
SUBSTITUTE SENATE BILL 5445

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Kline, Pridemore, Esser, Brown, Finkbeiner, Jacobsen, Benson, Swecker, Spanel, Regala, Poulsen, Rockefeller, Rasmussen, Kohl-Welles, Weinstein and McCaslin)

READ FIRST TIME 02/17/05.

1 AN ACT Relating to regulation and cleanup of sites with mixed
2 radioactive and hazardous wastes to provide clarification for
3 interpretation of the cleanup priority act consistent with intent and
4 policy of the cleanup priority act as passed by the voters in November
5 2004; amending RCW 70.105E.030 and 70.105E.090; adding new sections to
6 chapter 70.105E RCW; creating a new section; and declaring an
7 emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** The people of Washington state adopted the
10 cleanup priority act as Initiative 297 in November 2004. The
11 legislature finds that the intent of Initiative 297 is clearly stated
12 in the intent and policy sections of the cleanup priority act as passed
13 by the voters. The cleanup priority act makes the cleanup of
14 contamination the top priority at sites with hazardous or mixed waste
15 contamination. Consistent with that priority, the legislature finds
16 that adding more wastes to sites with mixed radioactive and hazardous
17 wastes where there have been releases into the environment detracts
18 from cleanup, and from the work needed to bring wastes into compliance.

1 The cleanup priority act should be interpreted by the courts consistent
2 with the clear intent of the voters, and the findings and
3 clarifications in this act.

4 The legislature further finds that nothing in the cleanup priority
5 act is intended to, or has the effect of, preventing the movement of
6 waste from one facility or unit within a site to another as part of an
7 approved cleanup order, agreement, or plan, or pursuant to permits.
8 Given claims made by the federal government in challenging the cleanup
9 priority act, the legislature finds that, the intent of the voters
10 being clear, it is desirable to clarify that the language of the
11 cleanup priority act should be interpreted consistent with voter
12 intent. Because the term facility is used in different ways in
13 different statutes, rules, and regulations, the legislature finds that
14 it is desirable to clarify that the cleanup priority act does not
15 prevent the movement or transfer of waste within a site to accomplish
16 cleanup of the site. The legislature finds that the cleanup priority
17 act does not increase the universe of substances that are subject to
18 regulation by the state as hazardous or mixed wastes. The legislature
19 finds that the cleanup priority act does not regulate radioactive
20 materials, medical isotopes, other radioactive substances, or
21 facilities exclusively regulated by the United States pursuant to the
22 federal atomic energy act 42 U.S.C. Sec. 2011 et seq.

23 The legislature further finds that this chapter is not intended,
24 nor may it be interpreted, to adversely affect the transportation,
25 manufacturing, storage, or use of any hazardous substance or
26 radioactive materials necessary for medical research, medical
27 treatment, or manufacturing or industrial processes.

28 The legislature further finds that the cleanup priority act does
29 not regulate the materials or facilities used in the processing of
30 radioactive substances, including those with nonradioactive components,
31 to produce radioactive isotopes for beneficial use, such as
32 calibrations, research, and medical use. In accordance with this
33 finding, the cleanup priority act is not intended to, and shall not be
34 interpreted to, regulate those radioactive or otherwise hazardous
35 materials that may be imported to Washington state, or generated within
36 the state, to be processed for the production of beneficial products,
37 such as medical isotopes. Disposal of the radioactive, hazardous, or

1 mixed wastes resulting from such processing activities is governed by
2 other statutes and not regulated by the cleanup priority act.

3 The legislature further finds that congress has clearly granted the
4 state the authority to adopt and enforce the cleanup priority act and
5 this act, under the federal facilities compliance act and federal
6 resource recovery and conservation act, 42 U.S.C. Sec. 6901 et seq.
7 The cleanup priority act is intended to be consistent with limitations
8 of the federal superfund law, the comprehensive environmental response,
9 compensation and liability act, 42 U.S.C. Sec. 9601 et seq., relating
10 to the inappropriateness of adding more waste to sites with spreading
11 contamination and where hazardous wastes create risks of additional
12 release to the environment due to noncompliance with applicable
13 standards.

14 Court challenges have raised possible interpretations of the
15 cleanup priority act that the legislature finds are not consistent with
16 the clear intent. It is in the interest of the state to clarify as
17 quickly as possible that the cleanup priority act does not impact any
18 business operation, or federal or private facility, that was not
19 intended to be impacted by the cleanup priority act. Consistent with
20 the intent of the voters, the legislature finds that the universe of
21 regulated hazardous or dangerous wastes was not expanded by the passage
22 of the cleanup priority act. Because court action has prevented the
23 normal role of the department of ecology from issuing defining or
24 interpretive rules, the legislature finds that adoption of the
25 amendments to the cleanup priority act will ensure that the intent of
26 the cleanup priority act is understood and clarified for the courts as
27 well as for businesses or cleanup operations without delay.

