the Revised Code.

Section 9.86 of the Revised Code applies to members of the board.

(H) Prior to the operation of a facility, funding for the authority shall be provided by the midwest interstate low-level radioactive waste commission as authorized in Article III(I)(5) of the midwest interstate compact on low-level radioactive waste established under section 3747.01 of the Revised Code. After the facility begins operation, funding for the authority shall be derived from the fee system established in rules adopted under division (B) of section 3747.07 of the Revised Code pursuant to Article VI(J) of that compact. Moneys from the general revenue fund shall not be used for any activities associated with the development, siting, construction, operation, closure, institutional control, or long-term care of the facility.

Sec. 3747.06. (A) The board of directors of the Ohio low-level radioactive waste facility development authority shall do all of the following:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Maintain a principal office at a location that it designates in the state;

(3) Employ and fix the compensation of employees, including an executive director, who shall serve at the pleasure of the board; in consultation with the executive director, develop an organizational plan for the hiring of additional staff and specify which of those staff shall be in the classified civil service pursuant to Chapter 124. of the Revised Code and which of those staff shall serve at the pleasure of the executive director; and provide coverage for its employees under Chapters 4123. and 4141. of the Revised Code; The board may delegate to the executive director authority to make personnel decisions with respect to employees, subject to applicable law. The board of directors may lay off employees of the authority that are in the classified service pursuant to Chapter 124. Of the Revised Code as may be appropriate or delegate that decision to the executive director.

(4) Utilize the expertise of other state agencies and departments to the fullest extent possible. The agencies and departments shall be paid for the cost of providing services to the board.

(5) Provide for the establishment of a statewide public information and

involvement program and of a public document repository in Columbus and in each community in which a site undergoing site characterization is located, provided that after a site is licensed as a facility and the license is finally determined to be valid, a public ~~records~~ document repository shall no longer be required in the other communities that underwent characterization. A copy of all records of the board, including the minutes of the board, and of the contractor relating to the screening, siting, design, construction, operation, institutional control, and long-term care of the facility shall be kept permanently by the board and the contractor, respectively.

(6) Not later than ~~twelve~~ eighteen months after ~~the effective date of this section~~ September 8, 1995, select a private entity as a contractor ~~for the purposes of to begin~~ development, as defined in section 3747.01 of the Revised Code, ~~and operation~~ of a facility. Not later than thirty months after September 8, 1995, the board shall select one or more private entities as a contractor or contractors to complete development of and operate a facility, except that the board may choose not to select one or more private entities as a contractor to complete development of and operate a facility if the low-level radioactive waste commission has not complied with any request made under division (B)(6) of this section. Notwithstanding sections ~~153.02, 153.03,~~ 153.50, 153.51, and 153.52 of the Revised Code, the board may award a single contract for the development, construction, and operation of a facility.

(7) Approve, approve with modifications requested by the board, or disapprove the design of the facility and any subsequent revisions to it that are proposed by the contractor. If the board disapproves the design or revisions, it shall provide reasons for the disapproval and require the contractor to submit a new design or revisions.

(8) Not later than ~~eighteen~~ twenty-four months after ~~the effective date of this section~~ September 8, 1995, approve, approve with modifications requested by the board, or disapprove and, when approved, implement a statewide screening process, prepared by the contractor selected under division (A)(6) of this section with the assistance of the board and its employees, through which the exclusionary siting criteria established in section 3747.12 of the Revised Code and further specified in rules adopted under division (A)(3) of section 3747.07 of the Revised Code and the preference siting criteria established in section 3747.12 of the Revised Code and further specified in rules adopted under division (A)(3) of section 3747.07 of the Revised Code shall be applied. If the board disapproves the screening process, it shall provide reasons for the disapproval and require the contractor to submit a new screening process.

(9) Approve, approve with modifications requested by the board, or disapprove the geologic and hydrogeologic database and other appropriate databases to be used by the contractor for application of the siting criteria. If the board disapproves a database, it shall provide reasons for the disapproval and require the contractor to submit a new database.

(10) Establish a program to offer research grants to state universities and colleges as defined in division (A)(1) of section 3345.12 of the Revised Code and nonprofit institutions of higher education holding a certificate of authorization from the Ohio board of regents under Chapter 1713. of the Revised Code for the study and development of technology for the reduction, management, treatment, disposal, and monitoring of low-level radioactive waste. Until moneys are collected through the fee system established in rules adopted under division (B) of section 3747.07 of the Revised Code, the total amount of moneys available annually for grants shall not exceed five per cent of the board's annual budget. When moneys are collected through that fee system, the total amount of moneys available annually for grants shall not exceed one per cent of the moneys collected during the preceding fiscal year through the fee system. The grants shall be awarded in accordance with rules adopted under division (B)(8) of section 3747.07 of the Revised Code.

(11) Not more than ~~thirty-six~~ forty-two months after ~~the effective date of this section~~ September 8, 1995, approve for site characterization at least three potentially suitable disposal sites from among the sites recommended by the contractor, provided that each state that is a member of the midwest interstate compact on low-level radioactive waste entered into under section 3747.01 of the Revised Code has enacted, and the United States congress has consented to, the amendments to the compact made by this act;

(12) Not more than fifty-seven months after ~~the effective date of this section~~ September 8, 1995, from among the characterized sites, select the disposal site to be submitted for licensure as the facility under Chapter 3748. of the Revised Code, provided that the midwest interstate low-level radioactive waste commission created in Article III(A) of the midwest interstate compact on low-level radioactive waste entered into under section 3747.01 of the Revised Code has selected and notified the next host state under the compact;

(13) Acquire real property in fee simple on behalf of the state for the purpose of operating the facility, including real property to be used as an ecological monitoring zone in accordance with section 3747.14 of the Revised Code. For the purposes of division (A)(13) of this section, the board may appropriate real property in accordance with Chapter 163. of the

ed Code.

