
SENATE BILL 5319

State of Washington

65th Legislature

2017 Regular Session

By Senators Brown and McCoy; by request of Department of Health

Read first time 01/20/17. Referred to Committee on Energy,
Environment & Telecommunications.

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; and repealing RCW 43.200.907.

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

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

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

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

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

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

18 (4) "Low-level radioactive waste" means waste material that
19 contains radioactive nuclides emitting primarily beta or gamma
20 radiation, or both, in concentrations or quantities that exceed
21 applicable federal or state standards for unrestricted release. Low-

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

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

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

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

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

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

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

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

36 All departments, agencies, and officers of this state and its
37 subdivisions shall cooperate with the department of ~~((ecology))~~

1 health in the furtherance of any of its activities pursuant to this
2 chapter.

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

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

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

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

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

28 (2) To assume the responsibilities of the state under the
29 perpetual care agreement between the state of Washington and the
30 federal government executed July 29, 1965, and the sublease between
31 the state of Washington and the site operator of the commercial low-
32 level radioactive waste disposal facility. In order to finance
33 perpetual surveillance and maintenance under the agreement and ensure
34 site closure under the sublease, the department of (~~ecology~~) health
35 shall impose and collect fees from parties holding radioactive
36 materials for waste management purposes. The fees shall be
37 established by rule adopted under chapter 34.05 RCW and shall be an
38 amount determined by the department of (~~ecology~~) health to be

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

32 (3)(a) Subject to the conditions in (b) of this subsection, on
33 July 1, 2008, and each July 1st thereafter, the treasurer shall
34 transfer from the perpetual surveillance and maintenance account to
35 the site closure account the sum of nine hundred sixty-six thousand
36 dollars. The nine hundred sixty-six thousand dollars transferred on
37 July 1, 2009, and thereafter shall be adjusted to a level equal to
38 the percentage increase in the United States implicit price deflator
39 for personal consumption. The last transfer under this section shall
40 occur on July 1, 2033.

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

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

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

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

38 (5) (~~To make application for or otherwise pursue any federal~~
39 ~~funds to which the state may be eligible, through the federal~~
40 ~~resource conservation and recovery act or any other federal programs,~~

1 ~~for the management, treatment or disposal, and any remedial actions,~~
2 ~~of wastes that are both radioactive and hazardous at all commercial~~
3 ~~low-level radioactive waste disposal facilities; and~~

4 (~~6~~)) To develop contingency plans for duties and options for the
5 department and other state agencies related to the commercial low-
6 level radioactive waste disposal facility based on various
7 projections of annual levels of waste disposal. These plans shall
8 include an analysis of expected revenue to the state in various taxes
9 and funds related to low-level radioactive waste disposal and the
10 resulting implications that any increase or decrease in revenue may
11 have on state agency duties or responsibilities. The plans shall be
12 updated annually.

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

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

20 (1) Collecting and administering the surcharge assessed by the
21 governor under RCW 43.200.170;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) The agency is empowered to administer a user permit system
31 and issue site use permits for generators, packagers, or brokers to
32 use the commercial low-level radioactive waste disposal facility. The
33 agency may issue a site use permit consistent with the requirements
34 of this chapter and the rules adopted under it and the requirements
35 of the Northwest Interstate Compact on Low-Level Radioactive Waste
36 Management under chapter 43.145 RCW. The agency may deny an
37 application for a site use permit or modify, suspend, or revoke a

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

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

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

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

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

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

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

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

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

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

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

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

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