

1 **RADIOACTIVE AND HAZARDOUS WASTE ACCOUNT**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brad R. Wilson**

6 Senate Sponsor: Jacob L. Anderegg

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions relating to funding and reporting on perpetual care and
11 maintenance of commercial radioactive waste disposal facilities and reporting on the
12 maintenance of hazardous waste disposal facilities.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ exempts funds in the Radioactive Waste Perpetual Care and Maintenance Account
16 from the State Money Management Act;
- 17 ▶ requires the state treasurer to:
- 18 • follow certain account management and investment guidelines; and
 - 19 • report to the Legislative Management Committee on account performance;
- 20 ▶ repeals the requirement that an existing commercial radioactive waste treatment or
21 disposal facility pay an annual fee;
- 22 ▶ repeals the requirement that the Waste Management and Radiation Control Board
23 report to the Legislative Management Committee on the adequacy of the funds to
24 provide for the closure, postclosure, and perpetual care and maintenance of
25 commercial radioactive waste treatment or disposal facilities and hazardous waste
26 treatment, storage, or disposal facilities.
- 27 ▶ provides that the Waste Management and Radiation Control Board may report on



28 account adequacy and impose fees if an existing facility increases its licensed disposal volume
29 by 25% or more; and

30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **19-1-307**, as last amended by Laws of Utah 2015, Chapter 451

38 **19-3-106.2**, as last amended by Laws of Utah 2010, Chapter 278

39 **51-7-2**, as last amended by Laws of Utah 2015, Chapter 319



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

42 Section 1. Section **19-1-307** is amended to read:

43 **19-1-307. Evaluation of closure, postclosure, and perpetual care and maintenance**
44 **for hazardous waste and radioactive waste treatment and disposal facilities -- Report.**

45 (1) (a) [~~Beginning in 2006, the~~] The Waste Management and Radiation Control Board
46 created in Section 19-1-106 [shall] may direct an evaluation [every five years] of a commercial
47 hazardous waste treatment, storage, or disposal facility, if the facility is:

48 (i) licensed or permitted after July 1, 2017; or

49 (ii) (A) licensed or permitted before July 1, 2017; and

50 (B) has cumulatively increased the facility's licensed disposal volume by 25% or more.

51 (b) The evaluation shall determine:

52 (i) the adequacy of the amount of financial assurance required for closure and
53 postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted
54 pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment,
55 storage, or disposal facility under Section **19-6-108**; [~~and~~]

56 (ii) the adequacy of the amount of financial assurance or funds required for perpetual
57 care and maintenance following the closure and postclosure period of a commercial hazardous
58 waste treatment, storage, or disposal facility, if found necessary following the evaluation under

59 Subsection (1)(c)[-];

60 ~~[(b) The evaluation shall determine:]~~

61 ~~[(i)]~~ (iii) whether the amount of financial assurance required is adequate for closure
62 and postclosure care of hazardous waste treatment, storage, or disposal facilities;

63 ~~[(ii)]~~ (iv) whether the amount of financial assurance or funds required is adequate for
64 perpetual care and maintenance following the closure and postclosure period of a commercial
65 hazardous waste treatment, storage, or disposal facility, if found necessary following the
66 evaluation under Subsection (1)(c); and

67 ~~[(iii)]~~ (v) the costs above the minimal maintenance and monitoring for reasonable risks
68 that may occur during closure, postclosure, and perpetual care and maintenance of commercial
69 hazardous waste treatment, storage, or disposal facilities including:

70 (A) groundwater corrective action;

71 (B) differential settlement failure; or

72 (C) major maintenance of a cell or cells.

73 (c) The Waste Management and Radiation Control Board shall evaluate in 2006
74 whether financial assurance or funds are necessary for perpetual care and maintenance
75 following the closure and postclosure period of a commercial hazardous waste treatment,
76 storage, or disposal facility to protect human health and the environment.

77 (2) (a) ~~[Beginning in 2006, the]~~ The Waste Management and Radiation Control Board
78 created in Section 19-1-106 ~~[shall]~~ may direct an evaluation ~~[every five years]~~ of a commercial
79 radioactive waste treatment or disposal facility if the facility is:

80 (i) licensed or permitted after July 1, 2017; or

81 (ii) (A) licensed or permitted before July 1, 2017; and

82 (B) has cumulatively increased the facility's licensed disposal volume by 25% or more.

