
SUBSTITUTE HOUSE BILL 1252

State of Washington

65th Legislature

2017 Regular Session

By House State Government, Elections & Information Technology
(originally sponsored by Representatives Haler, Fitzgibbon, Klippert,
Nealey, Tarleton, and Jinkins; by request of Department of Health)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to transferring authority for low-level
2 radioactive waste management from the department of ecology to the
3 department of health; amending RCW 43.200.020, 43.200.030,
4 43.200.070, 43.200.080, 43.200.180, 43.200.190, 43.200.200,
5 43.200.220, 43.200.230, 43.200.900, 70.98.085, and 70.98.098;
6 reenacting and amending RCW 43.200.015; adding new sections to
7 chapter 43.200 RCW; repealing RCW 43.200.907; and providing a
8 contingent effective date.

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

10 **Sec. 1.** RCW 43.200.015 and 2012 c 19 s 1 are each reenacted and
11 amended to read as follows:

12 As used in this chapter, the following terms have the meanings
13 indicated unless the context clearly requires otherwise.

14 (1) "Commercial low-level radioactive waste disposal facility"
15 has the same meaning as "facility" as defined in RCW 43.145.010.

16 (2) "Department" means the department of (~~ecology~~) health.

17 (3) "High-level radioactive waste" means "high-level radioactive
18 waste" as the term is defined in 42 U.S.C. Sec. 10101 (P.L. 97-425).

19 (4) "Low-level radioactive waste" means waste material that
20 contains radioactive nuclides emitting primarily beta or gamma
21 radiation, or both, in concentrations or quantities that exceed

1 applicable federal or state standards for unrestricted release. Low-
2 level waste does not include waste containing more than one hundred
3 nanocuries of transuranic contaminants per gram of material, nor
4 spent nuclear fuel, nor material classified as either high-level
5 radioactive waste or waste that is unsuited for disposal by near-
6 surface burial under any applicable federal regulations.

7 (5) "Radioactive waste" means both high-level and low-level
8 radioactive waste.

9 (6) "Spent nuclear fuel" means spent nuclear fuel as the term is
10 defined in 42 U.S.C. Sec. 10101.

11 **Sec. 2.** RCW 43.200.020 and 1989 c 322 s 2 are each amended to
12 read as follows:

13 The department of ~~((ecology))~~ health is designated as the
14 executive branch agency for participation in ~~((the federal nuclear
15 waste policy act of 1982 and))~~ the federal low-level radioactive
16 waste policy act of 1980~~((, however the legislature retains an
17 autonomous role with respect to participation in all aspects of the
18 federal nuclear waste policy act of 1982))~~. The department may
19 receive federal financial assistance for carrying out radioactive
20 waste management activities, including assistance for expenses,
21 salaries, travel, and monitoring ~~((and evaluating the program of
22 repository exploration and siting undertaken by the federal
23 government))~~.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.200
25 RCW to read as follows:

26 The department of ecology is designated as the executive branch
27 agency for participation in the federal nuclear waste policy act of
28 1982, however the legislature retains an autonomous role with respect
29 to participation in all aspects of the federal nuclear waste policy
30 act of 1982. The department of ecology may receive federal financial
31 assistance for carrying out radioactive waste management activities,
32 including assistance for expenses, salaries, travel, and monitoring
33 and evaluating the program of repository exploration and siting
34 undertaken by the federal government.

35 **Sec. 4.** RCW 43.200.030 and 1989 c 322 s 3 are each amended to
36 read as follows:

1 All departments, agencies, and officers of this state and its
2 subdivisions shall cooperate with the department of (~~ecology~~)
3 health in the furtherance of any of its activities pursuant to this
4 chapter.

5 **Sec. 5.** RCW 43.200.070 and 1989 c 322 s 5 are each amended to
6 read as follows:

7 The department of (~~ecology~~) health shall adopt such rules as
8 are necessary to carry out responsibilities under this chapter. The
9 department of (~~ecology~~) health is authorized to adopt such rules as
10 are necessary to carry out its responsibilities under chapter 43.145
11 RCW.

