

March 2, 2000

**Senate Bill 12** (Cowles/Duff)

Escrow payments for the disposal of radioactive waste.

**Summary of Bill -**

The federal Dept. of Energy was supposed to start accepting high-level radioactive waste and spent nuclear materials in January 1998. However, DOE doesn't have a place to put all this waste yet and they are refusing to accept it. The states and utilities are currently pursuing contractual remedies against DOE right now, but they are also supposed to be making regular payments to a DOE escrow account for future storage.

This bill directs the Wisconsin PSC and SWIB to create an escrow account and accept payments here - rather than sending them to DOE - if PSC determines that DOE is not meeting its obligations under the Nuclear Waste Policy Act of 1982. The PSC would direct the money to DOE when a waste repository is found and DOE starts meeting its obligations.

It's estimated that about \$10.6 million would be collected each year from operators and generators in the state. PSC and SWIB say they don't need any additional staff or funding to run this escrow account.

**Staff Comments -**

This bill seems fine. We would be taking action only after a finding that DOE has effectively breached the contract. Although DOE is in a tough spot, we should send them a message that this issue needs to be resolved soon.

**Standing Committee Action -**

SB 12, as amended by SA1, was approved 5-0 by the Sen. Committee on Agriculture & Environmental Resources on May 25, 1999.

(Note: SA1 made only minor changes to the bill, see p. 3 of FB memo)

**Recommended JFC Action -**

- Approve SA1
- Approve SB 12 as amended by SA1

Prepared by Barry.



## Legislative Fiscal Bureau

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March 2, 2000

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 12: Escrowing of Certain Fee Payments to the Federal Government for the Disposal of Radioactive Waste

### BACKGROUND

Under provisions of the federal Nuclear Waste Policy Act of 1982, the federal Department of Energy (DOE) is given the ultimate responsibility to provide for the permanent disposal of high level radioactive waste and spent nuclear fuel. The Secretary of DOE is authorized under the Act to enter into contracts with the owners and generators of the radioactive waste and spent nuclear fuel for "the acceptance of title, subsequent transportation and disposal" of such materials. Further, the Act prohibits the federal Nuclear Regulatory Commission from licensing or renewing the license of any entity owning or generating radioactive waste and spent nuclear fuel unless a nuclear waste disposal contract actually exists between the entity and the Secretary of DOE.

These contracts must also provide for the collection of fees from the owners and generators of the radioactive wastes sufficient to offset DOE's costs for the acceptance, transportation and disposal of these materials. The amount of the fee is 1 mil per kilowatt hour of electricity generated from the use of nuclear fuel. For the 1998 calendar year, the last full year for which complete data is available, Wisconsin utilities with nuclear generating capabilities paid fees totaling \$10.6 million to DOE. Since 1983 when the required waste disposal fees were first collected, Wisconsin utilities have paid more than \$261.8 million to DOE. In return for these fee payments, the Nuclear Waste Policy Act required DOE to begin accepting and disposing of high level radioactive waste and spent nuclear fuel by January 31, 1998.

However, as the January 31, 1998, date approached, the DOE took the position that it did not have the statutory or contractual obligation to accept high level radioactive waste and spent nuclear materials by the deadline date in the absence of an operational waste repository or interim storage

facility. Subsequently, several utilities and state utility regulatory agencies began legal action requesting a review of DOE's interpretation of its obligations under the Nuclear Waste Policy Act. In a 1996 decision, the U. S. Court of Appeals for the District of Columbia ruled that the DOE had an unconditional obligation to begin disposing of radioactive waste and spent nuclear fuel by the January 31, 1998, deadline date, notwithstanding the various impediments encountered by DOE in trying to do so. In mid-1997, when it became apparent that DOE would not begin accepting nuclear waste materials by January 31, 1998, the utility and state petitioners again asked the U. S. Court of Appeals for relief by: (1) ordering DOE to begin accepting the waste materials; (2) placing all fee payments required under the nuclear waste disposal contracts into an escrow account until DOE met its obligations; and (3) prohibiting DOE from taking any punitive actions against the contract holders who suspend their direct fee payments.

In late 1997, the court ruled that it would not adopt the remedies proposed by the petitioners and instead directed the contract holders to pursue the remedies already provided in the existing contracts with DOE in the event that the latter did not perform its obligations to accept the nuclear waste. According to staff at the Public Service Commission (PSC), the parties are currently pursuing contractual remedies in federal claims court.

## **SUMMARY OF BILL**

Senate Bill 12 would provide that if the PSC determines that the federal DOE is not meeting its obligations under the Nuclear Waste Policy Act of 1982 to accept title to, transport and dispose of high level radioactive waste and spent nuclear fuel pursuant to contracts with the Wisconsin owners and generators of such materials, the PSC would be authorized to direct such entities to pay the required disposal fees to the PSC rather than to DOE. Under the bill, this arrangement would continue for as long as DOE was not meeting its contractual obligations to accept, transport and dispose of the wastes.

The PSC would be required to deposit any such fees received into a separate Nuclear Waste Escrow Fund. The bill would create this new fund as a separate, nonlapsible segregated trust fund under the management of the State of Wisconsin Investment Board (SWIB). SWIB would be required to invest the monies in the fund only in investments appropriate for an escrow fund, such as interest-bearing accounts at federally-insured banking institutions or short-term direct obligations of the federal government.

Further, Senate Bill 12 would provide that upon a showing by the Secretary of DOE that the federal agency was meeting its contractual obligations under the Nuclear Waste Policy Act of 1982 to accept title to, transport and dispose of high level radioactive waste and spent nuclear fuel, the PSC would then be required to pay the Secretary of DOE all the amounts contained in the Nuclear Waste Escrow Fund. A new sum sufficient appropriation would be created under the PSC's appropriation structure for the purpose of making such disbursements from the fund. Upon making

this payment to the Secretary of DOE, the bill would direct the PSC to cease accepting additional escrow payments.

Senate Bill 12, as amended by Senate Amendment 1, was recommended for passage by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform on a vote of 5-0.

### **SENATE AMENDMENT 1**

Senate Amendment 1 would require that, if the PSC determines that the federal DOE is not meeting its contract obligations under the Nuclear Waste Policy Act, the PSC would have to meet an additional condition before it could direct the owners or generators of high level radioactive waste and spent nuclear fuel to pay the required waste disposal fees to the Nuclear Waste Escrow Fund. Under this amendment, the PSC could direct payments to the nuclear waste escrow fund only if a federal court or the DOE has authorized the PSC to receive the payment of the fees due under the contracts. This provision would ensure that contract holders would not be subject simultaneously to conflicting payment requirements under both state law and the existing contracts with DOE.

Senate Amendment 1 would also require the PSC to order payments to the Nuclear Waste Escrow Fund if the two conditions (a finding that DOE is not meeting its obligations and a federal court or the DOE authorizes the PSC to receive the escrow payments) are met. Under the original bill, the PSC is permitted but not required to order the escrow payments if the one condition (a finding that DOE is not meeting its obligations) is met.

### **FISCAL EFFECT**

Neither the PSC nor SWIB believes that the implementation and management of the Nuclear Waste Escrow Fund would require additional funding or staffing resources. Any such additional costs or staffing requirements could be met from within each agency's existing base budget.

To the extent that owners and generators of high level radioactive waste and spent nuclear fuel in the state were required to remit current disposal fee payments to the Nuclear Waste Escrow Fund rather than to the federal DOE, it is estimated that \$10.6 million SEG of such fees would be collected annually from operators and generators in the state and escrowed to the fund.

Prepared by: Tony Mason