H-1915.1

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**SUBSTITUTE HOUSE BILL 1252**

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**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)

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

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

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

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

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

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

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

(4) "Low-level radioactive waste" means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than one hundred nanocuries of transuranic contaminants per gram of material, nor spent nuclear fuel, nor material classified as either high-level radioactive waste or waste that is unsuited for disposal by near-surface burial under any applicable federal regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) To assume the responsibilities of the state under the perpetual care agreement between the state of Washington and the federal government executed July 29, 1965, and the sublease between the state of Washington and the site operator of the commercial low-level radioactive waste disposal facility. In order to finance perpetual surveillance and maintenance under the agreement and ensure site closure under the sublease, the department of ((~~ecology~~)) health shall impose and collect fees from parties holding radioactive materials for waste management purposes. The fees shall be established by rule adopted under chapter 34.05 RCW and shall be an amount determined by the department of ((~~ecology~~)) health to be necessary to defray the estimated liability of the state. Such fees shall reflect equity between the disposal facilities of this and other states. A site closure account and a perpetual surveillance and maintenance account are hereby created in the state treasury. Site use permit fees collected by the department of health under RCW 70.98.085(3) must be deposited in the site closure account and must be used as specified in RCW 70.98.085(3). Funds in the site closure account other than site use permit fee funds shall be exclusively available to reimburse, to the extent that moneys are available in the account, the site operator for its costs plus a reasonable profit as agreed by the operator and the state, or to reimburse the state licensing agency and any agencies under contract to the state licensing agency for their costs in final closure and decommissioning of the commercial low-level radioactive waste disposal facility. If a balance remains in the account after satisfactory performance of closure and decommissioning, this balance shall be transferred to the perpetual surveillance and maintenance account. The perpetual surveillance and maintenance account shall be used exclusively by the state to meet post-closure surveillance and maintenance costs, or for otherwise satisfying surveillance and maintenance obligations. Appropriations are required to permit expenditures and payment of obligations from the site closure account and the perpetual surveillance and maintenance account. Receipts shall be directed to the site closure account and the perpetual surveillance and maintenance account as specified by the department. Additional moneys specifically appropriated by the legislature or received from any public or private source may be placed in the site closure account and the perpetual surveillance and maintenance account. During the 2003-2005 fiscal biennium, the legislature may transfer up to thirteen million eight hundred thousand dollars from the site closure account to the general fund;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The agency is empowered to administer a user permit system and issue site use permits for generators, packagers, or brokers to use the commercial low-level radioactive waste disposal facility. The agency may issue a site use permit consistent with the requirements of this chapter and the rules adopted under it and the requirements of the Northwest Interstate Compact on Low‑Level Radioactive Waste Management under chapter 43.145 RCW. The agency may deny an application for a site use permit or modify, suspend, or revoke a site use permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or rules adopted under this chapter or the requirements of the Northwest Interstate Compact on Low‑Level Radioactive Waste Management under chapter 43.145 RCW. The agency may also deny or suspend a site use permit for failure to comply with RCW 43.200.230.

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  (1) Sections 6, 8, 10, 11, and 15 of this act take effect when the consultation between the state and the Yakama Nation regarding the commercial radioactive waste disposal trench closure, as set forth in the provisions of section 3002, chapter 3, Laws of 2015 3rd sp. sess., has been fulfilled to the mutual satisfaction of both parties.

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

**--- END ---**