12 **Sec. 6.** RCW 43.200.080 and 2012 c 19 s 2 are each amended to
13 read as follows:

14 The (~~director of ecology~~) secretary of health shall, in
15 addition to the powers and duties otherwise imposed by law, have the
16 following special powers and duties:

17 (1) To fulfill the responsibilities of the state under the lease
18 between the state of Washington and the federal government executed
19 September 10, 1964, as amended, covering (~~approximately~~) one
20 hundred (~~fifteen~~) acres of land lying within the Hanford
21 reservation near Richland, Washington. The department of ecology may
22 sublease to private or public entities all or a portion of the land
23 for specific purposes or activities which are determined, after
24 public hearing, to be in agreement with the terms of the lease and in
25 the best interests of the citizens of the state consistent with any
26 criteria that may be developed as a requirement by the legislature.
27 Beginning on the effective date of this section, the department of
28 health may renew existing subleases entered into by the department of
29 ecology under this subsection;

30 (2) To assume the responsibilities of the state under the
31 perpetual care agreement between the state of Washington and the
32 federal government executed July 29, 1965, and the sublease between
33 the state of Washington and the site operator of the commercial low-
34 level radioactive waste disposal facility. In order to finance
35 perpetual surveillance and maintenance under the agreement and ensure
36 site closure under the sublease, the department of (~~ecology~~) health
37 shall impose and collect fees from parties holding radioactive
38 materials for waste management purposes. The fees shall be

1 established by rule adopted under chapter 34.05 RCW and shall be an
2 amount determined by the department of (~~ecology~~) health to be
3 necessary to defray the estimated liability of the state. Such fees
4 shall reflect equity between the disposal facilities of this and
5 other states. A site closure account and a perpetual surveillance and
6 maintenance account are hereby created in the state treasury. Site
7 use permit fees collected by the department of health under RCW
8 70.98.085(3) must be deposited in the site closure account and must
9 be used as specified in RCW 70.98.085(3). Funds in the site closure
10 account other than site use permit fee funds shall be exclusively
11 available to reimburse, to the extent that moneys are available in
12 the account, the site operator for its costs plus a reasonable profit
13 as agreed by the operator and the state, or to reimburse the state
14 licensing agency and any agencies under contract to the state
15 licensing agency for their costs in final closure and decommissioning
16 of the commercial low-level radioactive waste disposal facility. If a
17 balance remains in the account after satisfactory performance of
18 closure and decommissioning, this balance shall be transferred to the
19 perpetual surveillance and maintenance account. The perpetual
20 surveillance and maintenance account shall be used exclusively by the
21 state to meet post-closure surveillance and maintenance costs, or for
22 otherwise satisfying surveillance and maintenance obligations.
23 Appropriations are required to permit expenditures and payment of
24 obligations from the site closure account and the perpetual
25 surveillance and maintenance account. Receipts shall be directed to
26 the site closure account and the perpetual surveillance and
27 maintenance account as specified by the department. Additional moneys
28 specifically appropriated by the legislature or received from any
29 public or private source may be placed in the site closure account
30 and the perpetual surveillance and maintenance account. During the
31 2003-2005 fiscal biennium, the legislature may transfer up to
32 thirteen million eight hundred thousand dollars from the site closure
33 account to the general fund;

34 (3)(a) Subject to the conditions in (b) of this subsection, on
35 July 1, 2008, and each July 1st thereafter, the treasurer shall
36 transfer from the perpetual surveillance and maintenance account to
37 the site closure account the sum of nine hundred sixty-six thousand
38 dollars. The nine hundred sixty-six thousand dollars transferred on
39 July 1, 2009, and thereafter shall be adjusted to a level equal to
40 the percentage increase in the United States implicit price deflator

1 for personal consumption. The last transfer under this section shall
2 occur on July 1, 2033.

