

**PROHIBITION AGAINST CERTAIN
LOW-LEVEL RADIOACTIVE WASTE**

2005 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies provisions relating to certain types of low-level radioactive waste.

Highlighted Provisions:

This bill:

- ▶ prohibits any entity in the state from accepting class B or C low-level radioactive waste or radioactive waste having a higher radionuclide concentration than allowed under existing licenses;

- ▶ directs the Utah member of the Northwest low-level radioactive waste compact not to bring to the compact committee for approval and to vote against any arrangement with persons outside the compact area to access a Utah facility for storage, treatment, incineration, or disposal of class B and class C low-level radioactive waste; and

- ▶ makes conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.



Utah Code Sections Affected:

AMENDS:

19-3-103.7, as enacted by Chapter 73, Laws of Utah 2003

19-3-104, as last amended by Chapter 73, Laws of Utah 2003

19-3-105, as last amended by Chapter 334, Laws of Utah 2004

ENACTS:

19-3-206, Utah Code Annotated 1953

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

Section 1. Section **19-3-103.7** is amended to read:

19-3-103.7. Prohibition against certain low-level radioactive waste.

~~[On and after May 3, 2003, through February 15, 2005, there is a moratorium prohibiting any entity in the state from accepting]~~ No entity may accept in the state or apply for a license to accept in the state for commercial storage, decay in storage, treatment, incineration, or disposal:

(1) class B or C low-level radioactive waste [for commercial storage, decay in storage, treatment, incineration, or disposal.]; or

(2) radioactive waste having a higher radionuclide concentration than the highest radionuclide concentration allowed under licenses existing on the effective date of this section that have met all the requirements of Section 19-3-105.

Section 2. Section **19-3-104** is amended to read:

19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" have the same definitions as in 42 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

(2) The board may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) The board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;

(c) to establish:

(i) board accreditation requirements and procedures for mammography facilities; and

(ii) certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and

(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:

(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and

(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).

(b) On and after January 1, 2003 through March 30, 2003:

(i) \$6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and

(ii) \$4,167 per month for those uranium mills the executive secretary has determined are on standby status.

(c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.

(d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63-38-3.2, subject to the restrictions under Subsection (5)(d).

(f) The department shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(6) (a) The department shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The department shall comply with the requirements of Section 63-38-3.2 in assessing fees for licensure and registration.

(7) The department shall coordinate its activities with the Department of Health rules made under Section 26-21a-203.

(8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(9) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (8) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(10) (a) The board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent

experts to conduct these inspections.

(b) Independent experts under this Subsection (10) are not considered employees or representatives of the division or the state when conducting the inspections.

(11) (a) The board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities, subject to the ~~[moratorium regarding class B and C low-level radioactive waste]~~ prohibition imposed by Section 19-3-103.7.

(b) Any facility under Subsection (11)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) A facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(12) The board shall by rule establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities, taking into account existing financial assurance requirements.

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

19-3-105. Definitions -- Legislative and gubernatorial approval required for radioactive waste license -- Application for new, renewed, or amended license.

(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).

(d) "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.

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

(3) A person may not own, construct, modify, or operate a radioactive waste facility without:

(a) having received a radioactive waste license for the facility;

(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

(d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the approval of the governor and the Legislature.

(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:

(a) specifies a different geographic site than a previously submitted application;

(b) would cost 50% or more of the cost of construction of the original 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

(c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of[: ~~(i) class B or class C low-level radioactive waste; or (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.

(7) 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 radioactive waste licenses. The board shall report the suspension to the Legislative Management Committee.

(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.

(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 radioactive waste license application is incomplete, the board shall issue a notice of deficiency, listing the additional information to be provided by the applicant to complete the application.

Section 4. Section **19-3-206** is enacted to read:

19-3-206. Direction to compact committee member.

The Utah compact committee member designated under Section 19-3-204 may not bring to the committee for approval and shall vote to disapprove any arrangement under Subsection 19-3-204(4) for a facility to receive class B or class C low-level radioactive waste for commercial storage, decay in storage, treatment, incineration, or disposal within the state.

Section 5. **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.

Section 6. **Revisor instructions.**

It is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the database for publication, delete "the effective date of this section" where it appears in this bill and replace it with the actual date on which the bill takes effect.

Legislative Review Note

as of 1-24-05 6:38 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0166

Prohibition Against Certain Low-Level Radioactive Waste

03-Feb-05

4:08 PM

State Impact

No significant fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst