

HOUSE BILL NO. 218

INTRODUCED BY BOOKOUT-REINICKE

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT THE OWNER OF HIGH-LEVEL RADIOACTIVE WASTE OR TRANSURANIC WASTE PAY FEES, PROVIDE A SAFETY REPORT, SUBMIT A SAFETY PLAN, POST A RECLAMATION BOND, AND OBTAIN A PERMIT BEFORE SHIPPING THE WASTE THROUGH MONTANA; DEFINING TERMS; CREATING THE RADIOACTIVE WASTE TRANSPORTATION MONITORING, EMERGENCY RESPONSE, EQUIPMENT PURCHASE, AND TRAINING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; SPECIFYING HOW MONEY IN THE ACCOUNT MUST BE USED; REQUIRING THAT INITIAL NOTICE OF SHIPMENTS BE PROVIDED TO THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AND TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THAT THE DISASTER AND EMERGENCY SERVICES DIVISION NOTIFY CERTAIN OTHER AGENCIES AND PERSONS WHEN IT IS INFORMED THAT WASTE WILL BE ROUTED THROUGH MONTANA; PROVIDING RESPONSIBILITIES FOR TRANSPORTERS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO COLLECT THE FEES AND ISSUE PERMITS; REQUIRING INSPECTIONS; REQUIRING THAT THE PERMIT REMAIN WITH THE TRANSPORTER OF WASTE AS IT TRAVELS THROUGH THE STATE; REQUIRING THE HIGHWAY PATROL TO MONITOR OR ESCORT MOTOR CARRIERS THAT ARE CARRYING THE WASTE; PROVIDING FOR THE COORDINATION OF INSPECTIONS OF MOTOR CARRIERS; ALLOWING THE HIGHWAY PATROL TO BE REIMBURSED FOR COSTS INCURRED IN MONITORING OR ESCORTING THE MOTOR CARRIERS; SPECIFYING THAT THE PUBLIC SERVICE COMMISSION IS RESPONSIBLE FOR INSPECTING RAILS OR TRAINS THAT WILL BE INVOLVED IN CARRYING THE WASTE; PROVIDING CERTAIN CONSTRAINTS ON TRANSPORT OF THE WASTE; ALLOWING THE PUBLIC SERVICE COMMISSION TO ENTER INTO RECIPROCAL AGREEMENTS WITH ADJACENT STATES AND CANADIAN PROVINCES FOR INSPECTION; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH RULES FOR CARRYING OUT THESE PROVISIONS; ASSIGNING LIABILITY; ~~AND~~ PROVIDING A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9 12] may be cited as the "Montana

High-Level Radioactive Waste and Transuranic Waste Transportation Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 9 12] is to:

(1) enhance the safety of Montana's citizens by requiring a special permit, inspections, and monitoring of shipments of high-level radioactive waste and transuranic waste that travel through Montana by motor carrier or railroad; AND

(2) ENSURE THAT IN THE EVENT OF AN ACCIDENT, SPILL, OR OTHER RELATED EMERGENCY THERE WILL BE SUFFICIENT INDEMNITY, BOND, OR INSURANCE TO COMPENSATE FOR ALL DAMAGE TO PERSONS, PROPERTY, OR THE ENVIRONMENT.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 9 12], the following definitions apply:

(1) "High-level radioactive waste" means:

(a) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste that contains fission products in sufficient concentrations;

(b) irradiated reactor fuel; or

(c) other highly radioactive waste material that the U.S. nuclear regulatory commission has determined by rule requires permanent isolation.

(2) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(3) "Transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram or in other concentrations that the U.S. nuclear regulatory commission may prescribe.

NEW SECTION. Section 4. Radioactive waste transportation monitoring, emergency response, and training account -- purpose -- disbursement. (1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, EQUIPMENT PURCHASE, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to [section 6 7]

may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and, IF FEDERAL FUNDING IS INSUFFICIENT FOR TRAINING;

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill, or other related emergency occurs;

(D) TO ASSIST STATE AND COUNTY OFFICIALS IN NOTIFICATION COSTS FOR RESIDENTS ALONG THE TRANSPORT ROUTE;

(E) TO OBTAIN PROTECTIVE CLOTHING AND GEAR NEEDED FOR INSPECTION OR POTENTIAL HAZARDOUS CLEANUP ACTIVITIES; AND

(F) TO PROVIDE FOR A MONITORED PULLOUT AREA FOR USE BY TRUCK TRANSPORTERS HAULING HIGHLY RADIOACTIVE WASTE.