(14) Establish quality assurance and quality control programs for all phases of development, siting, construction, operation, closure, institutional control, and long-term care of the facility;

(15) Approve, approve with modifications requested by the board, or disapprove and, if approved, supervise activities within the ecological monitoring zone;

(16) Approve or disapprove petitions submitted by communities that wish to be identified as affected communities;

(17) Approve, approve with modifications requested by the board, or disapprove community compensation and benefits agreements as negotiated with the host community and any affected community or communities by the staff of the board. If the board disapproves the community compensation agreement negotiated with the host community, it shall provide reasons for the disapproval and require the staff to renegotiate the agreement.

(18) In consultation with the director of health, establish epidemiological health studies if requested by the legislative authority of the host community;

(19) Approve, approve with modifications requested by the board, or disapprove methods proposed by the contractor to provide institutional control and long-term care of the facility for a minimum of five hundred years. If the board disapproves the methods, it shall provide reasons for the disapproval and require the contractor to submit new institutional control and long-term care methods.

(20) Pursuant to division (A)(3) of section 3748.09 of the Revised Code, advise the department of health on the hiring of an independent person to examine the license review process for the facility;

(21) Approve, approve with modifications requested by the board, or disapprove the form of the waste acceptance agreement prepared by the contractor under division (A) of section 3747.17 of the Revised Code. If the board disapproves the form, it shall provide reasons for the disapproval and require the contractor to submit a new form.

(22) Enter into agreements with agencies of other party states to the midwest interstate compact on low-level radioactive waste for the purpose of verifying information in the waste minimization reports required under section 3747.17 of the Revised Code;

(23) Ensure that sufficient resources are allocated for both of the following:

(a) Institutional control through the fee system established in rules adopted under division (B) of section 3747.07 of the Revised Code pursuant

to Article VI(J) of the midwest interstate compact on low-level radioactive waste established under section 3747.01 of the Revised Code;

(b) Long-term care for a minimum of five hundred years through the long-term care fund established pursuant to Article VI(O) of the compact.

(24) Approve, approve with modifications requested by the board, or disapprove termination of the long-term care of the facility, and provide reasons for that decision;

(25) In the event of a failure of a facility that results in a release of radioactivity in excess of prescribed limits, approve, approve with modifications requested by the board, or disapprove a program to correct the failure and contain and remediate any contamination caused by the release.

(B) The board may do any of the following:

(1) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter; If the board enters into more than one contract for the purpose of executing the duties of a contractor specified in this chapter or Chapter 3748. of the Revised Code or rules adopted under either chapter, the specific duties so established apply to the appropriate contractor. Any other requirement established under this chapter or Chapter 3748. of the Revised Code or rules adopted under either chapter regarding a contractor applies to any contractor with whom the board proposes to enter or has entered into a contract, except that the board may establish different requirements under those rules for contractors that execute separate duties.

(2) Sue and be sued in the name of the authority and plead and be impleaded, provided that any actions against the authority shall be brought in the court of common pleas of the county in which the office of the board is located or in the court of common pleas of the county in which the cause of action arose if that county is in the state. All summonses, exceptions, and notices of every kind shall be served on the authority by leaving a copy thereof at the principal office of the board with the executive director.

(3) Establish a peer review committee to review, analyze, and make recommendations regarding the screening and siting process established in rules adopted under division (A)(3) of section 3747.07 of the Revised Code and the design and construction of the facility. Such a committee shall consist of not less than two nor more than three persons representing each of the professional fields described in division (B) of section 3747.05 of the Revised Code. Each member of the committee shall be a resident of this state and shall have recognized ability, credentials, and experience in the member's professional field of expertise. If the board establishes such a committee, it shall do so no later than twelve months after ~~the effective date~~

~~of this section~~ September 8, 1995, and shall disband it when the facility begins operating.

(4) Periodically review compensation of board members and make recommendations to the general assembly regarding any needed changes in compensation of board members;

(5) Perform all other acts necessary or proper to carry out the powers expressly granted in this chapter;

(6) not later than January 1, 1998, request the midwest interstate low-level radioactive waste commission created in Article III of the midwest interstate low-level radioactive waste compact entered into under section 3747.01 of the Revised Code to locate its principal office at a location of the commission's choosing within this state.

Sec. 3747.061. In addition to executing the other duties assigned to it under this chapter, the board of directors of the Ohio low-level radioactive waste facility development authority shall approve, approve with modifications requested by the board, or disapprove the application for a license for a facility that is required to be submitted to the department of health under section 3748.09 of the Revised Code by the contractor selected under division (A)(6) of section 3747.06 and section 3747.10 of the Revised Code. If the board disapproves the application, it shall provide reasons for the disapproval and require the contractor to prepare a new application for the board's review.

The contractor shall not submit the license application to the department until the application has been approved or approved with modifications by the board.

SECTION 2. That existing sections 3747.05 and 3747.06 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_