83 (b) The evaluation shall determine:

84 (i) the adequacy of the Radioactive Waste Perpetual Care and Maintenance Account
85 created by Section 19-3-106.2; ~~[and]~~

86 (ii) the adequacy of the amount of financial assurance required for closure and
87 postclosure care of commercial radioactive waste treatment or disposal facilities under
88 Subsection 19-3-104(11)[-];

89 ~~[(b) The evaluation shall determine:]~~

90 ~~[(i)]~~ (iii) whether the restricted account is adequate to provide for perpetual care and
91 maintenance of commercial radioactive waste treatment or disposal facilities;

92 ~~[(ii) whether the amount of financial assurance required is adequate to provide for
93 closure and postclosure care of commercial radioactive waste treatment or disposal facilities;]~~

94 ~~[(iii)]~~ (iv) the costs under Subsection 19-3-106.2~~[(5)]~~(4)(b) of using the Radioactive
95 Waste Perpetual Care and Maintenance Account during the period before the end of 100 years
96 following final closure of the facility for maintenance, monitoring, or corrective action in the
97 event that the owner or operator is unwilling or unable to carry out the duties of postclosure
98 maintenance, monitoring, or corrective action; and

99 ~~[(iv)]~~ (v) the costs above the minimal maintenance and monitoring for reasonable risks
100 that may occur during closure, postclosure, and perpetual care and maintenance of commercial
101 radioactive waste treatment or disposal facilities including:

102 (A) groundwater corrective action;

103 (B) differential settlement failure; or

104 (C) major maintenance of a cell or cells.

105 (3) (a) The board under Subsections (1) and (2) shall submit a report on the evaluations
106 to the Legislative Management Committee ~~[on or before October 1 of the year in which the
107 report is due]~~.

108 (b) For each report received under Subsection (3)(a), the Legislative Management
109 Committee shall review and evaluate the report and determine whether to recommend further
110 action.

111 Section 2. Section 19-3-106.2 is amended to read:

112 **19-3-106.2. Perpetual care and maintenance of commercial radioactive waste**
113 **disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Account created**
114 **-- Contents -- Use of restricted account money -- Evaluation.**

115 (1) As used in this section, "perpetual care and maintenance" means perpetual care and
116 maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites
117 within the facility used for the disposal of byproduct material, as required by applicable laws,
118 rules, and license requirements beginning 100 years after the date of final closure of the
119 facility.

120 ~~[(2)(a) On and after July 1, 2002, the owner or operator of an active commercial~~

121 ~~radioactive waste treatment or disposal facility shall pay an annual fee of \$400,000 to provide~~
122 ~~for the perpetual care and maintenance of the facility.]~~

123 ~~[(b) The owner or operator shall remit the fee to the department on or before July 1 of~~
124 ~~each year.]~~

125 ~~[(3) The department shall deposit fees received under Subsection (2) into the~~
126 ~~Radioactive Waste Perpetual Care and Maintenance Account created in Subsection (4).]~~

127 ~~[(4)]~~ (2) (a) There is created a restricted account within the General Fund known as the
128 "Radioactive Waste Perpetual Care and Maintenance Account" to finance perpetual care and
129 maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites
130 within those facilities used for the disposal of byproduct material.

131 (b) The sources of revenue for the restricted account are:

132 ~~[(i) the fee imposed under this section; and]~~

133 (i) fees paid into the account by the owner or operator of a commercial radioactive
134 waste treatment or disposal facility; and

135 (ii) investment income derived from money in the restricted account.

136 (c) (i) The revenues for the restricted account shall be segregated into subaccounts for
137 each commercial radioactive waste treatment or disposal facility covered by the restricted
138 account.

139 (ii) Each subaccount shall contain:

140 (A) the fees paid by each owner or operator of a commercial radioactive waste
141 treatment or disposal facility; and

142 (B) the associated investment income.

143 (3) (a) The state treasurer shall invest money in the account with the primary goal of
144 providing for the stability, income, and growth of the principal.

145 (b) The state treasurer shall seek account growth that is designed to achieve a minimum
146 target account balance of \$414,838,740 in the year 2141.

147 (c) Nothing in this section requires a specific outcome in investing.

148 (d) The state treasurer may deduct administrative costs incurred in managing account
149 assets from earnings before distributing them.

150 (e) (i) The state treasurer may employ professional asset managers to assist in the
151 investment of assets of the account.

152 (ii) The state treasurer may only provide compensation to asset managers from earnings
153 generated by the account's investments.

154 (f) The state treasurer shall invest and manage the account assets as a prudent investor
155 would, by:

156 (i) considering the purposes, terms, distribution requirements, and other circumstances
157 of the account; and

158 (ii) exercising reasonable care, skill, and caution in order to meet the standard of care
159 of a prudent investor.

