

SENATE BILL REPORT

SB 5445

As Reported By Senate Committee On:
Water, Energy & Environment, February 16, 2005

Title: An act relating to regulation and cleanup of sites with mixed radioactive and hazardous wastes to provide clarification for interpretation of the cleanup priority act consistent with intent and policy of the cleanup priority act as passed by the voters in November 2004.

Brief Description: Clarifying Initiative 297.

Sponsors: Senators Kline, Pridemore, Esser, Brown, Finkbeiner, Jacobsen, Benson, Swecker, Spanel, Regala, Poulsen, Rockefeller, Rasmussen, Kohl-Welles, Weinstein and McCaslin.

Brief History:

Committee Activity: Water, Energy & Environment: 2/1/05, 2/16/05 [DPS, DNP].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5445 be substituted therefor, and the substitute bill do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hewitt, Honeyford and Mulliken.

Staff: Richard Rodger (786-7461)

Background: Initiative 297, known as the Cleanup Priority Act, approved by the voters on November 2, 2004, prohibits additional mixed radioactive and hazardous waste from being brought to sites, such as the Hanford Nuclear Reservation, until the existing on-site waste conforms to all state and federal environment laws. New requirements were established for sites and facilities that handle mixed radioactive and hazardous waste. The act also increased grant funding to help the public and local governments evaluate permit, closure, and cleanup decisions, and to review funding priorities.

On December 1, 2004, the federal government filed a complaint in Federal District Court seeking to have the act declared invalid because, among other grounds, it is discriminatory under the Commerce Clause, it's in violation of the Supremacy Clause, and the United States has not waived sovereign immunity as it relates to the control of hazardous or solid waste.

The court challenge has raised issues with possible interpretations of the act. As part of its response, the state has requested the federal court to refer those interpretations to the Washington State Supreme Court.

Summary of Substitute Bill: In relation to Cleanup Priority Act (Initiative 297), the legislature makes the following findings and, where necessary, the related statutory clarifications:

- The cleanup of contamination is the top priority at sites with hazardous or mixed waste contamination.
- Adding more wastes to sites with mixed radioactive and hazardous wastes where there have been releases into the environment detracts from the cleanup and from the work needed to bring wastes into compliance.
- Congress has clearly granted the state the authority to adopt and enforce state and federal laws relating to the cleanup of wastes.
- The act is consistent with limitations of the federal law.

The legislature also finds and clarifies that the act did not intend:

- To prevent the movement of waste from one facility or unit within a site to another as part of the approved cleanup.
- To increase the universe of substances that are subject to regulation by the state as hazardous or mixed wastes.
- To regulate radioactive materials, medical isotopes, other radioactive substances, or facilities exclusively regulated by the United States pursuant to the Federal Atomic Energy Act, or necessary for medical research, medical treatment, or manufacturing or industrial processes.

The terms "mixed waste" or "mixed radioactive and hazardous waste" are clarified to ensure there is no confusion in the phrase "hazardous substance or dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component...." A new exclusion is added to the definition to ensure medical isotopes and materials are not included. The definition also does not include waste or facilities regulated under the Federal Atomic Energy Act.

The "mixed waste surcharge" definition is clarified. The surcharge is not assessed on the basis of budgets for a facility or site where such funding, or portion thereof, is not appropriated.

New land disposal facilities may be permitted by the department to accomplish the closure, remediation, or cleanup of facilities or units at a site, if there are releases or suspected releases of hazardous substances at the site that are not investigated and being controlled under current law. These new facilities may only have a disposal capacity that is necessary to accomplish the closure, remediation, or cleanup at that site.

The intent of the Cleanup Priority Act is restated. The Department of Ecology is directed to implement the Act's policy under the authorities granted in the Hazardous Waste Management Act, the Model Toxics Control Act, and the State Environmental Policy Act. The department must adopt rules to implement this intent.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: An emergency clause is added and the bill takes effect immediately.

Testimony For: This is a bipartisan bill that addresses questions of the constitutionality of I-297 as raised by the federal government. The intent and purposes of the Initiative are clear; however, we support clarifications to address the concerns raised, such as, the use radioactive isotopes in medical research or beneficial industrial processes, the over all scope to the Initiative, and the ability to transfer wastes within the clean up sites. This bill is needed to clarify the Initiative and ensure businesses do not leave the state as the result of misinterpretation. The Department of Ecology has been prohibited, by the federal court, from issuing clarifying administrative rules.

Testimony Against: This bill is very detailed and changes the intent of Initiative 297. This bill doesn't create jobs, it causes people to lose jobs. The TriCities area needs the spinoff research labs and industries such as IsoRay and Pacific Northwest National Laboratories. The clean up of Hanford is slowed by the passage of the Initiative. Clean up efforts are meticulous, lots of sites have been closed, and the waste is being prepared for export. Only a minimal amount of waste is being imported for processing, while a larger volume of the more dangerous waste is scheduled for export to Nevada and New Mexico. What happens if those states adopt the same initiative language. The Tri-Party Agreement covers the clean up at Hanford, it is working well and should govern the site.

Who Testified: Senator Jerome Delvin. PRO: Senator Adam Kline, prime sponsor; Mike Wilson, Department of Ecology; Bob Apple, Spokane City Council; Bob Cooper, Heart of America Northwest; Gerald Pollet, Chair, Yes on Initiative 297, Heart of America NW; Charles Weems, Washington Physicians for Social Responsibility; Lonnie Johns-Brown, Washington League of Women's Voters; Nick Federici, Washington Toxics Coalition; Robert Pregulman, Washington State Public Interest Research Group; Craig Engelking, Sierra Club; Rebecca Sayre, Heart of America Northwest.

CON: Bob Abbott, Laborers' District Council; Mark Reavis, Labor.