(3) PRIOR TO RULEMAKING PROVIDED FOR UNDER [SECTION 10(3)], THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS SHALL COORDINATE WITH THE PUBLIC SERVICE COMMISSION AND THE DEPARTMENT OF TRANSPORTATION TO PROVIDE TO AN APPROPRIATE LEGISLATIVE INTERIM COMMITTEE PRIOR TO THE 59TH LEGISLATURE A PLAN THAT PRIORITIZES PROSPECTIVE DISBURSEMENT OF MONEY IN THE ACCOUNT DESCRIBED IN SUBSECTION (1).

NEW SECTION. SECTION 5. RESPONSIBILITIES OF TRANSPORTER. (1) A TRANSPORTER MAY NOT CARRY SHIPMENTS OF HIGH-LEVEL RADIOACTIVE WASTE OR TRANSURANIC WASTE THROUGH THE STATE WITHOUT PROVIDING TO THE DISASTER AND EMERGENCY SERVICES DIVISION IN ADVANCE OF SHIPMENT:

(A) A SHIPMENT DESCRIPTION, INCLUDING TYPE OF WASTE;

(B) A SAFETY REPORT, WHICH MUST BE FORWARDED TO THE DEPARTMENT OF TRANSPORTATION FOR TRUCK SHIPMENTS OR THE PUBLIC SERVICE COMMISSION FOR RAIL SHIPMENTS, AND WHICH MUST INCLUDE:

(I) THE SPECIFICATIONS OF CASKS BEING USED TO TRANSPORT THE RADIOACTIVE WASTE, INCLUDING HOW THE CASKS HAVE BEEN TESTED AND CERTIFIED; AND

(II) PROOF OF TRAINING BY CREW MEMBERS FOR EMERGENCY SITUATIONS, INCLUDING ACCIDENTS;

(C) A SAFETY PLAN THAT INCLUDES:

(I) THE INTENDED ROUTE;

(II) ALL SAFETY PRECAUTIONS TO BE TAKEN TO PREVENT AN ACCIDENT; AND

(III) EMERGENCY PLANS FOR THREATS TO SAFETY;

(D) PROOF OF INSURANCE OR AN INDEMNITY BOND. IF THE TRANSPORTER IS COVERED BY A FEDERAL INSURANCE PROGRAM FOR THE TRANSPORT OF RADIOACTIVE MATERIAL, PROOF OF COVERAGE BY THAT PROGRAM IS SUFFICIENT. IF A FEDERAL INSURANCE PROGRAM DOES NOT COVER THE TRANSPORTER, THE TRANSPORTER SHALL PROVIDE PROOF OF A BOND OR INDEMNITY INSURANCE COVERAGE FOR \$25 MILLION. THE DEPARTMENT OF TRANSPORTATION IS RESPONSIBLE FOR INSURANCE OVERSIGHT IN THE EVENT OF AN ACCIDENT THAT RESULTS IN RADIOACTIVE MATERIAL LEAKING OR OTHERWISE SPILLING.

(E) PROOF OF A RADIOTELEPHONE OR OTHER WORKING, TWO-WAY VOICE COMMUNICATIONS DEVICE APPROVED BY THE NUCLEAR REGULATORY COMMISSION FOR THE MAIN TRANSPORTER AND FOR EACH ESCORT VEHICLE.

(2) A TRANSPORTER MAY NOT TRANSPORT THROUGH THE STATE ANY HIGH-LEVEL RADIOACTIVE WASTE OR TRANSURANIC WASTE THAT IS NOT PROPERLY SEALED IN A CASK APPROVED BY THE NUCLEAR REGULATORY COMMISSION.

NEW SECTION. Section 6. Transportation of radioactive waste through state -- notification -- responsibilities of division. (1) A person or entity may not ship high-level radioactive waste or transuranic waste through the state by rail or motor carrier unless the person or entity first notifies the disaster and emergency services division and the department of transportation, pays the appropriate fees, and obtains a permit.