28 **Sec. 2.** RCW 70.105E.030 and 2005 c 1 s 3 (Initiative Measure No.
29 297) are each amended to read as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Dangerous waste" has the same meaning as the term is defined
33 in RCW 70.105.010.

34 (2) "Department" means the department of ecology.

35 (3) "Dispose" or "disposal" have the same meanings as the terms are
36 defined in RCW 70.105.010.

1 (4) "Facility" has the same meaning as the term is defined in RCW
2 70.105.010.

3 (5) "Hanford" means the geographic area comprising the Hanford
4 nuclear reservation, owned and operated by the United States department
5 of energy, or any successor federal agency.

6 (6) "Hazardous substance" has the same meaning as the term is
7 defined in RCW 70.105D.020.

8 (7) "Hazardous waste" means and includes all dangerous and
9 extremely hazardous waste, as those terms are defined in RCW
10 70.105.010.

11 (8) "Local government" means a city, town, or county.

12 (9)(a) "Mixed waste" or "mixed radioactive and hazardous waste"
13 means:

14 (i) Any (~~hazardous substance or~~) dangerous or extremely hazardous
15 waste that contains both a nonradioactive hazardous component and a
16 radioactive component(~~, including~~); or

17 (ii) Any (~~such~~) hazardous substances, as defined by RCW
18 70.105D.020 that contain both a nonradioactive and radioactive
19 hazardous component, that (A) have been released to the environment, or
20 (B) are discarded solid wastes found by the department to pose a threat
21 of future release, in a manner that may expose persons or the
22 environment to (~~either the nonradioactive or radioactive hazardous~~
23 substances)) the release.

24 (b) Materials, useful products, or substances, including medical
25 isotopes and materials used to produce medical or industrial isotopes,
26 that are not otherwise regulated as hazardous or mixed waste under
27 chapter 70.105 RCW or the federal hazardous waste law (RCRA 42 U.S.C.
28 Sec. 6901, et seq.) are not hazardous, dangerous, or mixed waste under
29 this chapter. Mixed wastes or mixed waste facility does not include
30 radioactive materials or facilities regulated exclusively by the
31 federal government under the federal atomic energy act, 42 U.S.C. Sec.
32 2011 et seq.

33 (10) "Mixed waste surcharge" means an additional charge for the
34 purposes of local government and public participation in decisions
35 relating to mixed waste facilities(~~(+)~~) to be added to the service
36 charge assessed under RCW 70.105.280 against those facilities that
37 store, treat, incinerate, or dispose of mixed wastes(~~(+)~~), or against

1 facilities at which mixed wastes have been released((τ)) or which are
2 undergoing closure pursuant to chapter 70.105 RCW or remedial action
3 pursuant to chapter 70.105D RCW.

4 (11) "Person" has the same meaning as the term is defined in RCW
5 70.105D.020.

6 (12) "Release" has the same meaning as the term is defined in RCW
7 70.105D.020.

8 (13) "Remedy or remedial action" have the same meanings as the
9 terms are defined in RCW 70.105D.020.

10 (14) "Site" means the contiguous geographic area under the same
11 ownership, lease, or operation where a facility is located, or where
12 there has been a release of hazardous substances. In the event of a
13 release of hazardous substances, "site" includes any area, or body of
14 surface or ground water, where a hazardous substance has been
15 deposited, stored, disposed of, placed, migrated to, or otherwise come
16 to be located.

17 (15) Unless otherwise defined, or the context indicates otherwise,
18 terms not defined in this section have the same meaning as defined in
19 chapter 70.105 RCW, when used in this chapter.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.105E
21 RCW to read as follows:

22 (1) Nothing in this chapter prohibits mixed wastes generated on-
23 site as part of a remedial or corrective action from being transferred
24 to, stored, treated, recycled, or disposed of at a facility or unit
25 within the site subject to applicable permits, plans, agreements,
26 consent orders, or conditions of an approved remedy or corrective
27 action under the federal superfund law, 42 U.S.C. Sec. 9601 et seq.,
28 chapter 70.105D RCW, chapter 70.105 RCW, or the federal resource
29 conservation and recovery act, 42 U.S.C. Sec. 6921 et seq.

30 (2) New land disposal facilities may be permitted by the department
31 to accomplish the closure, remediation, or cleanup of facilities or
32 units at a site subject to RCW 70.105E.040(6), if there are releases or
33 suspected releases of hazardous substances at the site that are not
34 investigated and being controlled under chapter 70.105 RCW, chapter
35 70.105D RCW, CERCLA 42 U.S.C. Sec. 9601 et seq., or RCRA 42 U.S.C. Sec.
36 6921 et seq. New facilities permitted under this subsection may only

1 have a disposal capacity that is necessary to accomplish the closure,
2 remediation, or cleanup at that site.

