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HOUSE BILL 2873

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State of Washington                      52nd Legislature                      1992 Regular Session

By Representatives Grant, May and Rayburn

Read first time 01/31/92. Referred to Committee on Energy & Utilities.

1            AN ACT Relating to financial assurance; and amending RCW  
2 43.200.200, 43.200.210, 70.98.095, and 70.98.098.

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

4            **Sec. 1.** RCW 43.200.200 and 1990 c 82 s 1 are each amended to read  
5 as follows:

6            (1) The director of the department of ecology shall periodically  
7 review the potential for bodily injury and property damage ~~((in the~~  
8 ~~packaging, shipping, transporting, treatment, storage,))~~ arising from  
9 the transportation and disposal of commercial low-level radioactive  
10 ~~((materials))~~ waste under ~~((licenses or))~~ permits issued by the state.

11            (2) ~~((Except as otherwise provided in subsection (7) of this~~  
12 ~~section,))~~ The director shall require ~~((each))~~ permit holders to  
13 ~~((maintain liability coverage))~~ demonstrate financial assurance in an  
14 amount that is adequate to protect the state and its citizens from all

1 claims, suits, losses, damages, or expenses on account of injuries to  
2 persons and property damage arising or growing out of the ((~~packaging,~~  
3 ~~shipping, transporting, treatment, storage, and~~)) transportation or  
4 disposal of commercial low-level radioactive ((~~materials~~)) waste. The  
5 ((~~liability coverage~~)) financial assurance may be in the form of  
6 insurance, cash deposits, surety bonds, corporate guarantees, and other  
7 acceptable instruments or guarantees determined by the director to be  
8 acceptable evidence of financial assurance.

9 (3) In making the determination of the appropriate level of  
10 ((~~liability coverage~~)) financial assurance, the director shall  
11 consider:

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

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

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

21 (d) The legal defense cost, if any, that will be paid from the  
22 required ((~~liability coverage~~)) financial assurance amount; and

23 (e) Advice from the risk management division, department of general  
24 administration.

25 (4) The director may establish different levels of required  
26 ((~~liability coverage~~)) financial assurance for various classes of  
27 permit holders.

28 (5) The director shall establish by rule the instruments or  
29 mechanisms by which a ((~~person~~)) permit applicant or holder may  
30 demonstrate ((~~liability coverage~~)) financial assurance as required by

1 RCW 43.200.210. (~~Any instrument or mechanism approved as an~~  
2 ~~alternative to liability insurance shall provide the state and its~~  
3 ~~citizens with a level of financial protection at least as great as~~  
4 ~~would be provided by liability insurance.~~)

5 (6) The director shall complete (~~the first~~) a review and  
6 determination, and report the results to the legislature(~~(7)~~) by  
7 December 1, (~~(1987)~~) 1994, and at least every five years thereafter,  
8 the director shall conduct a new review and determination and report  
9 its results to the legislature.

10 (~~(7) (a) The director by rule may exempt from the requirement to~~  
11 ~~provide liability coverage a class of permit holders if the director~~  
12 ~~determines that the exemption of that class will not pose a significant~~  
13 ~~risk to persons or property and will not pose substantial financial~~  
14 ~~risk to the state.~~)

15 (~~(b) The director may exempt from the requirement to provide~~  
16 ~~liability coverage an individual permit holder if the director~~  
17 ~~determines that the cost of obtaining that coverage for that permit~~  
18 ~~holder would impose a substantial financial hardship on the person and~~  
19 ~~that failure to maintain the coverage will not pose a significant risk~~  
20 ~~to persons or property and will not pose a substantial financial risk~~  
21 ~~to the state.~~)

22 **Sec. 2.** RCW 43.200.210 and 1990 c 82 s 2 are each amended to read  
23 as follows:

24 (1)(~~(a)~~) The department of ecology shall require that any person  
25 who holds or applies for a permit under this chapter indemnify and hold  
26 harmless the state from claims, suits, damages, or expenses on account  
27 of injuries to or death of persons and property damage, arising or  
28 growing out of any operations and activities for which the person holds  
29 the (~~license or~~) permit, and any necessary or incidental operations.

1       (~~((b) Except for a permit holder not required to maintain liability~~  
2 ~~insurance coverage under RCW 43.200.200(7), the department shall~~  
3 ~~require any person who holds or applies for a permit under this chapter~~  
4 ~~to demonstrate that the person has and maintains liability coverage for~~  
5 ~~the operations for which the state has been indemnified and held~~  
6 ~~harmless pursuant to this section. The agency shall require coverage~~  
7 ~~in an amount determined by the director of the department of ecology~~  
8 ~~pursuant to RCW 43.200.200.))~~)

9       (2) The department of ecology shall refuse to issue or shall  
10 suspend the ((~~license~~)) permit of any person required by this section  
11 to ((~~hold and maintain liability coverage~~)) demonstrate adequate  
12 financial assurance who fails to demonstrate compliance with this  
13 section. The permit shall not be issued or reinstated until the person  
14 demonstrates compliance with this section.

15       (3) The department of ecology shall require (a) that any person  
16 required to ((~~maintain liability coverage~~)) demonstrate financial  
17 assurance maintain with the agency current copies of any insurance  
18 policies, certificates of insurance, or any other documents ((~~used to~~  
19 ~~comply with this~~)) sufficient to evidence compliance with this section,  
20 (b) that the agency be notified of any changes in the ((~~insurance~~  
21 ~~coverage~~)) instruments of financial assurance or financial condition of  
22 the person, and (c) that the state be named as an insured party on any  
23 insurance policy used to comply with this section.

