RADIOACTIVE AND HAZARDOUS WASTE ACCOUNT
AMENDMENTS
2017 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Brad R. Wilson
Senate Sponsor: Jacob L. Anderegg

LONG TITLE
General Description:
This bill amends provisions relating to funding and reporting on perpetual care and
maintenance of commercial radioactive waste disposal facilities and reporting on the
maintenance of hazardous waste disposal facilities.

Highlighted Provisions:
This bill:
- exempts funds in the Radioactive Waste Perpetual Care and Maintenance Account
  from the State Money Management Act;
- requires the state treasurer to:
  - follow certain account management and investment guidelines; and
  - report to the Legislative Management Committee on account performance;
- repeals the requirement that an existing commercial radioactive waste treatment or
disposal facility pay an annual fee;
- repeals the requirement that the Waste Management and Radiation Control Board
  report to the Legislative Management Committee on the adequacy of the funds to
  provide for the closure, postclosure, and perpetual care and maintenance of
  commercial radioactive waste treatment or disposal facilities and hazardous waste
treatment, storage, or disposal facilities.
- provides that the Waste Management and Radiation Control Board may report on
account adequacy and impose fees if an existing facility increases its licensed disposal volume by 25% or more; and
makes technical changes.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:
19-1-307, as last amended by Laws of Utah 2015, Chapter 451
19-3-106.2, as last amended by Laws of Utah 2010, Chapter 278
51-7-2, as last amended by Laws of Utah 2015, Chapter 319

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 19-1-307 is amended to read:
(1) (a) [Beginning in 2006, the] The Waste Management and Radiation Control Board created in Section 19-1-106 [shall] may direct an evaluation [every five years] of a commercial hazardous waste treatment, storage, or disposal facility, if the facility is:
(i) licensed or permitted after July 1, 2017; or
(ii) (A) licensed or permitted before July 1, 2017; and
(B) has cumulatively increased the facility's licensed disposal volume by 25% or more.
(b) The evaluation shall determine:
(i) the adequacy of the amount of financial assurance required for closure and postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment, storage, or disposal facility under Section 19-6-108; [and]
(ii) the adequacy of the amount of financial assurance or funds required for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under
Subsection (1)(c); 

[(b) The evaluation shall determine:] 

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

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

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

(A) groundwater corrective action; 

(B) differential settlement failure; or 

(C) major maintenance of a cell or cells. 

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

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

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

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

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

(b) The evaluation shall determine: 

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

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

[(b) The evaluation shall determine:]
whether the restricted account is adequate to provide for perpetual care and
maintenance of commercial radioactive waste treatment or disposal facilities;

whether the amount of financial assurance required is adequate to provide for
closure and postclosure care of commercial radioactive waste treatment or disposal facilities;

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

the costs above the minimal maintenance and monitoring for reasonable risks
that may occur during closure, postclosure, and perpetual care and maintenance of commercial
radioactive waste treatment or disposal facilities including:

(A) groundwater corrective action;
(B) differential settlement failure; or
(C) major maintenance of a cell or cells.

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

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

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

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

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

(2) (a) On and after July 1, 2002, the owner or operator of an active commercial
radioactive waste treatment or disposal facility shall pay an annual fee of $400,000 to provide for the perpetual care and maintenance of the facility.

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

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

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

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

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

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

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

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

(ii) Each subaccount shall contain:

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

(B) the associated investment income.

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

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

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

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

(e) (i) The state treasurer may employ professional asset managers to assist in the investment of assets of the account.
(ii) The state treasurer may only provide compensation to asset managers from earnings generated by the account's investments.

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

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

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

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

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

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

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

(A) market value of investments;

(B) asset allocation targets;

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

(D) projected investment returns;

(E) actual contributions;

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

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

(ii) The Legislative Management Committee shall:

(A) review and evaluate the report; and

(B) determine whether to recommend further action, including whether to impose a fee
on an owner or operator of a commercial radioactive waste treatment or disposal facility for the perpetual care and maintenance of the facility.

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

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

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

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

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

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

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

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

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

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

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

The following funds are exempt from this chapter:
(1) funds invested in accordance with the participating employees' designation or
direction pursuant to a public employees' deferred compensation plan established and operated
in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;
(2) funds of the Workers' Compensation Fund;
(3) funds of the Utah State Retirement Board;
(4) funds of the Utah Housing Corporation;
(5) endowment funds of higher education institutions;
(6) permanent and other land grant trust funds established pursuant to the Utah
Enabling Act and the Utah Constitution;
(7) the State Post-Retirement Benefits Trust Fund;
(8) the funds of the Utah Educational Savings Plan;
(9) funds of the permanent state trust fund created by and operated under Utah
Constitution, Article XXII, Section 4; [and]
(10) the funds in the Navajo Trust Fund; [and]
(11) the funds in the Radioactive Waste Perpetual Care and Maintenance Account.

Legislative Review Note
Office of Legislative Research and General Counsel