
SENATE BILL 5445

State of Washington

59th Legislature

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

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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; adding new sections to chapter 70.105E
6 RCW; and creating a new section.

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

8 NEW SECTION. **Sec. 1.** The people of Washington state adopted the
9 cleanup priority act as Initiative 297 in November 2004, with the
10 highest vote count ever received for passage of a ballot initiative in
11 Washington state. The legislature finds that the intent of Initiative
12 297 is clearly stated in the intent and policy sections of the cleanup
13 priority act as passed by the voters. The cleanup priority act makes
14 the cleanup of contamination the top priority at sites with hazardous
15 or mixed waste contamination that threatens our rivers, ground water,
16 environment, and health. Consistent with that priority, the
17 legislature finds that adding more wastes to sites with mixed
18 radioactive and hazardous wastes where there have been releases into
19 the environment detracts from cleanup, and from the work needed to

1 bring wastes into compliance. The cleanup priority act should be
2 interpreted by the courts consistent with the clear intent of the
3 voters, and the findings and 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 and rules, the legislature finds that it is
14 desirable to clarify that the cleanup priority act does not prevent the
15 movement or transfer of waste within a site to accomplish cleanup of
16 the site. The legislature finds that the cleanup priority act does not
17 increase the universe of substances that are subject to regulation by
18 the state as hazardous or mixed wastes. The legislature finds that the
19 cleanup priority act does not regulate radioactive materials, medical
20 isotopes, other radioactive substances, or facilities exclusively
21 regulated by the United States pursuant to the federal atomic energy
22 act 42 U.S.C. Sec. 2011 et seq.

23 The legislature further finds that congress has clearly granted the
24 state the authority to adopt and enforce the cleanup priority act and
25 this act, under the federal facilities compliance act and federal
26 resource recovery and conservation act, 42 U.S.C. Sec. 6901 et seq.
27 The cleanup priority act is intended to be consistent with limitations
28 of the federal superfund law, the comprehensive environmental response,
29 compensation and liability act, 42 U.S.C. Sec. 9601 et seq., relating
30 to the inappropriateness of adding more waste to sites with spreading
31 contamination and where hazardous wastes create risks of additional
32 release to the environment due to noncompliance with applicable
33 standards.

34 Court challenges have raised possible interpretations of the
35 cleanup priority act that the legislature finds are not consistent with
36 the clear intent. It is in the interest of the state to clarify as
37 quickly as possible that the cleanup priority act does not impact any
38 business operation, or federal or private facility, that was not

1 intended to be impacted by the cleanup priority act. Consistent with
2 the intent of the voters, the legislature finds and directs that the
3 courts shall interpret this act consistent with this finding; that the
4 universe of regulated hazardous or dangerous wastes was not expanded by
5 the passage of the cleanup priority act. Because court action has
6 prevented the normal role of the department of ecology from issuing
7 defining or interpretive rules, the legislature finds that adoption of
8 the amendments to the cleanup priority act will ensure that the intent
9 of the cleanup priority act is understood and clarified for the courts
10 as well as for businesses or cleanup operations without delay.

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

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

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

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

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

20 (4) "Facility" has the same meaning as the term is defined in RCW
21 70.105.010.

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

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

27 (7) "Hazardous waste" means and includes all dangerous and
28 extremely hazardous waste, as those terms are defined in RCW
29 70.105.010.