3 (b) The transfer in (a) of this subsection shall occur only if
4 written agreement is reached between the state (~~(department of~~
5 ~~ecology)~~) and the United States department of energy pursuant to
6 section 6 of the perpetual care agreement dated July 29, 1965,
7 between the United States atomic energy commission and the state of
8 Washington. If agreement cannot be reached between the state
9 (~~(department of ecology)~~) and the United States department of energy
10 by June 1, 2008, the treasurer shall transfer the funds from the
11 general fund to the site closure account according to the schedule in
12 (a) of this subsection.

13 (c) If for any reason the commercial low-level radioactive waste
14 disposal facility is closed to further disposal operations during or
15 after the 2003-2005 biennium and before 2033, then the amount
16 remaining to be repaid from the 2003-2005 transfer of thirteen
17 million eight hundred thousand dollars from the site closure account
18 shall be transferred by the treasurer from the general fund to the
19 site closure account to fund the closure and decommissioning of the
20 facility. The treasurer shall transfer to the site closure account in
21 full the amount remaining to be repaid upon written notice from the
22 secretary of health that the department of health has authorized
23 closure or that disposal operations have ceased. The treasurer shall
24 complete the transfer within sixty days of written notice from the
25 secretary of health.

26 (d) To the extent that money in the site closure account together
27 with the amount of money identified for repayment to the site closure
28 account, pursuant to (a) through (c) of this subsection, equals or
29 exceeds the cost estimate approved by the department of health for
30 closure and decommissioning of the facility, the money in the site
31 closure account together with the amount of money identified for
32 repayment to the site closure account shall constitute adequate
33 financial assurance for purposes of the department of health
34 financial assurance requirements;

35 (4) To assure maintenance of such insurance coverage by state
36 licensees, lessees, or sublessees as will adequately, in the opinion
37 of the (~~(director)~~) secretary of health, protect the citizens of the
38 state against nuclear accidents or incidents that may occur on
39 privately or state-controlled nuclear facilities; and

1 (5) (~~To make application for or otherwise pursue any federal~~
2 ~~funds to which the state may be eligible, through the federal~~
3 ~~resource conservation and recovery act or any other federal programs,~~
4 ~~for the management, treatment or disposal, and any remedial actions,~~
5 ~~of wastes that are both radioactive and hazardous at all commercial~~
6 ~~low-level radioactive waste disposal facilities; and~~

7 (~~6~~)) To develop contingency plans for duties and options for the
8 department and other state agencies related to the commercial low-
9 level radioactive waste disposal facility based on various
10 projections of annual levels of waste disposal. These plans shall
11 include an analysis of expected revenue to the state in various taxes
12 and funds related to low-level radioactive waste disposal and the
13 resulting implications that any increase or decrease in revenue may
14 have on state agency duties or responsibilities. The plans shall be
15 updated annually.

16 **Sec. 7.** RCW 43.200.180 and 2012 c 19 s 4 are each amended to
17 read as follows:

18 (~~Except as provided in chapter 70.98 RCW related to~~
19 ~~administration of a user permit system,~~) The department of
20 (~~ecology~~) health shall be the state agency responsible for
21 implementation of the federal low-level radioactive waste policy
22 amendments act of 1985, including:

23 (1) Collecting and administering the surcharge assessed by the
24 governor under RCW 43.200.170;

25 (2) Collecting low-level radioactive waste data from disposal
26 facility operators, generators, intermediate handlers, and the
27 federal department of energy;

28 (3) Developing and operating a computerized information system to
29 manage low-level radioactive waste data;

30 (4) Denying and reinstating access to the commercial low-level
31 radioactive waste disposal facility pursuant to the authority granted
32 under federal law;

33 (5) Administering and/or monitoring (a) the maximum waste volume
34 levels for the commercial low-level radioactive waste disposal
35 facility, (b) reactor waste allocations, (c) priority allocations
36 under the Northwest Interstate Compact on Low-Level Radioactive Waste
37 Management, and (d) adherence by other states and compact regions to
38 federal statutory deadlines; and

1 (6) Coordinating the state's low-level radioactive waste disposal
2 program with similar programs in other states.