24       **Sec. 3.** RCW 70.98.095 and 1990 c 82 s 4 are each amended to read  
25 as follows:

26       (1)((~~(a) The radiation control agency shall require that any person~~  
27 ~~who holds or applies for a license or permit under this chapter~~  
28 ~~indemnify and hold harmless the state from claims, suits, damages, or~~  
29 ~~expenses on account of injuries to or death of persons and property,~~

1 arising or growing out of any operations or activities for which the  
2 person holds the license or permit, and any necessary or incidental  
3 operations.

4 (b) ~~Except for a license or permit holder who the secretary has~~  
5 ~~exempted from maintaining liability coverage pursuant to RCW~~  
6 ~~70.98.098(5), the radiation control agency shall require any person who~~  
7 ~~holds or applies for a license or permit under this chapter to~~  
8 ~~demonstrate that the person has and maintains liability coverage for~~  
9 ~~the operations for which the state has been indemnified and held~~  
10 ~~harmless pursuant to this section.))~~ The radiation control agency  
11 shall require ~~((coverage))~~ any person who applies for, or holds, a  
12 license under this chapter to demonstrate that the person has financial  
13 assurance sufficient to assure that liability incurred as a result of  
14 licensed operations and activities can be fully satisfied. Financial  
15 assurance may be in the form of insurance, cash deposits, surety bonds,  
16 corporate guarantees, letters of credit, or other financial instruments  
17 or guarantees determined by the agency to be acceptable financial  
18 assurance. The agency may require financial assurance in an amount  
19 determined by the secretary pursuant to RCW 70.98.098.

20 (2) The radiation control agency shall ~~((suspend the license or~~  
21 ~~permit of))~~ refuse to issue a license or permit or suspend the license  
22 or permit of any person required by this section to ((hold and maintain  
23 liability coverage)) demonstrate financial assurance who fails to  
24 demonstrate compliance with this section. The license or permit shall  
25 not be issued or reinstated until the person demonstrates compliance  
26 with this section.

27 (3) The radiation control agency shall require (a) that any person  
28 required to ~~((maintain liability coverage))~~ demonstrate financial  
29 assurance, maintain with the agency current copies of any insurance  
30 policies, certificates of insurance, letters of credit, surety bonds,

1 or any other documents used to comply with this section, (b) that the  
2 agency be notified of any changes in the (~~insurance coverage~~)  
3 financial assurance or financial condition of the person, and (c) that  
4 the state be named as an insured party on any insurance policy used to  
5 comply with this section.

6 **Sec. 4.** RCW 70.98.098 and 1990 c 82 s 3 are each amended to read  
7 as follows:

8 (1) (~~Except as otherwise provided in subsection (5) of this~~  
9 ~~section, the secretary shall require each permit or license holder to~~  
10 ~~maintain liability coverage in an amount that is adequate to protect~~  
11 ~~the state and its citizens from all claims, suits, losses, damages, or~~  
12 ~~expenses on account of injuries to persons and property damage arising~~  
13 ~~or growing out of the packaging, shipping, transporting, treatment,~~  
14 ~~storage, and disposal of commercial low level radioactive materials.~~  
15 ~~The liability coverage may be in the form of insurance, cash, surety~~  
16 ~~bonds, corporate guarantees, and other acceptable instruments.~~

17 (2)) In making the determination of the appropriate level of  
18 (~~liability coverage~~) financial assurance, the secretary shall  
19 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 radioactivity~~  
23 ~~of material being packaged, transported, buried, or otherwise handled;~~

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

28 (d) The ~~report prepared by the department of ecology pursuant to~~  
29 ~~RCW 43.200.200;~~ and

1       ~~(e) The legal defense cost, if any, that will be paid from the~~  
2 ~~required liability coverage amount.~~

3       ~~(3)) report prepared by the department of ecology pursuant to RCW~~  
4 ~~43.200.200; (b) the potential cost of decontamination, treatment,~~  
5 ~~disposal, decommissioning, and cleanup of facilities or equipment; (c)~~  
6 ~~federal cleanup and decommissioning requirements; and (d) the legal~~  
7 ~~defense cost, if any, that might be paid from the required financial~~  
8 ~~assurance.~~

9       ~~(2) The secretary may establish different levels of required~~  
10 ~~((liability coverage)) financial assurance for various classes of~~  
11 ~~permit or license holders.~~

12       ~~((4)) (3) The secretary shall establish by rule the instruments~~  
13 ~~or mechanisms by which a person may demonstrate ((liability coverage))~~  
14 ~~financial assurance as required by RCW 70.98.095. ((Any instrument or~~  
15 ~~mechanism approved as an alternative to liability insurance shall~~  
16 ~~provide the state and its citizens with a level of financial protection~~  
17 ~~at least as great as would be provided by liability insurance.~~

18       ~~(5)(a) The secretary by rule may exempt from the requirement to~~  
19 ~~provide liability coverage a class of permit or license holders if the~~  
20 ~~secretary determines that the exemption of that class will not pose a~~  
21 ~~significant risk to persons or property and will not pose substantial~~  
22 ~~financial risk to the state.~~

23       ~~(b) The secretary may exempt from the requirement to provide~~  
24 ~~liability coverage an individual permit or license holder if the~~  
25 ~~secretary determines that the cost of obtaining that coverage for that~~  
26 ~~license or permit or license holder would impose a substantial~~  
27 ~~financial hardship on the person and that failure to maintain the~~  
28 ~~coverage will not pose a significant risk to persons or property and~~  
29 ~~will not pose a substantial financial risk to the state.))~~