(2) Upon receiving the notification required under subsection (1), the disaster and emergency services division shall notify the highway patrol ~~and~~, the public service commission, AND THE BOARDS OF COUNTY COMMISSIONERS IN COUNTIES THROUGH WHICH THE RADIOACTIVE WASTE WILL BE TRANSPORTED, WITHIN THE LIMITS OF INFORMATION DISCLOSURE ALLOWED BY NUCLEAR REGULATORY COMMISSION REGULATIONS. COUNTY COMMISSIONERS MAY INITIATE A NOTIFICATION SIGN-UP LIST FOR PROPERTY OWNERS ALONG HIGHWAYS AND RAIL CORRIDORS OF THE PROPOSED TRANSPORT ROUTE AND MAINTAIN THE LIST FOR USE IN NOTIFYING LANDOWNERS OF SHIPMENTS OF RADIOACTIVE WASTE, WITHIN THE EXTENT PERMITTED BY FEDERAL REGULATIONS OR REQUIRED IN AN EMERGENCY. IF A COUNTY COMPILES A LIST, AN ABSENTEE LANDOWNER IS RESPONSIBLE FOR PROVIDING COUNTIES WITH THE NAME OF ANY RENTER WHOSE NAME MUST BE INCLUDED ON THE NOTIFICATION LIST.

(3) The disaster and emergency services division shall reimburse the highway patrol for expenses incurred in monitoring or escorting motor carriers, as provided in [section 7 9], from money collected in the radioactive waste transportation monitoring, emergency response, and training account created in [section 4].

NEW SECTION. Section 7. Responsibilities of department of transportation -- assessment and collection of fees -- issuance of permits -- inspection of motor carriers. (1) After receiving notification from

the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall:

(a) assess fees according to the following schedule:

(i) a fee of \$2,500 must be assessed for each CASK THAT IS BEING TRANSPORTED ON HIGHWAYS BY motor carrier; and

(ii) a fee of \$4,500 must be assessed for the first cask that is being transported by rail through the state and a fee of \$3,000 for each additional cask that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns ~~and is shipping~~ the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste AND TO THE TRANSPORTER a ONE-TRIP permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in [section 4].

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) FEES UNDER THIS SECTION MUST BE ASSESSED REGARDLESS OF OWNERSHIP, AND 61-3-321(5) AND 61-10-127 DO NOT APPLY.

NEW SECTION. SECTION 8. INSPECTIONS. (1) IN ADDITION TO INSPECTIONS ROUTINELY CONDUCTED FOR RAIL CARRIERS OR MOTOR VEHICLE CARRIERS, THE AGENCY ASSIGNED TO INSPECT A CARRIER TRANSPORTING HIGH-LEVEL RADIOACTIVE WASTE MUST INSPECT AT A MINIMUM THE FOLLOWING:

(A) LEVELS OF RADIATION ON THE SURFACE OF THE DEVICE IN WHICH THE WASTE IS STORED; AND

(B) LOAD SAFETY OF THE RAIL CARS OR MOTOR VEHICLES CARRYING THE RADIOACTIVE MATERIAL.

(2) THE AGENCY ASSIGNED TO INSPECT TRANSPORT OF HIGH-LEVEL RADIOACTIVE WASTE MUST ALSO, PRIOR TO INSPECTION, COMPILE A REPORT ON THE CONDITIONS THAT MAY AFFECT THE TRAVEL ROUTE FOR THE IMMEDIATELY PRECEDING 24-HOUR PERIOD AND, IF THE WEATHER MAY INFLUENCE THE SAFETY OF THE TRANSPORT, MUST OBTAIN A

WEATHER REPORT FOR THE AREA THROUGH WHICH THE MATERIAL IS TO BE TRANSPORTED. IF THE INFORMATION GATHERED UNDER THIS SUBSECTION IS NOT OTHERWISE REQUIRED TO BE PROVIDED TO THE OWNER AND THE TRANSPORTER OF THE WASTE, THE INSPECTING AGENCY SHALL PROVIDE THE INFORMATION TO THE OWNER AND THE TRANSPORTER.

NEW SECTION. Section 9. Responsibilities of highway patrol -- monitoring of motor carriers -- billing. (1) After receiving notification from the disaster and emergency services division that a motor carrier will be transporting high-level radioactive waste or transuranic waste through the state, the highway patrol shall establish a plan for monitoring the shipment.

(2) Monitoring a shipment by motor carrier may include escorting the vehicle through the state, establishing checkpoints, shadowing the vehicle, electronically following the vehicle's movements, or any other method determined by the highway patrol to be effective and safe.