160 (g) In determining whether or not the state treasurer has met the standard of care of a
161 prudent investor, the judge or finder of fact shall:

162 (i) consider the state treasurer's actions in light of the facts and circumstances existing
163 at the time of the investment decision or action, and not by hindsight; and

164 (ii) evaluate the state treasurer's investment and management decisions respecting
165 individual assets not in isolation, but in the context of an account portfolio as a whole and as a
166 part of an overall investment strategy that has risk and return objectives reasonably suited to
167 the account.

168 (h) (i) Beginning in 2021, the state treasurer shall report every five years to the
169 Legislative Management Committee the following information about the account's investments
170 at the sub-account level:

171 (A) market value of investments;

172 (B) asset allocation targets;

173 (C) investment performance measured against appropriate benchmarks, at the portfolio
174 and individual investment level;

175 (D) projected investment returns;

176 (E) actual contributions;

177 (F) projected 10 and 20 year market values; and

178 (G) whether account growth is progressing adequately to reasonably achieve the
179 minimum target account balance established in Subsection (3)(b).

180 (ii) The Legislative Management Committee shall:

181 (A) review and evaluate the report; and

182 (B) determine whether to recommend further action, including whether to impose a fee

183 on an owner or operator of a commercial radioactive waste treatment or disposal facility for the
184 perpetual care and maintenance of the facility.

185 ~~[(5)]~~ (4) The Legislature may appropriate money from the Radioactive Waste Perpetual
186 Care and Maintenance Account for:

187 (a) perpetual care and maintenance of a commercial radioactive waste treatment or
188 disposal facility, excluding sites within the facility used for the disposal of byproduct material,
189 beginning 100 years after the date of final closure of the facility; or

190 (b) maintenance or monitoring of, or implementing corrective action at, a commercial
191 radioactive waste treatment or disposal facility, excluding sites within the facility used for the
192 disposal of byproduct material, before the end of 100 years after the date of final closure of the
193 facility, if:

194 (i) the owner or operator is unwilling or unable to carry out postclosure maintenance,
195 monitoring, or corrective action; and

196 (ii) the financial surety arrangements made by the owner or operator, including any
197 required under applicable law, are insufficient to cover the costs of postclosure maintenance,
198 monitoring, or corrective action.

199 ~~[(6)]~~ (5) The money appropriated from the Radioactive Waste Perpetual Care and
200 Maintenance Account for the purposes specified in Subsection ~~[(5)]~~ (4)(a) or (b) at a particular
201 commercial radioactive waste treatment or disposal facility may be appropriated only from the
202 subaccount established under Subsection ~~[(4)]~~ (2)(c) for the facility.

203 ~~[(7)]~~ (6) The attorney general shall bring legal action against the owner or operator or
204 take other steps to secure the recovery or reimbursement of the costs of maintenance,
205 monitoring, or corrective action, including legal costs, incurred pursuant to Subsection ~~[(5)]~~
206 (4)(b).

207 ~~[(8)]~~ ~~The board shall direct an evaluation of the adequacy of the restricted account as~~
208 ~~required under Section [19-1-307](#).]~~

209 ~~[(9)]~~ (7) This section does not apply to a uranium mill licensed under 10 C.F.R. Part
210 40, Domestic Licensing of Source Material.

211 Section 3. Section **51-7-2** is amended to read:

212 **51-7-2. Exemptions from chapter.**

213 The following funds are exempt from this chapter:

- 214 (1) funds invested in accordance with the participating employees' designation or
215 direction pursuant to a public employees' deferred compensation plan established and operated
216 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;
- 217 (2) funds of the Workers' Compensation Fund;
- 218 (3) funds of the Utah State Retirement Board;
- 219 (4) funds of the Utah Housing Corporation;
- 220 (5) endowment funds of higher education institutions;
- 221 (6) permanent and other land grant trust funds established pursuant to the Utah
222 Enabling Act and the Utah Constitution;
- 223 (7) the State Post-Retirement Benefits Trust Fund;
- 224 (8) the funds of the Utah Educational Savings Plan;
- 225 (9) funds of the permanent state trust fund created by and operated under Utah
226 Constitution, Article XXII, Section 4; [~~and~~]
- 227 (10) the funds in the Navajo Trust Fund[~~;~~]; and
- 228 (11) the funds in the Radioactive Waste Perpetual Care and Maintenance Account.
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Legislative Review Note
Office of Legislative Research and General Counsel