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

31 (9) "Mixed waste" or "mixed radioactive and hazardous waste" means
32 any (~~hazardous substance or~~) dangerous or extremely hazardous waste
33 that contains both a nonradioactive hazardous component and a
34 radioactive component, (~~including~~) and any (~~such~~) hazardous
35 substances, as defined by RCW 70.105D.020 that contain both a
36 nonradioactive and radioactive hazardous component, that have been
37 released to the environment, or are discarded solid wastes found by the

1 department to pose a threat of future release, in a manner that may
2 expose persons or the environment to either the nonradioactive or
3 radioactive hazardous substances. Materials, useful products, or
4 substances, including medical isotopes and materials used to produce
5 medical or industrial isotopes, that are not otherwise regulated as
6 hazardous or mixed waste under chapter 70.105 RCW or the federal
7 hazardous waste law (RCRA 42 U.S.C. Sec. 6901, et seq.) are not
8 hazardous, dangerous, or mixed waste under this chapter. Mixed wastes
9 or mixed waste facility does not include radioactive materials or
10 facilities regulated exclusively by the federal government under the
11 federal atomic energy act, 42 U.S.C. Sec. 2011 et seq.

12 (10) "Mixed waste surcharge" means an additional charge for the
13 purposes of local government and public participation in decisions
14 relating to mixed waste facilities((+)) to be added to the service
15 charge assessed under RCW 70.105.280 against those facilities that
16 store, treat, incinerate, or dispose of mixed wastes((+)), or against
17 facilities at which mixed wastes have been released((τ)) or which are
18 undergoing closure pursuant to chapter 70.105 RCW or remedial action
19 pursuant to chapter 70.105D RCW. The mixed waste surcharge shall be
20 assessed based on the need to meet the specified purposes of this
21 chapter. Assessments shall not be based on budgets for a facility or
22 site owned or operated by a public agency where such funding, or
23 portion thereof, is not appropriated.

24 (11) "Person" has the same meaning as the term is defined in RCW
25 70.105D.020.

26 (12) "Release" has the same meaning as the term is defined in RCW
27 70.105D.020.

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

30 (14) "Site" means the contiguous geographic area under the same
31 ownership, lease, or operation where a facility is located, or where
32 there has been a release of hazardous substances. In the event of a
33 release of hazardous substances, "site" includes any area, or body of
34 surface or ground water, where a hazardous substance has been
35 deposited, stored, disposed of, placed, migrated to, or otherwise come
36 to be located.

37 (15) Unless otherwise defined, or the context indicates otherwise,

1 terms not defined in this section have the same meaning as defined in
2 chapter 70.105 RCW, when used in this chapter.

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

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

13 (2) New land disposal facilities may be permitted by the department
14 to accomplish the closure, remediation, or cleanup of facilities or
15 units at a site subject to RCW 70.105E.040(6), if there are releases or
16 suspected releases of hazardous substances at the site that are not
17 investigated and being controlled under chapter 70.105 RCW, chapter
18 70.105D RCW, CERCLA 42 U.S.C. Sec. 9601 et seq., or RCRA 42 U.S.C. Sec.
19 6921 et seq. New facilities permitted under this subsection may only
20 have a disposal capacity that is necessary to accomplish the closure,
21 remediation, or cleanup at that site.

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

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

30 The voters passed this chapter intending to prevent the addition of
31 more hazardous or mixed wastes to mixed wastes sites with releases of
32 hazardous substances that are impacting the environment or pose a risk
33 to public health. The department must implement this policy using its
34 authority under the hazardous waste management act, chapter 70.105 RCW,
35 the model toxics control act, chapter 70.105D RCW, and the state
36 environmental policy act, chapter 43.21C RCW. The department shall

1 adopt rules necessary to carry out this intent and this chapter. The
2 department, by rule, shall define the term "actual characterization" of
3 wastes to reflect appropriate statistically valid sampling protocols
4 for determining the composition and appropriate designation of wastes.
5 The department shall consider local government and public participation
6 essential to its permitting and closure activities under chapter 70.105
7 RCW and this chapter, and, consistent with the intent of this chapter,
8 adopt rules to ensure that permittees or generators of hazardous
9 wastes, including mixed wastes, pay the appropriate costs for such
10 involvement. The department shall take into consideration whether such
11 permittees already pay a hazardous substance tax for such purpose under
12 chapter 70.105D RCW.

13 NEW SECTION. **Sec. 5.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

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