(3) The highway patrol shall coordinate inspection of the motor carrier with the department of transportation's motor carrier services division.

(4) The highway patrol shall determine the cost that it has incurred in monitoring each motor carrier and shall submit a bill for reimbursement to the disaster and emergency services division FOR PAYMENT OUT OF THE ACCOUNT ESTABLISHED IN [SECTION 4(1)] ACCORDING TO THE PRIORITIES ESTABLISHED IN [SECTION 4(3)].

(5) TRANSPORT BY MOTOR CARRIER OF HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE MAY BE ONLY OVER A FEDERAL-AID INTERSTATE HIGHWAY AND ONLY DURING DAYLIGHT HOURS, EXCEPT IN EMERGENCIES DETERMINED BY THE DISASTER AND EMERGENCY SERVICES DIVISION, WHICH SHALL WORK WITH LOCAL AUTHORITIES TO DETERMINE ALTERNATE ROUTES.

NEW SECTION. Section 10. Responsibilities of public service commission -- inspection of rails and trains -- agreements with neighboring states AND PROVINCES -- rulemaking. (1) After receiving notification from the disaster and emergency services division that high-level radioactive waste or transuranic waste will be shipped by railroad through the state, the public service commission shall establish a plan for inspecting the rails and the trains, as authorized in Title 69, chapter 14, part 2, that will be involved in the transportation of the waste. THE PLAN MUST INCLUDE BUT IS NOT LIMITED TO:

(A) COORDINATION WITH THE FEDERAL RAILROAD ADMINISTRATION ON TRACK AND ROLLING STOCK INSPECTIONS;

(B) INSPECTION AND APPROVAL BY A FEDERALLY CERTIFIED INSPECTOR NO LATER THAN 1 WEEK PRIOR TO SHIPMENT; AND

(C) A REQUIREMENT THAT TRAINS CARRYING RADIOACTIVE WASTE OR TRANSURANIC WASTE TRAVEL AT NO MORE THAN 40 MILES AN HOUR.

(2) The public service commission may enter into reciprocal agreements with adjacent states and bordering Canadian provinces that Montana's inspectors may inspect trains while they are stopped in those states or provinces before they cross the Montana border.

(3) The public service commission shall, in cooperation with the department of transportation, the disaster and emergency services division, and the highway patrol, establish rules to carry out the provisions of [sections 1 through 9 12]. The rules must address:

(a) the process by which local authorities will be notified when a motor carrier or a train carrying high-level radioactive waste or transuranic waste is approaching their jurisdictions;

(b) which local authorities will receive notification;

(c) the process by which local governments and local emergency response entities may apply for and receive training and reimbursement money from the radioactive waste transportation monitoring, emergency response, and training account, as provided in [section 4];

(d) the criteria for qualifying to receive money from the account;

(e) acceptable means for monitoring a train that is carrying high-level radioactive waste or transuranic waste; and

(f) other processes or procedures that the public service commission, the department of transportation, the disaster and emergency services division, and the highway patrol determine are necessary to efficiently carry out the provisions of [sections 1 through 9 12] and to ensure the safe transportation of high-level radioactive waste or transuranic waste through Montana.

NEW SECTION. Section 11. Penalty. A person or entity found to be in violation of the provisions of [sections 5 through 8 10] shall be fined an amount of not more than ~~\$40,000~~ \$100,000 for each violation. IN THE CASE OF AN ACCIDENTAL SPILL OF A CASK CONTAINING TRANSURANIC WASTE OR LEAKAGE OF HIGH-LEVEL RADIOACTIVE WASTE, THE PENALTY IS IN ADDITION TO ANY LIABILITY ASSESSED UNDER [SECTION 12]. ~~The public service commission~~ DEPARTMENT OF TRANSPORTATION is responsible for imposing and determining the amount of a fine.

NEW SECTION. SECTION 12. LIABILITY. THE TRANSPORTATION OF HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE THROUGH THE STATE IS CONSIDERED AN ULTRAHAZARDOUS ACTIVITY AND THE OWNER SHALL BE STRICTLY LIABLE FOR ANY DAMAGES TO PERSON, PROPERTY, OR THE ENVIRONMENT.

NEW SECTION. Section 13. Codification instruction. [Sections 1 through 9 12] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 9 12].

NEW SECTION. SECTION 14. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. SECTION 15. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

- END -