3 **Sec. 8.** RCW 43.200.190 and 2012 c 19 s 5 are each amended to
4 read as follows:

5 The department of (~~ecology~~) health shall perform studies, by
6 contract or otherwise, to define site closure and perpetual care and
7 maintenance requirements for the commercial low-level radioactive
8 waste disposal facility and to assess the adequacy of insurance
9 coverage for general liability, radiological liability, and
10 transportation liability for the facility.

11 **Sec. 9.** RCW 43.200.200 and 2012 c 19 s 6 are each amended to
12 read as follows:

13 (1) The (~~director of the department of ecology~~) secretary of
14 health may periodically review the potential for bodily injury and
15 property damage arising from the transportation and disposal of
16 commercial low-level radioactive waste under permits issued by the
17 state.

18 (2) In making the determination of the appropriate level of
19 financial assurance, the (~~director~~) secretary shall consider:

20 (a) The nature and purpose of the activity and its potential for
21 injury and damages to or claims against the state and its citizens;

22 (b) The current and cumulative manifested volume and
23 radioactivity of waste being packaged, transported, buried, or
24 otherwise handled;

25 (c) The location where the waste is being packaged, transported,
26 buried, or otherwise handled, including the proximity to the general
27 public and geographic features such as geology and hydrology, if
28 relevant; and

29 (d) The legal defense cost, if any, that will be paid from the
30 required financial assurance amount.

31 **Sec. 10.** RCW 43.200.220 and 1990 c 21 s 4 are each amended to
32 read as follows:

33 Beginning January 1, 1993, the department of (~~ecology~~) health
34 may impose a reasonable site closure fee if necessary to be deposited
35 in the site closure account established under RCW 43.200.080. The
36 department of health may continue to collect moneys for the site
37 closure account until the account contains an amount sufficient to

1 complete the closure plan, as specified in the radioactive materials
2 license issued by the department of health.

3 **Sec. 11.** RCW 43.200.230 and 2012 c 19 s 7 are each amended to
4 read as follows:

5 The (~~director of the department of ecology~~) secretary of the
6 department of health shall require that generators of waste pay a fee
7 for each cubic foot of waste disposed at any facility in the state
8 equal to six dollars and fifty cents. The fee shall be imposed
9 specifically on the generator of the waste and shall not be
10 considered to apply in any way to the low-level site operator's
11 disposal activities. The fee shall be allocated in accordance with
12 RCW 43.200.233 and 43.200.235. Failure to comply with this section
13 may result in denial or suspension of the generator's site use permit
14 pursuant to RCW 70.98.085.

15 **Sec. 12.** RCW 43.200.900 and 1984 c 161 s 15 are each amended to
16 read as follows:

17 The rules of strict construction do not apply to this chapter and
18 it shall be liberally construed in order to carry out the objective
19 for which it is designed, in accordance with the legislative intent
20 to give the (~~board~~) department of health the maximum possible
21 freedom in carrying the provisions of this chapter into effect.

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.200
23 RCW to read as follows:

24 The department of ecology may make application for or otherwise
25 pursue any federal funds to which the state may be eligible, through
26 the federal resource conservation and recovery act or any other
27 federal programs, for the management, treatment, or disposal, and any
28 remedial actions, of wastes that are both radioactive and hazardous
29 at all commercial low-level radioactive waste disposal facilities.

30 **Sec. 14.** RCW 70.98.085 and 2012 c 19 s 9 are each amended to
31 read as follows:

32 (1) The agency is empowered to administer a user permit system
33 and issue site use permits for generators, packagers, or brokers to
34 use the commercial low-level radioactive waste disposal facility. The
35 agency may issue a site use permit consistent with the requirements
36 of this chapter and the rules adopted under it and the requirements

1 of the Northwest Interstate Compact on Low-Level Radioactive Waste
2 Management under chapter 43.145 RCW. The agency may deny an
3 application for a site use permit or modify, suspend, or revoke a
4 site use permit in any case in which it finds that the permit was
5 obtained by fraud or there is or has been a failure, refusal, or
6 inability to comply with the requirements of this chapter or rules
7 adopted under this chapter or the requirements of the Northwest
8 Interstate Compact on Low-Level Radioactive Waste Management under
9 chapter 43.145 RCW. The agency may also deny or suspend a site use
10 permit for failure to comply with RCW 43.200.230.

