

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2873

52nd Legislature
1992 Regular Session

Passed by the House February 18, 1992
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 6, 1992
Yeas 46 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2873 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2873

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on Energy & Utilities (originally sponsored by Representatives Grant, May and Rayburn)

Read first time 02/07/92.

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)) may require ((each)) permit holders
13 to ((maintain liability coverage)) demonstrate financial assurance in
14 an amount that is adequate to protect the state and its citizens from

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

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

26 (5) The director shall establish by rule the instruments or
27 mechanisms by which a (~~person~~) permit applicant or holder may
28 demonstrate (~~liability coverage~~) financial assurance as required by
29 RCW 43.200.210. (~~Any instrument or mechanism approved as an~~
30 ~~alternative to liability insurance shall provide the state and its~~

1 citizens with a level of financial protection at least as great as
2 would be provided by liability insurance.))

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

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

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

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

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

28 ((b) Except for a permit holder not required to maintain liability
29 insurance coverage under RCW 43.200.200(7), the department shall

1 ~~require any person who holds or applies for a permit under this chapter~~
2 ~~to demonstrate that the person has and maintains liability coverage for~~
3 ~~the operations for which the state has been indemnified and held~~
4 ~~harmless pursuant to this section. The agency shall require coverage~~
5 ~~in an amount determined by the director of the department of ecology~~
6 ~~pursuant to RCW 43.200.200.)~~)

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

13 (3) The department of ecology shall require (a) that any person
14 required to ((maintain liability coverage)) demonstrate financial
15 assurance maintain with the agency current copies of any insurance
16 policies, certificates of insurance, or any other documents ((used to
17 ~~comply with this~~)) sufficient to evidence compliance with this section,
18 (b) that the agency be notified of any changes in the ((insurance
19 ~~coverage~~)) instruments of financial assurance or financial condition of
20 the person, and (c) that the state be named as an insured party on any
21 insurance policy used to comply with this section. This subsection
22 shall not apply to any person subject to the same requirements under
23 RCW 70.98.095.

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))~~ may require ~~((coverage))~~ any person who applies for, or
12 holds, a license under this chapter to demonstrate that the person has
13 financial assurance sufficient to assure that liability incurred as a
14 result of licensed operations and activities can be fully satisfied.
15 Financial assurance may be in the form of insurance, cash deposits,
16 surety bonds, corporate guarantees, letters of credit, or other
17 financial instruments or guarantees determined by the agency to be
18 acceptable financial assurance. The agency may require financial
19 assurance in an amount determined by the secretary pursuant to RCW
20 70.98.098.

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

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

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

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

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

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

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

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

25 (c) ~~The location where the material 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;~~

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

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

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

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

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

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

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

1 ~~will not pose a substantial financial risk to the state.))~~