

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2873

Chapter 61, Laws of 1992

52nd Legislature  
1992 Regular Session

LOW-LEVEL RADIOACTIVE WASTE TRANSPORTATION AND DISPOSAL--FINANCIAL  
ASSURANCE BY PERMIT HOLDERS

EFFECTIVE DATE: 6/11/92

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

JOE KING  
**Speaker of the  
House of Representatives**

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

JOEL PRITCHARD  
**President of the Senate**

Approved March 26, 1992

BOOTH GARDNER  
**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.

ALAN THOMPSON  
**Chief Clerk**

FILED

March 26, 1992 - 12:11 p.m.

**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



- 1 ~~coverage will not pose a significant risk to persons or property and~~
- 2 ~~will not pose a substantial financial risk to the state.))~~

Passed the House February 18, 1992.

Passed the Senate March 6, 1992.

Approved by the Governor March 26, 1992.

Filed in Office of Secretary of State March 26, 1992.