3 (3) This chapter does not regulate radioactive materials or
4 substances, or the safety of facilities storing or processing such
5 radioactive materials, where such radioactive materials or facilities
6 are regulated exclusively by the federal government pursuant to the
7 federal atomic energy act, 42 U.S.C. Sec. 2011 et seq., absent explicit
8 delegation by congress to the state of such authority.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.105E
10 RCW to read as follows:

11 The voters passed this chapter intending to prevent the addition of
12 more hazardous or mixed wastes to mixed wastes sites with releases of
13 hazardous substances that are impacting the environment or pose a risk
14 to public health. The department must implement this policy using its
15 authority under the hazardous waste management act, chapter 70.105 RCW,
16 the model toxics control act, chapter 70.105D RCW, and the state
17 environmental policy act, chapter 43.21C RCW. The department shall
18 adopt rules necessary to carry out the intent of this chapter.

19 **Sec. 5.** RCW 70.105E.090 and 2005 c 1 s 9 (Initiative Measure No.
20 297) are each amended to read as follows:

21 (1) At any site or facility at which there has been a release of
22 mixed wastes, permits issued under chapter 70.105 RCW for mixed waste
23 facilities shall provide for the operation and funding of a broadly
24 representative advisory board. The board shall be composed of
25 representatives chosen by: Potentially affected tribes; regional and
26 statewide citizen groups with an established record of concern
27 regarding human health or the environment impacted or potentially
28 impacted by releases from the site; local groups concerned with health
29 and resource impacts; local governments; and the state of Oregon if
30 that state may be, or has been, impacted by the release or threatened
31 release of waste. Such permits shall specify that the advisory board
32 be continued with adequate funding, provided by the owner or operator
33 of the site, to perform its chartered functions until final closure or
34 certification of the completion of remedial or corrective action.

35 (2) The department shall request the advisory board created or
36 maintained at a facility pursuant to this section to advise it on

1 procedural and substantive matters necessary for informed public
2 comment. The department shall formally consider and respond to any
3 comments from the advisory board regarding exposure scenarios prior to
4 issuing any decision on a remedial, corrective, or closure action.

5 (3) The department shall base planning for its own oversight and
6 permitting functions utilizing an assumption that mixed waste facility
7 service charges established pursuant to RCW 70.105.280 should not be
8 less than one percent of the first two hundred million dollars of the
9 estimated annual site clean-up budget for the coming year, and one-half
10 of one percent of the estimated annual site clean-up budget above that
11 level. If the department determines that a lower or higher level of
12 service charges is necessary to support its oversight and public
13 involvement functions, then it shall seek comment from any advisory
14 committee established for the site, and from the public, regarding the
15 appropriate level of support.

16 (4)(a) Due to the complexity of issues involving mixed waste
17 storage, treatment and disposal facilities, at such facilities, the
18 department shall make available annual local government and public
19 participation grants for both: (i) Assistance in public review of
20 mixed waste permit, closure, and clean-up decisions; and, (ii) review
21 of, and public comment on, site budgets, compliance costs and funding
22 priorities. Public participation grants pursuant to this section shall
23 be provided as determined by the criteria adopted by the department
24 pursuant to RCW 70.105D.070(5). Local government grants pursuant to
25 this section shall be made available to either a local government or a
26 coalition of local governments. Grants under this section may be
27 renewed annually at a level two times that permitted under RCW
28 70.105D.070(5), and shall not be subject to annual appropriation by the
29 legislature.

30 (b) Local government and public participation grants established
31 under this chapter shall be funded through the state toxics control
32 account, by charging an applicant or permit holder a mixed waste
33 surcharge added to the service charge established by RCW 70.105.280.
34 This surcharge shall be collected and administered consistent with the
35 procedures and requirements established in this section and RCW
36 70.105.280 to ensure adequate public and local government involvement.
37 This mixed waste surcharge shall be no less than fifteen one-hundredths
38 of one percent of the first two hundred million dollars of annual site

1 budget for all related clean-up activities, of which five one-
2 hundredths of one percent shall be available for grants to local
3 government. The mixed waste surcharge for public and local government
4 participation grants shall be five one-hundredths of one percent of the
5 portion of any estimated annual site clean-up budget exceeding two
6 hundred million dollars. Any unused mixed waste surcharges assessed
7 under this section shall remain in the state toxics control account
8 established pursuant to chapter 70.105D RCW, and shall be utilized to
9 reduce the mixed waste surcharge assessed the owner or operator of the
10 facility in future years.

11 (5) For federal facilities with releases of mixed wastes or
12 hazardous substances owned or operated (~~((by))~~) by a federal agency,
13 such as Hanford, the annual site clean-up budget shall be determined by
14 the department, for purposes of this section, based upon the (~~((greater~~
15 ~~of the congressional budget request or))~~) appropriations of the federal
16 government for activities at the site related to cleanup or waste
17 management. (~~((If the appropriation amount for a fiscal year exceeds~~
18 ~~the congressional budget request, the department shall adjust the~~
19 ~~assessment of the mixed waste surcharge within thirty days of final~~
20 ~~enactment of the appropriation.))~~)

21 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately.

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