

**APPROVAL REQUIRED FOR DISPOSAL OF
RADIOACTIVE WASTE**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill requires legislative and gubernatorial approval before a radioactive waste facility may receive certain types or concentrations of radioactive waste and amends radioactive waste tax provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms related to the regulation of radioactive waste facilities;
- ▶ deletes certain outdated provisions relating to approval for radioactive waste facilities;
- ▶ amends certain approval requirements regarding radioactive waste facilities;
- ▶ requires the approval of the Legislature, governor, and local governing body responsible for planning and zoning before a radioactive waste facility may receive specified types or concentrations of radioactive wastes;
- ▶ modifies the gross receipts tax on certain types of mixed waste; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

19-3-105, as last amended by Chapter 73, Laws of Utah 2003

59-24-103.5, as enacted by Chapter 295, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-3-105** is amended to read:

19-3-105. Definitions -- Legislative and gubernatorial approval required for radioactive waste license -- Class B and C low-level radioactive waste moratorium.

(1) As used in this section:

(a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

(b) (i) "Class A low-level radioactive waste" means:

(A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

(B) radium-226 up to a maximum radionuclide concentration level of 10,000 picocuries per gram.

(ii) "Class A low-level radioactive waste" does not include:

(A) uranium mill tailings;

(B) naturally-occurring radioactive materials; or

(C) the following radionuclides if classified as "special nuclear material" under the Atomic Energy Act of 1954, 42 U.S.C. 2014:

(I) uranium-233; and

(II) uranium-235 with a radionuclide concentration level greater than the concentration limits for specific conditions and enrichments established by an order of the Nuclear Regulatory Commission:

(Aa) to ensure criticality safety for a radioactive waste facility in the state; and

(Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special nuclear material exemption order.

(c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers, stores, decays in storage, treats, or disposes of radioactive waste:

(A) commercially for profit; or

(B) generated at locations other than the radioactive waste facility.

(ii) "Radioactive waste facility" does not include a facility that receives:

(A) alternate feed material for reprocessing; or

(B) radioactive waste from a location in the state designated as a processing site under 42 U.S.C. 7912(f).

(c) "Radioactive waste license" or "license" means a radioactive material license issued by the executive secretary under Subsection 19-3-108(2)(c)(i), to own, construct, modify, or operate a radioactive waste facility.

~~[(H)]~~ (2) The provisions of this section are subject to the moratorium regarding class B and C low-level radioactive waste under Section 19-3-103.7.

~~[(2)(a)]~~ (3) A person may not own, construct, modify, or operate ~~[any facility for the purpose of commercially transferring, storing, decaying in storage, treating, or disposing of]~~ a radioactive waste facility without ~~[first submitting and receiving the approval of the board for]:~~

(a) having received a radioactive [material] waste license for the facility[:];

~~[(b) A person may not construct a new commercial radioactive waste transfer, storage, decay in storage, treatment, or disposal facility until:]~~

~~[(i) the requirements of Section 19-3-104 have been met;]~~

(b) meeting the requirements established by rule under Section 19-3-104;

(c) the approval of the governing body of the municipality or county responsible for local planning and zoning where the radioactive waste is or will be located; and

~~[(ii) (d) [in addition and] subsequent to meeting the requirements of Subsections (3)(a) through (c), the approval [required in Subsection (2)(a),] of the governor and the Legislature [have approved the facility; and].~~

~~[(iii) local planning and zoning has authorized the facility.]~~

~~[(e) For purposes of this section, the following items shall be treated as submission of a new license application:]~~

(4) A new radioactive waste license application, or an application to renew or amend an existing radioactive waste license, is subject to the requirements of Subsections (3)(b) through (d)

if the application, renewal, or amendment:

~~[(i)]~~ (a) ~~[the submission of a revised application specifying]~~ specifies a different geographic site than a previously submitted application;

~~[(ii) an application for amendment of a commercial radioactive waste license for transfer, storage, decay in storage, treatment, or disposal facilities, including incinerators, if the construction]~~

(b) would cost 50% or more of the cost of construction of the original ~~[transfer, storage, decay in storage, treatment, or disposal]~~ radioactive waste facility or the modification would result in an increase in capacity or throughput of a cumulative total of 50% of the total capacity or throughput which was approved in the facility license as of January 1, 1990, or the initial approval facility license if the initial license approval is subsequent to January 1, 1990; or