11 (2) Any permit issued by the department of ecology for a site use
12 permit pursuant to chapter 43.200 RCW is valid until the first
13 expiration date that occurs after July 1, 2012.

14 (3) The agency shall collect a fee from the applicants for site
15 use permits that is sufficient to fund the costs to the agency to
16 administer the user permit system. The site use permit fee must be
17 set at a level that is also sufficient to fund state participation in
18 activities related to the Northwest Interstate Compact on Low-Level
19 Radioactive Waste Management under chapter 43.145 RCW. The site use
20 permit fees must be deposited in the site closure account established
21 in RCW 43.200.080(2). Appropriations to the department of health (~~or~~
22 ~~the department of ecology~~) are required to permit expenditures using
23 site use permit fee funds from the site closure account.

24 (4) The agency shall collect a surveillance fee as an added
25 charge on each cubic foot of low-level radioactive waste disposed of
26 at the commercial low-level radioactive waste disposal site in this
27 state which shall be set at a level that is sufficient to fund
28 completely the radiation control activities of the agency directly
29 related to the disposal site, including but not limited to the
30 management, licensing, monitoring, and regulation of the site. The
31 fee shall also provide funds to the Washington state patrol for costs
32 incurred from inspection of low-level radioactive waste shipments
33 entering this state. Disbursements for this purpose shall be by
34 authorization of the secretary of the department of health or the
35 secretary's designee.

36 (5) The agency shall require that any person who holds or applies
37 for a permit under this chapter indemnify and hold harmless the state
38 from claims, suits, damages, or expenses on account of injuries to or
39 death of persons and property damage, arising or growing out of any

1 operations and activities for which the person holds the permit, and
2 any necessary or incidental operations.

3 (6) The agency may adopt such rules as are necessary to carry out
4 its responsibilities under this section.

5 **Sec. 15.** RCW 70.98.098 and 2012 c 19 s 11 are each amended to
6 read as follows:

7 (1) In making the determination of the appropriate level of
8 financial assurance, the secretary shall consider: (a) Any report
9 prepared (~~by the department of ecology~~) pursuant to RCW 43.200.200;
10 (b) the potential cost of decontamination, treatment, disposal,
11 decommissioning, and cleanup of facilities or equipment; (c) federal
12 cleanup and decommissioning requirements; and (d) the legal defense
13 cost, if any, that might be paid from the required financial
14 assurance.

15 (2) The secretary may establish different levels of required
16 financial assurance for various classes of permit or license holders.

17 (3) The secretary shall establish by rule the instruments or
18 mechanisms by which a person may demonstrate financial assurance as
19 required by RCW 70.98.095.

20 (4) To the extent that money in the site closure account together
21 with the amount of money identified for repayment to the site closure
22 account pursuant to RCW 43.200.080 equals or exceeds the cost
23 estimate approved by the department of health for closure and
24 decommissioning of the commercial low-level radioactive waste
25 disposal facility, the money in the site closure account together
26 with the amount of money identified for repayment to the site closure
27 account shall constitute adequate financial assurance for purposes of
28 the department of health financial assurance requirements under RCW
29 70.98.095.

30 NEW SECTION. **Sec. 16.** RCW 43.200.907 (Transfer of site use
31 permit program from the department of ecology to the department of
32 health) and 2012 c 19 s 14 are each repealed.

33 NEW SECTION. **Sec. 17.** (1) Sections 6, 8, 10, 11, and 15 of this
34 act take effect when the consultation between the state and the
35 Yakama Nation regarding the commercial radioactive waste disposal
36 trench closure, as set forth in the provisions of section 3002,

1 chapter 3, Laws of 2015 3rd sp. sess., has been fulfilled to the
2 mutual satisfaction of both parties.

3 (2) The department of health must provide written notice of the
4 effective date of sections 6, 8, 10, 11, and 15 of this act to the
5 chief clerk of the house of representatives, the secretary of the
6 senate, the code reviser's office, and others as deemed appropriate
7 by the department.

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