~~[(iii)]~~ (c) ~~[any request for]~~ requests approval ~~[for a commercial radioactive waste transfer, storage, decay in storage, treatment, or disposal facility]~~ to receive, transfer, store, decay in storage, treat, or dispose of:

(i) class B or class C low-level radioactive waste~~[-including the submission of a new license application, revised license application, or major license amendment.];~~ or

~~[(3) A person need not obtain gubernatorial or legislative approval for the construction of a radioactive waste facility for which a license application has been approved by the Department of Health or submitted to the federal Nuclear Regulatory Commission and to the Department of Health for approval before January 1, 1990, and which has been determined, on or before October 31, 1990, by the Department of Health to be complete in accordance with state and federal requirements.]~~

(ii) radioactive waste having a higher radionuclide concentration limit than allowed, under an existing approved license held by the facility, for the specific type of waste to be received, transferred, stored, decayed in storage, treated, or disposed of.

(5) The requirements of Subsection (4)(c)(ii) do not apply to an application to renew or amend an existing radioactive waste license if:

(a) the radioactive waste facility requesting the renewal or amendment has received a

license prior to January 1, 2004; and

(b) the application to renew or amend its license is limited to a request to approve the receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level radioactive waste.

(6) A radioactive waste facility which receives a new radioactive waste license after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license application, renewal, or amendment that requests approval to receive, transfer, store, decay in storage, treat, or dispose of radioactive waste not previously approved under an existing license held by the facility.

~~[(4)] (7) [The] If the board finds that approval of additional radioactive waste license applications, renewals, or amendments will result in inadequate oversight, monitoring, or licensure compliance and enforcement of existing and any additional radioactive waste facilities, the board shall suspend acceptance of further applications for [commercial] radioactive [waste facilities upon a finding that they cannot adequately oversee existing and additional radioactive waste facilities for license compliance, monitoring, and enforcement] waste licenses.~~ The board shall report the suspension to the Legislative Management Committee.

~~[(5)] (8)~~ The board shall review each proposed radioactive waste license application to determine whether the application complies with the provisions of this chapter and the rules of the board.

~~[(6)] (9)~~ (a) If the radioactive waste license application is determined to be complete, the board shall issue a notice of completeness.

(b) If the board determines that the [plan] radioactive waste license application is [determined by the board to be] incomplete, the board shall issue a notice of deficiency, listing the additional information to be provided by the applicant to complete the application.

Section 2. Section **59-24-103.5** is amended to read:

59-24-103.5. Radioactive waste disposal, processing, and recycling facility tax.

(1) On and after July 1, 2003, there is imposed a tax on a radioactive waste facility, or a processing or recycling facility, as provided in this chapter.

(2) The tax is equal to the sum of the following amounts:

(a) 12% of the gross receipts of a radioactive waste facility derived from the disposal of containerized class A waste;

(b) 10% of the gross receipts of a radioactive waste facility derived from the disposal of processed class A waste;

(c) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed class A waste from a governmental entity or an agent of a governmental entity:

(i) pursuant to a contract entered into on or after April 30, 2001;

(ii) pursuant to a contract substantially modified on or after April 30, 2001;

(iii) pursuant to a contract renewed or extended on or after April 30, 2001; or

(iv) not pursuant to a contract;

(d) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed class A waste received by the facility from an entity other than a governmental entity or an agent of a governmental entity;

(e) (i) 5% of the gross receipts of a radioactive waste facility derived from the disposal of mixed waste, other than the mixed waste described in Subsection (2)(e)(ii), received from an entity other than a governmental entity or an agent of a governmental entity;

(ii) 10% of the gross receipts of a radioactive waste facility derived from the disposal of mixed waste:

(A) received from an entity other than a governmental entity or an agent of a governmental entity; and

(B) that contains a higher radionuclide concentration level than the mixed waste received by any radioactive waste facility in the state prior to April 1, 2004;

(f) 10 cents per cubic foot of alternate feed material received at a radioactive waste facility for disposal or reprocessing; and

(g) 10 cents per cubic foot of byproduct material received at a radioactive waste facility for disposal.

(3) For purposes of the tax imposed by this section, a fraction of a cubic foot is considered to be a full cubic foot.

(4) Except as provided in Subsection (2)(e), the tax imposed by this section does not apply to radioactive waste containing material classified as hazardous waste under 40 C.F.R. Part 261.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.